



July 2018

**CJC response to the survey for the
POST-IMPLEMENTATION REVIEW OF PART 2 OF THE
LEGAL AID, SENTENCING & PUNISHMENT OF OFFENDERS ACT 2012**

What types of claims do you typically deal with?

Not applicable.

How long have you been in that role/dealing with that type of claim?

Not applicable.

Section 44 abolished the recoverability of Conditional Fee Agreement success fees. In your experience what have been the impacts of this reform, and the regulations made under it?

The CJC has members and sponsors events that represent both claimant and defendant interests, and their views would diverge on this issue. Claimant lawyers point to the loss of some law firms and a reduction in access to justice and parties receiving less in damages as their lawyers recover more in fees. Defendant lawyers and insurers would say that large numbers of cases are still being brought with CFA funding and the overall numbers of claims have not fallen post-LASPO.

The CJC is not aware of any problems relating to the 2013 CFA Regulations.

Section 46 abolished the recoverability of after the event (ATE) insurance premiums (except in relation to clinical negligence expert reports). Qualified One Way Costs Shifting (QOCS) was introduced in its place in personal injury claims. In your experience what have been the impacts of this reform?

The comments made above in relation to CFAs apply equally to the ATE reform.

The introduction of QOCS in personal injury litigation was part of the checks and balances proposed by Sir Rupert Jackson to maintain equilibrium between claimant and defendant interests, as such it is an essential and integral part of the costs system.

The CJC published a report in June 2016 exploring further issues in relation to the scope of QOCS - <https://www.judiciary.uk/wp-content/uploads/2011/03/cjc-qocs-2016-report.pdf>. This concluded that there was a strong argument in principle to extending QOCS to actions brought against the police – this review provides an opportunity to analyse that issue again.

In total the report made 45 recommendations, including:

- Making a number of technical amendments to the existing regulations, designed to make them clearer, and therefore more attractive, as a funding option;
- Increasing some of the caps on payments for cases – for example, where a defendant successfully defends a personal injury action; and
- Allowing lawyers and clients to agree the ‘trigger point’ at which a DBA becomes payable, and the circumstances under which it can be terminated.

Section 45 introduced Damages Based Agreements as a funding method for civil cases. In your experience what have been the impacts of this reform?

A CJC working group produced a comprehensive report reviewing the regulations for DBAs in September 2015 - <https://www.judiciary.uk/announcements/damages-based-agreements-dbas-publication-of-cjc-recommendations/>. The report made a number of recommendations to increase the use of DBAs and the options available to litigation funders. Usage of DBAs remains small, and the CJC remains of the view that the regulations should be reformed. As things stand, the objectives of the legislation are not being fulfilled given the limited use of DBAs.

Section 55 reformed Part 36 offers to settle. The statutory change introduced by LASPO Part 2 was primarily that where defendant fails to beat a claimant’s offer, the claimant’s recovery should be enhanced by 10%. In your experience, what have been the impacts of this reform, and the regulations made under it?

The CJC seminar for the post-implementation review provided some discussion of this topic, and the notes are available here – (link here).

Sections 56-60 prohibited the payment of referral fees in personal injury cases. What have been the impacts of this reform?

The CJC seminar for the post-implementation review provided some discussion of this topic, and the notes are available here – (link here).

Overall, what has been your experience of the combined impacts of the LASPO Part 2 reforms?

Members on the CJC represent a broad range of interests in the civil justice system, and views would vary in terms of the impact of the reforms. In general, there is a broad consensus that the reforms have had an impact in terms of controlling civil litigation costs, although there is still scope for further work on this, which the second phase of the Jackson Review (on fixed recoverable costs) will help to address.

Some general reflections on the reforms as a whole were provided at the CJC seminar (referred to above) by representatives of the judiciary and claimant and defendant lawyers.

The one area where the CJC has consistently pressed for reform is in relation to the regulations for Damages-Based Agreements (see above), and this post-implementation review would be the appropriate opportunity to undertake this.