



BARGATE MURRAY – CIVIL LITIGATION FOCUS

Philip Henson, Partner in the City of London law firm **Bargate Murray**, reviews the new Government consultation which aims to reform Civil Justice in England and Wales.

Secretary of State for [Justice](#), **Ken Clarke**, has published a new consultation on reforming **Civil Justice in England and Wales** in which he sets out plans to tackle the perceived compensation culture, restore proportionality in costs for court users - particularly businesses - and promote quicker, cheaper alternative dispute resolution where appropriate.

[Philip Henson](#), partner (and accredited mediator) in the City of London law firm, [Bargate Murray](#), reviews the proposals:

The aims of the reforms are to provide " *just results delivered fairly, with proportionate costs and procedures and cases dealt with at reasonable speed.*"

Lord Young's health and safety review

Ken Clarke refers to Lord Young's recent review of health and safety which has drawn attention to the phenomenon of individuals suing employers and businesses for disproportionately large sums, often for trivial reasons and without regard to personal responsibility. This has been fuelled by Conditional Fee Agreements (CFAs) that mean cases can be opened with very little risk to claimants and the threat of very substantial costs to defendants.

Cost saving

As you would expect in the current economic malaise there is an stress on saving costs; and the consultation emphasises that expenditure on the High Court and county courts in England and Wales for the year 2009/10 was £363 million - largely paid for through court fees which meet the cost of the administrative, judicial and estate infrastructure.

Costs

The consultation opines that costs are not always borne in the right way. The significant proposals for reform to the system of administration in the county courts include:

1. Expanding significantly other appropriate forms of dispute resolution by requiring all cases below the small claims limit to have attempted settlement by meditation, and introducing mediation information/assessment sessions for claims above the small claims limit;
2. A simplified claims procedure on a fixed costs basis, similar to that for road traffic accidents under £10,000, for more types of personal injury claim; and,
3. A simpler and more effective enforcement regime.

The recommendations for reform of civil litigation funding and costs in England and Wales are of key relevance to the consultation. The Government's response to that consultation confirms that it intends to, in particular:

- Abolish the general recoverability from the losing party of conditional fee agreement success fees and after the event insurance premiums;
- Support an increase in general damages (for non pecuniary loss such as pain, suffering and loss of amenity) by 10% in all civil wrong claims;
- Introduce qualified one way costs shifting (so that a losing claimant only pays such of the defendant's costs as is reasonable to pay in all the circumstances) in personal injury claims;
- Increase the prescribed hourly rate recoverable by litigants in person.

A push for on-line claims?

The Consultation refers to the existing Money Claim Online (MCOL) and Possession Claim Online (PCOL), which are web-based services, enabling claims to be issued over the internet. The Government want to encourage more actions to be commenced electronically, since it is both cheaper and more efficient.

The proposals are made on the following principles, which emphasise its Business Friendly approach.

- **Proportionality** – That disputes should be resolved in the most appropriate forum, so that processes and costs are commensurate with the complexity of the issues involved.
- **Personal Responsibility** – That wherever possible citizens should take responsibility for resolving their own disputes, with the courts being focused on adjudicating particularly complex or legal issues.
- **Streamlined Procedures** – Those procedures should be citizen and business friendly with services focussed on the provision of timely justice.
- **Transparency** – To ensure that there is clear information on the dispute resolution options open to citizens so that they can take action early, make informed decisions and more readily access the most appropriate services.

The range of options to be used to help achieve those goals include:

1. Introducing a simplified claims procedure on a fixed costs basis, similar to that for road traffic accidents under £10,000, for more types of personal injury claim;

exploring the possibility of extending the framework of such a scheme to cover low value clinical negligence claims; and examining the option of extending the upper limit of those simplified claims procedures to £25,000 or £50,000;

2. Introducing a dispute management process and fixed recoverable costs by specific case types up to £100,000;
3. Increasing the upper jurisdiction threshold for small claims (excluding personal injury and housing disrepair) from £5,000 to £10,000, £15,000 or £25,000;
4. Requiring all cases below the small claims limit to have attempted settlement by mediation, before being considered for a hearing;
5. Introducing mediation information/assessment sessions for claims above the small claims limit.
6. Encouraging greater use of online services;
7. Providing a simpler and more effective enforcement regime;
8. Implementing reforms on enforcement already approved by Parliament in the Tribunals Courts & Enforcement Act 2007, in Orders for Sale, Charging Orders, Attachment of Earnings and Information Requests and Orders processes;
9. Introducing streamlining and efficiency reforms to the Third Party Debt Order and Charging Order processes;
10. Testing the public appetite for further enforcement reforms and jurisdictional changes;
11. Introducing a number of jurisdictional changes in the civil courts, including the introduction of a single county court jurisdiction for England & Wales.

Mediation – A real alternative?

It would seem that the real winners will be mediators, as Ken Clarke is seeking to move the emphasis away from Court to resolution via mediation. The consultation cites the example of last year, more than three quarters of claims in the civil system were settled after allocation but before trial - 87,000 cases that could potentially have been resolved earlier if mediation had been used more widely and committed.

Power to the people - More information on [DirectGov](#)

The consultation sets out plans to update the DirectGov web page with new content designed to inform the public about the full range of civil dispute resolution options available to them, including mediation, use of Ombudsmen, industry arbitration schemes and where appropriate, use of statutory regulators.

This will of course be useful. Perhaps more information about the ways to fund litigation such as claiming on existing insurance policies would also be helpful, or more information about local pro bono advice centres or Citizens advice Bureaux, would also be useful.

For more information:

The full Government consultation can be reviewed by clicking [here](#).

Please contact [Bargate Murray](#) for expert dispute resolution advice:

E: info@bargatemurray.com

T: +44 (0)20 7375 1393

W: www.bargatemurray.com

Tw: **PHBARGATEMURRAY**

(c) Philip Henson

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