

## Changes to the law on litigation funding in England & Wales: the Jackson Reforms

15 MAY 2013

Peter Wood

PARTNER | UK

**CATEGORY:**  
ARTICLE

On 1 April 2013 major reforms to the civil justice system in England came into effect. Changes to the procedural rules were highlighted in our earlier [article](#).

The principal changes affecting litigation costs are:

- legalisation of contingency fees for general civil litigation after centuries of prohibition
- ending of recovery of the costs of funding
- removal of state funding (Legal Aid) from the vast majority of civil claims.

### Contingency fees

A common feature in many US and Canadian jurisdictions, contingency fee arrangements with lawyers have only been legal in England for transactional work. Now, simple contingency arrangements are allowed in which the lawyers receive no fees during the running of a dispute in return for a percentage of sums recovered for the client if successful. The percentage is capped in commercial cases at 50% of sums recovered. The client will have to pay expenses such as court fees and expert's fees. The English costs-shifting rules still apply, so costs ordered to be paid by the losing party will be set off against the contingency fee and the client will only have to pay the balance.

These new arrangements will mainly be used in the personal injury market, so there is considerable uncertainty as to how the regime will fit more complex commercial disputes where there is more at stake than a simple money payment.

### Recovery of funding costs

Before 1 April, a litigant could insure against the risk of paying the other side's costs, and expect to recover the insurance premium as part of their legal costs. Equally, they could agree to pay their lawyers an uplift on fees, a "success fee", if they won their case, and recover that as part of their costs. This feature has now been removed for new cases, so that all funding options are now taken at the client's expense and not at the other parties' expense.

### Litigating in the new funding regime: better access for justice?

One of the main reasons behind the changes to funding of civil claims in England and Wales was to provide enhanced access to justice for those who could not afford legal representation and were no longer able to seek state funding or Legal Aid following the Government's sweeping cuts to the Legal Aid budget. It remains to be seen how these amendments will provide access to justice for the less well off.

In commercial cases, the potential for creative funding structures will increase. Making the most of this opportunity will require even greater 'due diligence' before a claim is issued as both lawyer and client may have a financial interest in the outcome of the case. The new transparency on costs (brought in by the procedural rule changes) should make the assessment of the risk of defending a claim a more straightforward exercise.

The changes to the funding law have not been implemented entirely as expected and we anticipate further changes being made before the end of the year.

# Authors

Peter Wood

PARTNER | LONDON

Litigation and arbitration

 +44 20 7597 6106

 [peter.wood@withersworldwide.com](mailto:peter.wood@withersworldwide.com)