

2019 No. 000

LEGAL SERVICES, ENGLAND AND WALES

The Damages-Based Agreements Regulations 2019

<i>Made</i>	-	***
<i>Coming into force</i>	-	***

The Lord Chancellor in exercise of the powers conferred by sections 58AA(4) and (5) and 120(3) of the Courts and Legal Services Act 1990(a), having consulted in accordance with section 58AA(6) of that Act, makes the following Regulations, a draft of which has been laid before and approved by resolution of each House of Parliament in accordance with section 120(4)(b) of that Act.

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Damages-Based Agreements Regulations 2019 and come into force on [*date to be inserted*].

(2) In these Regulations—

“the Act” means the Courts and Legal Services Act 1990;

“claim for personal injuries” has the same meaning as in Rule 2.3 of the Civil Procedure Rules 1998;

“client” means the person who has instructed the representative to provide advocacy services, litigation services (within section 119 of the Act) or claims management services (within the meaning of section 4(2)(b) of the Compensation Act 2006 and is liable to make a payment for those services;

“costs” means the total of the representative’s time reasonably spent, in respect of the claim or proceedings, multiplied by the reasonable hourly rate of remuneration of the representative;

“expenses” means –

(a) disbursements incurred by the representative, including any fees paid or payable to an expert, court filing fees, transcript fees, and translation fees, but excluding counsel’s fees;

(b) any after-the-event insurance premium incurred by the client; and

(c) any fees of the description in (2)(a) incurred directly by the client;

“financial benefit” –

(a) means money or money’s worth; and

(b) excludes any sum awarded in respect of recoverable representative’s costs;

“irrecoverable counsel’s fees” means counsel’s fees which are not payable by another party to the proceedings;

“irrecoverable expenses” means expenses which are not payable by another party to the proceedings;

“irrecoverable representative’s costs” means representative’s costs which are not payable by another party to the proceedings;

“money or money’s worth” means any money, assets, security, tangible or intangible property, services, and any other consideration reducible to a monetary value;

“payment” means that part of the financial benefit obtained in respect of the claim or proceedings that the client agrees to pay the representative;

“recoverable counsel’s fees” means counsel’s fees which are paid or payable by another party to the proceedings;

“recoverable representative’s costs” means representative’s costs which are paid or payable by another party to the proceedings;

“representative” means the person providing the advocacy services, litigation services or claims management services to which the damages-based agreement relates.

(3) These Regulations shall apply to all damages-based agreements entered into on or after the date on which these Regulations come into force.

(4) These Regulations shall not apply to –

- (a) any damages-based agreement to which section 57 of the Solicitors Act 1974 (non-contentious business agreements between solicitor and client) applies;
- (b) an employment matter to which section 58AA(10) of the Act applies; or
- (c) an agreement (“a litigation funding agreement”) under which –
 - (i) a person or entity (“the funder”) agrees to fund (in whole or in part) the provision of advocacy or litigation services (by someone other than the funder) to another person or entity (“the litigant”); and
 - (ii) the litigant agrees to pay a sum to the funder in specified circumstances.

(5) A damages-based agreement is unenforceable if it relates to a claim under Rule 19.6 of the Civil Procedure Rules 1998.

Revocation of 2013 Regulations and transitional provision

2.—(1) Subject to paragraph (2), the Damages-Based Agreements Regulations 2013 (“the 2013 Regulations”), in so far as they apply to claims or proceedings other than an employment matter, are revoked.

(2) The 2013 Regulations, in so far as they apply to claims or proceedings other than an employment matter, shall continue to have effect in respect of any damages-based agreement to which those Regulations applied and which was entered into before the date on which these Regulations come into force.

Requirements of an agreement in respect of all damages-based agreements

3.—The requirements prescribed for the purposes of section 58AA(4)(c) of the Act are that the terms and conditions of a damages-based agreement must specify—

- (a) the claim or proceedings or parts of them (including any appeal or counterclaim) to which the agreement relates;
- (b) whether the agreement covers the client’s prosecution or defence of the claim (or both);
- (c) the circumstances in which the representative’s payment, expenses and costs, or part of them, are payable, in accordance with paragraph 4(1);
- (d) the financial benefit to which the agreement relates;
- (e) the reasons for setting the amount of the payment at the level agreed; and
- (f) the circumstances in which the representative’s payment, expenses and costs, or part of them, are payable by the client, in the event that the agreement is terminated by the representative or by the client.

Payment in respect of claims or proceedings

4.—(1) Subject to paragraph (2), in respect of any claim or proceedings to which these Regulations apply, a damages-based agreement must not require an amount to be paid by the client other than —

- (a) where there is a financial benefit recovered by the client —
 - (i) the recoverable representative's costs,
 - (ii) the payment, net of —
 - (A) any irrecoverable representative's costs,
 - (B) where relevant, any sum in respect of disbursements incurred by the representative in respect of counsel's fees, whether recoverable or irrecoverable, and
 - (C) payment of VAT, where that sum is not recoverable by the client from any other party, and
 - (iii) expenses incurred by the representative or by the client;
- (b) where there is no financial benefit recovered by the client —
 - (i) any recoverable representative's costs,
 - (ii) no more than 30% of any irrecoverable representative's costs,
 - (iii) any recoverable counsel's fees,
 - (iv) no more than 30% of any irrecoverable counsel's fees, and
 - (v) expenses incurred by the representative or by the client.

(2)(a) Subject to paragraph (b), the total deductions from the financial benefit recovered by the client shall not exceed a total of the payment calculated in accordance with paragraph (1)(a)(ii) plus irrecoverable expenses.

(b) If all or part of the recoverable representative's costs referred to in paragraph (1)(a)(i) are not paid by another party to the proceedings, that sum may be deducted from the financial benefit recovered by the client.

(3) In a claim for personal injuries—

- (a) the financial benefit obtained by the client from which the payment shall be payable —
 - (i) shall exclude damages for future pecuniary loss, and
 - (ii) is net of any sums recoverable by the Compensation Recovery Unit of the Department for Work and Pensions;
- (b) subject to paragraph (5):
 - (i) where a financial benefit is obtained by the claimant as client, the payment referred to in paragraph (1)(a)(ii) shall not exceed an amount which is equal to 20% of the sum referred to in paragraph (3)(a), and
 - (ii) where a financial benefit is obtained by the defendant as client, a damages-based agreement must not provide for a payment above an amount which is equal to 40% of the financial benefit obtained by the client.

(4) Subject to paragraph (5), in any other claim or proceedings to which this regulation applies, the payment referred to in paragraph (1)(a)(ii) shall not exceed an amount which is equal to 40% of the financial benefit obtained by the client.

(5) The amounts prescribed in paragraphs (3)(b)(i) and (ii) and (4) shall only apply to claims or proceedings at first instance.

Additional representative

5.—Where the client enters into a damages-based agreement with an additional representative, the sum of the amounts to be paid by the client under each damages-based agreement shall not, when aggregated, exceed the amounts prescribed in paragraphs 4(2)(b)(i) and (ii) and 4(3).

Terms and conditions of termination

6.—Subject to the parties agreeing otherwise –

(1) the representative may not terminate the agreement and charge costs, expenses and counsel's fees unless the client has behaved or is behaving unreasonably, and

(2) in the event that the client terminates the agreement for any reason –

(a) paragraph 4(1) does not apply; and

(b) the representative may charge the client no more than the representative's costs and expenses, and counsel's fees, for the work undertaken in respect of the claim or proceedings to which the agreement relates as specified in paragraph 3(a).

Signed by authority of the Lord Chancellor

Parliamentary Under Secretary of State
Ministry of Justice

Date

EXPLANATORY NOTE

Draft Regulations laid before Parliament under section 120(4) of the Courts and Legal Services Act 1990, for approval by resolution of each House of Parliament.

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