

# Question time

Considering a partnership in a new firm? Make sure you find out some key details, say our new columnists, **Clare Murray and Esther Martin**



## “The pro-CFA lobby is fuming that the debate has been stifled”

of their article 6 rights to effective access to a court. However, the ECtHR has already drawn attention to the balancing act required between the conflicting rights contained in articles 6 and 10, and indicated that national authorities will be better placed to decide whether there is a “pressing social need” for interference with one or the other.

Jackson LJ’s suggestion in respect of defamation and personal injury claims is to limit success fees to ten per cent. However, a more flexible alternative could be a new system of CFAs, similar to the defamation proceedings costs management scheme. Under this scheme, costs budgets are provided to the court to ensure that the costs of each party are proportionate to the value of the claim and the reputational issues at stake, rather than the court deciding on the proportionality of the success fee at the end of proceedings, as is currently the case.

In this way it may be possible to balance the interests of both parties. Given the prohibitive expense of funding claims, and the uncertainty surrounding CFAs and indeed ATE insurance premiums, the responsibility now falls upon lawyers to be increasingly inventive when arranging funding for cases generally.

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**M**oving to a new firm is one of the biggest investment decisions you may make as a partner. As with any major investment, partners should carefully assess the risks and liabilities associated with accepting a role in another firm.

■ **Capital** – how much are you expected to contribute and how will this be funded? How capitalised is the firm generally; have there been any recent capital calls?

■ **Profit-sharing structure** – what is your budgeted profit share likely to be and how (and by whom) will it be determined? What is the firm’s drawings policy and the timing of distributions of the balance?

■ **Financial management** – what are budgeted income, expenditure and profits for the year ahead? Ask to see accounts for the last three financial years. How efficient is the firm in billing and collection?

■ **General finances** – does the firm have an overdraft facility and is the firm using this – is it near the limit? Are any major or unusual financial costs anticipated (e.g. substantial claims or new premises)?

■ **Potential exposure to liabilities** – is the firm an LLP or a general partnership? Will you have personal exposure including as a guarantor

for major liabilities, banking indebtedness, premises etc? What level of professional indemnity insurance does the firm maintain?

■ **Decision making** – how much influence and protection will you really have as a partner – e.g. are major strategic decisions (including partner exits) retained by the partnership or delegated to a management committee?

■ **Good faith** – is there an express duty of good faith owed between partners, especially LLP members, or is it excluded?

■ **Termination** – what if any partner majority is required to remove you as a partner, with or without cause, what notice applies? Are there any garden leave or restrictive covenants? How long before capital and outstanding profit is paid?

■ **Mergers** – are there any significant proposals in the pipeline and with whom? Lateral hire partners should not be hesitant about asking such questions of prospective firms – prudent and well-managed firms will anticipate such questions and be ready with their answers.

Clare Murray and Esther Martin specialise in partnership and employment law at CM Murray LLP