

# REFORM OF CIVIL LITIGATION

## Update



We reported previously on the UK Government's Ministry of Justice ('the MoJ') Consultation on reforms to civil litigation funding and costs. The MOJ published in Spring this year the Government's Response, which contained a review of the responses it received, and set out the Government's intention to implement the reforms recommended last year by Lord Justice Jackson. The Government has recently published a draft Bill for the implementation of its proposals, which is expected to come into force in Q2/Q3 2012.

### The Draft Legislation

Set out in Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Bill is the Government's proposed legislation on litigation funding and costs. It intends, amongst other things, the following changes in commercial litigation cases:

- introduction of contingency fees (damages-based agreements) in contentious matters
- abolition of the recoverability of success fees under conditional fee agreements ('CFAs') and after-the-event insurance premiums
- greater proportionality in costs assessments
- changes to Civil Procedure Rules ('CPR') part 36 offers to settle, to award an uplift where a defendant rejects a claimant's offer but fails to do better at trial; and to provide for a new CPR rule, as required, on the assessment of whether a judgment is at least as advantageous as an offer to settle (to the extent that the judgment in *Carver v BAA* on what constitutes beating a money offer at trial has not already been dealt with by the Court of Appeal in *LG Blower v Reeves*).

The introduction of contingency fees will mark an important change to the landscape for the funding of commercial cases. We will be monitoring carefully developments on this topic.

### Further Consultation

In the meantime, the MoJ has announced a planned overhaul of the civil justice system and published a consultation paper 'Solving Disputes in the County Courts: creating a simpler, quicker and more proportionate system'. Responses were due by 30 June. Innovate Legal's Response to the Consultation is available [here](#).

The Government proposes to expand the use of the courts' online system and to raise the small claims limit from £5,000 to £15,000 and the High Courts jurisdiction from cases starting at £25,000 to £100,000. It envisages an increase in the use of alternative dispute resolution, with compulsory mediation in some case, a mandatory set of pre-action steps for money cases under £100,000 and tightening up the regime for enforcement of judgments.

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#### Further information

For further information, please contact our Head of Dispute Resolution, Samantha McBain, at [samanthamcbain@innovatelegal.co.uk](mailto:samanthamcbain@innovatelegal.co.uk)

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