

# England and Wales litigation update – Jackson reforms



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In 2010, Lord Justice Jackson issued a report to address the ever increasing burden of litigation costs. This report has now, in the main, been implemented through the Jackson reforms, which came into force on 1 April 2013. Whilst aimed primarily at personal injury litigation, the reforms also affect commercial litigation. Both the club and members will be affected by the numerous changes being introduced by the Jackson reforms and should be prepared for these reforms, including ensuring that the relevant systems are in place to handle claims. It is hoped that the budgeting and disclosure reforms will result in earlier, better and more cost-effective outcomes for litigation.

In brief, the following changes will be seen:

#### – Disclosure

Under the Civil Procedure Rules (CPR), the customary requirement was for standard disclosure; now it is expected that the court will try to limit disclosure and may even prescribe the scope of disclosure, including that of expert evidence, so that it is kept to a proportionate cost. The court can also dispense with disclosure entirely.

#### – Budgeting

Parties are now expected, at the outset, to specify what costs a party will be liable for if it loses the case, with these articulated through a litigation budget submitted to the other side and the court. If parties do not accept the budget, the court can amend and approve them. The budget, as approved by the court, will provide a cap on the costs that the successful party can recover.

#### – Settlement offers

Claimants are being more incentivised to make Part 36 offers by the introduction of the following regime. If a claimant's offer is rejected and a more favourable judgment is obtained, the claimant will be entitled, unless considered unjust, to an additional sum. The additional sum is calculated as 10% of the damages awarded (up to £500,000). For awards in excess of £500,000 up to £1m, the additional sum will be 10% of the first £500,000 and 5% of any amount above that figure. This may lead to an additional liability up to £75,000.



#### – Litigation funding

Conditional Fee Agreements (CFAs) remain in place, going forward the losing party no longer pays the success fee. Also, the losing party will not have to pay insurance premiums to cover costs liabilities. The winner will pay its lawyer's success fee out of its own recovery. This may lead to increased settlement demands. In addition to CFAs, lawyers can now enter into damages-based agreement (DBAs), where they agree to accept a share of their client's damages, contingent upon the success of the cases. The lawyer's fees are capped at 50% for civil litigation and 25% for personal injury cases. Again, a losing defendant will not pay the contingency fee.

#### – Personal injury

To compensate claimants for having to pay success fees, general damages have been increased by 10%. There is also a newly introduced qualified one-way costs shifting (QOCS), meaning that claimants will not be liable for the other side's costs even if they lose, absent of fraud. For personal injury claims valued at less than £25,000 and those which occurred after 1 April 2013, a new portal is due to be introduced, where all claims must be registered (similar to that used for road traffic accidents). To date, the implementation of the portal has not been finalised.