

**THE RT HON THE LORD NEUBERGER OF ABBOTSBURY**

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Dear Natasha,

**Costs in Defamation Proceedings – Judicial consultation response**

We agree with the statement in the MoJ consultation paper that “there is an inherent unfairness in the present system, which impacts disproportionately on defendants in defamation cases”. That inherent unfairness arises from the fact that, where the claimant has a CFA and ATE insurance, the claimant is at no risk as to costs whereas the defendant is at a grossly inflated risk as to costs. Precisely the same inherent unfairness exists in all areas of civil litigation where one party has a CFA and ATE insurance, but the other party does not. Thus it is often just as able to affect claimants as defendants.

We believe that the right way to tackle this problem is holistically. A holistic solution is proposed in the Review of Civil Litigation Costs Final Report (“FR”) at chapters 9, 10, 19, 30 and 32. Libel litigation is specifically addressed in chapter 32, a copy of which is attached. The Judicial Executive Board supports the proposals in those chapters.

In our view, it is not right to single out one particular category of defendants, who have ready access to the media, for preferential treatment. Indeed it may be thought unfair if libel claimants are placed in a distinctly less advantageous position than all other claimants in civil litigation. Furthermore, we believe that any solution to the present problem must comprise a balanced package of measures, in order to control costs whilst promoting access to justice. In our view, a simple reduction of success fees in libel cases by 90% is not such a balanced package.

We agree that action should be taken promptly to deal with the problem which both the MoJ and the FR have identified. There is no reason why the FR recommendations should not be the subject of early legislation, if those recommendations commend themselves to the Government and to Parliament; as we hope they will.

The Rt Hon The Lord Neuberger of Abbotsbury