PROBLEMS, LARGE AND SMALL,

IN THE FINANCING OF LITIGATION

ANSWERS FROM THE UNITED KINGDOM

1. Who incurs the costs of civil litigation in your jurisdiction?

In England and Wales, civil litigation is funded by insurance companies, by private funding, by legal aid or by conditional fee agreements, depending on the type of litigation. Legal aid is now extremely limited, and pertains only to child protection proceedings involving State intervention, and to some cases where domestic violence is alleged in family proceedings.

Conditional fee agreements made between the litigant and his solicitor for the purpose of conducting, usually personal injury cases. This is also known colloquially as “no win, no fee” agreements. The solicitor agrees to take on the case and will not charge the client if the case is not successful. If the case is successful, the solicitor obtains costs from the losing party, and also receives an uplift from the damages of the litigant, limited to 25% of the total for general damages, and not attachable to special damages.
Insurance companies and trades unions will pay for some types of litigation, often noise induced hearing loss claims, professional or medical negligence claims, or other personal injury claims, particularly to defend them.

Some cases are not eligible for any funding, and they are paid for by private individuals. These would include divorce cases, probate and inheritance cases, property disputes and perhaps a case involving a private breach of contract, or children cases where domestic violence is not alleged.

2. Are there problems pertaining to civil litigation funding in your jurisdiction?

ENGLAND AND WALES

Yes. The funding regime often precludes proper recourse to the courts, as litigants who do not have private funds cannot afford representation. Increasingly the courts are faced with litigants in person who do not understand basic issues such as burden and standard of proof, the evidence required. The lack of legal aid has been the subject of political debate and academic auditing, and it is questionable whether it has made any saving, given the increased court time needed to manage cases without representation.

3. What resources, if any, are available to litigants in order to address financing litigation issues in your jurisdiction?

ENGLAND AND WALES

See above. There are some companies which will give loans expressly for the purposes of litigation, which are at a commercial interest rate.

4. Are litigation funding agreements permitted in your jurisdiction?

ENGLAND AND WALES

Yes, please see above.

5. If so, how are such agreements regulated or otherwise controlled?

A CFA is defined as follows: "an agreement with a person providing advocacy or litigation
services which provides for his fees and expenses, or any part of them, to be payable only in specified circumstances.” In other words, where the client will pay different amounts for the legal services depending on the outcome of the case. Generally, if the client loses the case, it will not be liable to pay for the fees and any expenses that are subject to the conditional fees. If the client wins the case, it will be liable to pay all fees and expenses, including the conditional fees, and the success fee, if a success fee is provided for in the CFA.

They were introduced by a statutory instrument the Conditional Fee Arrangements (Miscellaneous Amendments) Regulations 2003 (SI 2003/1240), under which the legal representative agreed to receive no more than is awarded or paid. They were so called because there were fewer formal requirements to be complied with. Since the revocation of the CFA Regulations 2000, there are no longer any statutory manifestations of CFAs, although Civil Procedure Rule 44 makes it clear that costs remain recoverable. The recoverability of such fees is governed by 2012 Statute.
Deuxième commission d’étude

Droit civil et procédure civile

Questionnaire 2019

62e Réunion annuelle de l’UIM – Astana (Kazakhstan)

DES PROBLÈMES, GRANDS ET PETITS,

DANS LE FINANCEMENT DES LITIGES

À Marrakech (Maroc), nous avons décidé qu’en 2019, la deuxième commission d’étude se concentrera sur les problèmes, grands et petits, dans le financement des litiges. Nous avons limité le questionnaire à cinq questions et nous nous attendons à recevoir des réponses courtes, mais concises.

1. Qui supporte les coûts d’un litige civil dans votre juridiction ?

2. Y a-t-il des problèmes liés au financement des litiges civils dans votre juridiction ?

3. Quelles ressources, le cas échéant, sont disponibles pour les parties afin de résoudre les problèmes de financement des litiges dans votre juridiction ?

4. Les accords de financement des litiges civils sont-ils autorisés dans votre juridiction ?
5. Dans’affirmative, comment ces accords sont-ils réglementés ou autrement contrôlés ?

Segunda Comisión de Estudios

Derecho Civil y Procedimiento Civil

Cuestionario 2019

62ª Reunión Anual de la UIM – Astana (Kazakhstan)

PROBLEMAS, GRANDES Y PEQUEÑOS,

EN EL FINANCIAMIENTO DE LOS LITIGIOS

En Marrakech, Marruecos, nosotros hemos decidido que, en 2019, nuestra Segunda Comisión de Estudios se concentrará en problemas, grandes y pequeños, en el financiamiento de los litigios. Hemos limitado el cuestionario a cinco preguntas y esperamos recibir respuestas cortas y concisas.

1. Quién soporta los costos de los litigios civiles en su jurisdicción?

2. Existen problemas en respecto al financiamiento de los litigios civiles en su jurisdicción?

3. Cuales recursos están disponibles a los litigantes para solucionar los temas de financiamiento de litigios en su jurisdicción?

4. Acuerdos de financiamiento de litigios civiles son permitidos en su jurisdicción?

5. En caso positivo, cómo esos acuerdos son regulados o por lo demás controlados?