



NEWS RELEASE

18 April 2013

CJC GROUP REPORTS ON DEFAMATION COSTS

A Civil Justice Council (CJC) Working Group today publishes its report (<http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/cjc/working-parties/costs-in-defamation-proceedings.htm>) on the case and options for costs protection in defamation and privacy proceedings.

The Working Group, which included defamation and costs specialists from a range of interests, was set up in response to a request by Justice Minister Lord McNally to explore the issue ahead of the measures in the Defamation Bill coming into effect.

At present many defamation and privacy cases are brought under Conditional Fee Agreements (CFAs or as they are sometimes known, no-win, no-fee agreements). This system was reformed in April 2013 for most claims. However, the Government delayed implementation of those changes for publication and privacy cases in the light of the Leveson report. The CJC was asked to set up a Working Group to assess what form of costs protection regime should apply in an area of law acknowledged to be complex and distinct, and also to see whether forms of costs protection would help parties secure effective access to justice.

John Pickering, Chairman of the Working Group, said:

“Our task was a difficult one. Defamation and privacy law is fast-changing and complex, not least because of the advent of social media and online publication. Ideally we would have had much more time (for example not all members were able to sign off the report), than the Ministerial timetable permitted, to both consider the issues and consult widely. Our deliberations were also hampered by examining the issues without knowing what model of arbitration would develop in response to the Leveson Inquiry.

“Nonetheless, we have done our best to weigh up the pros and cons of various methods for protecting parties from major adverse costs in bringing or defending a defamation or privacy claim, as without such protection there is a real risk of people not receiving access to justice.”

The Working Group report includes a number of recommendations on the options for controlling costs in defamation and privacy proceedings, including:

- A call for greater judicial case management, with specialist judges allocated to ensure proceedings are dealt with swiftly and at minimal cost, with early intervention, approval of costs budgets and overseeing progress (recommendations 1-9);
- A suggestion that a system of ‘Variable Costs Protection’ is introduced, a form of qualified one-way costs shifting that both claimants and defendants could apply for, on the basis that in this area of law either claimant or defendant could require costs protection to conduct their case (recommendations 10-13);

- Agreeing in which circumstances parties might lose their cost protection – for example if a claim is found to have been fundamentally dishonest, or has been struck out (e.g. as being an abuse of the court process) (recommendations 33-36).
- Applying costs budgeting measures, as adopted in other areas of law, so that parties draw up realistic budgets for cases and adhere to them under judicial supervision (recommendation 15); and
- Allowing the courts to continue to use their cost capping powers to supplement the costs management and protection systems developed (recommendation 14).

The CJC Working Group report has been submitted to the Ministry of Justice, which will consider it as part of its wider work on procedural reform in this area in the light of the Defamation Bill coming into force, the wider changes to the costs regime for civil litigation and potential changes to the arbitration process following the Leveson Inquiry report.

Notes to Editors

1. The Working Group's report can be found at (web link here), and two case scenarios have been mapped out to illustrate how the costs protection system might work in practice.

2. The membership of the Working Group was as follows:

John Pickering (Chair) – Partner, Irwin Mitchell
 Nicholas Bacon QC – Barrister, 4 New Square
 Desmond Browne QC - Barrister, 5 Raymond Buildings
 Keith Mathieson – Partner, RPC
 Professor Rachael Mulheron – Queen Mary University of London
 Lucy Moorman – Partner, Simons Muirhead and Burton
 Zoe Norden – In-House Lawyer, The Guardian
 Jack Norris – Ministry of Justice
 Marcus Partington, Group Legal Director, Trinity Mirror plc
 Alasdair Pepper – Partner, Carter-Ruck Solicitors
 Costs Judge Gordon-Saker
 Chloe Strong – Barrister, 5 Raymond Buildings
 Robert Wright – Ministry of Justice
 Peter Farr – CJC Secretary
 Andrea Dowsett – CJC Assistant Secretary

3. The Terms of Reference for the Group were as follows:

1. To identify whether there are meritorious actions for defamation and privacy, which could not properly be brought or defended without some form of costs protection;
2. If so identified, to advise -
 - (i) in which types of cases (or stages of cases) some form of costs protection should apply; and
 - (ii) what options for costs protection might be considered, with their advantages and disadvantages

4. Media queries to Michael Duncan, Judicial Office press office on behalf of the Civil Justice Council on 020 7947 7836.
5. The CJC is an independent arms-length statutory public body whose role is to scrutinise the operation of the civil justice system so that it remains accessible, fair and efficient.

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