



# Courts and Legal Services Act 1990

## 1990 CHAPTER 41

### PART II

#### LEGAL SERVICES

##### *Miscellaneous*

#### [<sup>F1</sup>58AA Damages-based agreements <sup>F2</sup>...

- (1) A damages-based agreement which <sup>F3</sup>... satisfies the conditions in subsection (4) is not unenforceable by reason only of its being a damages-based agreement.
- (2) But [<sup>F4</sup>(subject to subsection (9))] a damages-based agreement which <sup>F5</sup>... does not satisfy those conditions is unenforceable.
- (3) For the purposes of this section—
  - (a) a damages-based agreement is an agreement between a person providing advocacy services, litigation services or claims management services and the recipient of those services which provides that—
    - (i) the recipient is to make a payment to the person providing the services if the recipient obtains a specified financial benefit in connection with the matter in relation to which the services are provided, and
    - (ii) the amount of that payment is to be determined by reference to the amount of the financial benefit obtained;
  - <sup>F6</sup>(b) .....
- (4) The agreement—
  - (a) must be in writing;  
[ must not relate to proceedings which by virtue of section 58A(1) and (2)
  - <sup>F7</sup>(aa) cannot be the subject of an enforceable conditional fee agreement or to proceedings of a description prescribed by the Lord Chancellor;]

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- (b) [<sup>F8</sup>if regulations so provide,] must not provide for a payment above a prescribed amount or for a payment above an amount calculated in a prescribed manner;
  - (c) must comply with such other requirements as to its terms and conditions as are prescribed; and
  - (d) must be made only after the person providing services under the agreement [<sup>F9</sup>has complied with such requirements (if any) as may be prescribed as to the provision of information].
- (5) Regulations under subsection (4) are to be made by the Lord Chancellor and may make different provision in relation to different descriptions of agreements.
- (6) Before making regulations under subsection (4) the Lord Chancellor must consult—
  - (a) the designated judges,
  - (b) the General Council of the Bar,
  - (c) the Law Society, and
  - (d) such other bodies as the Lord Chancellor considers appropriate.
- [ Rules of court may make provision with respect to the assessment of costs in
- <sup>F10</sup>(6A) proceedings where a party in whose favour a costs order is made has entered into a damages-based agreement in connection with the proceedings.]
- (7) In this section—
  - “payment” includes a transfer of assets and any other transfer of money’s worth (and the reference in subsection (4)(b) to a payment above a prescribed amount, or above an amount calculated in a prescribed manner, is to be construed accordingly);
  - “claims management services” has the same meaning as in [<sup>F11</sup>the Financial Services and Markets Act 2000 (see section 419A of that Act)].
- [ In this section (and in the definitions of “advocacy services” and “litigation services”
- <sup>F12</sup>(7A) as they apply for the purposes of this section) “proceedings” includes any sort of proceedings for resolving disputes (and not just proceedings in a court), whether commenced or contemplated.]
- (8) Nothing in this section applies to an agreement entered into before the coming into force of the first regulations made under subsection (4).
- [ Where section 57 of the Solicitors Act 1974 (non-contentious business agreements
- <sup>F13</sup>(9) between solicitor and client) applies to a damages-based agreement other than one relating to an employment matter, subsections (1) and (2) of this section do not make it unenforceable.
- (10) For the purposes of subsection (9) a damages-based agreement relates to an employment matter if the matter in relation to which the services are provided is a matter that is, or could become, the subject of proceedings before an employment tribunal.]
- [ Subsection (1) is subject to section 47C(8) of the Competition Act 1998.]]
- <sup>F14</sup>(11)

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### Textual Amendments

- F1** S. 58AA inserted (12.11.2009) by [Coroners and Justice Act 2009 \(c. 25\)](#), **ss. 154(2)**, 182(1)(e) (with s. 180, [Sch. 22](#))
- F2** Words in s. 58AA heading omitted (19.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 45(11)**, 151(1) (with s. 45(13)); S.I. 2013/77, arts. 2(1)(b), 3(b)
- F3** Words in s. 58AA(1) omitted (19.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 45(2)**, 151(1) (with s. 45(13)); S.I. 2013/77, arts. 2(1)(b), 3(b)
- F4** Words in s. 58AA(2) inserted (19.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 45(3)(a)**, 151(1) (with s. 45(13)); S.I. 2013/77, arts. 2(1)(b), 3(b)
- F5** Words in s. 58AA(2) omitted (19.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 45(3)(b)**, 151(1) (with s. 45(13)); S.I. 2013/77, arts. 2(1)(b), 3(b)
- F6** S. 58AA(3)(b) omitted (19.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 45(4)**, 151(1) (with s. 45(13)); S.I. 2013/77, arts. 2(1)(b), 3(b)
- F7** S. 58AA(4)(aa) inserted (19.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 45(5)**, 151(1) (with s. 45(13)); S.I. 2013/77, arts. 2(1)(b), 3(b)
- F8** Words in s. 58AA(4)(b) inserted (19.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 45(6)**, 151(1) (with s. 45(13)); S.I. 2013/77, arts. 2(1)(b), 3(b)
- F9** Words in s. 58AA(4)(d) substituted (19.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 45(7)**, 151(1) (with s. 45(13)); S.I. 2013/77, arts. 2(1)(b), 3(b)
- F10** S. 58AA(6A) inserted (1.10.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 45(8)**, 151(1) (with s. 45(13)); S.I. 2012/2412, art. 2(a)
- F11** Words in s. 58AA(7) substituted (29.11.2018 for specified purposes, 1.4.2019 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Claims Management Activity\) Order 2018 \(S.I. 2018/1253\)](#), arts. 1(2)(3), **90** (with arts. 106, 107)
- F12** S. 58AA(7A) inserted (19.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 45(9)**, 151(1) (with s. 45(13)); S.I. 2013/77, arts. 2(1)(b), 3(b)
- F13** S. 58AA(9)(10) inserted (19.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 45(10)**, 151(1) (with s. 45(13)); S.I. 2013/77, arts. 2(1)(b), 3(b)
- F14** S. 58AA(11) inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), **Sch. 8 para. 37**; S.I. 2015/1630, art. 3(j)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 58A(2)(fe) inserted by [2021 c. 17 s. 53](#)