

## Simon Twigden's response to the Jackson Review

Whilst the existing legislation and court rules undoubtedly assist in providing access to justice for meritorious commercial litigation claims, Lord Justice Jackson's proposals in his Final Report on Civil Litigation Costs demonstrate that there is still room for improvement.

Of key importance to our commercial clients is the potential introduction of contingency fee arrangements. If a properly regulated contingency fee regime is implemented, it would represent a revolutionary public policy change that would deliver even better access to justice: a simpler and more transparent regime that incentivises lawyers to settle cases early, achieving a result for clients that is proportionate whatever the outcome. This is precisely what our clients want and we are ready to pioneer the use of these arrangements in the highest courts.

We do have serious reservations regarding the recommendation to abolish the recoverability of ATE insurance premiums and anticipate the lively debate this proposal will generate. A properly structured and staged ATE premium is a powerful tool in driving the earlier settlement of meritorious commercial claims - unmeritorious claims should not attract cover.

Abolishing recoverability may also have unwanted consequences in relation to the pricing structures of third party litigation funders, who although capable of operating without ATE, in our experience rarely do (Lord Justice Jackson appears to have reached the opposite conclusion based on his findings in relation to a single case). Add to this the recommended removal of the cap on funders' exposure to adverse costs, and the net result may increase the risks and costs associated with funding such that access to justice is inhibited, not encouraged.

However, whatever its ultimate overall impact, now that the Report is in the political as well as public arena, Lord Justice Jackson must be congratulated for the comprehensive and clear manner in which he has set out the issues and reasoned arguments on this crucially important area. We don't agree with all his recommendations; many of those recommendations are, arguably, only of passing interest to a large commercial litigation practice, but his support for contingency fee arrangements is a further dramatic step in the liberalisation of what solicitors can and cannot do with their clients in the litigation arena.



**Simon Twigden, Partner, Head of Litigation**

( 020 7788 5020

\* [simon.twigden@addleshawgoddard.com](mailto:simon.twigden@addleshawgoddard.com)