CONTROLLING THE COSTS OF DEFAMATION CASES

I am writing to inform you that the Government has today announced by way of a written ministerial statement that it will commence the ‘no win no fee’ conditional fee agreement (CFA) reforms in Part 2 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 for defamation claims. This will make the lawyer’s ‘success fee’ non-recoverable (that is, no longer payable by losing defendants). This will further control the costs of these cases and will also give effect to our legal obligations under the MGN v UK judgment of the European Court of Human Rights in 2011. The provision will come into force for new cases on 6 April 2019.

The LASPO Act CFA reforms came into effect for the majority of cases in April 2013 but was delayed in respect of defamation and privacy claims pending the outcome of the Leveson Inquiry. The then Government accepted the Leveson recommendation that there should be a costs protection regime in place for defamation and privacy claims, before commencing the LASPO Act CFA reforms. It consulted on a draft bespoke costs protection regime in 2013. In the event, there was opposition to the detail of that regime, and the then Government did not implement the proposal before the change of Government. Having considered the responses to the consultation, we have decided on a different approach that will give effect to our international obligations and to help to control costs. We will therefore keep in place, at least for the time being, the existing costs protection regime, namely the recoverability of after the event (ATE) insurance premiums for these cases. ATE insurance covers the risks of having to pay the other side’s costs in unsuccessful cases. This approach - of abolishing recoverability of the CFA success fee, but retaining it for the ATE insurance premium - will preserve access to justice for impecunious claimants who should not be deterred from bringing or defending a defamation or privacy claim to uphold their rights, because of the fear of having to pay unaffordable legal costs, if they lose the case.

The Government has also published today its response to the 2013 consultation, ‘Costs protection in defamation and privacy claims: the Government’s proposals’, which is available on the MoJ website.

I have written in similar terms to the Chair of the Joint Committee on Human Rights.