

Reform of Civil Litigation Costs

The reforms resulting from Lord Justice Jackson's review of civil litigation costs will be extensive. As stated in previous alerts, the reforms will require changes to primary legislation, the Civil Procedure Rules ("CPR") and its practice directions, as well as a change in litigation culture.

Legal Aid, Sentencing and Punishment of Offenders Bill

Reforms requiring primary legislation are contained in Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Bill, which is currently at the report stage in the House of Lords. The Government has recently announced that Part 2 will not now come into force until April 2013. (For further detail on the substance of Part 2 of the Bill, please see our alert of 23 June 2011.)

CPR changes

Work on changes to the CPR is being undertaken by the CPR Committee and the Ministry of Justice. Other work is being undertaken under the auspices of the Civil Justice Council. All of it is being supervised by a steering group comprising the Master of the Rolls, Lord Neuberger, and Lord Justices Jackson, Moore-Bick and Maurice Kay.

Since last September, Lord Justice Jackson and other members of the senior judiciary have delivered a number of lectures on how the reforms are to be implemented, which are clearly intended to raise awareness of the changes. Nine lectures have been published in the series so far, the text of which are accessible from the [judiciary website](#).

Two changes have already come into force. First, the hourly rate for costs that a litigant in person can recover from its opponent in civil litigation has been increased. Secondly, CPR Part 36 (Offers to Settle) has been amended to resolve the uncertainty caused by the Court of Appeal decision in *Carver v. BAA* [2008] EWCA Civ

412, mentioned in our alert of 30 March 2011. The amendment makes it clear that, in relation to any money claim or money element of a claim, "more advantageous" means better in money terms by any amount, however small.

Much of the rest of the drafting is already complete but is being held back so that all of the changes can be launched together, "big bang" style, when the primary legislation comes into force next year.

Work which has already been completed but not published includes:

- a handbook on Alternative Dispute Resolution;
- new provisions for disclosure in multi-track cases; and
- a rule change aimed at controlling the cost of expert evidence - a party applying for permission to adduce expert evidence will be required to file an estimate at the permission stage of the cost of obtaining that evidence.

Also of interest is an amendment to CPR Rule 3.9 (Relief from Sanctions) that will reduce the number of factors that must be taken into account when a court is considering an application for relief from any sanction imposed for failure to comply with a rule, practice direction or court order. This amendment, which may have far reaching consequences, will make it easier for the judiciary to enforce court orders and court timetables and follows Lord Justice Jackson's recommendation that courts should be less tolerant of unjustified delays and breaches of orders.

Further announcements

On 9 February 2012, the Government published a report on the public consultation on County Court litigation reform (*Solving Disputes in the County Courts*). In addition to confirming that the financial threshold for the Small Claims Track will be increased, the Government has confirmed that all small claims

will be referred automatically to mediation. The Ministry of Justice emphasises that this is not “compulsory mediation” but rather a requirement to engage with a mediator.

In a sign that it is backing away from the controversy surrounding the issue of compulsory mediation, the Government has announced that it does not propose to introduce mandatory mediation information sessions for higher value claims nor, at this stage, to introduce provisions similar to those in the EU Mediation Directive for domestic disputes.

We are monitoring implementation of all of the civil justice costs reforms and we will report further as matters progress. If you would like further information in the meantime, please contact:

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