

Jackson – how changes to the litigation landscape will affect you

Nick Oliver, Howes Percival
&
Stephen Davies QC, Guildhall Chambers

June 2011



The litigation landscape



The winds of change are coming.....



Overview

1. The coming changes to litigation costs and funding (*Nick Oliver*):
 - Where are we and how did we get here?
 - Jackson changes.
 - Other changes to civil litigation.
2. The impact of the changes for insolvency litigation (*Stephen Davies QC*):
 - Overview.
 - Addressing some misconceptions.
 - Irrecoverability of success fees.
 - Contingency fees.
 - Fixed costs for petitions?
 - Costs budgets.
 - Changes to 3rd Party funding and ATE insurance?



Overview cont/d...

3. Litigating on a CFA (*Nick Oliver*):

- How does it work now?
- Who takes the hit if the Jackson changes come in?



1. The coming changes to litigation costs and funding

Nick Oliver



Why is all this relevant?

Context of changes for the purposes of this talk:

- Civil litigation costs and funding.
- Litigation conducted by IPs – particularly situations where an IP is appointed to formal office, there is litigation to pursue but no/limited assets and creditors unable/unwilling to fund litigation.

Increasingly common situation!

Issues and developments are, however, equally applicable to other areas of litigation/litigants, and some will also apply to funded cases.



The historic problem

- IP appointed to formal office.
- Issues identified regarding assets and/or actions of directors or third parties.
- Appear to be good claims for recovery for benefit of creditors, but no money to fund.
- How can the claims be brought?



HOWES
PERCIVAL
CHAMBERS

Guildhall
CHAMBERS

Conditional Fee Agreements – Getting the sword

Only option was creditor funding or "spec'ing" until.....
Conditional Fee Agreements ("CFAs"):

- Brought in for insolvency and PI by Legal Services Act 1990.
- Allowed from 1995.

Gave the IP a sword with which to 'attack' and commence litigation for recovery of money/assets.

CFAs:

- For solicitors and counsel.
- If successful, "success fee" or "uplift" up to 100% of normal time costs.
- If not successful, no fee payable.

Made such actions more viable for lawyers.



HOWES
PERCIVAL
CHAMBERS

Guildhall
CHAMBERS

'After the event' insurance – Getting the shield

But still a problem re adverse costs:

- Who would pay the other side's costs if the claim was not successful?
- Risk for the IP unless:
 - Wealthy estate (but remember *Re Pacific Coast Syndicate Ltd* [1913]).
 - 'Deep pockets' creditor.

Then along came ATE – a shield

ATE:

- Premium paid (by estate/creditor).
- Insurance against having to pay the Defendant's legal costs if claim is not successful.
- If claim not successful, Defendant's costs paid by insurer.



HOWES
PERCIVAL
CHAMBERS

Guildhall
CHAMBERS

Developing the tools

Developments to CFAs

- Recoverability of success fees.
- From 2000 – Access to Justice Act 1999.

Developments to ATE

- Recoverability of premiums.
- From 2000 – Access to Justice Act 1999.
- Deferred premium (you only pay it if you win).
- Interim costs orders paid.
- Bond for security for costs.
- Staged premiums.



3rd party funding – Getting the airstrike!

More recently 3rd party funding

- Very effective tool (but with some collateral damage!)
- Typically for larger claims only (£2million plus).
- 3rd party pays:
 - Legal costs (usually 50 – 70% with balance on CFA).
 - ATE insurance premium.
- 3rd party gets:
 - 30 – 50% of recoveries.



Where are we now?

IP now has effective tools to conduct litigation to recover assets/money for creditors:

- CFAs.
- ATE.
- 3rd party funding.



But in the meantime...

The new regime of CFAs and ATE insurance (with success fees and ATE premiums recoverable from losing parties) had taken on a life of its own:

- PI claims against insured Defendants.
- Clinical negligence claims against the NHS:
 - > Cost to NHS in 2009 - £796 million.
- Libel claims.
- 'Claims farmers'.



THE TIMES THE SUNDAY TIMES

Archived Article Please enjoy this article from The Times & The Sunday Times archives.

From The Sunday Times

Lawyers get more than victims in NHS compensation scandal

Tenagers are shelling out tens of millions of pounds on 'no-win, no-fee' claims

By Stephen Lee

© 2009. All rights reserved. All other content on this website is the property of the publisher.

As a health 'no-fee' lawyer, he can charge the National Health Service up to £750 an hour in successful claims for patient compensation over medical negligence and more.

While Smith's colleagues may not work on family and criminal cases for legal aid rates of about £35 an hour, in successful cases for their own firms they charge a top of £200 an hour. He can get the NHS to £275 an hour, with an 'uplift' on a successful case of up to 100%.

Guildhall CHAMBERS

The review

- November 2008 - Lord Justice Jackson commissioned to prepare a report on civil costs and funding by Lord Clarke (Master of the Rolls).
- The aim was for Jackson to make a series of recommendations which would improve access to justice at proportionate cost.
- May 2009 – Jackson's preliminary report.
- Jan 2010 – Jackson's final report.



The outcome

Jackson concluded that in some areas of civil litigation costs are "excessive or disproportionate" and that:

"... the present system for achieving costs protection for Claimants is, in my view, the most bizarre and expensive system that it is possible to devise."

He sets out a number of what he describes as "interlocking" reforms.



The Jackson Report – Key Recommendations

The following should no longer be recoverable from the other side:

- Success fees in Conditional Fee Agreements (CFAs); and
- 'After the Event' (ATE) insurance premiums.

The common law indemnity principle should be scrapped.

'Before the Event' (BTE) insurance should be encouraged for SMEs and householders.

Third party funding should be voluntarily regulated. Third party funders potentially liable for the full amount of adverse costs.

Contingency fees (also known as 'Damages Based Agreements' or DBAs) to be permitted. But only conventional costs will be recoverable from the other side. Clients also likely to require independent advice before signing.



The Jackson Report – Key Recommendations (cont'd)

The test of 'proportionality' for legal costs should be applied globally and defined more clearly in the Civil Procedure Rules.

Personal injury - referral fees for personal injury claims should be banned. Regime of qualified one way costs shifting ("QOWCS") to be introduced.

A special streamlined procedure for business disputes of lower value should be considered. A guide for "small business disputes" should be prepared so that business people can deal with disputes themselves if they wish, without the assistance of lawyers.

Assignment of cases to specific judges who will be responsible for managing the whole court procedure.

Certain specific suggestions for insolvency related cases (more later).



What came next?

- November 2010 - Government consultation on the Jackson Report.
- February 2011 – Responses due in and consultation closed.
- March 2011 – The Government Response.



The Government Response - March 2011

"We are seeking to reduce the unfair costs suffered by the many businesses, individuals and other organisations (including the NHS) that have been faced with CFA actions.

...the Government believes that the right way forward is to abolish the recoverability of CFA success fees and ATE insurance premiums.

...the Government agrees that these proposals should be taken forward as a package, and that the connected constituent parts should be implemented together."



Kenneth Clarke
Lord Chancellor and
Secretary of State for Justice



Jonathan Djanogly
Justice Minister

HOWES
PERCIVAL
SOLICITORS

Guildhall
CHAMBERS

In effect...



A 'green light' to the Jackson reforms

HOWES
PERCIVAL
SOLICITORS

Guildhall
CHAMBERS

Other changes – County Court and Small Claims Court

Consultation regarding County Court and Small Claims Court.

- Ongoing consultation – "Solving disputes in the County Courts" including:
 - Raising the Small Claims limit to between £10,000 and £25,000.
 - Improving how court judgments are enforced.
 - Introducing automatic mediation for small claims cases, and mediation awareness sessions for higher-value cases.
 - Changing the county court jurisdiction so that the High Court is used for bigger and more complex claims only.
- Likely that Small Claims limit will rise to £15,000:
 - Mediation stage prior to final hearing.
 - Very limited ability to recover legal costs from opposing parties.
- Consultation closes 30 June 2011.
- Could be in force by April 2012.

HOWES
PERCIVAL
SOLICITORS

Guildhall
CHAMBERS

Other changes - 3rd party funding

More entrants to the market.

This means:

- more competition; and thus
- better deals; and
- more innovative funding structures.

More on this from Stephen...



2. The impact of the changes for insolvency litigation

Stephen Davies QC



Some things we know...



Reforming Civil Litigation Funding and Costs in England and Wales – Implementation of Lord Justice Jackson's Recommendations
The Government Response

And a bit of crystal ball gazing...



In context

- Litigation by IPs – but also relevant to those defending such claims and other insolvency related litigation.
- As a representative litigant with no personal interest (other than fees), IPs have always been risk averse:
 - Internal committee approval.
 - Sanction.
- Litigation success and recoveries are essential.
- Success often comes at a price:
 - CFA success fees and ATE premium.
 - Cost of litigation funding.
- Complex and protracted litigation.
- Need to give cross-undertaking in damages for interim relief.
- SIP2 from May 2011 – New key compliance standards.
- IP's fees not recoverable – *SISU Capital Fund v Tucker* [2005].
- Or are they...



Jackson reforms – Correcting some misconceptions

CFAs will still be allowed between the client and solicitors/counsel.

However, the 'success fee' will now have to come out of damages recovered, rather than being recovered from the opponent.

ATE insurance will still be allowed to be obtained by the client.

However, as with success fees, the premium will now have to come out of damages recovered, rather than being recovered from the opponent.

The reforms only apply to legal costs (i.e. solicitors fees, counsels fees and disbursements) - not IP remuneration...albeit that IP remuneration still remains a live topic.



Jackson reforms – Irrecoverability issues

"...if you accept the recommendations...to abolish recoverability of ATE and success fees...the package should be implemented in full. It would be the worst of both worlds to retain elements of recoverability (subject to qualifications and exceptions) thus adding to the present morass of rules and case law."

Letter from Lord Justice Jackson to the Lord Chancellor, 14 January 2011

- Impact on outcome for creditors...more from Nick later.
- Response to the Government consultation from the Insolvency Lawyers Association and R3 – the 'carve out'.



Jackson reforms – Irrecoverability issues cont/d.....

Is the battle over?

- Recent R3 survey.
- Lobbying.

If it goes ahead, what will the impact be:

- Tactical issues – will Defendants give in so easily?
- Commercial issues.
 - > Will IPs only be able to take on and run larger cases?
 - > Will lawyers increase their 'normal' charge out rates?



Jackson reforms – Contingency fees and DBAs

Relevance to insolvency litigation?

- Usually about recoverability anyway.

No guidance from Ontario.

The success fee versus the contingency element:

- Opportunity for lawyers to take a bigger slice...but of bigger claims only?
- Will creditors approve?
- Need for IPs to 'shop around' to get the best deal?

Can the IP take a slice of the damages?

- Not under these rules. Normal remuneration rules unaffected.
- But this still means:
 - > Percentage of realisations; or
 - > Time costs (at uplifted rates)?



Jackson reforms – Fixed costs for petitions?

- Fixed Costs Working Group report - October 2009.
- Terms of reference – To recommend:
 - Categories of insolvency proceedings for which fixed costs would be appropriate.
 - Figures or bases for fixed costs for those categories.
- Recommendations:
 - Fixed costs regime for 'routine':
 - > Bankruptcy petitions.
 - > Winding-up petitions.

"...I adopt the recommendations of the working group...and recommend that these figures be adopted. These figures should be treated as benchmark costs rather than fixed costs."

Jackson Report
Chapter 28, Section 5



Jackson reforms – Fixed costs for petitions?

What are the figures?

• Bankruptcy petitions:		
➢ London:	Preparation	£1,100
	Drafting/issuing	£175
	Attendance	£225
	Total*	£1,500
➢ National	Preparation	£725
	Drafting/issuing	£125
	Attendance	£160
	Total*	£1,010

* - Some additional 'benchmark' costs are recommended for adjournments, substituted service, etc.



Jackson reforms – Fixed costs for petitions?

What are the figures?

• Winding-up petitions:		
➢ London:	Preparation	£1,000
	Drafting/issuing	£110
	Attendance	£110
	Total*	£1,220
➢ National	Preparation	£725
	Drafting/issuing	£80
	Attendance	£80
	Total*	£885

* - Some additional 'benchmark' costs are recommended for adjournments, substituted service, etc.



Jackson reforms – Fixed costs for petitions?

Any views from the Chief Registrar?



3. Costs budgeting

Stephen Davies QC




Jackson reforms – Costs budgeting

- Costs Management Working Group report - October 2009
- Terms of reference – To consider in relation to insolvency proceedings, and in particular insolvency proceedings in which an office holder is a party:
 - Whether, and how, it would be beneficial and cost effective for the Court to manage:
 - The recoverable costs as between the parties; and
 - The costs and remuneration of the office-holder as between the office-holder and the insolvent estate.




Jackson reforms – Costs budgeting

Some concerns referred to in the Jackson report:

- "There is a perception that [IPs] milk each case e.g. attendances by more than one partner and several juniors".
- "Lawyers acting for trustees in bankruptcy charge excessive hourly rates; the courts and creditors have little opportunity to monitor these costs; the court should set much lower hourly rates".
- "Trustees in bankruptcy, liquidators, receivers and administrators, the Official Receiver do not always act reasonably".

Jackson Report
Chapter 28, Section 5




Jackson reforms – Costs budgeting

The recommendations:

- Costs budgeting should be introduced, but only in cases of sufficient complexity/value to warrant the expense involved.
- In proceedings under the Insolvency Act 1986 (or other proceedings where an office holder is a party) the Court may order a costs budget to be filed and exchanged at the first hearing and subsequent hearings:
 - The Court may also require:
 - Confirmation that sanction has been obtained in relation to the proceedings.
 - Confirmation that a costs budget has been provided to the IP.
 - Confirmation that a costs budget (and an estimate of the IPs fees to be incurred in relation to the litigation) has been provided to the creditors committee/creditors meeting/the principle creditors.
 - Other procedural requirements similar to the Birmingham pilot (more on that later).



Jackson reforms – Costs budgeting

"In my view these are extremely sensible proposals, which should be considered by the Insolvency Rule Committee."

Jackson Report
Chapter 28, Section 5

Insolvency Rule Committee response.

- Declined jurisdiction!

Where does this leave us?

- Costs budgeting likely to be coming in any event:
 - Solicitors Code of Conduct - Para 2.03.
 - Jackson Report – Chapter 40.
 - Birmingham Pilot .



Jackson reforms – Costs budgeting Cont/d.....

If it does come in, benefit for monitoring appropriateness of 'Limits of Indemnity' on ATE insurance premiums.

Jackson made no comment on IP remuneration, save referring favourably to the remuneration Practice Statement.

Any views from the Chief Registrar?



Costs budgeting – The Birmingham Pilot (Guidelines)

Guidelines for pilot from 01/06/2009 of "Costs Management" of cases in the Birmingham TCC and Mercantile Court where parties voluntarily provide detailed estimates of future costs.

1. The parties will submit detailed budgets of their "estimates of costs" as attachments to their Case Management Information Sheets and Pre-trial Check Lists (or at such other time as ordered by the court).
2. The judge:
 - (i) Will, either by agreement between the parties or after hearing argument, record approval or disapproval of each side's budget for each step in the action.
 - (ii) May order attendance at regular hearings (by telephone if appropriate), the purpose of which is to monitor expenditure. Parties will be expected to provide to the judge any budget revisions in good time before such hearings to enable the judge to prepare for the hearing.



Costs budgeting – The Birmingham Pilot (Guidelines)

6. At each subsequent CMC, PTR and at trial the judge will receive updated figures, in order to ascertain what departures have occurred from each side's budget and why. A judge will, either by agreement between the parties or after hearing argument, approve or disapprove such departures from the previous budget as have occurred.
7. If any party exceeds the costs previously estimated for any activity, it shall notify all other parties and the court of the amount of the excess.
10. The objective of costs management is to control the litigation in such manner that the costs of each party are proportionate to the amount at stake and to ensure that the parties are on an equal footing.
11. At the end of the litigation the judge conducting a detailed or summary assessment will have regard to the budget estimates of the receiving party and will generally approve as reasonable and proportionate any costs claimed which fall within the previously approved total.



Costs budgeting – The Birmingham Pilot (Budget)

1	A	B	C	D	E
2	Work done / to be done	Assumptions (to be completed as appropriate)	Disbursements	Profit Costs	Total
3	4 Pre action costs		£0.00	£0.00	£0.00
4	5 Letter of proceedings		£0.00	£0.00	£0.00
5	6 A&L		£0.00	£0.00	£0.00
6	7 Affidavits		£0.00	£0.00	£0.00
7	8 Witness statements		£0.00	£0.00	£0.00
8	9 Expert reports		£0.00	£0.00	£0.00
9	10 PFI's		£0.00	£0.00	£0.00
10	11 Trial preparation		£0.00	£0.00	£0.00
11	12 Trial		£0.00	£0.00	£0.00
12	13 Settlement discussions		£0.00	£0.00	£0.00
13	14 Contingent cost A (preparation)		£0.00	£0.00	£0.00
14	15 Contingent cost B (preparation)		£0.00	£0.00	£0.00
15	16 Contingent cost C (preparation)		£0.00	£0.00	£0.00
16	17 (Where additional contingent costs are required)				
17	18				
18	19 GRAND TOTAL (including both incurred costs and estimated costs)				£0.00
19	20				
20	21				
21	22				
22	23				
23	24				
24	25				
25	26				
26	27				
27	28				
28	29				
29	30				
30	31				
31	32				
32	33				
33	34				
34	35				
35	36				
36	37				
37	38				
38	39				
39	40				
40	41				
41	42				
42	43				
43	44				
44	45				
45	46				
46	47				
47	48				
48	49				
49	50				
50	51				
51	52				
52	53				
53	54				
54	55				
55	56				
56	57				
57	58				
58	59				
59	60				
60	61				
61	62				
62	63				
63	64				
64	65				
65	66				
66	67				
67	68				
68	69				
69	70				
70	71				
71	72				
72	73				
73	74				
74	75				
75	76				
76	77				
77	78				
78	79				
79	80				
80	81				
81	82				
82	83				
83	84				
84	85				
85	86				
86	87				
87	88				
88	89				
89	90				
90	91				
91	92				
92	93				
93	94				
94	95				
95	96				
96	97				
97	98				
98	99				
99	100				

Page 1



4. Litigating on a CFA – who takes the hit as a result of the changes?

Nick Oliver



The current regime

- If you win you can, as a general rule, recover from the opposing party:
 - Normal time costs of solicitors and counsel.
 - Disbursements.
 - Solicitor's CFA 'success fee'.
 - Counsel's CFA 'success fee'.
 - ATE insurance premium.



The new regime

If you win you will, as a general rule, only be able to recover from the opposing party:

- Normal time costs of solicitors and counsel.
- Disbursements.

You will not be able to recover from the opposing party:

- Solicitor's CFA 'success fee'.
- Counsel's CFA 'success fee'.
- ATE insurance premium.

The impact is best understood by looking at an example...



Worked example – The facts

- Wrongdoing by company officers.
- No funds/assets available in the estate.
- No creditor(s) having the ability to fund legal action.
- Claim by Insolvency Practitioner as office holder (liquidator) pursuant to the Insolvency Act 1986 against 2 Defendants for wrongful trading and misfeasance pursuant to sections 214 and 212 Insolvency Act 1986.
- Value of claim is £1,400,000.
- Solicitors and counsel act on a CFA with 50% uplift.
- Claimant takes out ATE insurance (with staged premiums) to cover £500,000 of adverse costs (£250,000 per defendant) (except scenario 3 where he/she benefits from 'Qualified One Way Costs Shifting*').
- VAT can be recovered by the estate.



Worked example – The scenarios

For the purposes of considering the impact of the proposed reforms on this claim and, consequently, the estate and its creditors, the following scenarios have been considered:

- **Scenario 1**
The current regime (CFA success fees and ATE insurance premiums are recovered from the Defendants).
- **Scenario 2**
The current regime is changed so that CFA success fees and ATE insurance premiums are no longer recoverable from the Defendants.
- **Scenario 3**
The current regime is changed so that (a) CFA success fees and ATE insurance premiums are no longer recoverable from the Defendants; but (b) 'Qualified One Way Costs Shifting*' is brought in to benefit Insolvency Practitioner Claimants holding office under the Insolvency Act 1986.



Worked example – The stages

The financial impact of success in the different scenarios is considered at the following 4 stages:

- **Stage 1**
Settlement pre issue – 'Global' settlement (including 50% of the recoverable legal costs).
- **Stage 2**
Settlement post issue (after 12 months) with costs paid by the Defendants.*
- **Stage 3**
Settlement post issue (after 12 months) – 'Global' settlement (including 50% of the recoverable legal costs).
- **Stage 4**
Win at Trial (18 months after issue) with costs paid by the Defendants.*

* For the purposes of the example it has been assumed that all legal costs of the claim (excluding certain investigation costs) are recovered from the defendants where settlement is not on a 'Global' settlement basis.



Scenario 1 – The current regime (CFA success fees and ATE insurance premiums are recovered from the defendants)

Stage 1 – Settlement pre issue – 'Global' settlement (including costs)								
	Value of Claim (£)	Amount of Settlement / Judgment (£)	WIP (Not recoverable from Defendant as litigation costs) (£)	Disbursements (Not recoverable from Defendant as litigation costs) (£)	Recoverable from Defendants (50% only where part of 'Global' settlement)			Total available to estate (£)
					WIP (Recoverable from Defendant as litigation costs) (£)	Disbursements (Recoverable from Defendant as litigation costs) (£)	CFA Success Fee (@ 50% of WIP) (£)	
Value of Claim	1,400,000							
Settlement/Judgment		1,000,000						1,000,000
Pre issue work								
IP's WIP (Investigation)			50,000					-50,000
IP's WIP (Administration)			20,000					-20,000
Solicitors costs – WIP			40,000		40,000			-40,000
Solicitors costs – CFA Success Fee			20,000			20,000		-20,000
Counsel's fees – WIP			5,000		15,000			-12,500
Counsel's fees – CFA Success Fee			2,500			7,500		-4,250
ATE premium (Stage 1)								-2,500
Disbursements				2,000		5,000		-4,500
Post issue work								
Solicitors costs – WIP								
Solicitors costs – CFA Success Fee								
Counsel's fees – WIP								
Counsel's fees – CFA Success Fee								
Disbursements								
IP work post issue								
ATE Premium (Stage 2)								
ATE Premium (Stage 3)								
ATE Premium (Stage 4)								
Experts Fees								
Net recovery for estate (and, therefore, creditors)								804,250

Scenario 2 – The current regime is changed so that CFA success fees and ATE insurance premiums are no longer recoverable from the defendants

Stage 1 – Settlement pre issue – 'Global' settlement (including costs)								
	Value of Claim (£)	Amount of Settlement / Judgment (£)	WIP (Not recoverable from Defendant as litigation costs) (£)	Disbursements (Not recoverable from Defendant as litigation costs) (£)	Recoverable from Defendants (50% only where part of 'Global' settlement)			Total available to estate (£)
					WIP (Recoverable from Defendant as litigation costs) (£)	Disbursements (Recoverable from Defendant as litigation costs) (£)	CFA Success Fee (@ 50% of WIP) (£)	
Value of Claim	1,400,000							
Settlement/Judgment		1,000,000						1,000,000
Pre issue work								
IP's WIP (Investigation)			50,000					-50,000
IP's WIP (Administration)			20,000					-20,000
Solicitors costs – WIP			40,000		40,000			-40,000
Solicitors costs – CFA Success Fee			20,000			20,000		-40,000
Counsel's fees – WIP			5,000		15,000			-12,500
Counsel's fees – CFA Success Fee			2,500			7,500		-10,000
ATE premium (Stage 1)								-25,000
Disbursements				2,000		5,000		-4,500
Post issue work								
Solicitors costs – WIP								
Solicitors costs – CFA Success Fee								
Counsel's fees – WIP								
Counsel's fees – CFA Success Fee								
Disbursements								
IP work post issue								
ATE Premium (Stage 2)								
ATE Premium (Stage 3)								
ATE Premium (Stage 4)								
Experts Fees								
Net recovery for estate (and, therefore, creditors)								778,000

Scenario 1 – The current regime (CFA success fees and ATE insurance premiums are recovered from the defendants)

Stage 2 – Settlement post issue (after 12 months) with costs paid by the defendants								
	Value of Claim (£)	Amount of Settlement / Judgment (£)	WIP (Not recoverable from Defendant as litigation costs) (£)	Disbursements (Not recoverable from Defendant as litigation costs) (£)	Recoverable from Defendants (50% only where part of 'Global' settlement)			Total available to estate (£)
					WIP (Recoverable from Defendant as litigation costs) (£)	Disbursements (Recoverable from Defendant as litigation costs) (£)	CFA Success Fee (@ 50% of WIP) (£)	
Value of Claim	1,400,000							
Settlement/Judgment		1,000,000						1,000,000
Pre issue work								
IP's WIP (Investigation)			50,000					-50,000
IP's WIP (Administration)			20,000					-20,000
Solicitors costs – WIP			40,000		40,000			-40,000
Solicitors costs – CFA Success Fee			20,000			20,000		-20,000
Counsel's fees – WIP			5,000		15,000			-5,000
Counsel's fees – CFA Success Fee			2,500			7,500		-2,500
ATE premium (Stage 1)								
Disbursements				2,000		5,000		-2,000
Post issue work								
Solicitors costs – WIP			20,000		120,000			-20,000
Solicitors costs – CFA Success Fee			10,000			60,000		-10,000
Counsel's fees – WIP			10,000		40,000			-10,000
Counsel's fees – CFA Success Fee			5,000			20,000		-5,000
Disbursements						3,000		
IP work post issue			15,000					-15,000
ATE Premium (Stage 2)								
ATE Premium (Stage 3)						125,000		
ATE Premium (Stage 4)								
Experts Fees						20,000		
Net recovery for estate (and, therefore, creditors)								800,500

Scenario 2 – The current regime is changed so that CFA success fees and ATE insurance premiums are no longer recoverable from the defendants

Stage 2 – Settlement post issue (after 12 months) with costs paid by the defendants

	Value of Claim (£)	Amount of Settlement / Judgment (£)	WIP (Not recoverable from Defendant as litigation costs) (£)	Disbursements (Not recoverable from Defendant as litigation costs) (£)	Recoverable from Defendants (50% only where part of 'Global' settlements)			Total available to estate (£)
					WIP (Recoverable from Defendant as litigation costs) (£)	Disbursements (Recoverable from Defendant as litigation costs) (£)	CFA Success Fee (@ 50% of WIP) (£)	
Value of Claim	1,400,000							1,400,000
Settlement/Judgment		1,000,000						1,000,000
Pre issue work								
IP's WIP (Investigation)			50,000					-50,000
IP's WIP (Administration)			20,000					-20,000
Solicitors costs - WIP			40,000		40,000			-40,000
Solicitors costs - CFA Success Fee			20,000				20,000	-40,000
Counsel's fees - WIP			5,000		15,000			-5,000
Counsel's fees - CFA Success Fee			2,500				7,500	-10,000
ATE Premium (Stage 1)				2,000		5,000		-2,000
Disbursements								
Solicitors costs - WIP			20,000		120,000			-20,000
Solicitors costs - CFA Success Fee			10,000				60,000	-70,000
Counsel's fees - WIP			10,000		40,000			-10,000
Counsel's fees - CFA Success Fee			5,000				20,000	-25,000
Disbursements						3,000		-15,000
IP work post issue								
ATE Premium (Stage 2)								-15,000
ATE Premium (Stage 3)				125,000				-125,000
ATE Premium (Stage 4)						20,000		
Experts Fees								
Net recovery for estate (and, therefore, creditors)								568,000

Scenario 1 – The current regime (CFA success fees and ATE insurance premiums are recovered from the defendants)

Stage 3 – Settlement post issue (after 12 months) – 'Global' settlement (including costs)

	Value of Claim (£)	Amount of Settlement / Judgment (£)	WIP (Not recoverable from Defendant as litigation costs) (£)	Disbursements (Not recoverable from Defendant as litigation costs) (£)	Recoverable from Defendants (50% only where part of 'Global' settlements)			Total available to estate (£)
					WIP (Recoverable from Defendant as litigation costs) (£)	Disbursements (Recoverable from Defendant as litigation costs) (£)	CFA Success Fee (@ 50% of WIP) (£)	
Value of Claim	1,400,000							1,400,000
Settlement/Judgment		1,000,000						1,000,000
Pre issue work								
IP's WIP (Investigation)			50,000					-50,000
IP's WIP (Administration)			20,000					-20,000
Solicitors costs - WIP			40,000		40,000			-40,000
Solicitors costs - CFA Success Fee			20,000				20,000	-30,000
Counsel's fees - WIP			5,000		15,000			-12,500
Counsel's fees - CFA Success Fee			2,500				7,500	-6,250
ATE Premium (Stage 1)				2,000		5,000		-4,500
Disbursements								
Solicitors costs - WIP			20,000		120,000			-80,000
Solicitors costs - CFA Success Fee			10,000				60,000	-40,000
Counsel's fees - WIP			10,000		40,000			-30,000
Counsel's fees - CFA Success Fee			5,000				20,000	-15,000
Disbursements						3,000		-1,500
IP work post issue								
ATE Premium (Stage 2)			15,000					-15,000
ATE Premium (Stage 3)								-125,000
ATE Premium (Stage 4)						20,000		-10,000
Experts Fees								
Net recovery for estate (and, therefore, creditors)								562,750

Scenario 2 – The current regime is changed so that CFA success fees and ATE insurance premiums are no longer recoverable from the defendants

Stage 3 – Settlement post issue (after 12 months) – 'Global' settlement (including costs)

	Value of Claim (£)	Amount of Settlement / Judgment (£)	WIP (Not recoverable from Defendant as litigation costs) (£)	Disbursements (Not recoverable from Defendant as litigation costs) (£)	Recoverable from Defendants (50% only where part of 'Global' settlements)			Total available to estate (£)
					WIP (Recoverable from Defendant as litigation costs) (£)	Disbursements (Recoverable from Defendant as litigation costs) (£)	CFA Success Fee (@ 50% of WIP) (£)	
Value of Claim	1,400,000							1,400,000
Settlement/Judgment		1,000,000						1,000,000
Pre issue work								
IP's WIP (Investigation)			50,000					-50,000
IP's WIP (Administration)			20,000					-20,000
Solicitors costs - WIP			40,000		40,000			-40,000
Solicitors costs - CFA Success Fee			20,000				20,000	-40,000
Counsel's fees - WIP			5,000		15,000			-12,500
Counsel's fees - CFA Success Fee			2,500				7,500	-10,000
ATE Premium (Stage 1)				2,000		5,000		-4,500
Disbursements								
Solicitors costs - WIP			20,000		120,000			-80,000
Solicitors costs - CFA Success Fee			10,000				60,000	-70,000
Counsel's fees - WIP			10,000		40,000			-30,000
Counsel's fees - CFA Success Fee			5,000				20,000	-25,000
Disbursements						3,000		-1,500
IP work post issue								
ATE Premium (Stage 2)			15,000					-15,000
ATE Premium (Stage 3)				125,000				-125,000
ATE Premium (Stage 4)						20,000		-10,000
Experts Fees								
Net recovery for estate (and, therefore, creditors)								446,500

Scenario 1 – The current regime (CFA success fees and ATE insurance premiums are recovered from the defendants)

Stage 4 – Win at Trial (18 months after issue)								
	Value of Claim (£)	Amount of Settlement / Judgment (£)	WIP (Not recoverable from Defendant as litigation costs) (£)	Disbursements (Not recoverable from Defendant as litigation costs) (£)	Recoverable from Defendants (50% only where part of 'Global' settlement)			Total available to estate (£)
					WIP (Recoverable from Defendant as litigation costs) (£)	Disbursements (Recoverable from Defendant as litigation costs) (£)	CFA Success Fee (@ 50% of WIP) (£)	
Value of Claim	1,400,000							1,400,000
Settlement/Judgment		1,000,000						1,000,000
Pre issue work								
IP's WIP (Investigation)			50,000					-50,000
IP's WIP (Administration)			20,000					-20,000
Solicitors costs - WIP			40,000		40,000			-40,000
Solicitors costs - CFA Success Fee			20,000				20,000	-20,000
Counsel's fees - WIP			5,000		15,000			-5,000
Counsel's fees - CFA Success Fee			2,500				7,500	-2,500
ATE Premium (Stage 1)				2,000		5,000		-2,000
Disbursements								
Post issue work								
Solicitors costs - WIP			30,000		200,000			-30,000
Solicitors costs - CFA Success Fee			15,000				100,000	-15,000
Counsel's fees - WIP			15,000		80,000			-15,000
Counsel's fees - CFA Success Fee			7,500				40,000	-7,500
Disbursements			40,000			5,000		-40,000
IP's post issue								
ATE Premium (Stage 2)								
ATE Premium (Stage 3)								
ATE Premium (Stage 4)						210,000		
Experts Fees						50,000		
Net recovery for estate (and, therefore, creditors)								753,000

Scenario 2 – The current regime is changed so that CFA success fees and ATE insurance premiums are no longer recoverable from the defendants

Stage 4 – Win at Trial (18 months after issue)								
	Value of Claim (£)	Amount of Settlement / Judgment (£)	WIP (Not recoverable from Defendant as litigation costs) (£)	Disbursements (Not recoverable from Defendant as litigation costs) (£)	Recoverable from Defendants (50% only where part of 'Global' settlement)			Total available to estate (£)
					WIP (Recoverable from Defendant as litigation costs) (£)	Disbursements (Recoverable from Defendant as litigation costs) (£)	CFA Success Fee (@ 50% of WIP) (£)	
Value of Claim	1,400,000							1,400,000
Settlement/Judgment		1,000,000						1,000,000
Pre issue work								
IP's WIP (Investigation)			50,000					-50,000
IP's WIP (Administration)			20,000					-20,000
Solicitors costs - WIP			40,000		40,000			-40,000
Solicitors costs - CFA Success Fee			20,000				20,000	-40,000
Counsel's fees - WIP			5,000		15,000			-5,000
Counsel's fees - CFA Success Fee			2,500				7,500	-10,000
ATE Premium (Stage 1)				2,000		5,000		-2,000
Disbursements								
Post issue work								
Solicitors costs - WIP			30,000		200,000			-30,000
Solicitors costs - CFA Success Fee			15,000				100,000	-115,000
Counsel's fees - WIP			15,000		80,000			-15,000
Counsel's fees - CFA Success Fee			7,500				40,000	-47,500
Disbursements			40,000			5,000		-40,000
IP's post issue								
ATE Premium (Stage 2)								
ATE Premium (Stage 3)								
ATE Premium (Stage 4)					210,000			-210,000
Experts Fees						50,000		
Net recovery for estate (and, therefore, creditors)								375,500

How do the outcomes compare?

COMPARISON TABLE – OUTCOMES FOR THE INSOLVENT ESTATE

Stage	Description	Net recovery for estate (£)		
		Scenario 1 (Current regime)	Scenario 2 (No recoverability of CFA success fees or ATE)	Scenario 3 (QOWCS*)
1	Settlement pre issue – 'Global' settlement (including costs)	804,250	778,000	803,000
2	Settlement post issue (after 12 months) with costs paid by the defendants	900,500	668,000	683,000
3	Settlement post issue (after 12 months) – 'Global' settlement (including costs)	562,750	446,500	571,500
4	Win at Trial (18 months after issue)	753,000	375,500	565,500



Questions?

HOWES PERCIVAL

Guildhall
CHAMBERS
