

## WRITTEN MINISTERIAL STATEMENT

Tuesday 17 July 2012

### MINISTRY OF JUSTICE

#### *Implementation of Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012: Civil Litigation Funding and Costs*

#### **The Parliamentary Under-Secretary of State, Ministry of Justice (Jonathan Djanogly):**

This statement amends the one I made on 10 July (col.20WS). The wording in relation to the sanctions under Part 36 of the Civil Procedure Rules (offers to settle), paragraph (i), contained a factual error, which has now been corrected.

On 24 May 2012 (col 94WS), I announced the Government's implementation plans for the provisions under Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 relating to civil litigation funding and costs. The Government has now considered further advice from the Civil Justice Council and I can therefore set out further details of those provisions.

A regime of qualified one way costs shifting (QOCS) is to be introduced in personal injury claims, so that claimants conducting their case properly will not have to pay towards defendants' costs if the claim fails. Rules will be drafted on the following basis:

- i. QOCS will apply to all claimants whatever their means; there is to be no financial test to determine eligibility;
- ii. Subject to the provisions below, claimants who lose will not have to contribute towards defendants' costs (there is to be no minimum payment by a losing claimant);
- iii. QOCS protection would be lost if
  - (a) the claim is found to be fraudulent on the balance of probabilities;
  - (b) the claimant has failed to beat a defendant's 'Part 36' offer to settle; or
  - (c) the case has been struck out where the claim discloses no reasonable cause of action or where it is otherwise an abuse of the court's process (or is otherwise likely to obstruct the just disposal of the proceedings).
- iv. The principles set out in Part 36 of the Civil Procedure Rules override QOCS, but only up to the level of damages recovered by the claimant;
- v. QOCS protection would apply in relation to claims that are discontinued during proceedings (subject to iii(a) above); and
- vi. QOCS protection would be allowed for all appeal proceedings as the requirement for permission to appeal controls unmeritorious appeals.

The Ministry of Justice is considering further the practicality of QOCS protection not applying to elements of a claim for personal injury that are pursued for the benefit of a

third party (such as a property damage insurer or a credit hire provider) in respect of goods, services or indemnity provided by a third party to the claimant as a consequence of the accident.

The sanctions under Part 36 of the Civil Procedure Rules (offers to settle) are to be reformed on the following basis in order to encourage early settlement:

- i. There is to be an additional amount to be paid by a defendant who does not accept a claimant's offer to settle where the court gives judgment for the claimant that is at least as advantageous as an offer the claimant made to settle the claim. This additional sanction is to be calculated as 10% of damages where damages are in issue, and 10% of costs for non-damages claims;
- ii. In mixed (damages and non-damages) claims, the sanction will be calculated as 10% of the damages element of the claim;
- iii. However, the sanction under these provisions is to be subject to a tapering system for claims over £500,000 so that the maximum sanction is likely to be £75,000; and
- iv. There would only be one sanction applicable for split trials.

The new rule on proportionality has been agreed by the Civil Procedure Rule Committee (CPRC), and the test is intended to control the costs of activity that is clearly disproportionate to the value, complexity and importance of the claim. The senior judiciary are considering revisions to the Costs Practice Direction to give effect to the new rule.

Changes to the Civil Procedure Rules (CPR) will be considered by the CPRC in the autumn, in order for the necessary changes to come into effect for April 2013. The Ministry of Justice will continue to engage with key stakeholders throughout the implementation stage and will also work closely with the senior judiciary on other aspects of Lord Justice Jackson's reforms, which are due to come into effect at the same time. Updates are provided on the judiciary website at <http://www.judiciary.gov.uk/publications-and-reports/review-of-civil-litigation-costs>.