



## The Jackson Reforms

In 2009, Lord Justice Jackson undertook a Review of Civil Litigation Costs in England and Wales. The review was primarily undertaken due to concerns over the high costs of civil litigation, and the frequency with which the cost of legal proceedings become disproportionate to the value or importance of the dispute. On 14 January 2010, Jackson published his findings in the Jackson Report. On 15 November 2010, Justice Secretary Kenneth Clarke revealed which of Jackson's proposals he is intending to introduce in an extensive reform to civil litigation costs.

The reasons for the shake up include:

- making the costs of civil litigation more reasonable and proportionate;
- supporting businesses and public bodies who are currently fearful of costly litigation; and
- tackling the escalating costs that are potentially payable by those who are sued under a "no win no fee" agreement.

## Key changes

### Alterations to Conditional Fee Agreements ("CFAs")

A CFA is a method of funding litigation that enables the successful party's solicitor to recover from the losing party not only their normal fees but also a "success fee", which is a percentage increase (sometimes as high as 100%) of their usual fees. Similarly, the claimant can also normally recover from the losing party any premiums paid under an after the event (ATE) insurance policy. ATE insurance can be taken out by the claimant to insure against the risk of having to pay the opponent's costs should they lose.

Under the current system, claimants generally have no interest in whether or not costs are incurred on their behalf because, win or lose, they do not have to pay any contribution towards them. Conversely, defendants are often pressured to settle, regardless of the merits of their case, for fear of an excessive costs award against them should they lose.

The key proposal put forward to overcome these concerns is to abolish the recovery of success fees and insurance premiums from the unsuccessful party and instead make the claimant pay for them.

The proposal aims to reduce the costs awarded against defendants and ensure that claimants have a financial interest in controlling the legal costs incurred on their behalf. This is intended to deter unnecessary and unmeritorious cases.

## Introduction of “damages-based agreements” (also known as Contingency Fees)

Permitting damages-based agreements in litigation proceedings is also a key proposal. This is another form of a “no win no fee” agreement, under which solicitors can take a proportion of the claimant’s damages as fees if the case is successful. Currently, such agreements are prohibited in contentious proceedings.

Allowing this method of fee payment presents an alternative to CFAs and increases the funding options available to claimants.

In order to balance the impact of these key changes on claimants, the consultation document also seeks views on other recommendations made by Lord Justice Jackson, such as increasing the general level of damages awarded to claimants by 10% in order to assist them in paying the success fees.

Other proposals being explored are those that would further encourage parties to make and accept reasonable settlement offers. For instance, strengthening the benefits of claimant Part 36 settlement offers by increasing the damages award by 10% for claimants who are successful in obtaining a judgment which is at least as advantageous as their own offer.

Another proposal is to introduce a new test to ensure that overall costs are proportionate to the size of the claim.

## What the key changes will mean for you

### As a defendant (against a “no win no fee” claimant)

If the recovery of success fees and ATE insurance premiums is abolished, you can be more confident about resisting unmeritorious claims, without being liable for disproportionate costs.

As claimants will be taking more of an interest in their own costs and thinking twice before pursuing unnecessary and unwarranted claims, the claims against you under a CFA are likely to have more substance and there may be fewer of them.

### As a claimant (on a “no win no fee” arrangement)

If the reforms are implemented you will need to pay your own solicitors’ success fee, which if 100%, will mean you end up paying twice your solicitors’ usual rate. Therefore, you will no longer be able to take a laid back approach as the legal costs mount up. You will have to take an active role in considering the merits of the case and weigh up whether a claim is worth pursuing, in the knowledge that you could face a large legal bill even if the case is successful.

If this does not appeal, a damages-based agreement could be entered into, where the solicitor would take a proportion of the damages awarded to you as fees. This would reduce the amount you win, probably significantly, so careful consideration should be given as to whether it is worth the time and stress of pursuing a claim.

The proposals are set out in the consultation document [Reform of Civil Litigation Funding and Costs in England and Wales](#).



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