



The Law Society

**Civil Justice update
Survival after the big bang
Will your business be ready?**

Regional road shows in conjunction with the Civil Justice section

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Foreword by the Chief Executive

The reforms proposed by the government to civil litigation costs and funding will have a profound effect on access to justice and the way our members conduct their litigation business. The Law Society has lobbied vigorously to oppose or mitigate many aspects of the changes, most of which are expected to be implemented in April 2013. The Society remains disappointed that despite offering some concessions (not least the delay in implementation of the reforms from October 2012 to April 2013) the government has gone nowhere near far enough to make their proposals acceptable.

There remains a great deal of work ahead for our members in preparing for implementation of these reforms. Many are telling us that the government must at the very least postpone implementation until October 2013. But the government's response to the Law Society's pressing of this point has been that: 'the profession has had more than sufficient notice of these reforms'. Have we?

As I write this there is less than 5 weeks to go before implementation. We still do not have the final Regulations and Civil Procedure Rules as approved by parliament. The draft rules that have been published do not contain the new protocols for employment and public liability claims. This is a near impossible situation for the profession. We have made our views strongly known to the Lord Chancellor.

Possibly the government is influenced by the insurance sector's barrage of propaganda and expensive lobbying about a mythical compensation culture, fraudulent claims and 'disproportionate' legal costs, without satisfactory empirical evidence in support. Recently Aviva even went so far as to say that accident victims should deal directly with insurers and their right to instruct a solicitor should be constrained until they had negotiated with the insurer - who do these people think they are? They claim that this would save motorists £1.5 billion per annum without reducing compensation to accident victims.

The evidence says otherwise:

- Previous costs reforms, negotiated with insurers, have not resulted in lower insurance premiums despite insurers' promises to the contrary. In fact, insurance premiums have steadily risen.
- Investigation and research by Financial Services Authority (FSA) in 2009 (which emerged into the public domain only through an FOI application) concluded that

“The data provided found that on average 3rd parties were awarded 274.95% more through court proceedings than the initial rejected out-of-court offer from a [insurance] firm.” The FSA also concluded that 3rd party capture is “more widespread than initially assumed, and that the impact and probability of consumer detriment is greater...”

Meanwhile in the midst of a consultation on changing the small claims cost threshold the Lord Chancellor is quoted in the Daily Mail speculating on an increase above £10,000. A step that would not save any public expenditure indeed I think it would increase costs and further reduce the prospect of ordinary citizens securing justice.

The Prime Minister held a summit with insurers last year (no legal bodies were invited) at which insurers promised to reduce insurance premiums as a result of the planned reforms. We watch and wait, with no faith and little hope.

I remain proud of a solicitor profession which contributes greatly to the UK economy, protects access to justice for genuine accident victims and remains true to its duties to client and court. Contrast this with the insurers all too obvious commitment to their profits and their shareholders' dividends.

Desmond Hudson
Chief Executive
The Law Society.

1 Civil Justice Road Shows Overview

1.1 Litigation Costs and Funding Reforms

In April 2013 the provisions of the Legal Aid Sentencing and Punishment of Offenders Act 2012 and other reforms to civil litigation costs and funding which do not require primary legislation will be implemented. These are:-

- i. Non-recoverability of CFA success fees and ATE premiums
- ii. Introduction of qualified one way costs shifting (QOCS)
- iii. 10% increase in damages
- iv. The introduction of damages based agreements
- v. The prohibition of referral fees
- vi. Vertical extension of the existing RTA portal to £25,000
- vii. Horizontal extension of the portal process to EL and PL claims
- viii. Introduction of new costs management and budgeting rules to all multi track claims
- ix. Raising of non PI small claims limit from £5,000 to £10,000
- x. Raising of PI (“whiplash”) small claims limit from £1,000 (current consultation)
- xi. New CPR rule on proportionality
- xii. New CPR on Part 36 (offers to settle)

The changes will be far reaching across all area of civil dispute resolution and will require changes to processes and the way that civil litigation is currently conducted and funded.

The road shows are intended to briefly explain what reforms will be introduced and what impact these will have on the legal services market and its users.

1.2 Road Shows Main Speaker:- Martin Heskins

Martin is a solicitor and the Law Society’s civil justice policy officer. He has an extensive background in civil litigation issues for both claimants and defendants. Over the last 3 years he has been the Law Society’s lead on all issues resulting from the Jackson review of civil litigation costs and Part 2 of the Legal Aid Sentencing and Punishment of Offenders Act 2012.

He has also represented the Law Society in major stakeholder meetings and negotiations, served on the Civil Justice Council’s Pre-Action Protocol Review working group and is currently a member of the Clinical Disputes Forum.

1.3 Part 2 - The Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPOA)

a) S. 44 - The abolition of recoverability of CFA success fees

Claimants will have to pay their own solicitors' CFA success fees. The amount of fee will be capped at 25% of general damages.

The probable effect of this is that due to the cap many lower value claims and also higher value more complex claims may be uneconomical for solicitors to pursue and it remains to be seen how this may affect access to justice.

b) S. 46 - The abolition of recoverability of ATE premiums

Abolishes the recoverability of ATE premiums from the unsuccessful defendant. Any premium will now have to be paid by the claimant from damages in addition to any success fee and this could cause funding problems for solicitors (due to the fact that many ATE products cover disbursements).

The ATE market will also be affected due to the proposal to introduce qualified one way costs shifting, details of which are not contained in the Act but will be introduced via changes to the Civil Procedure Rules (CPR).

c) Exceptions

There are three exceptions to the new rules on recoverability.

- **Clinical negligence claims** - ATE premiums will remain recoverable for experts' reports **only** in publicly funded cases
- **Mesothelioma claims** - success fees and ATE premiums will remain recoverable until such time as the Lord Chancellor has undertaken a review of the impact on victims and compiled a report.
- **Insolvency proceedings** (until April 2015)

d) S.45- Damages Based Agreements (DBAs)

Introduces DBAs (contingency fees) for contentious business matters. These have previously been held to be unlawful on public policy grounds although they have been available in non contentious business (e.g. employment tribunals where the fee is currently capped at 35% of damages inclusive of VAT).

e) SS. 56 to 60 - Prohibition of Referral Fees

These are to be prohibited in personal injury claims only and the MoJ has insisted that it is for the SRA to regulate and police the prohibition.

There is a great deal of uncertainty as to how this prohibition will be applied and whether or not it will successfully resolve the problem. There is also some confusion as to whether

shared marketing arrangements are to be captured within the interpretation of a referral fee. There are still many issues which need to be resolved.

1.4 Non LASPOA Reforms

a) 10% uplift in general damages

To make up for claimants having to pay success fees and ATE premiums from their own damages the government has accepted Lord Justice Jackson's proposal that general damages should be increased by 10% across the board. Despite extensive lobbying this proposal has not been included in the Act. The rationale for the increase is that, according to Jackson LJ, more claimants will be better off. However, the evidence does not support this view.

It is not clear at this stage how this will be implemented. The Court of Appeal gave guidance on this issue in ***Simmons v Castle* ([2012] EWCA Civ 1288)**.

Last year an MoJ official publicly stated that there is no way that the Government can enforce or police the increase in damages and it is therefore crucial that this is monitored in some way.

b) Qualified One Way Costs Shifting (QOCS)

This is another recommendation of Jackson LJ which the government has accepted but has not been included in the Act. It will be introduced by changes to the CPR and will mean that unsuccessful claimants will not have to pay the defendant's costs unless they have acted unreasonably or fraudulently or the claim has been struck out.

c) Increase of RTA Portal financial limit to £25,000

The current limit is £10,000 and the government considers that the limit should be increased. The portal is a streamlined 3 stage fixed costs process for RTA claims only at the moment where liability is admitted within the protocol period (currently 15 days after receipt of notification). It is estimated that it currently deals with in excess 500, 000 claims each year and has saved insurance companies approximately £150 million (although this figure is an estimate) since it commenced in April 2010.

d) Expansion of Portal to include EL and PL claims

The government intends to expand the portal to include employer and public liability claims with values between £1,000 and £25,000. This will be a similar streamlined fixed costs process.

e) Review of Fixed Costs and Guideline Hourly Rates (GHR)

The Ministry of Justice has asked the Civil Justice Council to form a sub committee to review GHRs.

f) Costs Management and Budgeting

One of the recommendations of Lord Justice Jackson was to introduce changes which improved the judicial management of cases and costs. After a series of pilots, the Civil Procedure Rules Committee will be introducing changes to costs management and budgeting in **all multi track claims** on 1 April 2013. (see ***Henry v News Group Newspapers Ltd - [2013] EWCA Civ 19***)

These changes are likely to have wide implications for solicitors dealing with these claims who will now be required to complete and agree costs budgets for the conduct of claims which will result in potentially serious penalties if exceeded.

g) Small Claims Limits

With regard to small claims, the government has already decided to increase the limit for non PI or housing disrepair claims to £10k. However, with the intention of reducing the number of whiplash claims, and thereby reducing motor insurance premiums, the MoJ is consulting on increasing the PI small claims limit for whiplash claims to £5k. It is estimated that such an increase will result in over 50% of all PI claims falling within that limit which is likely to result in a significant rise in the numbers of litigants in person. We will of course be responding very robustly against this proposal.

2 Conditional Fee Agreements

2.1 The Conditional Fee Agreements Order 2013¹ – (comes into force on 1/4/2013)

Amends S. 58 of the Courts and Legal Services Act 1990 (the Act).

Article 2 Agreements providing for a success fee

All proceedings under S.58 of the Act can be the subject of an enforceable CFA (except proceedings under S 82 of the Environmental Protection Act 1990(a). The relevant proceedings are specified in S.58(4)(a) of the Act as “*proceedings of a description specified by order made by the Lord Chancellor*”. These are currently²:-

- (a) proceedings in which there is a claim for damages in respect of personal injuries or in respect of a person's death, and “personal injuries” includes any disease and any impairment of a person's physical or mental condition;
- (b) proceedings in England and Wales by a company which is being wound up in England and Wales or Scotland;
- (c) proceedings by a company in respect of which an administration order made under Part II of the Insolvency Act 1986(1) is in force;
- (d) proceedings in England and Wales by a person acting in the capacity of—
 - (i) liquidator of a company which is being wound up in England and Wales or Scotland; or
 - (ii) trustee of a bankrupt's estate;
- (e) proceedings by a person acting in the capacity of an administrator appointed pursuant to the provisions of Part II of the Insolvency Act 1986;
- (f) proceedings before the European Commission of Human Rights and the European Court of Human Rights established under article 19 of the Convention for the Protection of Human Rights and Fundamental Freedoms opened for signature at Rome on 4th November 1950, ratified by the United Kingdom on 8th March 1951, which came into force on 3rd August 1953,

provided that the client does not have legal aid in respect of the proceedings.

Article 3 Amount of Success Fee

In relation to all proceedings specified in article 2, the percentage specified for the purposes of section 58(4)(c) of the Act is 100%.

Article 4 Specified proceedings

A claim for personal injuries shall be proceedings specified for the purpose of section 58(4A)(b) of the Act.

Article 5 Amount of success fee in specified proceedings

(1) In relation to the proceedings specified in article 4, the percentage prescribed for the

¹ <http://www.legislation.gov.uk/ukdsi/2013/9780111533437/data.pdf>

² Article 2(1) Conditional Fee Agreements Order 1995

purposes of section 58(4B)(c) of the Act is—

- (a) in proceedings at first instance, 25%; and
- (b) in all other proceedings, 100%.

(2) The descriptions of damages specified for the purposes of section 58(4B)(d) of the Act are—

- (a) general damages for pain, suffering, and loss of amenity; and
- (b) damages for pecuniary loss, other than future pecuniary loss, net of any sums recoverable by the Compensation Recovery Unit of the Department of Work and Pensions.

Article 6 Transitional Provisions

(1) Articles 4 and 5 do not apply to a conditional fee agreement which is entered into before the date upon which this Order comes into force if—

- (a) the agreement was entered into specifically for the purposes of the provision to a person (“P”) of advocacy or litigation services in connection with the matter which is the subject of the proceedings; or
- (b) advocacy or litigation services were provided to P under the agreement in connection with those proceedings before that date.

(2) Articles 4 and 5 do not apply to any conditional fee agreement entered into in relation to—

- (a) proceedings relating to a claim for damages in respect of diffuse mesothelioma;
- (b) publication and privacy proceedings;
- (c) proceedings in England and Wales brought by a person acting in the capacity of—
 - (i) a liquidator of a company which is being wound up in England and Wales or Scotland under Parts IV or V of the 1986 Act; or
 - (ii) a trustee of a bankrupt’s estate under Part IX of the 1986 Act;
- (d) proceedings brought by a person acting in the capacity of an administrator appointed pursuant to the provisions of Part II of the 1986 Act;
- (e) proceedings in England and Wales brought by a company which is being wound up in England and Wales or Scotland under Parts IV or V of the 1986 Act; or
- (f) proceedings brought by a company which has entered administration under Part II of the 1986 Act.

3 After the event insurance

3.1 S. 46 Legal Aid Sentencing and Punishment of Offender Act 2012

Inserts new section 58C into the Courts and Legal Services Act 1990

S.58C Recovery of insurance premiums by way of costs

- (1) A costs order made in favour of a party to proceedings who has taken out a cost insurance policy may not include provision requiring the payment of an amount in respect of all or part of the premium of the policy, unless such provision is permitted by regulations under subsection (2).
- (2) The Lord Chancellor may by regulations provide that a costs order may include provision requiring the payment of such an amount where—
 - (a) the order is made in favour of a party to clinical negligence proceedings of a prescribed description,
 - (b) the party has taken out a costs insurance policy insuring against the risk of incurring a liability to pay for one or more expert reports in respect of clinical negligence in connection with the proceedings (or against that risk and other risks),
 - (c) the policy is of a prescribed description,
 - (d) the policy states how much of the premium relates to the liability to pay for an expert report or reports in respect of clinical negligence (“the relevant part of the premium”), and
 - (e) the amount is to be paid in respect of the relevant part of the premium.

3.2 The Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings Regulations 2013³ – (comes into force on 1 April 2013)

Regulation 2 Costs order may require payment of an amount of the relevant part of the premium

- (1) Subject to paragraph (2), a costs order made in favour of a party to clinical negligence proceedings may include provision requiring the payment of an amount in respect of the relevant part of the premium of a costs insurance policy taken out by that party which insures against the risk of incurring liability to pay for one or more expert reports in connection with the proceedings (or against that risk and other risks).
- (2) A costs order may not require the payment of an amount in respect of the relevant part of the premium which relates to the liability to pay for any expert report if—
 - (a) the report was not in the event obtained;
 - (b) the report did not relate to liability or causation; or
 - (c) the cost of the report is not allowed under the costs order.

³

<http://www.legislation.gov.uk/ukxi/2013/92/made/data.pdf>

4 Damages Based Agreements

4.1 The Damages-Based Agreements Regulations 2013⁴ – (comes into force 1 April 2013)

Regulation 2 Revocation of 2010 Regulations and transitional provision

- (1) Subject to paragraph (2), the Damages-Based Agreements Regulations 2010^(b) (“the 2010 Regulations”) are revoked.
- (2) The 2010 Regulations shall continue to have effect in respect of any damages-based agreement to which those Regulations applied and which was signed before the date on which these Regulations come into force.

Regulation 3 Requirements of an agreement in respect of all damages-based agreements

The requirements prescribed for the purposes of section 58AA(4)(c) of the Act are that the terms and conditions of a damages-based agreement must specify—

- (a) the claim or proceedings or parts of them to which the agreement relates;
- (b) the circumstances in which the representative’s payment, expenses and costs, or part of them, are payable; and
- (c) the reason for setting the amount of the payment at the level agreed, which, in an employment matter, shall include having regard to, where appropriate, whether the claim or proceedings is one of several similar claims or proceedings.

Regulation 4 Payment in respect of claims or proceedings other than an employment matter

- (1) In respect of any claim or proceedings, other than an employment matter, to which these Regulations apply, a damages-based agreement must not require an amount to be paid by the client other than—

- (a) the payment, net of—

- (i) any costs (including fixed costs under Part 45 of the Civil Procedure Rules 1998); and
- (ii) where relevant, any sum in respect of disbursements incurred by the representative in respect of counsel’s fees,

that have been paid or are payable by another party to the proceedings by agreement or order; and

- (b) any expenses incurred by the representative, net of any amount which has been paid or is payable by another party to the proceedings by agreement or order.

⁴

<http://www.legislation.gov.uk/ukdsi/2013/9780111533444/data.pdf>

(2) In a claim for personal injuries—

(a) the only sums recovered by the client from which the payment shall be met are—

(i) general damages for pain, suffering and loss of amenity; and

(ii) damages for pecuniary loss other than future pecuniary loss, net of any sums recoverable by the Compensation Recovery Unit of the Department for Work and Pensions; and

(b) subject to paragraph (4), a damages-based agreement must not provide for a payment above an amount which, including VAT, is equal to 25% of the combined sums in paragraph (2)(a)(i) and (ii) which are ultimately recovered by the client.

(3) Subject to paragraph (4), in any other claim or proceedings to which this regulation applies, a damages-based agreement must not provide for a payment above an amount which, including VAT, is equal to 50% of the sums ultimately recovered by the client.

(4) The amounts prescribed in paragraphs (2)(b) and (3) shall only apply to claims or proceedings at first instance.

Regulation 5 Information required to be given before an agreement is made in an employment matter

(1) In an employment matter, the requirements prescribed for the purposes of section 58AA(4)(d) of the Act are to provide—

(a) information to the client in writing about the matters in paragraph (2); and

(b) such further explanation, advice or other information about any of those matters as the client may request.

(3) Those matters are—

(a) the circumstances in which the client may seek a review of costs and expenses of the representative and the procedure for doing so;

(b) the dispute resolution service provided by the Advisory, Conciliation and Arbitration Service (ACAS) in regard to actual and potential claims;

(c) whether other methods of pursuing the claim or financing the proceedings, including—

(i) advice under the Community Legal Service,

(ii) legal expenses insurance,

(iii) pro bono representation, or

(iv) trade union representation,

are available, and, if so, how they apply to the client and the claim or proceedings in question; and

(d) the point at which expenses become payable; and

(e) a reasonable estimate of the amount that is likely to be spent upon expenses, inclusive of VAT.

Regulation 6 Additional causes of action in an employment matter

In an employment matter, any amendment to a damages-based agreement to cover additional causes of action must be in writing and signed by the client and the representative.

Regulation 7 Payment in an employment matter

In an employment matter, a damages-based agreement must not provide for a payment above an amount which, including VAT, is equal to 35% of the sums ultimately recovered by the client in the claim or proceedings.

Regulation 8 Terms and conditions of termination in an employment matter

(1) In an employment matter, the additional requirements prescribed for the purposes of section 58AA(4)(c) of the Act are that the terms and conditions of a damages-based agreement must be in accordance with paragraphs (2), (3) and (4).

(2) If the agreement is terminated, the representatives may not charge the client more than the representative's costs and expenses for the work undertaken in respect of the client's claim or proceedings.

(3) The client may not terminate the agreement—

(a) after settlement has been agreed; or

(b) within seven days before the start of the tribunal hearing.

(4) The representative may not terminate the agreement and charge costs unless the client has behaved or is behaving unreasonably.

(5) Paragraphs (3) and (4) are without prejudice to any right of either party under general law of contract to terminate the agreement.

4.2 Civil Procedure Rules - Part 44.18 - Award of costs where there is a damages-based agreement

(1) The fact that a party has entered into a damages-based agreement will not affect the making of any order for costs which otherwise would be made in favour of that party.

(2) Where costs are to be assessed in favour of a party who has entered into a damages based agreement—

(a) the party's recoverable costs will be assessed in accordance with rule 44.3; and

- (b) the party may not recover by way of costs more than the total amount payable by that party under the damages-based agreement for legal services provided under that agreement.

5 Qualified One Way Costs Shifting

CPR Rule 44.13 Qualified one-way costs shifting: scope and interpretation

- (1) This Section applies to proceedings which include a claim for damages—
- (a) for personal injuries;
 - (b) under the Fatal Accidents Act 1976; or
 - (c) which arises out of death or personal injury and survives for the benefit of an estate by virtue of section 1(1) of the Law Reform (Miscellaneous Provisions) Act 1934,

but does not apply to applications pursuant to section 33 of the Senior Courts Act 1981 or section 52 of the County Courts Act 1984 (applications for pre-action disclosure), or where rule 44.17 applies.

- (2) In this Section, “claimant” means a person bringing a claim to which this Section applies or an estate on behalf of which such a claim is brought, and includes a person making a counterclaim or an additional claim.

CPR Rule 44.14 Effect of qualified one-way costs shifting

- (1) Subject to rules 44.15 and 44.16, orders for costs made against a claimant may be enforced without the permission of the court but only to the extent that the aggregate amount in money terms of such orders does not exceed the aggregate amount in money terms of any orders for damages and interest made in favour of the claimant.
- (2) Orders for costs made against a claimant may only be enforced after the proceedings have been concluded and the costs have been assessed or agreed.
- (3) An order for costs which is enforced only to the extent permitted by paragraph (1) shall not be treated as an unsatisfied or outstanding judgment for the purposes of any court record.

CPR Rule 44.15 Exceptions to qualified one-way costs shifting where permission not required

Orders for costs made against the claimant may be enforced to the full extent of such orders without the permission of the court where the proceedings have been struck out on the grounds that—

- (a) the claimant has disclosed no reasonable grounds for bringing the proceedings;
- (b) the proceedings are an abuse of the court’s process; or
- (c) the conduct of—
 - (i) the claimant; or
 - (ii) a person acting on the claimant’s behalf and with the claimant’s knowledge of such conduct,

is likely to obstruct the just disposal of the proceedings.

CPR Rule 44.16 Exceptions to qualified one-way costs shifting where permission required

Orders for costs made against the claimant may be enforced to the full extent of such orders with the permission of the court where the claim is found on the balance of probabilities to be fundamentally dishonest.

- (2) Orders for costs made against the claimant may be enforced up to the full extent of such orders with the permission of the court, and to the extent that it considers just, where—
- (a) the proceedings include a claim which is made for the financial benefit of a person other than the claimant or a dependant within the meaning of section 1(3) of the Fatal Accidents Act 1976 (other than a claim in respect of the gratuitous provision of care, earnings paid by an employer or medical expenses); or
 - (b) a claim is made for the benefit of the claimant other than a claim to which this Section applies.
- (3) Where paragraph (2)(a) applies, the court may, subject to rule 46.2, make an order for costs against a person, other than the claimant, for whose financial benefit the whole or part of the claim was made.

CPR Rule 44.17 Transitional provision

This Section does not apply to proceedings where the claimant has entered into a pre-commencement funding arrangement (as defined in rule 48.2).

6 Offers to Settle

The Offers to Settle in Civil Proceedings Order 2013⁵ – (came into force on 12 February 2013)

Regulation 2 Additional amount to be paid where a claim is only for an amount of money

Where rules of court make provision for a court to order a defendant in civil proceedings to pay an additional amount to a claimant in those proceedings and the claim is for (and only for) an amount of money then, for the purposes of section 55(3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the prescribed percentage shall be—

<i>Amount awarded by the court</i>	<i>Prescribed percentage</i>
Up to £500,000	10% of the amount awarded.
Above £500,000, up to £1,000,000	10% of the first £500,000 and 5% of the amount awarded above that figure.
Above £1,000,000	7.5% of the first £1,000,000 and 0.001% of the amount awarded above that figure.

Regulation 3 Amount to be paid where a claim is or includes a non-monetary claim

(1) Rules of court may make provision for a court to order a defendant in civil proceedings to pay an amount to a claimant (“the amount to be paid”) in those proceedings where—

- (a) the claim is or includes a non-monetary claim;
- (b) judgment is given in favour of the claimant; and
- (c) the judgment in respect of the claim is at least as advantageous as an offer to settle the claim which the claimant made in accordance with rules of court and has not withdrawn in accordance with those rules.

(2) The amount to be paid shall be calculated as prescribed in paragraph (4).

(3) Rules made under paragraph (1) may—

- (a) include provision as to the assessment of whether a judgment is at least as advantageous as an offer to settle; and
- (b) make provision as to the calculation of the value of a non-monetary benefit awarded to a claimant.

(4) Subject to subparagraph (5), the amount to be paid shall be—

⁵ <http://www.legislation.gov.uk/ukxi/2013/93/made/data.pdf>

- (a) if a claim includes both a claim for an amount of money and a non-monetary claim, the following percentages of the amount awarded to the claimant by the court (excluding any amount awarded in respect of the claimant's costs)—

<i>Amount awarded by the court</i>	<i>Amount to be paid by the defendant</i>
Up to £500,000	10% of the amount awarded.
Above £500,000, up to £1,000,000	10% of the first £500,000 and 5% of the amount awarded above that figure; and

- (b) in a non-monetary claim only, the following percentages of any costs ordered by the court to be paid to the claimant by the defendant—

<i>Costs ordered to be paid to the claimant</i>	<i>Amount to be paid by the defendant</i>
Up to £500,000	10% of the costs ordered to be paid.
Above £500,000, up to £1,000,000	10% of the first £500,000 and 5% of any costs ordered to be paid above that figure.

- (5) The amount to be paid shall not exceed £75,000.

7 Proportionality

CPR Rule 44.3 Basis of assessment

(1) Where the court is to assess the amount of costs (whether by summary or detailed assessment) it will assess those costs—

- (a) on the standard basis; or
- (b) on the indemnity basis,

but the court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount.

(Rule 44.5 sets out how the court decides the amount of costs payable under a contract.)

(2) Where the amount of costs is to be assessed on the standard basis, the court will—

- (a) only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and
- (b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party.

(Factors which the court may take into account are set out in rule 44.4.)

(3) Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party.

(4) Where—

- (a) the court makes an order about costs without indicating the basis on which the costs are to be assessed; or
- (b) the court makes an order for costs to be assessed on a basis other than the standard basis or the indemnity basis,

the costs will be assessed on the standard basis.

(5) Costs incurred are proportionate if they bear a reasonable relationship to—

- (a) the sums in issue in the proceedings;
- (b) the value of any non-monetary relief in issue in the proceedings;
- (c) the complexity of the litigation;
- (d) any additional work generated by the conduct of the paying party; and
- (e) any wider factors involved in the proceedings, such as reputation or public importance.

(6) Where the amount of a solicitor's remuneration in respect of non-contentious business is regulated by any general orders made under the Solicitors Act 1974, the amount of the costs to be allowed in respect of any such business which falls to be assessed by the court will be decided in accordance with those general orders rather than this rule and rule 44.4.

(7) Paragraphs (2)(a) and (5) do not apply in relation to cases commenced before 1 April 2013 and in relation to such cases, rule 44.4(2)(a) as it was in force immediately before 1 April 2013 will apply instead.

CPR Rule 44.4 Factors to be taken into account in deciding the amount of costs

- (1) The court will have regard to all the circumstances in deciding whether costs were—
- (a) if it is assessing costs on the standard basis—
 - (i) proportionately and reasonably incurred; or
 - (ii) proportionate and reasonable in amount, or
 - (b) if it is assessing costs on the indemnity basis—
 - (i) unreasonably incurred; or
 - (ii) unreasonable in amount.
- (2) In particular, the court will give effect to any orders which have already been made.
- (3) The court will also have regard to—
- (a) the conduct of all the parties, including in particular—
 - (i) conduct before, as well as during, the proceedings; and
 - (ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;
 - (b) the amount or value of any money or property involved;
 - (c) the importance of the matter to all the parties;
 - (d) the particular complexity of the matter or the difficulty or novelty of the questions raised;
 - (e) the skill, effort, specialised knowledge and responsibility involved;
 - (f) the time spent on the case;
 - (g) the place where and the circumstances in which work or any part of it was done; and
 - (h) the receiving party's last approved or agreed budget.

(Rule 35.4(4) gives the court power to limit the amount that a party may recover with regard to the fees and expenses of an expert.)

8 Costs Management, Budgeting and Capping Orders

One of the recommendations of Lord Justice Jackson was to introduce changes which improved the judicial management of cases and costs. After a series of pilots, the Civil Procedure Rules Committee have introduced changes to costs management and budgeting in all multi track claims.

8.1 Costs Management

CPR Rule 3.12 Application of this Section and the purpose of costs management

(1) This Section and Practice Direction 3E apply to all multi-track cases commenced on or after 1 April 2013 in—

- (a) a county court; or
- (b) the Chancery Division or Queen's Bench Division of the High Court (except the Admiralty and Commercial Courts),

unless the proceedings are the subject of fixed costs or scale costs or the court otherwise orders. This Section and Practice Direction 3E shall apply to any other proceedings (including applications) where the court so orders.

(2) The purpose of costs management is that the court should manage both the steps to be taken and the costs to be incurred by the parties to any proceedings so as to further the overriding objective.

CPR Rule 3.13 Filing and exchanging budgets

Unless the court otherwise orders, all parties except litigants in person must file and exchange budgets as required by the rules or as the court otherwise directs. Each party must do so by the date specified in the notice served under rule 26.3(1) or, if no such date is specified, seven days before the first case management conference.

CPR Rules 3.14 Failure to file a budget

Unless the court otherwise orders, any party which fails to file a budget despite being required to do so will be treated as having filed a budget comprising only the applicable court fees.

CPR Rule 3.15 Costs management orders

(1) In addition to exercising its other powers, the court may manage the costs to be incurred by any party in any proceedings.

(2) The court may at any time make a “costs management order”. By such order the court will—

- (a) record the extent to which the budgets are agreed between the parties;
- (b) in respect of budgets or parts of budgets which are not agreed, record the court's approval after making appropriate revisions.

- (3) If a costs management order has been made, the court will thereafter control the parties' budgets in respect of recoverable costs.

CPR Rule 3.16 Costs management conferences

- 1) Any hearing which is convened solely for the purpose of costs management (for example, to approve a revised budget) is referred to as a "costs management conference".
- (2) Where practicable, costs management conferences should be conducted by telephone or in writing.

CPR Rule 3.17 Court to have regard to budgets and to take account of costs

- 1) When making any case management decision, the court will have regard to any available budgets of the parties and will take into account the costs involved in each procedural step.
- (2) Paragraph (1) applies whether or not the court has made a costs management order.

CPR Rule 3.18 Assessing costs on the standard basis where a costs management order has been made

In any case where a costs management order has been made, when assessing costs on the standard basis, the court will—

- (a) have regard to the receiving party's last approved or agreed budget for each phase of the proceedings; and
- (b) not depart from such approved or agreed budget unless satisfied that there is good reason to do so.

(Attention is drawn to rule 44.3(2)(a) and rule 44.3(5), which concern proportionality of costs.)

8.2 Costs Capping

CPR Rule 3.19 Costs capping orders – General

- 1) A costs capping order is an order limiting the amount of future costs (including disbursements) which a party may recover pursuant to an order for costs subsequently made.
- (2) In this rule, "future costs" means costs incurred in respect of work done after the date of the costs capping order but excluding the amount of any additional liability.
- (3) This rule does not apply to protective costs orders.
- (4) A costs capping order may be in respect of –
- (a) the whole litigation; or

- (b) any issues which are ordered to be tried separately.
- (5) The court may at any stage of proceedings make a costs capping order against all or any of the parties, if—
- (a) it is in the interests of justice to do so;
 - (b) there is a substantial risk that without such an order costs will be disproportionately incurred; and
 - (c) it is not satisfied that the risk in subparagraph (b) can be adequately controlled by—
 - (i) case management directions or orders made under this Part; and
 - (ii) detailed assessment of costs.
- (6) In considering whether to exercise its discretion under this rule, the court will consider all the circumstances of the case, including—
- (a) whether there is a substantial imbalance between the financial position of the parties;
 - (b) whether the costs of determining the amount of the cap are likely to be proportionate to the overall costs of the litigation;
 - (c) the stage which the proceedings have reached; and
 - (d) the costs which have been incurred to date and the future costs.
- (7) A costs capping order, once made, will limit the costs recoverable by the party subject to the order unless a party successfully applies to vary the order. No such variation will be made unless—
- (a) there has been a material and substantial change of circumstances since the date when the order was made; or
 - (b) there is some other compelling reason why a variation should be made.

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE SENIOR COURTS COSTS OFFICE
(Senior Costs Judge Hurst)

SYLVIA HENRY

**Claimant/
Appellant**

- and -

NEWS GROUP NEWSPAPERS LTD

**Defendant
Respondent**

28 In the light of the experience gained from those pilots the Rule Committee decided to adopt Sir Rupert Jackson's recommendation that the management of costs by the court should in future form an integral part of the ordinary procedure governing claims allocated to the multi-track. Those rules, which will become effective from 1st April 2013, differ in some important respects from the practice direction with which this appeal is concerned. In particular, they impose greater responsibility on the court for the management of the costs of proceedings and greater responsibility on the parties for keeping budgets under review as the proceedings progress. Read as a whole they lay greater emphasis on the importance of the approved or agreed budget as providing a prima facie limit on the amount of recoverable costs. In those circumstances, although the court will still have the power to depart from the approved or agreed budget if it is satisfied that there is good reason to do so, and may for that purpose take into consideration all the circumstances of the case, I should expect it to place particular emphasis on the function of the budget as imposing a limit on recoverable costs. The primary function of the budget is to ensure that the costs incurred are not only reasonable but proportionate to what is at stake in the proceedings. If, as is the intention of the rule, budgets are approved by the court and revised at regular intervals, the receiving party is unlikely to persuade the court that costs incurred in excess of the budget are reasonable and proportionate to what is at stake.

LORD JUSTICE MOORE-BICK, LORD JUSTICE AIKENS and LADY JUSTICE BLACK
(sitting with COSTS JUDGE CAMPBELL as Assessor)

9 10% Increase in Damages

- Suggested to make up for claimants having to pay success fees and ATE premiums.
- Jackson LJ states that more claimants will be better off.
- Impossible to police – there will be no way of knowing if 10% is added to damages in cases which settle without judicial intervention.
- On figures of Jackson LJ nearly 40% of claimants will be worse off.
- Jackson figures include RTA claims most of which are now dealt with under a new streamlined fixed cost process.
- If RTA claims are removed from the Jackson data then most claimants will be worse off.

[2012] EWCA Civ 1288

Case No: A3/2011/1846

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE DERBY COUNTY COURT
RECORDER BURNS (SITTING IN NORTHAMPTON)
REF: 0DE03953

CHRISTOPHER SIMMONS

Appellant

- and -

DEREK CASTLE

Respondent

Conclusion

50 In these circumstances, we would, as it were, delete para 19 from our earlier judgment, and replace para 20 with the following paragraph:

“Accordingly, we take this opportunity to declare that, with effect from 1 April 2013, the proper level of general damages in all civil claims for (i) pain and suffering, (ii) loss of amenity, (iii) physical inconvenience and discomfort, (iv) social discredit, or (v) mental distress, will be 10% higher than previously, unless the claimant falls within section 44(6) of LASPO. It therefore follows that, if the action now under appeal had been the subject of a judgment after 1 April 2013, then (unless the claimant had entered into a CFA before that date) the proper award of general damages would be 10% higher than that agreed in this case, namely £22,000 rather than £20,000”.

10/10/2012

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES , THE MASTER OF THE ROLLS
and THE VICE-PRESIDENT OF THE COURT OF APPEAL (CIVIL DIVISION)

10 Guideline Hourly Rates

31 October 2012

- **Transfer of function to the CJC from the Advisory Committee on Civil Costs**

“The Government has today issued a Written Ministerial Statement regarding a transfer of an additional function to the CJC in January 2013. The Guideline Hourly Rates (GHR) for solicitors in legal proceedings are set by the Master of the Rolls. The Advisory Committee on Civil Costs (ACCC) was established in 2007 by the Ministry of Justice to provide advice on this and other issues (12 Sep 2007: Col 124WS). I am grateful for the work which the ACCC has carried out since its inception. However, I have decided that the ACCC’s remaining function of advising on the GHR should be transferred to the Civil Justice Council (CJC) from January 2013. I envisage that a sub-committee of the CJC would be established to deal with this issue. The ACCC will be disbanded forthwith, which will reduce the number of advisory bodies. This proposal does not go so far as Sir Rupert Jackson’s recommendation for a Costs Council as the new sub-committee’s standing role will be limited to a review of the GHR; other fixed costs will remain for the Lord Chancellor to consider in the first instance. However, there may be other costs issues on which the Lord Chancellor and Judiciary would welcome advice from the new sub-committee from time to time. I will liaise with the Master of the Rolls, who chairs the CJC, concerning the membership, terms of reference and work to be undertaken by the CJC within the scope of its statutory role of keeping the civil justice system under review”.

Helen Grant
Parliamentary Under Secretary of State for Justice

COSTS COMMITTEE

Proposed Membership

- a) Chairman – High Court Judge, CJC member (currently Mr Justice Foskett)
- b) Deputy Chairman – Senior Costs Judge (currently SCJ Peter Hurst)
- c) Circuit Judge with costs expertise.
- d) District Judge with costs expertise
- e) An economist, probably a senior academic
- f) A consumer representative
- g) A costs barrister, to be nominated by the Bar Council
- h) A ‘claimant’ solicitor, to be nominated by The Law Society
- i) A ‘defendant’ solicitor, to be nominated by The Law Society
- j) A costs lawyer to be nominated by the Association of Costs Lawyers
- k) A Chartered Legal Executive, to be nominated by CILEX
- l) An insurer, nominated by the ABI
- m) A business representative, to be nominated by the CBI
- n) A trade union representative, to be nominated by the TUC
- o) A Ministry of Justice representative

11 Small Claims

11.1 The Government's views

"Britain has become the whiplash capital of the world. Between 2006 and 2012 claims for personal injury caused by road traffic accidents increased by 60%. Whilst over the same period the number of reported road traffic accidents fell by 20%. The Government shares the widespread concerns over this totally disproportionate growth in claims.

The Prime Minister has recognised the pressing need to tackle the rising cost of insurance premiums, and the effect this has on individuals, families and businesses in the current challenging economic conditions.

With every fraudulent and every exaggerated insurance claim that goes unchallenged the premium of each motorist increases. Insurers estimate that the cost of whiplash claims from road traffic accidents, which comprise 90% of relevant personal injury claims, to the average policy-holder is £90 per year. This is not a victimless problem. We must, of course, preserve access to justice for the genuinely injured, but that does not mean allowing exaggerated, misrepresented or fabricated claims to go unchallenged.

On 14 February 2012, the Prime Minister hosted an 'Insurance Summit' which looked closely at reducing motor insurance premiums. Both the Government and the insurance industry committed to action: the Government to looking at how best to tackle the issue without eroding access to justice; insurers, as well as looking at how to tackle this issue, committed to pass on savings to policy holders and to ensuring that genuine claimants receive the appropriate recompense.

This consultation document presents options that build upon the significant reforms this Government is already introducing from April 2013, through Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Reforms which include making the costs of no win no fee conditional fee agreements more proportionate and fairer between claimants and defendants, as well as banning referral fees in personal injury. The measures in this consultation look to remedy two areas where the current arrangements are imperfect: the difficulties in diagnosing the injury and the nature and cost of the court system that can work against insurers challenging suspect claims.

The first aspect this document considers is the creation of independent medical panels to support better diagnosis of possible whiplash injuries.

The second looks at the small claims track threshold for personal injury claims arising from road traffic accidents, which provides a more cost effective route for straightforward claims and self represented litigants.

Our aim is to deter fraudulent and exaggerated claims and reduce the cost of dealing with whiplash claims while preserving access to justice. The Government accepts that whiplash injury is a complex issue and that the causes and options to address them in this paper are not the only ones. We are keen to receive further ideas respondents might have to help us deliver our aims in this area.

*The Ministry of Justice will review all submissions to this consultation and publish a response on the aspects of the current arrangements in Spring 2013."*⁶

Helen Grant
Parliamentary Under Secretary of State for Justice

⁶ [Reducing the number and costs of whiplash claims - A consultation on arrangements concerning whiplash injuries in England and Wales – December 2012 – Ministry of Justice]

11.2 The Law Society's Views

The Law Society is seriously concerned at the suggestion that the small claims track limit for personal injury cases should be increased. The proposal will result in many thousands of accident victims losing substantial amounts of their damages awards in order to pay their own legal costs or having to represent themselves without the assistance of a solicitor. The Society estimates that this could result in over half a million self represented litigants which would add to the burdens of an already under resourced court system.

A copy of our response to the MoJ consultation - *Reducing the number and costs of whiplash claims - A consultation on arrangements concerning whiplash injuries in England and Wales* can be found at <http://www.lawsociety.org.uk/costs>

12 Fixed Costs

12.1 Government Policy

The government considers that fixed costs in the RTA portal need to be reviewed for two reasons:

- efficiency savings which can be identified since the process commenced.
- the prohibition of referral fees.

Whilst there may be a case that the RTA portal scheme has resulted in efficiency savings for solicitors it is the Law Society's view that the fixed costs should not be reduced because of the prohibition of referral fees. There are two main reasons for this:

- the fixed costs were based upon GHRs which were introduced in 2000 and have only increased by inflation since then. As the Law Society only lifted its ban on referral fees in 2005, the GHR rates cannot include any referral fee element.
- solicitors will still need to expend significant sums of money on other forms of marketing in the absence of referral fees.

12.2 RTA/EL/PL Portal Costs

MOJ PROPOSED FIXED RECOVERABLE COSTS FOR CLAIMS WITHIN THE RTA AND EL/PL PROTOCOLS

	Claims of £1k-£10k			Claims of £10k-£25k		
	Stage 1	Stage 2	Total	Stage 1	Stage 2	Total
RTA claims	£200	£300	£500	£200	£600	£800
EL/PL claims	£300	£600	£900	£300	£1,300	£1,600

12.3 RTA/EL/PL Fast Track Costs

MOJ PROPOSED FIXED RECOVERABLE COSTS FOR RTA, EL AND PL CLAIMS OUTSIDE THE RTA AND EL/PL PROTOCOLS

	Pre issue £1,000- £5,000	Pre Issue £5,001- £10,000	Pre Issue £10,001- £25,000	Issued – Post issue Pre Allocation	Issued – Post allocation pre listing	Issued – Post listing pre trial	Trial - Advocacy Fee
	Case Settles before Issue	Case Settles before Issue	Case Settles before Issue				
Road Traffic Accident							
Fixed Costs	Greater of £550 or £100 + 20% of Damages	£1,100 +15% of Damages over £5k	£1,930 + 10% of Damages over £10k	£1,160 + 20% of Damages	£1,880 + 20% of Damages	£2,655 + 20% of Damages	£485 (to £3,000) £690 (£3-10,000) £1,035 (£10-15,000) £1,650 (£15,000+)
Escape	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na
Employers Liability							
Fixed Costs	£950 + 17.5% of Damages	£1,855 +12.5% of Damages over £5k	£2,500 + 10% of Damages over £10k	£2,630 + 20% of Damages	£3,350 + 25% of Damages	£4,280 + 30% of Damages	£485 (to £3,000) £690 (£3-10,000) £1,035 (£10-15,000) £1,650 (£15,000+)
Escape	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na
Public Liability							
Fixed Costs	£950 + 17.5% of Damages	£1,855 +10% of Damages over £5k	£2,370 + 10% of Damages over £10k	£2,450 + 17.5% of Damages	£3,065 + 22.5% of Damages	£3,790 + 27.5% of Damages	£485 (to £3,000) £690 (£3-10,000) £1,035 (£10-15,000) £1,650 (£15,000+)
Escape	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na

Notes:

Base fees - in all cases increased by 12.5% where London firm as per CPR 45

13 Referral Fees

Government amendments to LASPOA were introduced with the intention of banning payment referral fees by regulated persons in **personal injury cases only**.

The Act defines a referral as providing information which a legal services provider would need to offer legal services and the person providing the information is not the client (**Section 56**). The relevant services will be legal activities as defined by the Legal Services Act 2007 and a provider is defined as someone authorised to conduct reserved legal activity.

A regulated person will be in breach if he/she refers business to another person or has business referred to him/her or arranges for another person to provide services and a payment is made. Payment is defined as any form of consideration but excludes hospitality which is reasonable in the circumstances.

There is a provision in the Act which gives the power to the Lord Chancellor to extend the scope to other areas of work.

There is a "get out" clause where it can be shown that the consideration was for the provision of services or "for any other reason". The Lord Chancellor is also to be given power to make provision for a "maximum" sum which is exempt from the regulations (n.b. Lord Justice Jackson's alternative to an outright ban was a maximum referral fee payment of £200)

The ban is to be enforced by the appropriate regulator (i.e. the SRA).

Analysis of SS. 56 – 60 of the Act

S. 56 (1)

Prevents solicitors from paying and claims management companies and insurance companies and other regulated persons (as defined in **S. 57**) from receiving a fee for the referral of personal injury work (prescribed legal business – **S. 56 (4)**). This will prevent any form of "cash per case" referral.

S. 56 (2)

Prevents the regulated person being paid a fee for arranging for anyone else to provide services to the client.

S. 56 (4)

This restricts the proposed ban to personal injury claims only but gives the power to the Lord Chancellor to extend the ban to other areas by subsequent regulation.

S. 56 (5)

This section describes a referral as the provision of information by one person (not the client) to another, which a solicitor will need in order to contact the client and offer to act for him/her (e.g. name/ contact details and/or details of an accident). Advertising directly for clients is not affected.

S. 56 (6)

Legal services will be legal activities as defined by the Legal Services Act 2007 and a provider of such services is defined as a person authorised to carry on a reserved legal activity (e.g. solicitors and barristers).

S. 56 (7)

This section merely defines a client as a person who makes, or would have made a claim (e.g. a fatal accident claim made on behalf of the deceased) for the purposes of this part of the Act.

S. 56 (8)

This section defines payment as also including any form of consideration but not hospitality which is reasonable (but see **S. 57 (7) and (8)** below).

S. 57

This section and its subsections imposes a duty on a regulator to make appropriate rules for these purposes. A breach of the rules will not be an offence, give rise to an action for breach of duty or make void or unenforceable any contract, except one which provides for the payment of a referral fee. **S. 57(7) and (8)** will allow the regulator to treat a payment as not being a referral fee if it was made as consideration for the provision of services or for another reason as long as the payment does not exceed any amount in respect of those services which is specified in any regulations made by the Lord Chancellor. However, **S. 57(9)** of the Act also gives the power to the Lord Chancellor to specify a maximum amount as consideration for services which would mean any amount in excess would be considered to be a referral fee in any event. It is possible that this power could be used by the Lord Chancellor to set a maximum referral fee which would be allowed. It may be the case that this could be a fall back position based upon the Jackson alternative of maximum referral fees of £200 if an outright ban is not introduced.

S. 58

This gives the power to the Treasury to make regulations enabling the FSA to monitor and enforce compliance on those organisations which are regulated by the FSA (e.g. insurers).

S. 59

Sets out the definitions of regulators and the relevant regulated persons.

S. 60

Provides that any regulations made on sections 56 to 59 are to be by statutory instrument where a draft has been laid before and approved by resolution of the Commons and the Lords.

The Effect of a Referral Fees Ban

The proposed ban will apply to personal injury claims only and therefore referral fees will continue to be paid in all other areas of legal work, including conveyancing, where such payments are already made for referral of clients.

Straight “cash per case” referral arrangements (see 5(i) above) including paid referrals between solicitors (see 5(iv) above) will therefore cease.

It is believed that arrangements such as those between trade unions and their solicitors (see 5(ii) above) will also come within the definition of a paid referral as it is likely to fall within the definition of “consideration” (**Section 56(8)**) unless, which is doubtful, the Lord Chancellor exercises his powers (**Section 57(9)**) to make these exempt.

It is unclear whether or not the shared marketing type of arrangements (see 5(iii) above) will fall within the definition of referral fee arrangements and this needs further consideration.

14 Your Law Society

14.1 Campaign Timeline

The detailed timeline below sets out the substantial volume of work that the Law Society has undertaken in relation to civil justice reform on members' behalf over the past several years.

Since proposing our own reforms back in 2006, the Society has engaged closely with successive governments with an aim to protect access to justice and limit negative consequences for the profession. In 2011 the Society launched the Sound Off For Justice campaign, a wide-ranging campaign covering both the legal aid and civil justice elements of the Legal Aid, Sentencing and Punishment of Offenders Bill.

The Society continues to work hard to defend access to justice and the interests of our members.

Date	Event / Law Society action
March 2013	The Law Society president will meet with justice minister Helen Grant to discuss the impact of the pace of implementation on the solicitors' profession and the consequences for access to justice.
March 2013	The Law Society has organised a programme of 14 regional civil justice roadshow events. View details
February 2013	Law Society reacts robustly to insurer's proposals on personal injury claims. Read press release
January 2013	The Society publishes a campaigner briefing assisting members to lobby their local MP in relation to the pace of implementation of the civil justice reforms. Read the Society's campaigner briefing (PDF)
January 2013	The Law Society met with several MPs to discuss concerns regarding the pace of implementation of civil justice reforms and the impact on solicitors and clients.
January 2013	The Law Society responds to the Ministry of Justice's call for evidence: <i>Extension of the RTA PI Scheme: Proposals on Fixed Recoverable Costs</i> . Read the Society's response
November 2012	The Law Society responds to the CPRC's consultation on the pre-action protocols for low value personal injury EL, PL and RTA claims. Read the Society's response
November 2012	The Law Society president writes to the lord chancellor Chris Grayling expressing concern at the pace of implementation of the civil justice reforms and calling for a delay. Read the president's letter to the lord chancellor (PDF)
November 2012	The Law Society president writes to justice minister Helen Grant criticising the process by which proposals for fixed costs have been calculated. Read the president's letter to Helen Grant (PDF)
November	The Ministry of Justice issues a call for evidence in relation to costs available in the extended RTA scheme: <i>Extension of the RTA PI Scheme: Proposals</i>

2012	<p><i>on Fixed Recoverable Costs.</i></p> <p>Read the Ministry's call for evidence (PDF)</p>
October 2012	The Civil Procedure Rules Committee (CPRC) issues a consultation on the pre-action protocols for low value personal injury employer liability, public liability and RTA claims
October 2012	<p>The Ministry of Justice publishes its analysis of responses received to the call for evidence in relation to proposals to extend the RTA scheme to PL and EL</p> <p>Read the Ministry's analysis (PDF)</p>
July 2012	<p>Professor Paul Fenn publishes his analysis of the RTA portal process: <i>Evaluating the Low Value Road Traffic Accident Process</i></p> <p>Read professor Fenn's report (PDF)</p>
June 2012	The Law Society organises regional civil justice road show events in Manchester, Leeds, Newcastle, Cardiff, Birmingham and London.
May 2012	<p>The Legal Aid, Sentencing and Punishment of Offenders Act receives Royal Assent</p> <p>Read the Act</p>
May 2012	<p>The Law Society responds to the Ministry of Justice's call for evidence in relation to extend the RTA scheme to include employers' and public liability claims up to the value of £25,000</p> <p>Read the Society's response to the call for evidence</p>
April 2012	The President and CEO hold a private dinner with the lord chancellor, Kenneth Clark MP and the justice minister, Jonathan Djanogly MP to discuss implementation of part 2 of the LASPO Bill among other issues.
March 2012	<p>The Legal Aid, Sentencing and Punishment of Offenders Bill underwent its Third Reading debate in the House of Lords.</p> <p>Read the Society's briefing to all peers</p>
March 2012	<p>The Legal Aid, Sentencing and Punishment of Offenders Bill underwent its report stage in the House of Lords. The Law Society worked with a number of concerned peers to table a number of amendments to part 2 of the bill.</p> <p>Read the Law Society's briefing on its proposed amendments</p>
March 2012	The Law Society attends the Liberal Democrat Spring Conference to raise awareness of the impact of the Legal Aid, Sentencing and Punishment of Offenders Bill and accompanying reforms among party delegates and to urge parliamentarians to support proposed amendments.
February 2012	<p>The Ministry of Justice issues a call for evidence in relation to proposals to extend the RTA scheme to include employers' and public liability claims up to the value of £25,000.</p> <p>Read the call for evidence</p>
January 2012	In response to direct pressure from the Law Society and others the government announced a delay in the implementation of part 2 of the Legal Aid, Sentencing and Punishment of Offenders Bill from October 2012 until April 2013.

14.2 Campaign Achievements

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.

14.2.1. Civil litigation funding reforms

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.

14.2.2. 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.

14.2.3. 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.

14.2.4. 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.

14.2.5. 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.

14.2.6. 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.

14.2.7. 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.

14.2.8. Conditional fee agreement regulations withdrawn

After discussions with the Law Society the government decided not to proceed with these regulations which would could have made such agreements unenforceable and therefore costs irrecoverable because of the application of the indemnity principle.

15 Some Useful Links

Law Society Website (costs)

<http://www.lawsociety.org.uk/costs>

The Civil Procedure (Amendment) Rules 2013 - (2013 No. 262)

<http://www.legislation.gov.uk/uksi/2013/262/made/data.pdf>

The Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings Regulations 2013 (2013 No. 92)

<http://www.legislation.gov.uk/uksi/2013/92/made/data.pdf>

The Conditional Fee Agreements Order 2013

<http://www.legislation.gov.uk/ukdsi/2013/9780111533437/data.pdf>

The Damages-Based Agreements Regulations 2013

<http://www.legislation.gov.uk/ukdsi/2013/9780111533444/data.pdf>

The Offers to Settle in Civil Proceedings Order 2013 (2013 No. 93)

<http://www.legislation.gov.uk/uksi/2013/93/made/data.pdf>

Ministry of Justice Website

<http://www.justice.gov.uk/civil-justice-reforms/>

