CJC workshop event on technical aspects of implementation of Jackson LJ's costs reforms – 31 October 2011

The Civil Justice Council (CJC) has held a workshop event to discuss technical aspects of implementation of Jackson LJ's recommendations for reform of civil litigation costs. The focus was on qualified one-way costs shifting (QOCS), Part 36 offers (possible additional sanctions and rewards), and the appropriate test for assessing the proportionality of costs.

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Speedread

We have previously reported on the formation of a CJC working party to consider technical aspects of implementing Jackson LJ's proposals for reform of civil litigation focusing on the following issues:

- Introduction of qualified one-way costs shifting (QOCS).
- Reform of Part 36: possible additional sanctions and rewards.
- Reform of the proportionality test.

(See *Legal update, CJC working party on technical aspects of implementing the Jackson LJ reforms (www.practicallaw.com/8-507-1413)*.)

The current intention is that the full package of civil litigation costs reform will be implemented in October 2012.

The CJC has prepared a paper, *CJC Working Group on Technical Aspects of Jackson Implementation: Options for proportionality, Part 36 Offers and Qualified One-way Costs Shifting* (options paper), summarising the options for reform in these areas. A workshop event took place on 31 October 2011 to obtain wider stakeholder feedback on the CJC's findings.

PLC Dispute Resolution attended and participated in the discussions about the appropriate test for assessing proportionality of costs. There was lively debate and some useful points were raised. It is clear that there is much to be done within an extremely ambitious timetable if full implementation is to be achieved by October 2012, as planned.

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This note summarises the proceedings at the Civil Justice Council's (CJC) workshop event on technical aspects of implementation of Jackson LJ's proposals for costs reform. As well as providing details of the formal presentations, it sets out in detail some key points raised during discussions on the following key issues:

- Qualified one-way costs shifting (QOCS).
- Part 36: possible additional sanctions and rewards.
- Options for assessing the proportionality of costs.

Opening address

Lord Neuberger of Abbotsbury, MR, gave the opening address. He noted that the hallmarks of a good, modern civil justice system are for it to be as fair, accessible, clear, inexpensive, quick and proportionate as it can be.

He emphasised the need for simplicity of concept, principle and provisions, noting that, judging from the length of the White Book (and the Green Book), we have perhaps not been doing well on that front. The "KISS" (keep it simple) principle should underlie the work.

He recognised that everyone will have their own views and these will not always coincide with Jackson LJ's recommendations. However, by harnessing the views of experts and stakeholders, it is possible to improve the quality of policy implementation.

In fact, most of the changes proposed are not controversial. However, where there is disagreement, often adversarial discussions provide the best means of achieving the best outcomes. It is important to ensure that the proposed new arrangements are subject to detailed scrutiny and that the options are "stress tested".

Lord Neuberger endorsed the comments in a paper prepared for the workshop event by Jackson LJ (Judiciary website, Lord Justice Jackson's paper for the Civil Justice Council Workshop on "Technical Aspects of Implementation", *Third lecture in the implementation programme, 31 October 2011*). He emphasised a number of points, not least the overarching requirement for simplicity and the need to keep in mind that the proposals form an interlocking whole. Jackson LJ has cautioned that any attempt to "unpick that package" will distort the balance and have knock-on consequences.

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Presentation by Alastair Kinley, Chair of the CJC Working Group on technical aspects of Jackson implementation

Alastair Kinley outlined the three key areas addressed in the *CJC's options paper* (as referred to above).

He noted the following general points:

- The CJC was not expected to reach consensus on all points, but to ventilate views on the options and variables. The emphasis was very much on practical implementation, rather than policy issues (on which the Ministry of Justice has already made decisions) although it can be difficult to keep the two things completely separate.
- Implementation of the civil litigation costs reforms will be achieved at different levels. Some aspects will be addressed by the Legal Aid, Sentencing and Punishment of Offenders Bill 2010-11 (the Bill) (see *Legal update, Bill to implement Jackson reforms laid before Parliament (www.practicallaw.com/6-506-5804)*), whilst others will be implemented through changes to the civil procedure rules.
- The Bill needs to be through Parliament by summer 2012 and the Civil Procedure Rule Committee will have to have the opportunity to consider rule changes by Spring 2012, if revised procedures are to take effect by October 2012, as planned.

Presentation by Robert Wright, Ministry of Justice

Robert Wright noted that we have moved into the third phase of civil litigation costs reform, which involves working out the detail of how the reforms will be implemented. The target of achieving implementation by October 2012 means that time is against us.

Qualified one-way costs shifting (QOCS)

Jackson LJ proposed the introduction of QOCS for certain categories of case. The government's *response* to the consultation on Jackson LJ's recommendations for reforming civil litigation funding and costs included the following statement of its policy decision on QOCS:

"A regime of Qualified One Way Costs Shifting ('QOCS') will be introduced for personal injury cases, including clinical negligence. This was proposed by Lord Justice Jackson and means that an individual claimant is not at risk of paying the defendant's costs should the claim fail (except in limited prescribed circumstances), but that the defendant – which typically in personal injury cases is a relatively well-resourced body – would have to pay the individual claimant's costs should the

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claim succeed. The exceptions will be: (i) on behaviour grounds - where the claimant has acted fraudulently, frivolously or unreasonably in pursuing proceedings - so a reasonable claimant will not be at risk of paying the other side's costs on behaviour grounds; and (ii) on financial means grounds - only the very wealthy would be at risk of paying any costs."

For details of the government's response, see *Legal update, Government response to Jackson LJ's recommendations on reforming civil litigation costs and funding (www.practicallaw.com/6-505-4810)*.

An issue that is particularly challenging is deciding the appropriate "gateway" for QOCS: in particular, whether or not there should be financial criteria. The aim is to find a simple, fair approach.

In the first instance, QOCS will only apply for personal injury cases. Notwithstanding the asymmetrical relationship in those cases, the Ministry of Justice's current thinking is that there should be some limits, for example in respect of the "very wealthy". On that point, Robert Wright said that it would be extremely helpful to have data on the number of wealthy individuals who bring personal injury claims that fail.

He recognised the criticisms raised (both by national courts and the European Court of Human Rights) about wealthy individuals' use of CFAs for defamation claims (see, for example, *Legal update, Excessive success fees in Naomi Campbell libel action (European Court of Human Rights) (www.practicallaw.com/7-504-5900)*. Currently, though, defamation is not relevant in the context of QOCS.

It is likely that a relatively small number of cases will fall within QOCS. The difficulty is in finding the appropriate filter. For example, should all higher rate income taxpayers be excluded? An alternative approach might be for QOCS to apply in all personal injury cases unless challenged by the defendant.

25% cap on CFA success fee in personal injury cases

The aim of capping the success fee is to protect claimants' damages. There is a need for clarity and certainty. A number of issues arise, including:

- Should the cap cover any counsel's success fee or VAT?
- Should the cap apply solely at first instance?
- How should the cap be enforced?

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The Ministry of Justice recognises that it could be argued that the cap is primarily an issue between the claimant and his lawyer and that there might be concerns about prescription by the state where a fully-informed claimant could be prevented from bringing a claim, due to the cap. In terms of timing (as the Ministry of Justice sees it), the Bill commenced the report stage in the Commons on 31 October 2011. Following that, it will go to the Lords, but there is currently no confirmed date for that. It is hoped that the Bill will have Royal Assent by April 2012. The planned date for implementation is October 2012 but it is recognised that this is very tight, not least on the legal aid aspects of the Bill. The Civil Procedure Rule Committee will need to consider any necessary rule changes early next year. The interaction between the procedural rules and provisions in the Bill complicates the timing.

Concerns have been voiced that satellite litigation will be generated by changes to the costs regime. Robert Wright questioned whether, arguably, the only inevitable consequence of any reform to civil litigation is civil litigation. This is not necessarily undesirable, as one man's satellite litigation is another's helpful clarification. However, every effort should be made to reduce the prospect of unnecessary litigation.

Workshop sessions

A member of the PLC Dispute Resolution team attended the session considering the appropriate approach for determining proportionality, chaired by Nicholas Bacon QC.

The principle of proportionality is central to civil procedure. The ***overriding objective (www.practicallaw.com/4-205-5197)*** of dealing with cases justly (as set out in CPR 1.1) includes:

"dealing with the case in ways which are proportionate:

(i) to the amount of money involved;

(ii) to the importance of the case;

(iii) to the complexity of the issues; and

(iv) to the financial position of each party."

In *Home Office v Lownds [2002] EWCA Civ 365 (www.practicallaw.com/9-504-9978)*, the Court of Appeal gave guidance on how the courts should give effect to the requirement of proportionality. The court held that, in general, there should be a two-stage approach:

- First, a global approach to proportionality.
- Secondly, an item by item approach.

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The global approach will indicate whether the total sum claimed is (or appears to be) disproportionate having particular regard to the considerations which CPR 44.5(3) states are relevant. If the costs as a whole are not disproportionate according to that test, then all that is normally required is that each item should have been reasonably incurred, and the cost for that item should be reasonable. If, on the other hand, the costs as a whole appear disproportionate, then the court will want to be satisfied that the work in relation to each item was necessary, and, if necessary, that the cost of the item was reasonable. See *Practice note, Detailed assessment: what it is and the basis of assessment (www.practicallaw.com/3-203-1338)*.

Jackson LJ has proposed the following wording for a new test on proportionality:

"Costs are proportionate if, and only if, the costs incurred 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."

The CJC has identified four broad options for implementation:

- A long stop model. Under this, there would be no preliminary assessment based on proportionality. Instead, each item of costs or category of costs would be subject to a reasonableness test (applying the factors in CPR 44.5). Only at the end of the assessment would proportionality be applied and then only in exceptional cases, as the expectation would be that the application of the reasonableness test would result in proportionate costs in the majority of cases.
- Reversal of the *Lownds* approach so that proportionality will routinely be considered in all cases, not just as a long stop. The bill of costs would be assessed, item by item, against the test of reasonableness. Once the bill was assessed as reasonable, the proportionality test would be applied in all cases.
- A “hybrid” approach (that is, retaining elements of *Lownds* plus elements of the approach proposed by Jackson LJ) – reasonableness and proportionality will be considered together when the items in the bill of costs or categories of costs are being assessed but there will still be a residual long stop proportionality test if, even after the first exercise, the costs still appear disproportionate. This would almost certainly only apply exceptionally.

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- Retention of *Lownds* so that proportionality is considered at the outset (globally) and, if the costs seem disproportionate, the "necessity" test will be applied. However, the wording of the CPR would be extended to clarify the application of the rule. A long stop provision could also be retained.

What is the appropriate basis for assessing proportionality?

Points raised during the discussions included:

- *Lownds* is not being applied in practice. There is a need for more uniform application. The key problem with *Lownds* has been the inconsistency of approach.
- The test needs to be easy to apply and to understand. It can be difficult to distinguish between the principles of "reasonableness" and "proportionality" or "proportionality" and "necessity". They can be overlapping concepts. In practice, often the bottom line is seldom very different, whichever of these is applied.
- There is a concern that using a global view of proportionality as the starting point can lead to a "knee jerk reaction". It is more appropriate to consider the reasonableness and proportionality of each item separately, first.
- Jackson LJ has made it clear that necessity should not be a basis for making costs that are disproportionate proportionate. Any revised rules need to be clear about how this will work in practice.
- Simplicity and consistency of approach is key.
- It needs to be recognised that there are certain categories of case, for example clinical negligence and housing disrepair claims, where costs are more likely to exceed the sums in dispute. The drafting needs to accommodate these types of cases.
- Another area that needs to be looked at is how non-monetary claims are "valued".
- Some concern was voiced about the timing of implementation generally. Jackson LJ has emphasised that his recommendations form an interlocking package. However, there appears to be some risk that the reforms will not be entirely co-ordinated. For example, the following points are all likely to impact in terms of the appropriate approach to proportionality:
    - The outcome of the costs management pilot scheme running in all Mercantile courts and the TCC until October 2012. Jackson LJ has voiced the hope that costs management might be rolled out more generally in 2012 “at judicial discretion, but the detail will not be certain until the results of the pilot scheme are known. The point was made that if effective judicial costs management is achieved, in theory there should be few cases where issues about proportionality arise at detailed assessment.

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- The policy decisions resulting from the Government's consultation, *Solving disputes in the county courts: creating a simpler, quicker and more proportionate system: A consultation on reforming civil justice in England and Wales* (see *Legal update, Consultation on significant reform to court procedure (www.practicallaw.com/8-505-4809)*). Issues of particular relevance will include whether the thresholds for small claims and county court claims are increased and the extent to which compulsory mediation is introduced.

- Disclosure is a key driver of costs during the litigation process. In his final report, Jackson LJ recommended the introduction of a "menu of disclosure options". Although judges can already order parties to carry out something other than standard disclosure, in practice that is seldom done. Implementation of Jackson LJ's proposals on disclosure might, potentially, have a significant impact on the proportionality of costs generally.

- More recently, Jackson LJ has proposed an amendment which requires that an estimate of costs is filed when an application for expert evidence is made. The CPRC has approved the amendment which is to be held over until 2012, when the majority of new provisions and amendments relating to costs will commence.

- Extensions to the fixed costs regime.

- The majority who expressed views seemed to be in favour of active case management by the courts. It was agreed that there are real benefits in ensuring that costs are controlled throughout the progress of a case, not just at the end. However, serious concerns were voiced about whether sufficient resources would be devoted to judicial training (as well as training for members of the Bar and, perhaps to a lesser extent, solicitors). This is seen as essential, not least as, traditionally, most counsel have been less involved than solicitors with costs issues and most judges come from the Bar. One person observed that any solution that relies upon investment by the Ministry of Justice is naïve.

- As a related point, it was noted that it might assist judges if there was data available to them so that they could get a quick feel for the usual range of costs – for example for disclosure involving a certain volume of documents. Again, this would require investment by the Ministry of Justice.

- It is important to keep in mind the objectives of the reforms. If the aim is to achieve a real shift in the courts' and lawyers' approach to costs, then changes that impact primarily at the detailed assessment stage are not enough. A very significant number of cases do not go to detailed assessment. Active costs management is also required, with a prospective rather than retrospective perspective.

Is there a need for a Practice Direction on proportionality?

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Points arising out of the discussions included the following:

- Practice Directions are helpful and provide guidance for practitioners.
- Practice Directions are also likely to assist litigants in person. The procedural rules are intended to be simple and clear, so explanatory text would assist.
- Caution is required in terms of setting out approaches for certain types of case, as there are bound to be omissions. This could lead to satellite litigation, which should be avoided. On the same point, it is likely that the financial thresholds for the small claims track and for county court cases will be increased, so there should not be "scoping" based on very low-value claims.
- If *Lownds* is retained, it would be necessary to clarify its application, so as to achieve a more uniform approach than has been adopted.
- Any Practice Direction should not disturb the unfettered discretion of the judge.
- It might be preferable for all of the relevant wording to be in one place (that is, incorporated into the rule itself, rather than contained in a Practice Direction). Practitioners can have different perceptions of the "weight" of specific requirements depending on whether they form part of the rule or a Practice Direction. Practice Directions seem to have "grown like topsy" in recent years, particularly the Costs Practice Direction.
- The Practice Direction could have an important role to play at the beginning of the case, drawing practitioners' attention to the principles that will apply when assessing the proportionality of costs incurred.

Other issues

During the discussions, a number of observations were made about the importance of encouraging practitioners to submit accurate estimates of costs:

- Currently, the rules encourage practitioners to submit estimates based on the very worst case scenario. Often, in practice, actual costs are significantly lower than the costs in the estimate.
- This is a crucial area for those indemnifying costs. They really do need to have accurate estimates and, indeed, that is something demanded by the FSA to ensure that there is accurate reserving.

It was agreed that active judicial costs management and costs budgeting by lawyers would provide a solution, but this was seen as "a big if", and the point was made that the solution needs to match the reality of the courts' resources.

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Tentative conclusions

Proportionality test

Although a range of views were expressed, a majority seemed to prefer the "hybrid approach", adjusted to remove the residual long stop test of proportionality. Reasons for wanting to remove the long stop included:

- It should not be necessary if each element of costs has been assessed for reasonableness and proportionality.
- It could introduce a degree of uncertainty – with a "rabbit out of the hat" scenario at the end of the assessment.
- There is a risk of "double jeopardy".
- Even though it is intended for exceptional cases only, there would be a risk of parties routinely seeking to argue that their cases were exceptional.
- The similar "audit" process in criminal cases gives rise to a lot of appeals.

Retention of the current *Lownds* approach seemed to be the second most preferred option, subject to adding clarification in the rules and taking steps to achieve a more consistent approach by costs judges.

Is there a need for a Proportionality Practice Direction?

The majority was in favour of a Practice Direction setting out broad principles, without giving very specific examples.

Summaries of the separate discussion groups' conclusions, provided in full session

QOCS

The key points identified by this discussion group were summarised as:

- KISS - there is a real need to keep things simple.

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- It is essential to consider the rules as an interlocking whole. QOCS cannot be looked at in isolation. The proposed 10% increase in general damages for personal injury claims is seen as "the elephant in the room".
- The time for consideration of the issues seems short. Undoubtedly, there would be benefit in further consideration and development of the issues, following the workshop event.
- Some interesting new perspectives had come out of the discussions: for example, it appeared that local authorities might possibly prefer ATE premiums to remain recoverable, rather than the introduction of QOCS.
- A threshold test, based on financial criteria, was seen as unwelcome by the whole group.
- It was felt that the assumptions made about the ATE market were wrong. In fact, there is no certainty about how the market will respond. It seems that there will not be a basket of cases, but just a rump.
- As far as mixed claims go, the primary problems relate to credit hire, not loss of earnings.
- The group discussions concluded that there should be "QOCS for all, or no QOCS at all".

A number of observations were made in the wider group discussions, including:

- Should any financial eligibility test anticipate the fact that, although initially only for personal injury claims, QOCS is likely to be extended in the future?
- Should the name be changed? QOCS is not easy to understand. Possibly, "costs protection" would be clearer (although concerns were voiced that this might be confused with protective costs orders). For information on protective costs orders, see *Legal update, Government consults on rules for protective costs orders in environmental judicial review claims (www.practicallaw.com/0-509-5427)*.
- Would cases funded by insurers be treated as cases brought by individuals with financial means?
- What is the likely future of the ATE market?
- A means test would complicate issues and would be a recipe for satellite litigation. Concerns were also voiced that "conspicuously wealthy" (as referred to by Jackson LJ) appeared to have become "higher rate taxpayer" and that this was not an appropriate level. One person suggested that an individual's legal rights should not be taken away because he was on a particular income level, and this amounted to additional taxation.
- In terms of whether Part 36 should "trump" QOCS, the point was made that the incentive to fight on would be the prospect of a 10% increase in damages, whilst the incentive to

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accept a low offer would be the risk of losing everything. Some felt that there should be more balance. There were divided views on this. Some felt that QOCS should always trump Part 36.

Enhancements to Part 36

Key points considered included:

- Should the enhanced reward be based on costs or damages?
- If based on damages, should the figure be capped?
- How would it apply for mixed claims?
- Should it apply solely to personal injury claims?
- How should early offers and late acceptance be dealt with?
- What about split trials?

Three preliminary points were identified:

- It is essential to clarify, and to be consistent about, what this rule change is designed to achieve, whether it is:
  - an incentive for claimants to make early offers;
  - an incentive for defendants to accept;
  - a means of restoring the level of "recoverability".
- It needs to be clear that this is the claimant's money, not the lawyer's.
- This will be an additional power. The existing Part 36 consequences will all continue to apply.

Costs or damages based?

Powerful views were expressed on both sides.

Arguments in favour of a costs based approach included:

- A costs based approach would provide continuity. Part 36 has always led to costs consequences.

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- By basing the figure on costs, it would relate to the manner in which the case has been conducted. Clearly, this could have pros or cons. It would have to be subject to appropriate costs controls.
- A damages cap would not be proportionate, and could not be assessed until late on.

Points raised by those in favour of a damages based approach included:

- It fits with Jackson LJ's ideals, and incentivises claimants to make early offers.
- It is not a good argument to point to the fact that Part 36 currently gives rise to costs consequences and does not impact on damages.
- It provides increased clarity.
- It encourages more proportionate litigation (that is, in terms of the costs proportionate to the value of the claim).

A need to consider the impact on small claims as opposed to large claims was identified. Care will also be required when putting a value on non-monetary claims, but it was suggested that judges have developed skills for measuring non-monetary claims, which they will be able to apply in this context.

Should there be a cap on the percentage of damages?

The general consensus was that there should be a cap. There would be a chilling effect without any cap.

Some suggested that it was necessary to look again at large value claims. £100,000 is unlikely to be an incentive in some very large claims.

Early offers/late acceptance

It was suggested that it might be appropriate to adopt a tapered approach, based on key stages in the litigation. Arguably, this will be more of an issue if the remedy is linked to damages rather than costs.

PI claims only?

Views were divided on this. Some felt that there should be one system for everyone. Others felt that would be deceptively simple, and pointed out the need to factor in the fixed costs regime, for example. On that basis, it might be appropriate to treat personal injury claims differently.

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Emphasis was placed on the fact that these will be additional powers and that the existing part 36 powers will continue to apply.

Split trials

The general view seemed to be that the natural time for costs to be assessed is once damages have been assessed.

All in all, views were fairly evenly split on most of the issues. However, there was a very strong feeling that this would be the claimant's money, not the lawyer's (subject to any arrangements, for example, for payment of a success fee). The point was also made that the extra 10% would not actually be costs or damages. It is neither, but operates as a penalty.

Proportionality

The findings of the proportionality discussion group were summarised for the full group as follows:

- All recognised the need for greater proportionality of costs.
- There was a fair amount of scope for agreement on either a "hybrid" approach or retention of the *Lownds* test. However, there were concerns about the proposal for a "proportionality" long stop test in the "hybrid" model. It was hard to detect support for this, not least due to the conceptual difficulty of assessing costs on the basis of reasonableness and proportionality and then returning to the issue of proportionality. This would place a burden on the court, and could also lead to satellite litigation over when there were "exceptional" circumstances justifying the application of the long stop.
- The favoured option appeared to be the hybrid model without the long stop proportionality test. Although the long stop was only intended for very exceptional cases, there was a real concern that everyone would seek to argue that their case was exceptional for particular reasons.
- Jackson LJ has suggested that there is no need for a Practice Direction, and that clarification will be provided by the courts. Within the discussion group, the general view was that guidance (either in a Practice Direction, or within the rule itself) would be beneficial, and that this might reduce the scope for satellite litigation. However, this should set out the factors to be considered. It should not give specific examples. That could give rise to satellite litigation, as it would be difficult to cover every single different type of case. The rule should be codified as much as possible.
- It was not considered helpful to introduce a "reasonable bystander test", which would be attempting to look backwards, retrospectively.

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- Strong support was voiced for a robust approach to costs estimates but, due to concerns about the courts' resources, it was felt that this was unlikely to happen in practice.
- It was suggested that the exercise of judicial discretion in the 1% of cases that go to detailed assessment might be bad for the 99% of cases that don't get there. Possibly, judicial discretion might be said to be good for justice but bad for access to justice.
- Costs judges would benefit from data that would allow them to assess whether the figures are "in the right ball park".
- Proportionality is unlikely to be a major issue at the detailed assessment stage if there is proper costs management throughout the life of the case. A real opportunity for achieving control of civil litigation costs could be lost if there is not substantial investment in judicial education. There was scepticism about whether the appropriate investment will be made.

Closing words by Jonathan Djanogly MP, Parliamentary Under-Secretary of State for Justice

Jonathan Djanogly outlined the next steps to be taken. He reiterated that the Bill is going through Parliament currently. On Wednesday 3 November, the House of Commons Report Stage would consider the proposals on referral fees and civil costs.

The Ministry of Justice considers that the changes proposed comprise a balanced package of measures. Not all are contained within the Bill. Some will be implemented through changes to the procedural rules. Changes to reverse the effect of *Carver v BAA Plc [2008] EWCA Civ 412 (www.practicallaw.com/5-506-3235)* and to increase the rates for litigants in person, have already been implemented (see *Legal update, CPR: details of the autumn 2011 update (www.practicallaw.com/5-507-2268)*).

The Ministry of Justice recognises the need to minimise the risk of satellite litigation resulting from the changes.

Implementation is currently planned for autumn 2012, so much work needs to be done imminently. The Ministry of Justice has been extremely impressed with the very constructive input on the details for implementation, even from those who do not necessarily agree with the reforms.

Civil Justice news release, Experts Workshop: Experts discuss civil costs, 1 November 2011 and *Paper produced by the CJC Working Group on Technical Aspects of Jackson Implementation: Options for proportionality, Part 36 Offers and Qualified One-way Costs Shifting*.

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