

Proposed reforms of No Win - No Fee legislation

The Government is pushing ahead with plans to reform 'no win no fee' deals and overhaul the civil-justice system, as part of its efforts to release businesses from the fear of a compensation culture. In a new consultation launched on 29th March and aimed at creating a simpler, quicker and more proportionate civil-justice regime, the Government is proposing to expand the use of an online system for resolving road-traffic accident personal-injury claims of up to £10,000, by making it available to process employers' liability and public liability personal-injury claims.

The Government also plans to introduce automatic referral to mediation in small-claims cases, automatic referral to mediation-awareness sessions in higher-value cases, and consulting on making mediated settlements enforceable by courts.

Other proposals include raising the maximum value for small claims from £5000 to £15,000, enabling more cases to be heard through the small-claims process rather than through a costly trial.

Announcing the plans, Justice secretary Kenneth Clarke said: "With no major reform for 15 years, the civil-justice system has got out of kilter. Businesses and other people who have been sued can find that spiralling legal costs, slow court processes, unnecessary litigation, and the 'no win no fee' structures, which mean greater payments to lawyers than to claimants, are setting them back millions of pounds each year."

According to the Government, statistics provided by insurers show that in 1999 claimant solicitors' costs were equivalent to just over half the damages agreed, or awarded. By last year, however, average claimant costs represented 142 per cent of the sums received by injured victims.

Seeking reform in this area, the Government also confirmed it would be implementing Lord Justice Jackson's blueprint to reform the cost of civil litigation. These plans include:

- Abolishing recoverability of success fees and associated costs in 'no win no fee' conditional-fee agreements. Under the current regime, defendants must pay these additional costs if they lose. Under the reforms, claimants will pay their lawyer's success fee, and will therefore take an interest in controlling the costs being incurred on their behalf.
- Allowing damages-based agreements (also known as contingency fees) in litigation before the courts. These are another form of 'no win no fee' agreement, under which lawyers can take a proportion of the claimants' damages in fees, and would increase the funding options available to claimants.
- Introducing a 10-per-cent increase in general damages, and introducing a mechanism to protect the vast majority of personal-injury claimants from paying a winning defendant's costs.

Justice minister Jonathan Djanogly said the reforms would help tackle "the perverse situation in which lawyers can be awarded a greater proportion of payouts than claimants" and "help put an end to the fear of a compensation culture".

Following the announcement, EEF head of health & safety, Steve Pointer, said: "This is a welcome step forward in delivering a system that reflects a fair balance between rewarding those who have been harmed, and the significant efforts of companies to manage risks. The current system of high legal costs for small claims is encouraging poor claims and is failing to meet the needs of genuine claimants, insurers and employers."

He added: "Today's reforms must now be followed by further action. The HSE is already doing a great deal to reduce the paperwork burden imposed by regulation, and this needs to be followed through into the compensation system, where straightforward changes could make a real difference."

But TUC general secretary Brendan Barber attacked the proposals, saying: "This review has nothing to do with justice. It is simply lining the pockets of insurers at the expense of claimants seeking compensation for injuries caused by the negligence of others."

The consultation, 'Solving disputes in the county courts', can be found at www.justice.gov.uk/consultations/solving-disputes-county-court.htm

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