



Jackson Review Statement : Reform of Civil Litigation Funding Arrangements

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WRITTEN MINISTERIAL STATEMENT MINISTRY OF JUSTICE

Reform of Civil Litigation Funding Arrangements

Parliamentary Under-Secretary of State for Justice (Jonathan Djanogly MP):

I am today announcing the Government's intention to consult in the autumn on implementing Lord Justice Jackson's recommendations on the reform of funding arrangements in his report, Review of Civil Litigation Costs: Final Report, published on 14 January 2010. We will be consulting in particular on the reform of Conditional Fee Agreements (CFAs) which should lead to significant costs savings, whilst still enabling those who need access to justice to obtain it. The Government is therefore taking these proposals forward as a matter of priority.

Lord Justice Jackson was appointed by the then Master of the Rolls in January 2009 to review the rules and principles governing the costs of civil litigation and to make recommendations to promote access to justice at proportionate costs. Sir Rupert's independent and comprehensive report makes a broad range of significant recommendations for reducing costs in the civil justice system in England and Wales. The Government is very grateful to Sir Rupert for his report.

CFAs have played a role in giving access to justice to a range of people. However, high costs under the existing arrangements have now become a serious concern, particularly in clinical negligence cases against the NHS Litigation Authority and in defamation proceedings.

CFAs are a type of 'no win no fee' agreements under which lawyers are not paid if they lose a case, but can charge an uplift on top of their base costs – otherwise known as a 'success fee' - if they win. Success fees allow lawyers to cover the costs of cases they take on which do not succeed. The success fee can be up to 100% of base costs. After the Event (ATE) Insurance can be taken out by parties to a CFA funded case to protect them against the risk of having to pay their opponent's costs if they lose. Under the current arrangements, success fees and ATE premiums can be recovered from the losing opponent in addition to the base costs.

Sir Rupert recommends significant changes to the current arrangements for CFAs. He proposes abolishing the recoverability of both success fees and ATE insurance premiums; this would require primary legislation. In addition, to assist claimants to meet the cost of the success fees for which they would now be liable, he also recommends an increase of 10% in the level of general damages for personal injury, defamation and other tort claims; and a regime of qualified one way costs shifting in specified proceedings, including personal injury and defamation.

Our consultation in the autumn would also seek views on other related recommendations on funding arrangements such as whether lawyers should be permitted to enter into Damages-Based Agreements (DBAs) or 'contingency fees' in litigation. DBAs are also a type of 'no win no fee' agreements which allow a lawyer to take a percentage of the claimant's damages for taking on the claim. DBAs are commonly used in Employment Tribunals but are not permitted in litigation before the courts. This consultation will take account of any relevant legal aid reform proposals on which we will also be seeking views in the autumn, as previously announced.

Work is also progressing on a number of other areas covered by Sir Rupert's review, but will not form part of the Government's consultation in the autumn. The Government is considering the recommendations on Fixed Recoverable Costs in the Fast Track, and on referral fees. The Legal

Services Board is looking at the issue of referral fees, and their conclusions will inform the Government's position. We will also consider Lord Young of Graffham's conclusions from his "Review of Health and Safety Law and the Compensation Culture". Separately, the Civil Justice Council will consult over the summer on a Voluntary Code of Conduct for third party funders, as recommended by Sir Rupert. Third Party Funding is an arrangement whereby a party not directly relevant to the proceedings agrees to fund the case in return for a share of the damages awarded.

A range of judiciary-led costs and case management work has been continuing since Sir Rupert's report was published. For example:

- more robust costs management is being piloted in defamation cases and in mercantile, technology and construction cases;
- a streamlined process and scale costs in the Patents County Court will come into effect in October 2010;
- there will be a pilot of assessing disputed costs under £25,000 on the papers rather than at a hearing, in Leeds, Scarborough and York County Courts from October 2010;
- and a pilot to speed up and reduce the costs of expert evidence (through 'concurrent evidence') started in June 2010 in mercantile, technology and construction cases at the Manchester Civil Justice Centre.

A Judicial Steering Group is considering the priorities for further implementation of these recommendations.