

## **Reforming civil litigation funding and costs - The impact on compensation claims**

### **What is changing?**

The government issued its response to Lord Justice Jackson's recommendations on reforming civil litigation funding and costs in England and Wales, on 29 March 2011. The government plans to implement all of Lord Justice Jackson's proposals, with some minor amendments, 'as soon as Parliamentary time allows'.

The key changes will include the following:

- Preventing claimants from recovering Conditional Fee Agreement (CFA) success fees and 'After the Event' insurance premiums from defendants in successful claims. Claimants will instead have to pay any such costs out of their damages (with a limited exception for clinical negligence claims).
- The maximum CFA success fee chargeable by solicitors to their clients will be 100% of their base costs and in personal injury cases it will be capped at 25% of the client's damages, not including future care and losses.
- Damages-based agreements (DBA)/contingency fees will be allowed, so that solicitors can take a percentage of their clients' damages in successful claims (as opposed to a percentage of their base costs as in CFA cases). Any base costs recovered from the defendant will be deducted from the DBA/contingency fee. The fee will be capped at 25% of the damages in personal injury cases, not including future care and losses.
- 'Qualified One Way Costs Shifting' will be implemented for personal injury claims, so that claimants will not have to pay the defendant's costs in failed cases but the defendant will still have to pay claimant's base costs in successful cases. However, there will be exceptions to this rule based on behaviour and financial considerations, which are to be drafted by the government following further discussions with interested parties.
- Defendants will become liable to pay an additional sanction, equivalent to 10% of the value of the claim, under Part 36 where they don't accept a reasonable offer from a claimant which they then fail to beat at trial.
- General damages will be increased by 10% for all claimants in personal injury claims.

## **What is the impact on claimants?**

The government's response to the consultation on civil litigation funding comes as no surprise. The government has not stated when it will be implemented and it may not be until late 2012.

The proposals seek to benefit motorists in that they may lead to lower insurance premiums as a result, but the reverse is true if you get injured as a motorist. The claimant stands to lose up to 25% of your damages to pay for the success fee charged by solicitors acting on a CFA which up until now is paid by the defendants. The concept therefore of a 'No Win - No Fee' is slightly misleading and is only half of the story. Regardless of winning or losing a claim, the claimant still pays a fee.

It looks as if the majority of claimants in personal injury will no longer need to obtain insurance to underwrite the CFA because the defendant will not be entitled to recover their costs from the claimant in the event that the claimant loses. This is a sensible development.

It is too early to say how this will affect our personal injury clients. It will certainly lead to more interaction between client and solicitor in relation to the work that is being undertaken which will be good and bad.

In respect of clinical negligence it looks as if there will be some exceptions but we will just have to wait and see how the insurance market will respond. The government's decision on Legal Aid for clinical negligence will no doubt play a part in influencing insurers as to the type of products that can be produced to help claimants and make a profit for insurers.

These are certainly interesting times ahead.

If you have any concerns or further questions about any of the issues, please contact:

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