

For information

**Legislative Council
Panel on Administration of Justice and Legal Services**

**Recent Review relating to
Civil Justice Procedures in the United Kingdom**

INTRODUCTION

This paper briefs Members on the public information that has been collated on the recent reform relating to civil justice procedures of the United Kingdom (“the UK”).

BACKGROUND

2. At the meeting on 18 May 2015 when the subject of review on the implementation of Civil Justice Reform (“CJR”) in Hong Kong was discussed, a Member asked whether there had been a review on the implementation of CJR in the UK, and if so, whether the review had covered the use of sanctioned payments to settle disputes.

UK’S RECENT REVIEW

3. According to the website of the UK Government, they have recently carried out a review of the civil litigation funding and costs for England and Wales. Recommendations have been put forward by Lord Justice Jackson, a UK Court of Appeal Judge. The UK Government has subsequently implemented the recommendations after consultation. Some details are set out at the [Annex](#)¹.

¹ Information at the [Annex](#) is extracted from the relevant website of the UK Government.

SANCTIONED PAYMENTS/OFFERS

4. In Hong Kong, sanctioned offers and payments are important CJR initiatives acting as an incentive for parties to settle disputes at an early stage, thus avoiding unproductive and expensive prolongation of litigation. Regarding sanctioned payments, defendants may make an offer by way of a payment into court to settle claims or issues within claims (under Order 22 of the Rules of the High Court (Cap. 4A)/Rules of the District Court (Cap. 336H)). A party may also make similar offer to settle another party's entitlement to costs (under Order 62A). There are costs consequences if it turns out that the sanctioned payment is a better offer that should have been accepted instead of going to trial. Sanctioned payments are regarded as an important measure in the just and expeditious resolution of disputes.

5. Similarly, sanctioned offer is an offer made by a plaintiff or a defendant (otherwise than by way of a payment into court) to settle claims or issues within claims (under Order 22) or another party's entitlement to costs (under Order 62A). Again, there are costs consequences should the sanctioned offer not be bettered after trial. It operates in a similar way and brings about similar benefits as the scheme of sanctioned payments. As the Final Report of the CJR indicated, the system of sanctioned offers and payments elicited an enthusiastic response.

6. In England and Wales, their Part 36 of the Civil Procedure Rules ("the CPR") (offers to settle) operates in a similar way as our sanctioned payment/offer. Lord Justice Jackson has indicated in his final report for the recent review mentioned in paragraph 3 above that Part 36 of the CPR had generally been regarded as a success as follows² :

"Part 36 has generally been regarded as a success, even by those who are otherwise critical of the Woolf reforms. In April 2000 a survey of the FTSE 100 companies revealed that 90% of respondents believed that the Woolf reforms would encourage earlier settlement of disputes. This was seen as the key benefit of those reforms. A survey of lawyers conducted by Morin for the Centre for

² Paragraph 1.2 of Chapter 41 of Lord Justice Jackson's final report about Part 36 refers. The full final report is available at website of the UK Judiciary at <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Reports/jackson-final-report-140110.pdf>.

Effective Dispute Resolution in April 2000 showed a high level of overall satisfaction with the Woolf reforms, in particular with Part 36. Evaluations by the Lord Chancellor's Department in 2001 and 2002 came to similar conclusions."

WAY FORWARD

7. Members are invited to note the contents of this paper.

Judiciary Administration
July 2015

**Extract of the Relevant Website of the UK Government about their
Recent Review on Civil Justice Procedures¹**

“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

¹ The relevant website is at <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."