

## Review of Civil Litigation Costs – The Headlines

The long awaited final report of LJ Jackson has today been published. A weighty 584 pages set out “a coherent package of interlocking reforms, designed to control costs and promote access to justice”. For a speedy read there is a 10 page Executive Summary.

The CFA comes under attack. Introduced in order to allow Access to Justice following the 1999 reforms they are now recognised as “the major contributor to disproportionate costs in civil litigation in England and Wales”. The suggestion is that success fees and ATE insurance premiums should cease to be recoverable; although success fees can still be agreed these will be payable by the Client to the lawyer and not by the unsuccessful party. The maximum amount of damages that can be deducted for the success fee would be capped at 25 %. It seems that we have come full circle. The original CFA regime proposed a maximum uplift of 25% payable by the Claimant!

Unsurprisingly referral fees come in for criticism, the recommendation being that lawyers should not be permitted to pay referral fees in respect of pi cases.

Whilst this is potentially good news for defendants of grave concern is the suggestion that, to ensure Claimant’s still receive proper compensation for their injuries, general damages should be increased across the board by 10% and that there should be “qualified one way costs shifting”. The proposal is that in “certain categories of litigation” the claimant will not be required to pay the defendant’s costs if the claim is unsuccessful, but the defendant will still have to pay the claimant’s costs if the claimant is successful. The qualification being that unreasonable or unjustified behaviour may lead to different costs order and the financial resources available to the parties may justify there being two way costs shifting in particular cases. Whether the need to protect the public purse qualifies as a reason to justify two way shifting remains to be seen. The recommendation of LJ Jackson is that personal injury litigation is ripe for such shifting.

The biggest bonus for Defendant is that the costs of fast track cases would be fixed where a case can be concluded within a one day trial. The cynic will ask what steps might be taken to draw out the evidence to exceed a day’s trial. There is a proposed limit on pre-action costs of £12,000 in other litigation.

Once again ADR is given a big push as a means to reduce civil litigation costs with a serious campaign suggested to properly inform all of the benefits it can bring. The recommendations stop short of making ADR mandatory for all proceedings.

Personal Injury claims are largely untouched in respect of the recommendations for disclosure which can be extensive in other fields of civil litigation and again witness statements and the use of expert evidence is not criticised. There is a recommendation that case management should place controls over the length of statements with necessary costs sanctions.

Much more hands on case management, such as that which was widely anticipated following the introduction of the Civil Procedure Rules, is recommended with judges being allocated to cases and that hearings do not take place for the sake of it. The Court will also be actively involved in looking at the budgets of the parties costs as the case progresses to ensure that costs do not become disproportionate.

So what happens next? Well that remains to be seen. In a general election year there has to be a question mark over the implementation of the changes and the speed over which any change might take place.

### Crutes LLP

Offices at:

#### carlisle

13 Castle Street  
Carlisle  
CA3 8SY

T: 01228 525 195  
F: 01228 552 620

#### newcastle

Great North House  
Sandyford Road  
Newcastle upon Tyne  
NE1 8ND

T: 0191 233 9700  
F: 0191 233 9701

#### teeside

Crutes House  
University Boulevard  
Teesdale Park  
Stockton on Tees  
TS17 6EN

T: 01642 623 400  
F: 01642 623 401

[www.crutes.co.uk](http://www.crutes.co.uk)  
[info@crutes.co.uk](mailto:info@crutes.co.uk)



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Article written by:

Sue Howes  
Partner

DDI: 01642 623 421

Email: [sue.howes@crutes.co.uk](mailto:sue.howes@crutes.co.uk)

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Details correct at the time of going to print. January 2010.