

## 資料文件

### 立法會 司法及法律事務委員會

#### 英國近期對民事司法程序作出的檢討

## 引言

本文件旨在向委員簡介就英國的民事司法程序近期的改革所收集的相關公開資料。

## 背景

2. 於 2015 年 5 月 18 日的會議上，當委員會討論有關檢討香港民事司法制度改革（“改革”）的實施事宜時，有委員問及英國曾否對其改革的實施作出檢討，以及如有的話，該等檢討是否涵蓋採用附帶條款付款以解決爭議的措施。

## 英國近期作出的檢討

3. 根據英國政府的網站，英國近期曾就英格蘭和威爾斯的民事訴訟撥款及訟費事宜進行檢討。英國上訴法院法官 Lord Justice Jackson 曾提出若干建議。其後，英國政府經諮詢後，落實此等建議。部份詳情列述於附件<sup>1</sup>。

## 附帶條款付款／和解提議

4. 在香港，附帶條款和解提議及付款是重要的改革措施，為促使訴訟各方及早解決爭議提供誘因，以避免訴訟遭不必要的拖延而抬高訟費。就附帶條款付款而言，被告人可以向法院繳存款項的方式，就申索或申索中的爭論事項作出

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<sup>1</sup> 附件的內容摘錄自相關的英國政府網站。只備有英文版本。

和解提議（根據《高等法院規則》（第 4 章）／《區域法院規則》（第 336H 章）第 22 號命令）。某一訴訟方亦可就另一訴訟方獲付訟費的權利作出類似的和解提議（根據第 62A 號命令）。若最終結果顯示，相比起進行審訊，附帶條款付款才是本應獲接納的更佳提議，有關訴訟方便須承擔訟費後果。附帶條款付款是重要措施，有助公正而迅速地解決爭議。

5. 相似地，附帶條款和解提議是由原告人或被告人提出，以向法院繳存款項以外的方式就申索或申索中的爭論事項（根據第 22 號命令）或就另一訴訟方獲付訟費的權利（根據第 62A 號命令）達成和解的提議。同樣，若審訊後，訴訟方未能取得比附帶條款和解提議更佳的结果，有關訴訟方便須承擔訟費後果。附帶條款和解提議的運作方式及可帶來的好處，與附帶條款付款制度相若。正如改革的《最後報告書》指出，各界對附帶條款和解提議及付款的制度，反應熱烈。

6. 至於英格蘭和威爾斯方面，其民事訴訟程序規則第 36 部（和解提議）的運作方式與香港的附帶條款付款／和解提議相若。Lord Justice Jackson 於上文第 3 段所述的近期檢討的最後報告中指出，各界普遍認為民事訴訟程序規則第 36 部成效理想。相關部分引述如下<sup>2</sup>：

「各界普遍認為第 36 部成效理想，即使是對伍爾夫（Woolf）改革的其他方面有所批評的人士亦不例外。一項於 2000 年 4 月向英國富時 100 指數公司進行的意見調查顯示，百分之九十的受訪者相信，伍爾夫改革能鼓勵爭議各方盡早達成和解。這被視為該等改革的主要好處。Morin 於 2000 年 4 月為高效爭議解決中心向律師進行的意見調查顯示，受訪者對伍爾夫改革（尤其是第 36 部）的整體滿意程度甚

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<sup>2</sup> 請參閱 Lord Justice Jackson 的最後報告第 41 章第 1.2 段中有關第 36 部的部分。最後報告的全文載於英國司法機構的網站：<https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Reports/jackson-final-report-140110.pdf>。

高。英國首席大法官辦公廳於 2001 年及 2002 年作出的評核亦得出類似的結論。」

## 未來路向

7. 請委員省覽本文件內容。

司法機構政務處  
2015 年 7 月

相關的英國政府網站上關於  
其近期對民事司法程序作出檢討的摘錄<sup>1</sup>

“Policy paper

## **2010 to 2015 government policy: civil justice reform**

### **Issue**

The costs of civil litigation are too high, and are fuelled by no win no fee conditional fee agreements (CFAs).

Claimants are at no financial risk when they bring personal injury claims as the risk is borne by the claimant’s lawyer and the defendant.

### **Actions**

We’re reducing the costs of civil litigation by:

- making any ‘success fee’ payable by the winning party
- limiting the success fee to 25% of the damages in personal injury cases
- introducing damage-based agreements (DBAs) into civil litigation
- banning referral fees and inducements in personal injury cases
- fixing the costs of getting medical reports in whiplash claims
- creating a compulsory payment scheme for victims of mesothelioma
- reducing the fixed recoverable costs in road traffic accident (RTA) claims up to £10,000 and extending the scheme to £25,000 and to include employer’s liability and public liability claims

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<sup>1</sup> 相關的網站為 <https://www.gov.uk/government/publications/2010-to-2015-government-policy-civil-justice-reform/2010-to-2015-government-policy-civil-justice-reform>。

## **Background**

A number of reforms have been implemented following Lord Justice Jackson's Report in 2010. Some of these were included in Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

## **Who we've consulted**

The government carried out a full consultation between November 2010 and February 2011 on implementing Lord Justice Jackson's main recommendations for the reform of funding arrangements. The response was published in March 2011.

In 2012, we consulted further on changes to the low-value RTA personal injury scheme.

Since early 2014 we've been working with a number of cross industry working groups on the implementation of the government's whiplash reform programme.

In October 2014, we asked the Civil Justice Council (CJC) to consider how the Damages-based Agreement (DBA) Regulations 2012 could be improved without encouraging more litigation.

## **Bills and legislation**

The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) became law in May 2012 and came into effect in April 2013. In addition to LASPO, changes have been included in secondary legislation including the Civil Procedure Rules 1998 and the Referral Fees (Regulators and Regulated Persons) Regulations 2014.

The government has amended the Criminal Justice and Courts Bill to introduce a ban on the offer of inducements in personal injury claims and to prevent inducements being offered via third parties.

## **Appendix 1: controlling costs in no-win no-fee cases**

This was a supporting detail page of the main policy document.

There are 2 types of no-win no-fee cases:

- conditional fee agreements (CFAs)
- damages-based agreements (DBAs, sometimes called contingency fees)

The general position is that, if the case is lost, the lawyer is not paid. If the case is won, the lawyer is paid the normal fee plus a 'success fee' of up to 100% of the normal fee (CFAs) or a percentage of the damages recovered (DBAs).

### **Conditional fee agreements (CFAs)**

Before 1 April 2013 the losing party had to pay the winning party's success fee, as well as their ordinary legal costs. This added substantially to costs for defendants.

Under Section 44 of the LASPO Act, since 1 April 2013 the winning party has to pay if a success fee is charged, typically out of damages recovered.

In personal injury cases, we've limited the success fee to 25% of the damages, excluding damages for future care and loss. This protects claimants' damages in these cases, and ensures that any damages for future care and loss are protected in their entirety.

## **Damages-based agreements (DBAs)**

Before 1 April 2013, DBAs could not be used in civil litigation but could be used in other areas, for example employment tribunals.

Section 45 of the LASPO Act and the Damages-Based Agreements Regulations 2013 allow DBAs to be used in civil litigation from 1 April 2013.

We've capped the maximum payment that the lawyer can recover from the claimant's damages:

- 25% of damages (excluding damages for future care and loss) in personal injury cases
- 35% of damages on employment tribunal cases (which has existed since 2010)
- 50% of damages in all other cases

In October 2014, we asked the Civil Justice Council (CJC) to review the DBA Regulations 2013.

More information is available in the Civil Procedure Rules 1998.

## **Appendix 2: banning referral fees and inducements in personal injury claims**

This was a supporting detail page of the main policy document.

### **Referral fees**

We introduced a ban on the payment and receipt of referral fees in personal injury cases on 1 April 2013.

The relevant regulators (the Solicitors Regulation Authority, the Bar Standards Board, the Chartered Institute of Legal Executives, the Claims Management Regulator and the Financial Conduct Authority monitor and enforce the ban. This was extended to cover those regulated by the

Chartered Institute of Legal Executives (CILEx) under the Referral Fees (Regulators and Regulated Persons) Regulations 2014.

The ban helps to remove the perception of a compensation culture, as lawyers and claim management companies can not pay for details of potential claimants.

We've been working with all the relevant regulators to ensure a consistent approach to enforcing the ban.

See in particular sections 56-60 of the LASPO Act.

### **Inducements**

We've introduced a ban on the offer of inducements by legal services providers in personal injury claims, including offers via third parties (see clauses 57-60 of the Criminal Justice and Courts Bill).

Unjustified personal injury claims factsheet (PDF)

## **Appendix 3: speeding up mesothelioma claims**

This was a supporting detail page of the main policy document.

Mesothelioma is an aggressive and terminal occupational disease caused by exposure to asbestos, with an average life expectancy of 7 to 9 months from diagnosis.

The government is determined to do what it can to help mesothelioma sufferers and their families. Significant changes have been made through the Mesothelioma Act 2014 and we continue to work with stakeholders to improve the compensation claims process.

- We've added a provision in the Deregulation Bill which will enable HM Revenue and Customs to disclose the work records of deceased victims



to their legal representatives and families without the need for a court order.

- We're working with the National Cancer Registration Service and others to speed up receipt of hospital medical notes (pathology records and imaging reports) to reduce delays in the claims process.

Following a judgment of the High Court in October 2014, the government announced in December 2014 that any future decision whether or not to apply the no win no fee reforms in the LASPO Act to mesothelioma cases would be subject to a review under Section 48 of that Act.

The Mesothelioma Act 2014 created a payment scheme for mesothelioma victims who can't trace their liable employer, or employer liability insurer, to claim the damages they are due. The untraced scheme started making payments from 1 July 2014."