



JUSTICE FOR THE FEW?

The government's latest move against conditional fee agreements means only the very wealthy will be able to hold media organisations to account, says *Dominic Crossley* of Payne Hicks Beach



THERESA MAY'S GOVERNMENT has a lot to think about. The pressures and political risks associated with the Brexit negotiations are the stuff of nightmares. But the government's approach to media law issues seems, in contrast, to be far more straightforward. It follows a clear direction, a direction that will be warmly welcomed by newspaper editors and proprietors.

The second part of the Leveson Inquiry has been cancelled, the cross-party mechanism for incentivising membership of an independent press regulator has been scrapped, and, hot off the happy press, the Secretary of State for Justice has recently announced that claimants will no longer be able to recover success fees on conditional fee agreements (CFAs) for libel and privacy cases. A cynic would think this government wants to keep the press onside.

A CFA is sometimes referred to as a 'no win, no fee' agreement. It means the lawyers do not get paid unless they win cases, but if they do win, they can recover a success fee. Many still associate CFAs with personal injury cases, and in 2013 its use was heavily curtailed. But the coalition government of the day recognised that if it restricted CFAs for libel and privacy claimants, only the very wealthy would have access to justice. In 2013 the misconduct of large sections of the tabloid press had been exposed by phone-hacking cases and the Leveson Inquiry. And in the absence of the press agreeing to establish a press regulator using Leveson's recommendations, or public funding by way of legal aid, CFAs represent the only way for those who don't have huge financial resources (particularly to take on a newspaper publisher) of bringing a case to court.

Memories of the Leveson Inquiry and phone hacking are fading (not least due to the lack of newspaper coverage) and the government has calculated that the public has other things to worry about. It is my view that the public should be worried about this latest blow to access to justice.

Media law is now something that we should all be aware of, not just those in the public eye. We are all subject to media attention, whether it is from friends, family, colleagues or business competitors using social media and other online tools. Even the tools themselves, including social media and search engines, engage our rights by their use of our personal information. Litigation may be a last resort, particularly

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when complaining about an online publication, but without the capability to enforce your rights, the chances of persuading a stubborn publisher to delete or correct will be significantly diminished.

The same is true of enforcing rights against newspapers. Like most companies, they assess risk. And one of the assessments they will make when publishing an article that may be libellous or intrude upon privacy is whether the subject is likely or able to sue. If they receive a complaint from the subject of the article after publication, they are also likely to consider the risk of the complaint being taken to court when they decide whether to apologise or publish a correction. Without lawyers willing to act on a CFA, all but the very wealthy will pose little risk to publishers.

HIGH STANDARDS

I believe that this is not just bad for the potential complainants. It is also bad for all those, like me, who enjoy reading newspapers and think they play a vital part in our democracy. With a regulator that inspires no confidence and no real risk of litigation, one would have to be wearing rose-tinted glasses to expect a future of high standards of journalism and editorial control. If ever we needed a strong and trustworthy UK press, it is now.

I understand those who may accuse me of having an interest, as a lawyer, in benefiting from CFAs and the 'uplift' in fees we are entitled to seek in the cases we win. It is also correct to say that I act mainly for complainants in media cases, and that I acted for the core participant victims in the Leveson Inquiry. Many of those clients, like Kate and Gerry McCann and Christopher Jefferies, gave evidence in the inquiry that they would not have been able to challenge the falsities they faced without being offered a CFA by their lawyers.

In truth, I rarely take on cases on a CFA, and I do not expect the government's announcement to have any significant effect on the level of the work I do. But I do recognise that removing meaningful access to justice to all but a small minority of the population is a dangerous step. And while media law is unlikely to be high up any political manifesto and you are never going to see it make the headlines in the *Daily Mail*, the steady erosion of the ability to protect these rights is likely to have serious and long-lasting consequences. ●