



# 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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*Status: Point in time view as at 29/11/2018. This version of this provision has been superseded.*

*Changes to legislation: Courts and Legal Services Act 1990, Section 58AA is up to date with all changes known to be in force on or before 07 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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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)

**Status:**

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**Changes to legislation:**

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