



NORTHERN IRELAND
Legal Services
Commission

Paying for your Legal Aid - The Statutory Charge

This guidance is for applicants for civil legal aid and explains what you might have to pay towards your legal aid if you win or keep money or property as a result of your case.

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Introduction

If you receive civil legal aid to help with your case you might still have to pay something towards the costs. This leaflet explains what you may have to pay from money or property that you win or keep as a result of your case. We hope it will help you decide whether to go ahead with your application for legal aid. The leaflet is mainly about civil legal aid, but the general principles also apply to “legal advice and assistance”.

Is legal aid free?

Legal aid is **not** always free. There are two main situations in which you may have to pay some or all of the costs of your case:

1. You may have to pay contributions towards legal aid based on your income and any savings or other capital you have.
2. If, at the end of the case, you “recover or preserve property” as a result of your solicitor’s work, you may have to pay some or all of the costs of your case. This is called the “statutory charge”.

What does it mean to “recover or preserve” property?

If, as a result of the case, you gain some money or property that you did not own before, or you manage to keep some money or property that someone tried to take from you, this is called recovering or preserving property.

What is the “statutory charge”?

The Commission is required by law to recover what it has spent on a case where someone has kept or gained money or property. Therefore the Commission might have to take some of the money or property you have kept or gained to cover some or all of the costs of your case. The “statutory charge” is the name given to how we recover the money we have spent.

How will I know if the statutory charge is going to affect my case?

The statutory charge applies only in cases about money or property. For example, in divorce cases the court often has to decide how to divide money or property that you and your spouse own jointly, such as

the house, endowment policies or pension, or you might be seeking a lump sum from your spouse. In other cases, you might be trying to get compensation or damages for injury. You should check with your solicitor to tell you at the start of your case whether the statutory charge could apply¹.

Here are some examples of the statutory charge.

Example 1

Mr A had legal aid for divorce. Mr A and his wife each owned half of their house.

Although Mr A wanted the house put in his name, his wife did not agree.

At the end of the case the judge decided that Mr A should have ownership of the entire house.

Mr A has therefore gained half a house, and according to the rules explained above, he will have to pay the cost of his legal representation.

Example 2

Mrs B had legal aid for divorce. Mrs B and her husband each owned half of their house. They both wanted to own the entire house.

At the end of the case the judge decided that they should each continue to own half of the property. Therefore Mrs B kept her half of the property.

Without the legal representation legal aid paid for, she may not have kept her half of the property. Therefore Mrs B will have to pay the cost of her legal aid.

¹The statutory charge **will** apply if you have been successful in keeping or gaining money or property but some, or all, of the costs of bringing your case cannot be recovered from your opponent, or the costs are not fully covered by any contributions you paid towards your legal aid.

But, if you have been successful in keeping or gaining money or property and, for example, all the costs of your case have been recovered from your opponent, the statutory charge will not apply.

How do we calculate how much you will owe?

The Commission, or an official of the court called a Taxing Master will assess your solicitor's bill at the end of the case. This is to ensure that the bill is fair, given the nature of the case and the amount of work needed. When we have paid your solicitor, we have to get back as much of that money as possible from three sources:

- First, from any award of expenses made by the court against your opponent or obtained by your solicitor as part of a negotiated settlement to your case. Please discuss the question of expenses with your solicitor, because if your opponent does not pay them we will not be able to refund any contribution you have paid. And we may have to ask you to pay some of the costs of the case from the property you have won or kept.
- Second, from any contribution we have asked you to pay.
- Third, and only as a last resort, from any property you have won or managed to keep.

Please see the example below, but if you have any questions about this, please either speak to your solicitor or contact the Commission.

Example 3

Mr C took negligence proceedings against his local hospital. The court decided in his favour, and awarded him £50,000, which his opponent paid to Mr C's solicitors. He therefore gained £50,000, and because of the statutory charge would have to pay back to the Commission all his solicitor's costs.

However the court also decided that his opponent should pay half of his solicitor's costs, which were £10,000. Therefore the amount Mr C receives from his case is:

Damages Awarded to Mr C:		£50,000
But Mr C has to pay to the Commission half of his solicitor's costs:	<u>£5,000</u>	
Total amount Mr C receives:		<u>£45,000</u>

Do I have any say about how much you pay my solicitor?

What we pay solicitors is generally set by law, and their bills are checked to ensure that the work and its cost are reasonable.

As you may end up having to pay some, or all, of these costs, you may wish to ask your solicitor to estimate how much your case is likely to cost and to tell you if this estimate changes as your case proceeds. Estimating these costs is sometimes difficult, particularly at the start of your case and in defended cases, but your solicitor should be able to give some guidance. This is what a privately paying client would probably do and we recommend you do the same.

Are there any exemptions from the statutory charge?

Some types of proceedings are exempt from the statutory charge. You should ask your solicitor to tell you at the start of your case whether the statutory charge could apply.

How you can repay your legal aid

If you have gained or kept money

Any money you are awarded at the end of the case is normally paid to your solicitor. When your solicitor's bill has been assessed, we take what we have spent on your solicitor, and give you what's left. We also take into account any contributions you made towards your solicitor's bill.

The example below explains this:

Damages awarded by the Court:		£10,000
Solicitor's Costs:	£5,000	
Minus contributions paid by you:	<u>£2,000</u>	
Total Amount you have to pay towards your solicitor's bill:		£3,000
You receive:		<u>£7,000</u>

If you have gained or kept a property

If you have gained or kept a property, you can delay repayment by having a charge registered on your property. A charge is a record with the Land Registry or Registry of Deeds which officially recognises that the Commission has a claim over the property equal to the amount of the money you owe. We register a charge to secure our debt, like a mortgage.

The charge will be equal to the amount of your solicitor's bill, minus the total of any contributions you made and any costs paid by the other side.

If you gain or keep a property, and you can repay the cost of your legal aid straight away, you will not need to have a charge registered on your home.

If you ask to delay repayment of the money you owe, the Commission will ask you some questions about your finances to see if this is reasonable. If we think that you are in a position to repay the money, we will ask you to do so. Depending on the answers to the questions we ask, we might allow you to delay repayment on condition that you make regular payments towards your debt. A charge will be registered on your property until your debt is repaid.

Once a charge is registered, you will not be able to sell your home or borrow more money against it without first paying us the charge.

Will you take all the money or property I have won or kept?

We will take enough of the money or property you have won or kept to meet any shortfall between what we have paid out in your case and what we have received as a contribution from you or expenses from your opponent. If your opponent delays paying the expenses, we will hold back enough money to cover that amount. We will put the money in an interest-earning account and pay you the interest.

Does the Commission have any discretion about applying the statutory charge rules?

We are allowed to take into account whether payment from the property recovered or preserved would cause you hardship if you receive "legal advice and assistance" only. However, if you go on to receive civil legal

aid in the same matter the Commission has no discretion whether to apply the statutory charge.

The Commission's address and contact details are:

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