



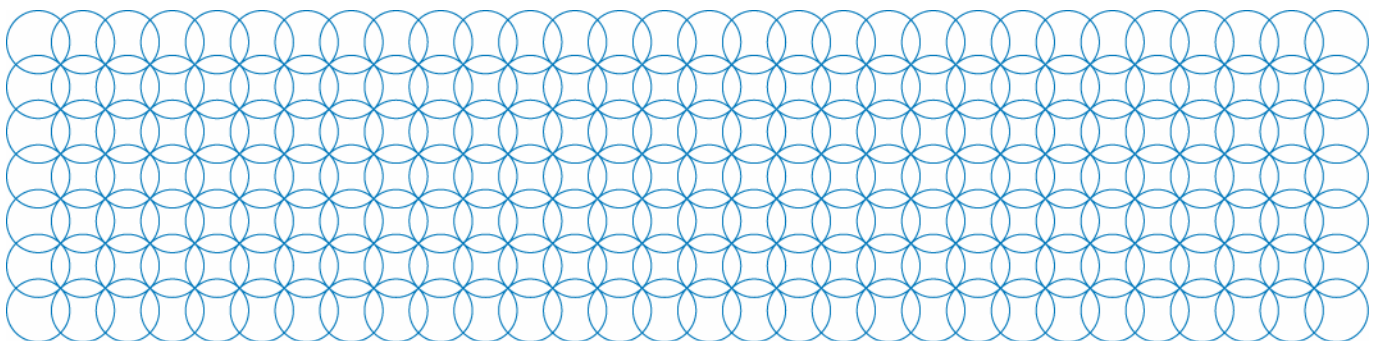
Ministry of  
**JUSTICE**

# **Controlling costs in defamation proceedings**

**Consultation Paper CP4/09**

Published on 24 February 2009

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Ministry of  
**JUSTICE**

## **Controlling costs in defamation proceedings**

**A consultation produced by the Ministry of Justice.**

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[www.justice.gov.uk](http://www.justice.gov.uk)**



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## Executive summary

1. The high levels of legal costs incurred in defamation and some other publication related proceedings have been the subject of criticism and debate in the courts and Parliament where, in particular, it was considered by the Constitutional Affairs Select Committee's inquiry into Compensation Culture in 2006.
2. Excessive costs may force defendants to settle unmeritorious claims, which in turn threatens a more risk averse approach to reporting and some argue is a risk to freedom of expression.
3. The Government has previously consulted on proposals for a scheme of staged recoverable success fees and after the event insurance (ATE) premiums in publication proceedings to reduce unreasonable and disproportionate costs. A number of media organisations responding to that consultation suggested additional measures that they considered necessary if costs in this area were to be maintained at reasonable levels. These included, in particular, costs capping in all publication proceedings and the introduction of fixed hourly rates recoverable from the losing party. Further representations were made in response to the recent consultation on new costs capping rules conducted on behalf of the Civil Procedure Rules Committee.
4. This paper seeks views on measures to control costs better in this area, taking account of the proposals submitted by media organisations and other interested parties in response to earlier consultations. These measures are:
  - A. Limiting recoverable hourly rates;
  - B. Mandatory costs capping or consideration of costs capping;
  - C. Linking recoverability of ATE Insurance premiums to notification to the other party and introducing a period of non-recoverability post notification; and
  - D. Requiring the proportionality of total costs to be considered on cost assessments conducted by the court.

## Introduction

This paper sets out for consultation a number of measures designed to control better the costs arising in defamation and possibly some other publication related proceedings where the level of costs might be considered too high. The consultation is aimed at, in particular, legal representatives who conduct litigation in the area of defamation and other publication related proceedings, media organisations, insurers and those in England and Wales with an interest in, or views on, the proposals.

Although in the main this consultation follows the Government Code of Practice on Consultation, Bridget Prentice, Parliamentary Under-Secretary of State for the Ministry of Justice, has decided that the following deviation from the Code is appropriate in the circumstances: in order to be in a position to implement these proposals in the form of a Statutory Instrument from October 2009 (if appropriate), it will be necessary to shorten the consultation period to ten weeks. To ensure that consultation on this proposed amendment to the civil procedure rules is as effective as possible, the consultation paper will in addition be brought to the attention of all those who contributed to the earlier consultation papers on related issues: *Conditional Fee Agreements in Publication Proceedings – Success Fees and After the Event Insurance*; and *Civil Procedure Rules – Costs Capping Orders*.<sup>1</sup>

An Impact Assessment has been completed and indicates that legal representatives, their clients and ATE insurance providers involved in claims in this area of the law are likely to be particularly affected. The proposals are likely to lead to additional costs or savings for businesses and the public sector. An Impact Assessment is attached at page 21. Comments on the Impact Assessment and the specific questions it contains are particularly welcome.

Copies of the consultation paper are being sent to:

The Senior Judiciary through the Judicial Office of England and Wales

Council of Her Majesty's Circuit Judges

Association of Her Majesty's District Judges

High Court Masters Group

Master Hurst, Senior Costs Judge

Lord Justice Jackson

Advisory Committee on Civil Costs

Civil Justice Council

Civil Procedure Rules Committee

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<sup>1</sup> Available on the Ministry of Justice website, [www.justice.gov.uk](http://www.justice.gov.uk).

Law Society

Law Reform Committee of the Bar Council

Institute of Legal Executives

Association of British Insurers

Association of Law Costs Draftsmen

Confederation of British Industry

Citizens Advice

Forum of Insurance Lawyers

Newspaper Society

Publishers Association

Trades Union Congress

Society of Editors

English PEN

Solicitors, media companies and insurance companies who responded to previous consultations in this area

Better Regulation Commission

Office of Fair Trading

Equality and Human Rights Commission

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

## The proposals

### Overview

1. There has been concern about the high level of costs in defamation proceedings<sup>2</sup> for a number of years. The issue has been raised in the courts and in responses to Government consultation papers on related subjects and in correspondence with the Department. It has also been the subject of debate and consideration by Parliament. The Government agrees that there is a problem that should be addressed.
2. There are several reasons why costs in defamation proceedings tend to be higher than in other types of proceedings:
  - Defamation cases tend to be more specialist and complex than the average civil case. They are one of the few categories of civil case restricted to the High Court or that may be heard by a jury.
  - The hourly rates charged by solicitors are often higher than rates charged for other non-commercial work.
  - In cases where there is a conditional fee agreement (CFA), the maximum recoverable<sup>3</sup> success fee of 100% is regularly charged. This doubles the hourly rate throughout the proceedings despite the fact that the risk faced by the solicitor in pursuing the claim is likely to be very different in a case that settles early from one that goes to trial.
  - Premiums for after the event insurance in defamation proceedings are significantly higher than in other fields. This is generally explained by the low volume of cases<sup>4</sup> which means that there is limited capacity for spreading the risks and the fact that few companies offer this cover. It is also suggested that insurance products in these cases are 'bespoke' and therefore more costly.
3. Although costs may be high, the amount of damages at issue is often relatively low as compared to other cases dealt with in the High Court. A claimant's prime motivation is generally to clear their name or obtain an apology rather than to seek damages and in practice damages awards of more than £150,000 are rare. Also as special damages are rarely an issue, awards of damages are also likely to be lower than those made in commercial or very serious personal injury cases.

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<sup>2</sup> In the context of this paper, proceedings includes all legal disputes, including disputes settled pre-litigation.

<sup>3</sup> The Conditional Fee Agreements Order 2000 (SI2000/823) enables the Lord Chancellor to prescribe by Order the maximum permitted percentage for any description of proceedings.

<sup>4</sup> In 2007 there were 233 defamation cases in the High Court Queens Bench Division (figures for the RCJ only). Statistics for other years are available at [www.justice.gov.uk/publications/judicialandcourtstatistics.htm](http://www.justice.gov.uk/publications/judicialandcourtstatistics.htm).

4. For all these reasons, there is a greater risk that costs in defamation proceedings will be considerably higher than the damages awarded. An example of this was in the case of *King v Telegraph Group Ltd*<sup>5</sup> where the award of damages (£130,000) was significantly less than the claimant's costs, whose base costs<sup>6</sup> alone were £317,523.
5. The size of the disparity between costs and damages in these cases is of particular concern because of the potential threat that the risk of facing excessive costs, if unsuccessful in the case, can be to freedom of expression.
6. To deal with these issues the Government is seeking views on the following proposed measures:
  - A. Limiting recoverable hourly rates;
  - B. Mandatory costs capping or consideration of costs capping;
  - C. Linking recoverability of ATE Insurance premiums to notification to the other party and introducing a period of non-recoverability post notification; and
  - D. Requiring the proportionality of total costs to be considered on cost assessments conducted by the court.
7. Details of each proposal are set out below.
8. This paper also seeks views on the types of proceedings to which the proposals should apply. The question of scope is considered at paragraphs 46–48. The Government proposes that as a minimum the measures should apply to defamation proceedings (libel and slander), but recognises that the issues are likely to affect a broader range of publication related cases. You are asked to keep this in mind as you read the paper.
9. Assuming these proposals are taken forward we will invite the Civil Procedure Rules Committee to consider appropriate amendments to the Civil Procedure Rules 1998 (CPR), practice directions and pre-action protocols for their implementation. The next programmed opportunity to introduce such rules would be in the Statutory Instrument taking effect from October 2009.

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<sup>5</sup> [2004] EWCA Civ 613.

<sup>6</sup> Base costs are the basic amount paid for the work done, that is the solicitor's hourly rate multiplied by the number of hours worked. Where there is a CFA total costs will include base costs and additional liabilities incurred under the CFA, which includes success fees and ATE insurance premiums.

## Background

10. The Woolf reforms, implemented in 1999, transformed civil court procedures and introduced judicial case management to promote early settlement and speed up the process. The introduction of the overriding objective and the concept of proportionality have done much to achieve the aim of making litigation a last resort. However it is generally agreed that the reforms have not been successful in controlling the costs of litigation.
11. Since then, further reforms have been made to control costs in specific areas, for example the introduction of fixed recoverable costs for certain applications in Road Traffic Act proceedings and fixed percentage success fees for certain Road Traffic Act, employers' liability and employers' liability disease claims. The independent Advisory Committee on Civil Costs has also been created, to provide evidence based advice to the Secretary of State and the Master of the Rolls on the level of costs to be allowed in particular areas. The Committee's proposals for new Guideline Hourly Rates have recently been accepted by the Master of the Rolls and came into effect on 1 January 2009. In addition the law on costs capping has been developed by the courts and new rules will come into effect in April 2009 which codify the procedure.
12. More broadly, recognising the general concern about the costs of civil proceedings, the Master of the Rolls, with the support of Government, has initiated a wide ranging review of costs to be undertaken by Lord Justice Jackson during 2009. This review will look at the rules and principles governing the costs of civil litigation and make recommendations to promote access to justice and proportionate costs for the longer term. Lord Justice Jackson will report to the Master of the Rolls in December 2009.

## Basis of consultation

13. It has been difficult in the past to obtain quantified evidence of the extent of the concerns expressed by media organisations and others about the cost of defending cases. However the Government believes, based on the responses to previous consultation exercises and representations made by media organisations over a number of years, that there is a problem that must be addressed. It also believes that reform in this specific area need not await more general or fundamental reforms that may follow from Lord Justice Jackson's review.
14. The Government believes that some or all of the measures proposed in this paper are necessary to improve control over legal costs in defamation proceedings. This consultation is therefore on the basis that such measures will be taken forward unless compelling arguments emerge against doing so.

## Measures for consideration and consultation

### A: Limiting recoverable hourly rates

15. Information provided in response to previous consultation papers in this area suggests that some claimant lawyers are regularly charging hourly rates of £400–£600 for Band A fee earners. This is at the top end and above the Guideline Hourly Rates for summary assessment of costs. However there is no incentive for a client with a conditional fee agreement to seek to limit his or her solicitor's hourly rates. In addition the area of defamation law is a small market in which few solicitors operate and the hourly rates may be less affected by competition than in other areas.
16. Hourly rates are generally controlled by costs assessment procedures under the Civil Procedure Rules, directly where a costs assessment is undertaken and indirectly by the threat of costs proceedings, in other cases. Unreasonably high hourly rates in defamation proceedings have been considered by the courts, for example in the case of *King v Telegraph Group Ltd*<sup>7</sup> where the use of 'City' rates in defamation proceedings was challenged.
17. The costs rules and assessment process provide precedents and a benchmark against which the parties can decide the appropriateness of costs charged, but does not stop a party claiming costs at rates higher than would normally be accepted on a costs assessment. Such costs can be challenged by applying for a costs assessment or by negotiation under threat of such an assessment but this increases uncertainty and adds to the cost and time taken to resolve the issue.
18. This uncertainty would be avoided in defamation claims if maximum hourly rates or fixed recoverable hourly rates were introduced. Such rates would need to be set at a level which does not deter solicitors from acting in defamation cases and take account of the full range of cases in terms of the claim's value, complexity and novelty. It would be open to solicitors to charge their own client a higher hourly rate. However any difference between the maximum/fixed hourly rate and the solicitor set rate would not be recoverable from unsuccessful defendants.
19. A maximum recoverable hourly rate would give solicitors flexibility to set competitive rates, within the maximum, which take account of the individual circumstances of the case. However setting a maximum rate could have an inflationary affect if it led more solicitors to charge fees at the maximum rates.
20. A fixed recoverable hourly rate would be likely to provide greater certainty and control costs more effectively than a maximum rate but it might be more difficult to set an appropriate figure. It would also take away any scope to compete on price.

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<sup>7</sup> [2005] EWHC 90015 (Costs) at para 92.

21. In either case the rates fixed would need to take account of the different levels of fee earners that may be involved in the case.
22. Most solicitors specialising in this area are based in London, although our research indicates that some practise elsewhere across England and Wales. It might therefore be necessary to distinguish between different geographic areas in setting hourly rates. We welcome more information on this.
23. Limiting the hourly rate that can be recovered from the paying party in defamation proceedings would reduce uncertainty and the additional cost involved in negotiating costs. We believe that it would be appropriate for such hourly rates (whether maximum or fixed recoverable rates) to be set by the Advisory Committee on Civil Costs.
24. The Government believes that there should be some limitation on the hourly rates that can be claimed in defamation proceedings and is minded towards the introduction of a maximum recoverable hourly rate or rates but welcomes your views on the relative merits of maximum or fixed recoverable hourly rates.

**Question 1: Do you agree that a maximum recoverable hourly rate should be introduced?**

**B: Costs Capping**

25. A maximum or fixed hourly rate will not control total base costs nor will they control costs prospectively.
26. The Civil Procedure Rule Committee has recently agreed new rules on costs capping to be included in the CPR. These provide for an order to be made which sets a limit on future costs (solicitor's hourly fee and disbursements) that can be recovered from the other party. The new rules will come into force on 6th April 2009. In these general rules the court will make a costs capping order only in exceptional circumstances where normal case management and after the event costs assessment is insufficient to control the costs of the case.
27. The Department agrees that this is the right approach for a rule dealing with the generality of cases. However, given the pressures towards disproportionate costs in defamation cases, we believe that the need for costs capping will arise much more frequently in defamation proceedings than the exceptional basis envisaged by the general rule.

28. This paper therefore proposes that costs capping should be applied in all defamation proceedings or at least that there should be mandatory consideration of the need for a costs cap. A costs capping order would preclude one party putting undue pressure on the other to settle by incurring ever increasing costs. The order could be made against either or, where necessary to promote a level playing field, both of the parties. Whilst a party could continue to incur high costs above the cost cap, the other would have certainty as to the level of their exposure in the event that they are unsuccessful.
29. Mandatory costs capping would allow the parties to prepare systems for gathering the necessary costs information in advance. It would also enable the courts to prepare and plan for the additional cost hearings that would be necessary. However it would add to the costs of each case.
30. Mandatory consideration of costs capping would provide the flexibility to decide the need for a costs cap on the facts of each case and allow the parties to agree a mutual costs cap. However it would be likely to lead to disputes about whether or not a costs capping order was necessary and to delay the case whilst the parties prepare for a separate costs capping hearing. Whether the requirement to consider a costs cap would be less costly than mandatory costs capping, would depend on the frequency with which costs capping orders were considered unnecessary and the frequency of disputes about the need for a costs capping order.
31. Each party would be required to provide information about the case and their estimated costs at an early stage of the proceedings. In the case of mandatory consideration of a costs cap the need for a costs cap would be considered at the first directions/case management hearing. A costs capping order might be made at this hearing or more likely adjourned to a separate hearing for more detailed costs information to be provided. A separate costs capping hearing might be before a costs judge or with a costs judge sitting as an assessor.
32. We estimate that preparation and attendance at a one day costs capping hearing might add around £3,000 to the costs of each party. There would be a significant increase in the number of costs hearings (costs capping, variation of the costs cap and costs assessment) required overall, although where a costs cap has been based on detailed estimates, post trial costs assessment should rarely be necessary.

**Question 2: Do you agree that costs capping is likely to be appropriate in all or most defamation proceedings? If so, (a) do you think costs capping should be made mandatory or (b) should its consideration be made mandatory?**

**C: Linking recoverability of ATE Insurance premiums to notification to the other party and introducing a period of non-recoverability post notification**

33. ATE insurance is usually taken out soon after legal advice is sought and well before court proceedings are commenced, typically alongside a conditional fee agreement. This means that a defendant who immediately admits liability or makes an offer of amends is still liable to pay the ATE insurance premium. This is a particular issue in relation to defamation proceedings where ATE insurance premiums are higher than in other types of proceedings. We understand that the average premium for cover of £100,000 is around £68,250. However many policies involve staged premiums and we have been advised that the average cost for a first stage premium in defamation cases is around £2,000.
34. It is best practice as reflected in the *Practice Direction on Protocols*,<sup>8</sup> for the claimant's solicitors to notify the defendant's solicitors when there is a funding arrangement in place, generally in the letter before claim. CPR rule 44.15 and the related provisions in the Costs Practice Direction require that, if a funding arrangement has been entered into before proceedings are commenced, notice must be given by a claimant with the claim form and by a defendant before filing any document with the court.<sup>9</sup>
35. Rule 44.3B states that that a party may not recover any additional liability for any period in the proceedings during which he failed to provide information about a funding arrangement in accordance with a rule, practice direction or court order. The position in relation to such costs pre-proceedings is less certain. It appears that where notice has not been given in accordance with the pre-action protocol, the court has the power to disallow these costs, but is not required to do so.
36. The Government believes it would be inappropriate for an ATE insurance premium to be recoverable from a defendant who has not received notice of it. We therefore propose that there should be a requirement that a party who seeks to recover an ATE insurance premium must notify the other party of the existence of the ATE insurance with the letter before claim. Where the ATE insurance is not entered into until after the letter before claim is sent, notification would be required within 7 days of taking the ATE insurance.
37. Claimants would not be required to disclose the amount of the premium payable, sensitive personal information or any other information that indicates the insurer's assessment of the merits of the claim.

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<sup>8</sup> Paragraph 4A.2. The new *Practice Direction – Pre-Action Conduct* effective from 6<sup>th</sup> April 2009 provides that such notification should be given **as soon as possible**.

<sup>9</sup> If later, notice must be given within 7 days of entering into the funding arrangement.

38. We propose that notification of ATE insurance should also include details of whether the premiums are staged and, if so, the points at which an increased premium is payable. This we understand is already the practice adopted by some claimant solicitors and allows the defendant to complete a better informed risk assessment at each stage of the proceedings.
39. We understand that standard ATE insurance premiums often provide £100,000 of cover, with additional top up cover being available if necessary (where the case goes to trial, for example). Defendant representatives say that top up cover is not always obtained, leaving them unable to recoup their full costs from unsuccessful claimants. Prior notice to the defendant of the amount of cover provided, would give an early opportunity for them to object or request additional cover as necessary. We welcome views on the benefits of early notice of the amount of cover provided.
40. It was suggested in the case of *Henry v BBC*<sup>10</sup> that defendants should also be made aware of any exclusion clauses in the policy, which might invalidate the insurance, for example, if a defence of justification is successful. We understand that some claimant's solicitors already provide this information and welcome views on whether such notice should be required in all defamation cases.
41. In addition we propose that where notice has been given, there should be a period during which the defendant may admit liability or make an offer of amends<sup>11</sup> without incurring liability for any ATE insurance premium, provided that the offer or admission leads to a settlement without court proceedings on the substantive claim. This would be achieved by requiring the court, when making an assessment of costs in costs only proceedings, to disallow any costs claimed in respect of an ATE insurance premium where a case has been settled in such circumstances. Although rules to this effect could apply only to costs only proceedings before the court, the threat of costs proceedings would control the costs claimed in all cases settled pre-proceedings.

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<sup>10</sup> [2005] EWHC 2503 (QB) at para 38.

<sup>11</sup> Pursuant to section 2 of the Defamation Act 1996.

42. The question then is how long a period should be allowed for the defendant to admit liability or make an offer of amends without triggering liability for any premium. The *Pre-Action Protocol for Defamation* does not specify a time period for responding to the letter of claim, although it requires the defendant to let the claimant know if he/she will be unable to respond within 14 days. However, a longer period, for example 30 days,<sup>12</sup> might be more likely to allow the defendant sufficient time to consider the circumstances of the case. Another possibility would be that premiums should not be recoverable in any case settled without proceedings on the substantive claim regardless of the time taken by the defendant to admit liability or make an offer of amends. Your views are welcome on the time period that should apply and any other matters that should be addressed in relation to a period of non-recoverability for ATE insurance premiums.

**Question 3: Do you agree that there should be a requirement to notify the other party that ATE insurance has been entered into in the letter before claim or at the earliest opportunity thereafter?**

**Question 4: Would it also be helpful to require early notice of (a) whether the premiums are staged and, if so, the points at which increased premiums become payable (b) the amount of insurance cover and (c) any exclusion clauses?**

**Question 5: Do you agree that the ATE insurance premium should not be recoverable where an offer of amends or admission of liability is made that leads to settlement of the substantive claim without court proceedings? If so (a) should a time period be specified during which the defendant must make the admission or offer of amends in order to avoid liability for an ATE insurance premium; (b) what should the period be?**

#### **D: Proportionality of total costs**

43. The CPR state that the courts should have regard to what is reasonable and proportionate when managing cases and assessing costs. In assessing whether costs claimed are reasonable and where appropriate, proportionate, the court must consider the amount of any success fee and ATE insurance premium separately from the base costs. This is because each element of costs is subject to different considerations. For example, in assessing base costs the court will consider the reasonableness and proportionality of the work done, whilst in assessing the success fee it considers the solicitor's risk in taking the case. The provisions of the Costs Practice Direction supplementing CPR Part 44 also provides<sup>13</sup> that the success fee will not be reduced simply on the grounds that when added to base costs which are themselves reasonable and proportionate the total appears disproportionate.

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<sup>12</sup> See the guidance on time periods for replying to a letter of claim set out at para. 7.2 of the new *Practice Direction – Pre-Action Conduct* effective from 6<sup>th</sup> April 2009.

<sup>13</sup> Paragraph 11.9A.

44. There is no provision which allows the court to consider the proportionality of total costs (including any additional liability). This means that the total costs, although reasonable and proportionate when considered as individual elements, may be disproportionate and excessive when considered together.
45. The Government believes that a requirement to consider the proportionality of total costs would be a helpful tool in controlling costs in defamation proceedings. We therefore propose to ask the Civil Procedure Rule Committee to consider amendments to the CPR and related practice direction, that would require the court when assessing costs on a standard basis, to first consider separately the reasonableness of base costs, success fees and ATE insurance premium before applying the test of proportionality to the whole (rather than just to the base costs as now). We recognise, however, that in assessing the proportionality of total costs in defamation cases, it will be particularly important for the court to take into account the complexity of the issues and the importance of the case as well as the amount of money involved.

**Question 6: Do you agree that the courts should apply the proportionality test to total costs not just base costs?**

**Scope of these proposals**

46. This paper assumes that as a minimum the provisions would be introduced for defamation disputes (libel and slander) because it is principally in these cases that the key problems addressed in this paper are seen to arise. Limiting the scope of the proposals in this way would be one option. However, doing so would mean that the provisions would not extend to other causes of action where it may be considered they should also apply, such as (in certain contexts) a breach of privacy.
47. In so far as the primary concern may be cases where there is a potential threat to freedom of expression a second option might be a broader definition based on the context of the claim rather than the cause of action, such as “publication proceedings”. However any contextual definition, using non-legal terms would be likely to lead to uncertainty and satellite litigation.

48. A third option would be to define the scope by reference to a wider list of causes of action that covers and is also limited to, the types of case in which the key problems in this paper arise. A possible definition might be:

Proceedings which:

- a) include a claim for defamation or malicious falsehood; or
- b) are brought in connection with any journalistic, literary or artistic material and include a claim
  - (I) for breach of confidence;
  - (II) for misuse or unlawful disclosure of personal or private information; or
  - (III) under the Data Protection Act 1998.

Your views are sought on whether this possible definition includes all the appropriate types of proceedings and on any amendments or restrictions you consider appropriate.

**Question 7: Should the proposals apply to (a) defamation disputes only (b) a broader definition based on context or (c) disputes defined by way of a wider list of causes of action? Please say which option you prefer and why. If option (b) please suggest how you would define the scope and give reasons. If option (c) please say whether you agree with the definition suggested at paragraph 48 or propose an alternative definition.**

## Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

**Question 1:** Do you agree that a maximum recoverable hourly rate should be introduced?

**Question 2:** Do you agree that costs capping is likely to be appropriate in all or most defamation proceedings? If so, (a) do you think costs capping should be made mandatory or (b) should its consideration be made mandatory?

**Question 3:** Do you agree that there should be a requirement to notify the other party that ATE insurance has been entered into in the letter before claim or at the earliest opportunity thereafter?

**Question 4:** Would it also be helpful to require early notice of (a) whether the premiums are staged and, if so, the points at which increased premiums become payable (b) the amount of insurance cover and (c) any exclusion clauses?

**Question 5:** Do you agree that the ATE insurance premium should not be recoverable where an offer of amends or admission of liability is made that leads to settlement of the substantive claim without court proceedings? If so (a) should a time period be specified during which the defendant must make the admission or offer of amends in order to avoid liability for an ATE insurance premium; (b) what should the period be?

**Question 6:** Do you agree that the courts should apply the proportionality test to total costs not just base costs?

**Question 7:** Should the proposals apply to (a) defamation disputes only (b) a broader definition based on context or (c) disputes defined by way of a wider list of causes of action? Please say which option you prefer and why. If option (b) please suggest how you would define the scope and give reasons. If option (c) please say whether you agree with the definition suggested at paragraph 48 or propose an alternative definition.

**Question 8:** Do you agree with the estimated costs and savings to legal businesses, media defendants, ATE insurers and the Courts? Will any additional costs or benefits arise from these proposals?

**Question 9:** Do you agree with our initial view that the proposed changes will have no equality impacts? If not, please explain your reasons.

**Question 10:** What would be the potential costs/savings to your business of the proposals? Please explain how these costs or savings will arise, indicate the size of your business; micro (1–9), small (10–49), medium (50–250) and also which sector you operate in.

**Question 11:** Are there any competition impacts arising from these proposals? Please give details

**Thank you for participating in this consultation exercise.**

## About you

Please use this section to tell us about yourself

<b>Full name</b>	
<b>Job title</b> or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
<b>Date</b>	
<b>Company name/organisation</b> (if applicable):	
<b>Address</b>	
<b>Postcode</b>	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

**If you are a representative of a group**, please tell us the name of the group and give a summary of the people or organisations that you represent.

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## Contact details/How to respond

Please send your response by 6 May 2009 to:

**Paul Shapiro**  
**Ministry of Justice**  
**Civil Law and Justice Division**  
**Post Point 2.19**  
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**London SW1H 9AJ**

**Tel: 020 3334 3218**  
**Fax: 020 3334 3230**  
**Email: paul.shapiro@justice.gsi.gov.uk**

### Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.justice.gov.uk/index.htm>.

Alternative format versions of this publication can be requested from paul.shapiro@justice.gsi.gov.uk, telephone 020 3334 3218.

### Publication of response

A paper summarising the responses to this consultation will be published within three months of the close of consultation. The response paper will be available on-line at <http://www.justice.gov.uk/index.htm>.

### Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond. Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

## Impact Assessment

### Summary: Intervention & Options

<b>Department /Agency:</b> Ministry of Justice	<b>Title:</b> Impact Assessment of Controlling costs in defamation proceedings	
<b>Stage:</b> Consultation	<b>Version:</b> 1	<b>Date:</b> 28 January 2009
<b>Related Publications:</b> Civil Procedure Rules - Costs Capping Orders; Conditional Fee Agreements in Publication Proceedings – Success Fees and After the Event Insurance		

**Available to view or download at:**

<http://www.justice.gsi.gov.uk>

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**What is the problem under consideration? Why is government intervention necessary?**

The high costs of defamation proceedings and other proceedings relating to publication of personal information, in particular those funded under conditional fee agreements (CFAs) has emerged as a problem. Media organisations claim that high costs, combined with high success fees and after the event (ATE) insurance premiums act as a heavy inducement to settle unmeritorious claims on commercial grounds and are a potential threat to their right to freedom of expression. Measures in addition to the current arrangements are necessary to achieve better costs control in this area of the law. Voluntary arrangements adopted by some solicitors and media organisations for fixed recoverable success fees, have not been sufficient in controlling the high level of costs.

**What are the policy objectives and the intended effects?**

The aim of these proposals is to bring more effective cost control to litigation in defamation proceedings and to ensure that costs in this area are more proportionate and reasonable. The proposals would remove the threat to the press and other groups of disproportionate costs which can cause a heavy inducement to settle a case on commercial grounds irrespective of merits and restrictions on their right to freedom of expression.

The measures would be implemented by way of amendments to the Civil Procedure Rules and Practice Directions. Legal representatives and clients, in particular those using CFAs in such cases should find the process more transparent and be able to make better informed decisions about the likely costs of the case early in the proceedings.

**What policy options have been considered? Please justify any preferred option.**

A package of proposals is being considered to control various elements of the costs in defamation proceedings: ;maximum or fixed recoverable hourly rates; mandatory costs capping or mandatory consideration of costs capping; linking recoverability of ATE premiums to prior notification and introducing a period of non-recoverability post notification consideration of proportionality in terms of total costs (including ATE insurance premiums and success fees). Voluntarily adopted schemes for fixed recoverable success fees (but not ATE insurance premiums) have not been sufficient to control costs. It would be possible to implement only some of these measures. However, part implementation may result in the problems not being addressed as fully as possible and excessive costs in defamation proceedings remaining an unresolved issue.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** The effectiveness of these proposals will be reviewed as part of the wider consideration of possible reforms to control the level of costs in civil proceedings, following the outcome of the Master of the Rolls Review of Costs.

**Ministerial Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:



.....Date: 30 January 2009

## Summary: Analysis & Evidence

Policy Option:

Description: Controlling costs in defamation proceedings

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Business annual costs – £0 HMCS annual costs – £71k Insurers – £60k
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£ 0</b>	10	
	<b>Average Annual Cost</b> (excluding one-off)		
	<b>£ 131k</b>		<b>Total Cost (PV)</b> <b>£1.3m</b>
Other <b>key non-monetised costs</b> by 'main affected groups'			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Business annual benefits – £198k HMCS annual benefits – £14k Insurers annual benefits – 60K
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ 0</b>	10	
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£ 272k</b>		<b>Total Benefit (PV)</b> <b>£2.34m</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'			
Legal profession: reduction in aggressive behaviour by both parties to litigation; introduction of clear, transparent and stable charging mechanisms, improving risk assessment.			

**Key Assumptions/Sensitivities/Risks** The small size of the market for legal and insurance services in defamation proceedings means that there are considerable sensitivities on the sharing of data. This impact assessment is based on the best available information and estimates. We are seeking additional information by way of consultation and the impact assessment will be perfected in the light of those responses.

Price Base Year 2009	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £1.21m
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What is the geographic coverage of the policy/option?		England and Wales			
On what date will the policy be implemented?		2009			
Which organisation(s) will enforce the policy?		Courts			
What is the total annual cost of enforcement for these organisations?		£ 0			
Does enforcement comply with Hampton principles?		Not applicable			
Will implementation go beyond minimum EU requirements?		Not applicable			
What is the value of the proposed offsetting measure per year?		£ 0			
What is the value of changes in greenhouse gas emissions?		£ 0			
Will the proposal have a significant impact on competition?		No			
Annual cost (£-£) per organisation (excluding one-off) – information being sought in this consultation		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)				(Increase – Decrease)
Increase	£ 0	Decrease	£ 0	<b>Net</b> <b>£ 0</b>

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

## Evidence Base

### Controlling costs in publication proceedings **Scaling the issues**

1. There are around 220 defamation cases issued in the High Court at the Royal Court of Justice each year. However, we have been unable to ascertain either the total number of proceedings issued or the number of defamation claims settled before court proceedings are issued. In the consultation paper *Conditional Fee Agreements in Publication Proceedings – Success Fees and After the Event Insurance*<sup>14</sup> (the *Staged Recovery Scheme* consultation paper) we estimated that there were around 300 such claims a year. Responses to the consultation did not indicate any dissent from this figure.
2. Media organisations continue to suggest that there have been huge increases in legal costs, in particular since the introduction of CFAs which imposes undue strain on the viability of, in particular, regional publishing businesses. Assuming that the average level of costs arising in defamation disputes (including those that settle out of court) is around £50,000 per case and a total of 300 disputes a year, the total costs arising in defamation proceedings would be in the order of £15m.

### Options

3. Option 1 – Do nothing.
4. Option 2 – introduce a package of measures to better control the costs of litigation in defamation cases by:

*A – maximum recoverable or fixed recoverable hourly rates.*

This proposal will limit the hourly rate that solicitors may recover from the losing party. A claimant solicitor would be free to charge his client more than the hourly rate but, if the case is successful, would only then be able to recover the specified hourly rate from the losing party. A maximum rate would allow the solicitor flexibility to set a competitive rate below the maximum whilst a fixed rate would apply to all cases in all circumstances.

*B – mandatory costs capping or mandatory consideration of costs capping.*

This would require the courts either to make or consider making an order specifying the total base costs and disbursements that can be recovered from the other party. Which option is taken forward will be decided by the result of the consultation. The aim of such an order is to control the process of litigation so that only necessary and proportionate work is undertaken. In a low value claim for example, justice may not require exhaustive investigation of every possible argument. A costs capping order provides transparency to the other party who will be in a better position to gauge the costs risk he faces from an early stage in the proceedings. It does not provide total transparency however because the cap does not include additional liabilities that may be payable (such as success fees and ATE insurance premiums).

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<sup>14</sup> Available at [www.justice.gov.uk](http://www.justice.gov.uk).

*C – linking recoverability of ATE Insurance premiums to notification and introducing a period of non-recoverability post notification;*

This proposal will require the parties to notify each other if they take out ATE insurance at the earliest possible point in the proceedings and ensure that the defendant will always have at least 14 days to admit liability without having to pay an ATE insurance premium.

*D – requiring the courts to consider proportionality of total costs on cost assessments, not just base costs.*

Currently there is no provision which allows the court to consider the proportionality of total costs. This means that although the individual elements may be reasonable and where relevant proportionate, the total costs (including a success fee and ATE insurance premiums) may be excessive and disproportionate to the issues in the particular case. Introducing this test would allow the courts to disallow any costs that fell above the level of total costs that would be considered proportionate for the case.

5. Options 3 – introduce a combination of some but not all of the above measures. The combination would depend on the outcome of the consultation.
6. Option 1 – Do nothing. With this option challenges to the level of likely costs, including challenge through the courts, would continue to cause unnecessary increases in costs, animosity and challenge between defendants and claimants, reduced accuracy of case risk assessments and inefficient use of court time. Defendants would continue to have to pay ATE insurance premiums from the outset. Nothing would be done to alleviate the commercial inducement to settle unmeritorious claims or the threat to freedom of expression that may be caused by high costs in this area.
7. Option 2 – Adopt the proposed changes to introduce greater certainty into the cost regime in this area of the law and reduce legal costs. This option would make the process costs more certain for both claimant and media lawyers involved in litigation. It will reduce: argument between the parties around the level of costs; legal challenges on costs after award or settlement and the threat of disproportionate costs which may induce the settlement of unmeritorious claims.
8. Option 3 – The benefits that flow from implementing the proposals would be achieved to a greater or less extent, but unless all or a substantial number of the measures are implemented, there will remain a danger of excessive costs in defamation proceedings.
9. The value of the benefits is difficult to quantify. We have estimated that there are about 300 defamation cases, of which about half would be funded by a CFA. All the proposals will affect CFA funded cases. Non CFA funded cases will be affected by proposals A and B only. We anticipate benefits and cost savings to businesses and media defendants from these additional proposals, with the possible exception of mandatory costs capping, because of the additional work the costs capping hearing would involve for legal advisors and the courts. However there would be some, albeit short term costs, to ATE insurers. The effect of these additional proposals on key stakeholders is discussed in more detail below.

## Key Groups Affected by the Proposals

10. The legal representatives specialising in this area of law (of which a number are small to medium sized businesses) would benefit from the proposals which transparency and stability to costs, including in cases not proceeding under a CFA. There would be less opportunity and reason for defendants to litigate aggressively or to challenge legal costs after trial or settlement, although possibly more cases would require the courts to consider the issue of costs at costs capping hearings. When setting maximum or fixed recoverable hourly rates due care must be taken so as not to deter solicitors from acting in defamation proceedings.
11. Media defendants would benefit from the proposals as they would not have to pay a insurance premiums when the claim settles at an early stage. Proposals for limited recoverable hourly rates and costs capping would provide greater certainty as to the extent of the cost risk faced by both claimants and defendants at an early stage in the proceedings.
12. ATE insurers should benefit from the greater control of costs, which should allow them to more accurately calculate the financial risk involved in such cases.

## Costs and benefits for legal businesses

13. Formalised costs capping procedures will increase certainty about the level of recoverable costs from an early stage in proceedings including those not conducted under a CFA. It will also, improve case management by the parties and reduce unnecessary costs associated with antagonistic litigious behaviour. Where a costs capping order has been made following a detailed consideration of costs, post hearing cost assessment should rarely be necessary. However new costs will arise from costs capping hearings and any necessary review and variation of the costs cap during the proceedings. These costs may have to be met by the client, where he or she does not have the benefit of a CFA with ATE insurance.
14. Limited recoverable hourly rates should further increase certainty as to costs for both parties in all cases from the initial stages of a claim and should assist the risk assessment process. However solicitors would now need to consider separately the level of fees charged to the client, which may be more than the recoverable rate. It should also reduce arguments and costs only proceedings in cases settled before proceedings are issued.
15. Measures to control base rates and the proposals for a period of at least 14 days non-recoverability of ATE insurance premiums would lead to a reduction in aggressive litigation behaviour and cost challenges. It should also reduce the time taken in negotiating costs.
16. The proposals for fuller and better information about any ATE insurance entered into will enable better risk assessment decisions in individual cases. Early notification of additional liabilities entered into is in accordance with best practice contained in protocols supporting the Civil Procedure Rules, so should result in no additional cost to solicitors.

17. Introducing a requirement on courts to consider proportionality of total costs in cost assessment decisions should act as a further deterrent to excessive costs (including success fees and ATE insurance) and encourage tighter solicitor case management.

### Savings for legal businesses

18. For the purposes of this impact assessment, we have used the same average hourly rates as those used in the impact assessment set out in the *Staged Recovery Scheme* response paper. Their use is indicative and does not imply any decision as to their reasonableness or any maximum/fixed recoverable hourly rate that might be adopted as a result of these proposals.

Grade A solicitors £394

Grade B solicitors £266

Grade D solicitors £148

Costs Draftsman £150

19. We estimate that limiting the recoverable hourly rates (proposal A) could save 2 hours per case in arguing and negotiating costs in all cases (300). These savings would most likely be at Grade A or B fee earner level. The total costs savings would be between £159,600 and £236,400. They would be passed on to the paying party by way of lesser costs and to the client by way of lower ATE insurance premiums.

20. Time would need to be spent on preparing detailed costs information and attending a mandatory costs capping hearing. We estimate that this might take:

6 hours – costs draftsman @ £150	£900
2 hours preparation – Grade A/B instructing solicitor	£788 (A)/£532 (B)
5 hour cost hearing	£1,970 (A)/£1330 (B)
Total	£3678 (A)/£2762 (B)

This figure assumes that the instructing solicitor would attend the costs capping hearing. If a barrister were to attend, the costs of a solicitor representative, probably a Grade D fee earner and the barristers fee, would replace solicitors costs for the costs capping hearing.

21. On average 220 defamation cases a year are issued at the Royal Courts of Justice. If costs capping were mandatory this would imply total costs to legal businesses of between £1.6m (220 x 2 x £3678) and £1.2m (220 x 2 x £2762).
22. A mandatory requirement to consider costs capping would require costs information from each party for the first directions/case management hearing, with more detailed cost information being required where the case management judge decided that a costs capping order was necessary. Parties are already required to provide costs estimates on the filing of the allocation or listing questionnaire covering base costs already incurred and to be incurred. Additional costs would only be incurred if the court required additional information before deciding whether a costs capping order was necessary.

23. We anticipate however that the new costs to be incurred as a result of mandatory costs capping or mandatory consideration of costs capping would be more than offset by the containment and reduction of costs resulting from costs capping orders.

### **Costs and benefits for media defendants and ATE insurers**

24. We assume the minimum premium for a publication proceedings dispute to be about £2,000 with a liability of £100,000. We do not know how many cases are settle without court proceedings. For the purpose of this impact assessment we have estimated that there are 300 defamation claims a year of which about half are funded under a CFA. We have also estimated a settlement rate of one in five cases. This would mean benefits from the proposals for non-recoverability of ATE insurance premiums of around £60,000.
25. Media defendants should also benefit from reduced legal costs brought about by the proposals on limited recoverable hourly rates, costs capping and assessment of proportionality on the basis of total costs and reduced numbers of costs assessment hearings. This would however need to be set off against the additional costs of a costs capping hearing in all or a significant proportion of the 220 or so court proceedings a year. The costs would be as set out above for legal businesses save that where they are unsuccessful, media defendants would be required to meet the costs capping related costs of both parties. Through a reduction in the disproportionate level of costs in defamation cases media defendants would see a reduction in the litigation behaviour that may threaten their freedom of expression.
26. We anticipate that initially the changes would have an adverse impact on ATE insurance providers costing around £60,000 (being the cost of the unrecoverable premiums as calculated at paragraph 24). The initial cost of ATE insurance policies may therefore increase, but should become cheaper as the proposed measures start to take effect and bring down legal costs in defamation proceedings.

### **Costs and benefits to the courts**

27. We estimate that about half the total of 220 defamation cases a year would be funded by a CFA. We anticipate that the proposals for limited recoverable hourly rates and at least mandatory consideration of costs capping will further reduce, to negligible levels, the number of cases taken to court on costs issues, including costs only proceedings for cases settled out of court. We do not however have reliable data on the number of defamation cases taken to court on costs issues. Assuming that a maximum of 20% of cases require a detailed cost assessment taking a day each, the cost savings would be £14,168 (44 x £322) – based on a salary of £98,000 for a cost judge and £18,500 for a court staff member (admin).

28. The costs of costs capping hearings must be set against these savings. Mandatory costs capping would require a costs capping hearing in every issued case at an estimated cost of £70,840 (£322 x 220). The cost of mandatory costs capping, is likely to negate any benefits to the courts of the reduction in costs assessments anticipated from the other proposals. However, it is possible that fees would be introduced for a costs capping hearing in the same way that fees are now charged for detailed cost assessment. This would reduce the costs to Her Majesty's Courts Service but would increase the parties' costs. It also raises the question of which party or parties should pay the court fee for such a hearing.

**Question 8: Do you agree with the estimated costs and savings to legal businesses, media defendants, ATE insurers and the Courts? Will any additional costs or benefits arise from these proposals?**

**Information is invited from consultees as to the probable level of any increased costs and benefits arising from these proposals.**

### **Legal Aid Impact**

29. The proposed changes have no impact on the legal aid fund. This area of law is excluded from legal aid.

### **Equality Impact**

30. The proposals will affect all claimants, defendants and businesses involved in legal proceedings in this area of the law. An initial equality impact screening considered the impact on different groups in terms of: disability; gender; age; religion and belief or sexual orientation. Taking account of the findings from the earlier consultation on *the Staged Recovery Scheme*, in the same general subject area, we do not consider that these proposals will have any positive or adverse impacts. However, we have no information on whether any of these groups are more likely to be involved in defamation proceedings, which could affect our assessment.

**Question 9: Do you agree with our initial view that the proposed changes will have no equality impacts? If not, please explain your reasons.**

### **Small Firms Impact Test**

31. We understand that a significant number of firms operating in the field of defamation are small to medium sized businesses and will be affected by these proposals. We do not foresee any particular disadvantages or start up costs for small businesses arising from these proposals save in one area. Initial discussions indicated that some additional costs may arise from limiting the level of costs solicitors can recover from the losing party under proposals A–B where they are unable to recover the difference between recoverable cost and full cost from their client. We will be contacting a number of small businesses during the consultation process to seek further information on any particular impacts to small firms and the likely costs and effects to their business

32. However it would be impossible to apply these measures to some legal businesses and not others both from a practical point of view and because it would reduce the efficacy of the proposals. It would also be likely to distort the market for legal services in this area.

**Question 10: What would be the potential costs/savings to your business of these proposals? Please explain how these costs or savings will arise, indicate the size of your business: micro (1–9), small (10–49), medium (50–250) and also which sector you operate in.**

### **Competition Assessment**

33. The ATE insurance markets are likely to be most affected by the changes. However, as costs become more proportionate ATE premiums should become cheaper and would see claims settling at reasonable costs.

**Question 11: Are there any competition issues that should be taken into account in implementing these proposals? Please give details.**

### **Offsetting Measures**

34. We have considered whether there is any opportunity to remove or simplify any other regulation in this field as an offsetting measure, but have concluded that this is not feasible.

### **Enforcement, Sanctions and Monitoring**

35. The professional bodies will monitor the conduct of practitioners in relation to the Scheme and the courts may sanction solicitors found to be non-compliant with the Scheme. The courts will consider the cases that come before them for assessment of costs as regards compliance with the proposals for early notification of any additional liability to be claimed, limited recoverable hourly rates and proportionality of total costs.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	
Small Firms Impact Test	No	
Legal Aid	No	
Sustainable Development	No	
Carbon Assessment	No	
Other Environment	No	
Health Impact Assessment	No	
Race Equality	Yes	
Disability Equality	Yes	
Gender Equality	Yes	
Human Rights	No	
Rural Proofing	No	

## The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

**These criteria must be reproduced within all consultation documents.**

## Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact Gabrielle Kann, Ministry of Justice Consultation Co-ordinator, on 020 3334 4496, or email her at [consultation@justice.gsi.gov.uk](mailto:consultation@justice.gsi.gov.uk).

Alternatively, you may wish to write to the address below:

**Gabrielle Kann**  
**Consultation Co-ordinator**  
**Ministry of Justice**  
**7<sup>th</sup> Floor**  
**102 Petty France**  
**London SW1H 9AJ**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the **How to respond** section of this paper at page 19.





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