



John Hardie
Chief Executive Officer

Tajinder Bhamra
Ministry of Justice
Civil Litigation Funding and Costs Team
4.37, 4th Floor
102 Petty France
London SW1H 9AJ

8 November 2013

Dear Sirs,

ITN's response to the consultation on costs protection in defamation and privacy claims

ITN has already put its name to the comprehensive submission to your consultation from the Media Lawyers Association ("the MLA"), the association of in-house news media lawyers of which our in-house compliance and legal team are members. We fully endorse that submission and the concerns and points raised in it.

In this supplementary response, we want to highlight the main areas of concern for ITN.

For background, ITN is the UK's biggest independent producer of public service broadcast news, supplying ITV, Channel 4 and Channel 5 - the three main commercial PSB broadcasters in the UK - and reaching more than 43 million people every week. We therefore play a crucial role as the BBC's main competitor in the provision of high quality, impartial news to a diverse cross-section of the British population.

As well as providing high-quality, trusted broadcast news output, ITN operates two commercial divisions: ITN Source which licenses "on the day" and archive footage, and ITN Productions which produces long and short form programming for worldwide distribution via all media. ITN has four shareholders: ITV plc (40%), Daily Mail and General Trust (20%), Reuters (20%) and United Business Media (20%).

With direct reference to your consultation, the specific points we would highlight from the MLA submission as being of most concern to ITN are:

1. If some form of QOCS (Qualified One-Way Costs Shifting) is to be introduced, it should be dealt with at an earlier stage than the first hearing after proceedings are issued, which will usually be after the close of pleadings, when substantial costs will often already have been incurred. Requests and applications for costs protection orders should be made pre-action and that this should form part of a package of reforms of the Pre-Action Protocol for Defamation to ensure quicker resolution of claims at minimal cost. Costs protection should also be subject to review at any stage of the proceedings and should not be granted or refused on a "once and for all" basis.
2. We consider that all litigants except the very poorest should potentially pay something towards the other party's costs, though in no case more than they could afford without suffering severe financial hardship. We believe that there is no public policy justification for removing from litigants who could afford it the burden of paying something towards the costs



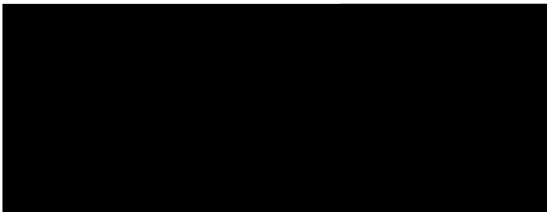
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of the other party where they have litigated unsuccessfully and that the imposition of even a modest potential liability will help maintain discipline in the litigation process.

3. We also have concerns in relation to the proposals for assessing an applicant's means and their ability to pay costs. Any statement of means relied upon by a party must, as a matter of course, be comprehensive and should be served on the other party on a confidential basis.
4. We strongly support the power to remove costs protection from a party if there are grounds to justify it and the specific power to do so if the party with costs protection has rejected a reasonable offer to settle. However, we are concerned that the current wording of that provision allows the litigant's means to trump its conduct of the claim as the costs protection order can only be set aside if the litigant would not suffer severe financial hardship if it had to pay the other party's costs of the proceedings and it is in the interests of justice to make such an order. We consider that wording to be defective. First, any litigant which would not suffer severe financial hardship if ordered to pay the other side's costs should lose costs protection automatically and without any further consideration. Second, it should be open to the court to deprive a litigant of costs protection if they reject a reasonable offer of settlement, even if their means would otherwise justify a costs protection order. Overall, we consider that the court should have maximum discretion to remove costs protection in appropriate circumstances including if there has been significant dishonesty.

I hope that our input is helpful as you consult on this matter and ITN would be happy to meet with you to discuss this issue fully.

Yours sincerely,



John Hardie