



The Law Society

Civil justice reforms: government concessions, amendments and assurances

February 2013



The Law Society has undertaken a substantial volume of work on behalf of members in relation to the government's civil justice reform programme. This document provides a short summary of the concessions, amendments and assurances secured from the Government throughout that process.

Civil litigation funding reforms

1. The Legal Aid, Sentencing and Punishment of Offenders Act sets the framework for the implementation of the reforms to civil litigation funding arrangements first set out in Lord Justice Jackson's review in 2009. Pressure from the Society and others has led to three major concessions, an initial delay and guarantees in relation to the operation of the proposed QUOCS regime.
2. **An exemption for asbestos poisoning victims** – The government conceded that victims of mesothelioma, caused by exposure to asbestos, should be exempt from the proposed reforms to the operation of no win, no fee agreements until after a full review of the effects of the reforms on those claims.
3. **An exemption for insolvency cases** - On 24 May 2012, the government announced that the abolition of the recoverability of success fees and insurance premiums under the Act in April 2013 will not apply to claims by liquidators, administrators and trustees in bankruptcy.
4. **An exemption for defamation cases** – In December 2012, the government announced that the abolition of the recoverability of success fees and insurance premiums the Act in April 2013 will not apply to claims by victims of defamation.
5. **Guarantees in relation to the proposed QUOCS regime** – The government gave assurances in relation to two Society priorities: (1) that there will be no means test to decide whether a losing claimant should be protected by Qualified One-Way Costs Shifting; and (2) there will be no minimum payment that a claimant will have to pay under the proposed regime.
6. **A delay in the implementation of the reforms until April 2013** - The Government had originally proposed to implement the reforms in October 2012, but accepted that the implementation of the proposed Part 2 reforms to civil litigation funding and costs should be delayed to April 2013, the same time as the legal aid changes will come into effect. The Society continues to lobby for a further delay until October 2013.
7. **An exemption from non-recoverability of ATE premiums for experts reports in clinical negligence cases** – The government announced the abolition of recoverability of after the event insurance premiums will not apply to premiums paid in respect of expert report fees in clinical negligence cases.
8. **Conditional fee agreement regulations withdrawn** – After discussions with the Law Society the government decided not to proceed with these Regulations which would have made such agreements unenforceable and therefore costs irrecoverable because of the application of the indemnity principle.

9. **Damages Based Agreement Regulations Amended** – On the advice of the Law Society the government amended the proposed Damages Based Agreement Regulations in order to resolve issues of uncertainty and avoid confusion
10. **Civil Procedure Rules Amendments** – The Society has achieved a number of amendments to Civil Procedure Rules due to be published which will resolve a number of our priority concerns with drafting.

Ban on referral fees

11. The Legal Aid, Sentencing and Punishment of Offenders Act contains provisions to ban the payment of referral fees in personal injury cases. The society supported the intention of the ban, but raised specific concerns with the MoJ during the passage of the Act, and continues active discussions with the SRA about the ban's implementation.
12. **Guarantee that the ban will not apply to legitimate solicitor-to-solicitor payments** – Pressure from the Society led to the Minister stating on the record that solicitor-to-solicitor payments would not be covered: 'The government do not believe that that kind of relationship, where a solicitor transfers business and takes a reasonable charge for the work already done, is covered by this ban' (HL, Col. 1618, 1 Feb 2012).
13. **Guarantee that ban will not apply to pooled marketing arrangements** – Following pressure the Minister stated on the record that 'The pooling of marketing resources... in our view does not in itself breach the prohibition on referral fees' (HL, Col. 1626, 1 Feb 2012).

For further information please contact

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