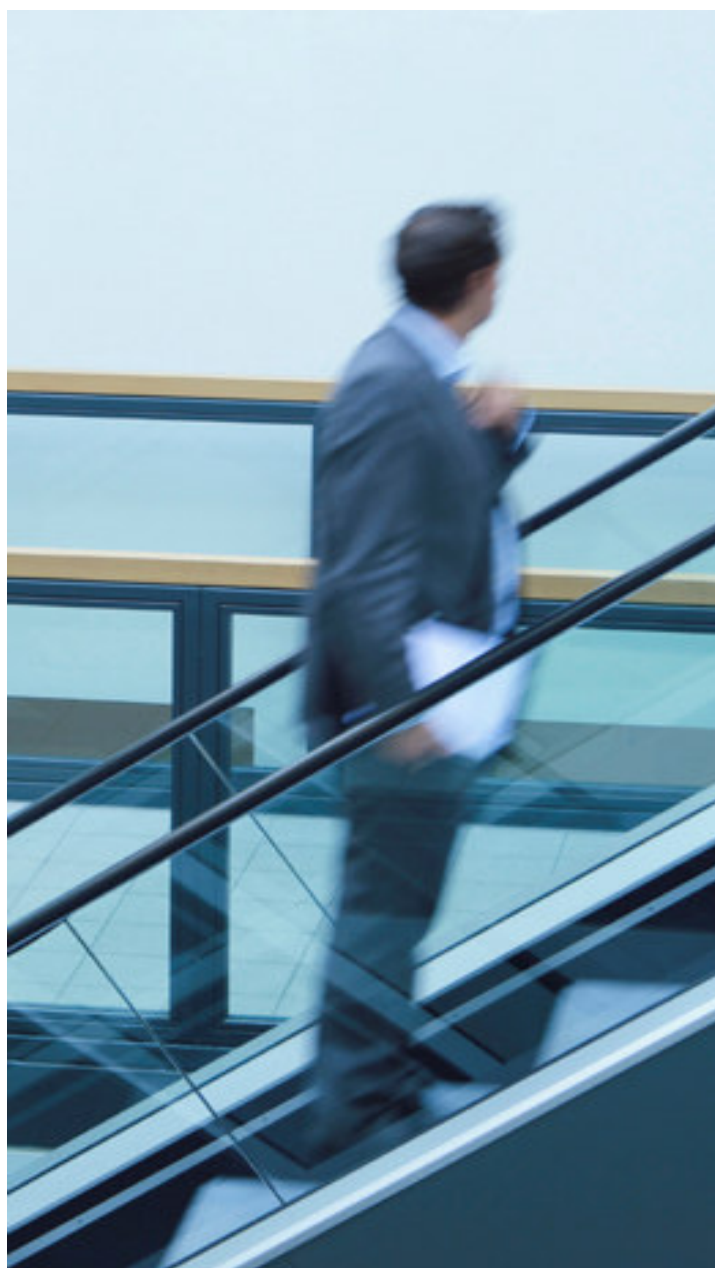


Briefing Note

**Lord Justice Jackson's final report:
Review of Civil Litigation Costs**

Initial views on the Executive Summary



Lord Justice Jackson's report containing recommendations for the future regulation of litigation costs has been published today. The report is 557 pages long and this note constitutes an initial assessment of certain elements of his executive summary only.

He recommends significant changes to the rules regulating Conditional Fee Agreements (CFAs). A CFA is a regulated agreement under which solicitors charge no fee or a discounted fee in the event that the client loses its case and normal fees plus a success fee of up to 100% of the normal fee if the client wins.

Under the current regime, losing defendants can normally expect to pay a significant proportion of successful claimants' legal fees, including any success fee element. CFAs therefore significantly increase the potential burden on defendants and their insurers. Lord Justice Jackson criticises the weight of this burden and he recommends that defendants be exempt from having to reimburse successful claimants the success fee element of their legal costs.

In personal injury cases, this may mean that successful claimants' ability to fund their medical and other care out of their award of damages is compromised, because part of the award would have to be used to pay their lawyer's success fee instead (the defendant no longer being liable for this element). To avoid this outcome, Lord Justice Jackson recommends that success fees in personal injury cases be capped at 25% of claimants' awards of damages but not including any elements of the awards referable to claimants' medical and other care requirements. In addition, claimants would receive a 10% higher award of general damages (for loss of amenity, pain and suffering) from defendants than is currently awarded to compensate for not being able to recover success fees.

The purpose of these proposals is to ensure that claimants recover more damages, defendants are not burdened by having to pay excessive legal costs claims on top of any award of damages and lawyers will still be entitled to a reasonable fee for their legal work.

In respect of non-personal injury cases successful claimants would not be entitled to recover any success fees from losing defendants.

These proposals would make CFAs less attractive to both claimants and their lawyers but will be welcomed by defendants and their insurers. Further analysis of the proposals will be required to decide whether or not they provide a better balance between claimants' and defendants' rights than the current regime.

There is also a recommendation that lawyers be allowed to enter into contingency fee arrangements i.e. if they win their clients' case, they can share in the fruits of that success. Lord Justice Jackson proposes two caveats on this: defendants should not be obliged to pay additional damages to compensate claimants for having to share the fruits of the success with their lawyers and such agreements should be regulated.

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This note does not constitute legal advice but is intended as general guidance only

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