

SOLVING DISPUTES: THE GOVERNMENT'S NEW BROOM

In January of this year, Naomi Campbell came into the spotlight of all lawyers. She had sued the Daily Mail ten years ago for publishing photos of her leaving a Narcotics Anonymous meeting “in a courageous bid to beat her addiction to drink and drugs”. She claimed her right to privacy had been breached and she had been libelled. She was awarded £3,500 in damages after the case had gone as far as the House of Lords.

What really caught lawyers' attention though were the costs claimed by her lawyers. The bill came to £1.1 million and included a “success fee” of £280,000 under a no-win, no-fee agreement. The Mail was outraged and took its case to the European Court arguing it had not breached her privacy, and that the paper's freedom of expression had been violated by the success fee. It lost on the first point, but won on the second. As a consequence, success fees in privacy and libel cases will no longer be payable to successful claimants.

THE JACKSON REFORMS

The last Labour Government asked Lord Justice Jackson to look at reforming the “no-win, no-fee” system. This is a costs agreement very broadly used by lawyers for claimants in personal injury claims. No-win, no-fee agreements usually include a “success fee” amounting to a percentage of the size of the claim. The perception has been growing that the burden of costs very often far outweighs the size of the actual claim, making the pursuit of justice a very expensive exercise. The Jackson Report proposes the scrapping of the recoverability of after-the-event premiums, would cap success fees in no-win, no-fee arrangements to 25%, and would increase damages by 10%.

Claimant lawyers say that if these proposed reforms are implemented, an estimated 50,000 potential claimants will have no access to justice. They say accident victims will shell out up to 25% of their compensation in legal fees. The burden for paying all these

costs, they maintain, should be paid by those causing the injuries, and will usually be paid via their insurers.

CONSULTATION PAPER

It is against this background that the coalition Government has now stepped into the fray. On 29th March the Secretary of State for Justice, Kenneth Clarke, stood up in the House of Commons to announce the publication of a consultation paper on legal reform of the entire civil justice system. The consultation period will run for a few short months, and the Government then intends to enact legislation to bring the proposed reforms into effect and onto the statute book.

FAULT LINES

Mr Clarke identifies the ills of the current civil justice system in this way: "It remains the case that there are too many claims being brought into the legal system inappropriately. Once in the system, they are being resolved too late, too expensively, with business in particular exposed to high and disproportionate costs. Civil justice administration and processes have once again become overly complex, bureaucratic and inefficient."

He speaks of individuals suing employers and businesses for disproportionately large sums, often for trivial reasons and without regard to personal responsibility. He blames the no-win, no-fee culture which he says means that cases can be opened with very little risk to claimants and the threat of very substantial costs to defendants.

He points the finger of blame at the way in which justice is administered. He quotes the statistics that last year 75% of the claims lodged in Court were settled shortly before trial (and often significant expense had been incurred). 87,000 cases, he argues, could have been resolved earlier if the parties had been forced to mediate their claim.

THE CURE

In his foreword to the consultation document and in the body of the document itself, Mr Clarke offers some panaceas as he sees them. These include, in no particular order, the following:-

- Implementing the key components of the Jackson Report, abolishing the recoverability of success fees and insurance premiums in no-win, no-fee agreements, capping the success fee at 25% of the compensation payable, and increasing general damages by 10%;
- Increasing the limit for small claims from £5,000 to £15,000, thereby preventing the successful party from getting their legal costs paid except in exceptional circumstances;
- Amending predictive costs in road traffic accident, clinical negligence and employers' and public liability claims to a limit of £50,000 (allowing therefore for a form of fixed costs);
- Expanding the upper limit on cases which must be started in the County Court from £15,000 to £100,000, thereby barring many claims from proceeding in the more expensive High Court;
- Referring claims valued at more than £15,000 to "mediation/information assessment sessions";
- Modernising the enforcement of the Court judgment procedure to give those with Court judgment orders more chance of recovering the money owed to them.

WAVING THE WAND

Mr Clarke thinks that the proposed changes "should mean fewer cases coming to Court unnecessarily, more rapid resolution, lower costs to participants and thus a system that delivers justice more effectively." He thinks that business as a whole stands particularly to benefit.

AMBITION

Mr Clarke's noble ambition is "to equip people with the knowledge and tools required to enable them to resolve their own disputes, by working problems through in a non-adversarial manner." He wants to see a move away from Courts and the resolution of conflict by people taking on more personal responsibility in seeking to resolve such conflict. "The prize", he claims, will be a "less litigious society and one where justice is affordable for those who need to litigate - in other words, a modern and effective civil justice system that is fit for the 21st century."

CONCLUSION

Interesting words. These come from the same Government intent upon making legal aid in family and children cases all but impossible to obtain. 650,000 are no longer eligible for legal aid in most cases under the most recent changes to the system. Legal help is denied to virtually every category of law, making it impossible for people to understand their rights, let alone fight for them. Some challenging days ahead, methinks! We'll see how it all pans out. Later in the year we should see new legislation on this laid before Parliament.

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