



FOIL UPDATE

26 July 2010

The Jackson Report – the Government responds

The Ministry of Justice has, this morning, issued a written ministerial statement setting out its plans to consult on the implementation of some aspects of Lord Justice Jackson's recommendations, in particular, those regarding the reform of CFAs.

The statement, by Jonathan Djanogly, the Parliamentary Under-Secretary of State for Justice, indicates that existing CFA arrangements have become a serious concern, particularly in clinical negligence claims and in defamation cases. It states that reform of the CFA regime "should lead to significant costs savings, whilst still enabling those who need access to justice to obtain it". The statement confirms that "the Government is therefore taking these proposals forward as a matter of priority".

The consultation will be undertaken in the autumn. It appears that it will encompass the abolition of recoverable success fees and ATE premiums (which will require primary legislation), the increase of general damages by 10% and qualified one-way costs shifting in personal injury and defamation cases. The consultation will also include the use of DBAs (Damages-based Agreements) in litigation. This follows a commitment given by the previous Government, in the consultation on the regulation of DBAs in July 2009, that any decision to extend the use of DBAs to litigation would be preceded by full consultation, and would require the approval of both Houses of Parliament.

The statement indicates that work is progressing on a number of other areas covered by the Jackson report, which will not be part of the consultation. These include the recommendations on Fixed Recoverable Costs on the Fast Track, which the Government is considering, and referral fees. The Ministry will also consider Lord Young's review of health and safety law and the compensation culture.

It is reported in the press that Lord Young will publish his report in September although the main findings have apparently already been identified and have found favour with David Cameron. The Sunday Times reported yesterday that in an interview with Lord Young he had indicated that legal costs under CFAs should be capped at a small percentage of damages awarded:

"In the normal run, legal costs should not be more than 25%-30% of the claim. Currently they are 100%-200%".

He indicated a determination to see through reform:

"This is not going to be a review which comes out, is written about and then gets pigeon-holed. My commitment is to see everything through."

On the issue of health and safety regulations the newspaper report indicated that:

"Swathes of health and safety regulations covering ordinary offices are expected to be scrapped, while safeguards in potentially dangerous workplaces such as factories and warehouses will remain".

There were no further details on how this might be achieved in the light of European regulation.

In a separate story in the Sunday Times yesterday it was reported that Ken Clarke wants to reduce the legal bill of £2.2bn by "hundreds of millions of pounds". Legal aid for clinical negligence cases against the NHS is described as a "prime target". Legal aid in employment tribunals, to enable parents to challenge special needs statements, and for consumer disputes is also under review. Potential changes to legal aid will be taken into account in the Jackson consultation.

Today's statement concludes with details of the judiciary-led costs and case management work which has been underway since the publication of Lord Justice Jackson's report. This includes a pilot of assessing disputed costs under £25k on the papers rather than at a hearing in the Leeds, Scarborough and York County Courts from October 2010. If you have experience of this over the coming months do let us have your views.

If you have any comments on the statement or the proposed consultation please contact Shirley Denyer on shirley.denyer@foil.org.uk . The full written ministerial statement is available on the FOIL website www.foil.org.uk

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