

Guidance on the Statutory Charge Reform

Further reform of the Statutory Charge legislation has been introduced on 10 December 2012 and affects all civil legal aid certificates granted on or after 10 December 2012. This reform of the legislation will enable the Commission to ensure that the Commission can continue to fund those who need legal aid the most. The following guidance outlines in general terms some aspects of the Statutory Charge, it is not a definitive statement of the law. Please contact your solicitor for advice on the operation of the Statutory Charge and how it affects your case.

What is the Statutory Charge?

If you have received legal aid and the result of your case is that you recovered or preserved property or money and some or all of your costs are not met by the opponent you will have to pay back some or all of the costs of your case. This is called the "Statutory Charge". The Commission is required by law to enforce the Statutory Charge

Property recovered or preserved

If as a result of receiving legal aid you get some property that you did not own before, you will have "won" or "recovered" it.

If, you keep some property that someone had tried to take from you, you will have "kept" or "preserved" it

Some examples are a house, shares, Life policies or payment of compensation.

Legal Aid is a loan not a gift. The Statutory Charge is any debt or shortfall owed to the Legal Aid Fund and ensures that those who have the means to pay, do so.

Further information on the statutory charge is available in the booklet “Paying for your Legal Aid – the Statutory Charge” which is located in the “Publications” section of the Commission’s website at www.nilsc.org.uk

Exemptions from the Statutory Charge

There are limited exemptions where the Statutory Charge does not apply and your solicitor will advise you at the outset and throughout your case if the charge applies to your case. , otherwise, the charge applies in all cases and the Commission is bound by law to clawback the monies paid for the Legal Aid fund for the benefit of other applicants for legal aid.

Solicitor’s duty

Your solicitor has a duty to explain the operation of the Statutory Charge to you at the time of taking the initial instructions and prior to applying for Civil Legal Aid. They also have a duty to keep you informed of the costs accumulating and the implications of the accrual of costs and the Statutory Charge as the case progresses and at the conclusion or resolution of the case

Financial Conditions of Legal Aid

Legal Aid can only be granted to those persons who meet the statutory criteria for eligibility and may be granted subject to a financial contribution where the assisted person can afford to pay. Your solicitors can provide the necessary forms for completion. The financial eligibility form CLA4 must be completed in all cases and must detail all financial resources, property, assets or possessions, even those assets outside the jurisdiction.

The purpose of the financial means test is to ensure that those who can afford to litigate on their own behalf do so and those who can not afford to litigate on their own behalf have the benefit of legal aid, either with or without a contribution, depending on their financial circumstances.

Subject Matter of Dispute

If you have sums of money or property or other assets which are the subject matter of the dispute for which legal aid has been granted or will be granted, those assets may be disregarded for the purpose of the financial means test at the outset of the case... However if you are successful in gaining or keeping those assets which are the subject matter of dispute, then the public funds expended in supporting your case to a successful conclusion may be recovered from your assets at the end of the case. The Statutory Charge will apply in accordance with the operation of the legislation unless an exemption applies. It is a matter for you and your solicitor to assert that an exemption applies.

The financial means assessment form, CLA4, must state all financial resources, property, assets or possessions including those which are the subject matter of dispute.

Reporting on the recovery or preservation of money or property

When your case concludes under a Civil Legal Aid certificate your solicitor must report the details of any settlement as soon as possible on the Statutory Charge Authority Form. This form is used by the Commission to establish what property was at issue in the proceedings and to determine what property was recovered or preserved by the assisted person. When submitting the form to the Commission your solicitor must attach whatever supporting documentation applies including copies of the final Order in the proceedings, or any Orders or the record of any agreement concluding the proceedings. Your Solicitor will discuss this with you prior to submitting the form

Claiming an exemption

Your solicitor should record on the form if the matter permits an exemption from the Statutory Charge and should specifically identify any statutory provision which s/he asserts constitutes an exemption.

The Commission can only proceed in accordance with the legislation on the basis that any property recovered or preserved is to be treated as subject to the charge unless the appropriate statutory provision which allows an exemption is recorded on the form.

The Legal Services Commission cannot provide legal advice. Please consult your solicitor with any query regarding the Statutory Charge

The Commission's address and contact details are:

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