

2000 No. 2988

LEGAL SERVICES, ENGLAND AND WALES

**The Collective Conditional Fee Agreements Regulations
2000**

Made - - - - *7th November 2000*

Laid before Parliament *8th November 2000*

Coming into force *30th November 2000*

The Lord Chancellor, in exercise of the powers conferred upon him by sections 58(3)(c), 58A(3) and 119 of the Courts and Legal Services Act 1990^(a) hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Collective Conditional Fee Agreements Regulations 2000, and shall come into force on 30th November 2000.

(2) In these Regulations, except where the context requires otherwise—

“client” means a person who will receive advocacy or litigation services to which the agreement relates;

“collective conditional fee agreement” has the meaning given in regulation 3;

“conditional fee agreement” has the same meaning as in section 58 of the Courts and Legal Services Act 1990;

“funder” means the party to a collective conditional fee agreement who, under that agreement, is liable to pay the legal representative’s fees;

“legal representative” means the person providing the advocacy or litigation services to which the agreement relates.

Transitional provisions

2. These Regulations shall apply to agreements entered into on or after 30th November 2000, and agreements entered into before that date shall be treated as if these Regulations had not come into force.

Definition of “collective conditional fee agreement”

3.—(1) Subject to paragraph (2) of this regulation, a collective conditional fee agreement is an agreement which—

^(a) 1990 c.41. Sections 58 and 58A are substituted by section 27 of the Access to Justice Act 1999 (c.22); section 119 is an interpretation provision and is cited because of the meaning given to the word “prescribed”.

- (a) disregarding section 58(3)(c) of the Courts and Legal Services Act 1990, would be a conditional fee agreement; and
 - (b) does not refer to specific proceedings, but provides for fees to be payable on a common basis in relation to a class of proceedings, or, if it refers to more than one class of proceedings, on a common basis in relation to each class.
- (2) An agreement may be a collective conditional fee agreement whether or not—
- (a) the funder is a client; or
 - (b) any clients are named in the agreement.

Requirements for contents of collective conditional fee agreements: general

4.—(1) A collective conditional fee agreement must specify the circumstances in which the legal representative's fees and expenses, or part of them, are payable.

(2) A collective conditional fee agreement must provide that, when accepting instructions in relation to any specific proceedings the legal representative must—

- (a) inform the client as to the circumstances in which the client may be liable to pay the costs of the legal representative; and
- (b) if the client requires any further explanation, advice or other information about the matter referred to in sub-paragraph (a), provide such further explanation, advice or other information about it as the client may reasonably require.

(3) Paragraph (2) does not apply in the case of an agreement between a legal representative and an additional legal representative.

(4) A collective conditional fee agreement must provide that, after accepting instructions in relation to any specific proceedings, the legal representative must confirm his acceptance of instructions in writing to the client.

Requirements for contents of collective conditional fee agreements providing for success fees

5.—(1) Where a collective conditional fee agreement provides for a success fee the agreement must provide that, when accepting instructions in relation to any specific proceedings the legal representative must prepare and retain a written statement containing—

- (a) his assessment of the probability of the circumstances arising in which the percentage increase will become payable in relation to those proceedings (“the risk assessment”);
- (b) his assessment of the amount of the percentage increase in relation to those proceedings, having regard to the risk assessment; and
- (c) the reasons, by reference to the risk assessment, for setting the percentage increase at that level.

(2) If the agreement relates to court proceedings it must provide that where the success fee becomes payable as a result of those proceedings, then—

- (a) if—
 - (i) any fees subject to the increase are assessed, and
 - (ii) the legal representative or the client is required by the court to disclose to the court or any other person the reasons for setting the percentage increase at the level assessed by the legal representative,

he may do so,

- (b) if—
 - (i) any such fees are assessed by the court, and
 - (ii) any amount in respect of the percentage increase is disallowed on the assessment on the ground that the level at which the increase was set was unreasonable in view of facts which were or should have been known to the legal representative at the time it was set

that amount ceases to be payable under the agreement, unless the court is satisfied that it should continue to be so payable, and

(c) if—

- (i) sub-paragraph (b) does not apply, and
- (ii) the legal representative agrees with any person liable as a result of the proceedings to pay fees subject to the percentage increase that a lower amount than the amount payable in accordance with the conditional fee agreement is to be paid instead,

the amount payable under the collective conditional fee agreement in respect of those fees shall be reduced accordingly, unless the court is satisfied that the full amount should continue to be payable under it.

(3) In this regulation “percentage increase” means the percentage by which the amount of the fees which would have been payable if the agreement were not a conditional fee agreement is to be increased under the agreement.

Form and amendment of collective conditional fee agreement

6.—(1) Subject to paragraph (2), a collective conditional fee agreement must be signed by the funder, and by the legal representative.

(2) Paragraph (1) does not apply in the case of an agreement between a legal representative and an additional legal representative.

(3) Where a collective conditional fee agreement is amended, regulations 4 and 5 apply to the amended agreement as if it were a fresh agreement made at the time of the amendment.

Amendment to the Conditional Fee Agreements Regulations 2000

7. After regulation 7 of the Conditional Fee Agreements Regulations 2000(a) there shall be inserted the following new regulation:—

“Exclusion of collective conditional fee agreements

8. These Regulations shall not apply to collective conditional fee agreements within the meaning of regulation 3 of the Collective Conditional Fee Agreements Regulations 2000.”.

Dated 7th November 2000

Irvine of Lairg, C.

(a) S.I. 2000/692.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations prescribe conditions which must be satisfied by a collective conditional fee agreement.

A collective conditional fee agreement is a conditional fee agreement with a legal representative which does not refer to specific proceedings, but provides for fees to be payable on a common basis in relation to a class of proceedings, whether or not the person liable to pay the fees under the agreement is the client of the legal representative.

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