

Statement to parliament: Controlling the costs of defamation cases

The Government is committed to controlling the costs of civil litigation while allowing appropriate cases to proceed. Part 2 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 reformed the operation of no win no fee conditional fee agreements in order to address the high costs of civil litigation. In particular, section 44 of the LASPO Act provided that the lawyer's success fee would no longer be recoverable from the losing party. This provision came into effect for the majority of cases in April 2013 but was delayed in respect of defamation and privacy claims pending the outcome of the Leveson Inquiry. The then Coalition Government accepted the Leveson recommendation that there should be a costs protection regime in place for defamation and privacy claims, before commencing the LASPO Act conditional fee agreement reforms. It consulted on a draft bespoke costs protection regime in 2013. In the event, there was opposition to the detail of that regime, and the then Coalition Government did not implement the proposal.

Having considered the responses to the consultation, the Government has now decided on a different approach that will further control the costs of these cases and will also give effect to our legal obligations under the MGN v UK judgment of the European Court of Human Rights in 2011. In the MGN case, the court concluded that the obligation for the defendant to pay a 100% 'success fee' to the claimant was disproportionate, and that the conditional fee agreements regime was therefore in breach of the defendant's rights under Article 10 (freedom of expression) of the European Convention on Human Rights.

The Government will therefore now commence section 44 of the LASPO Act in relation to defamation and privacy cases. However, the Government will keep in place, at least for the time being, the existing costs protection regime. This means that after the event insurance premiums will remain recoverable for these cases. After the event insurance covers the risks of having to pay the other side's costs in unsuccessful cases.

This approach – of abolishing recoverability of the conditional fee agreement success fee, but retaining it for the after the event insurance premium – will protect access to justice, since parties with good cases can still benefit from recoverable after the event insurance in respect of adverse costs; after the event insurance discourages weaker cases as these are unlikely to be insured. This provision will come into force for new cases on 6 April 2019.

The Government has also published today its response to the 2013 consultation, ['Costs protection in defamation and privacy claims: the Government's proposals'](#).