

**SECRETARIAT GENERAL**

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**Date:** 19/12/2012

**DH-DD(2012)1176**

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Meeting: 1164 DH meeting (5-7 March 2013)

Item reference: Action report (03/12/12)

Communication from the United Kingdom concerning the case of MGN against United Kingdom (Application No. 39401/04).

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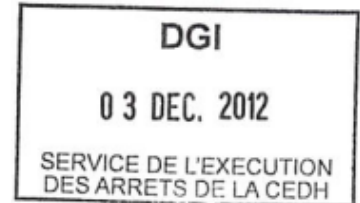
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Réunion : 1164 réunion DH (5-7 mars 2013)

Référence du point : Bilan d'action

Communication du Royaume-Uni relative à l'affaire MGN contre Royaume-Uni (requête n° 39401/04)  
**(anglais uniquement).**

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**Execution of Judgments of the European Court of Human Rights**  
**Action Report**

**MGN v the United Kingdom (application no. 39401/04; judgment final on 18/04/2011)**  
**Information submitted by the United Kingdom Government on 3 December 2012**

**Case Summary**

1. Case description:
  - The case concerns the House of Lords decision in *Campbell v. MGN Ltd* [2004] UKHL 22 (on appeal from: [2002] EWCA Civ 1373), where the majority of the House of Lords held that MGN's publication of information and photographs about the details of the treatment the claimant, Naomi Campbell, was seeking for her drug addiction constituted an intrusion into Campbell's private life. As a result the award of damages of £3,500 was confirmed for Campbell and MGN were ordered to pay Campbell's costs (under a 'no win, no fee' conditional fee agreement or a CFA) totalling in excess of £1 million including significant success fees. In *MGN Ltd v the UK*, MGN Ltd alleged two violations of its right to freedom of expression guaranteed by Article 10 of the Convention. In particular it complained about the finding of breach of privacy against it and, further, about being required to pay the claimants' costs including success fees.
  - The first ground (rejected by a majority of 6-1) was that the decision that there had been an actionable breach of privacy was contrary to Article 10. The second (upheld unanimously) was that the recoverability of success fees of 100% of the base costs exposed MGN to a total costs liability which was completely disproportionate to the matter in issue and was such as to cause a chilling effect on defending the claim and infringe their Article 10 rights to freedom of expression. The Court concluded that the requirement that MGN pay a 100% success fee to the claimant was disproportionate having regard to the legitimate aim of funding claims sought to be achieved by the CFA regime and exceeded even the broad margin of appreciation accorded to the Government in such matters.
  - The Court indicated in its judgment on 18 January 2011 (which became final on 18 April 2011) that the issue of just satisfaction was not yet ready for decision. In a separate judgment, dated 12 June 2012, the Court awarded MGN just satisfaction of £232,000 (EUR 292,800).

**Individual Measures**

2. **Just satisfaction:**
  - The Government made the just satisfaction payment on 14<sup>th</sup> September 2012 and evidence has been supplied.
3. **Individual measures:**
  - The Government considers no further individual measures are required. This is because under the reform of CFAs which the Government is implementing, MGN would not have to pay 100% success again.

## **General Measures**

### **4. General measures:**

- The Government has made fundamental changes to 'no win, no fee' conditional fee (CFA) arrangements.
- In January 2010 Lord Justice Jackson published his *Review of Civil Litigation Costs: Final Report*. Following the report, the Government published a consultation, *Proposals for Reform of Civil Litigation Funding and Costs: Implementation of Lord Justice Jackson's Recommendations*, in November 2010. Among other things, the consultation contained proposals for a fundamental reform of 'no win, no fee' conditional fee agreements (CFAs), including abolishing the recoverability of success fee and ATE insurance premiums in all categories of cases where CFAs are currently used. The Government response to the consultation was published on 29 March 2011 and indicated that the Government would be implementing the changes to the CFA regime.
- The Government accordingly pursued these reforms in the Legal Aid, Sentencing and Punishment of Offenders Act, which was enacted on 1 May 2012. The Government is at present implementing the reforms to civil litigation funding and costs, including changes to CFAs, all of which will come into force in April 2013. The changes will prevent future infringements of Article 10 rights (such as that which arose in *MGN v the UK*) in defamation related proceedings.

*Historical overview of relevant reports on general measures implementing this ECtHR judgment:*

- Lord Justice Jackson's Review of Civil Litigation Costs:  
<http://www.judiciary.gov.uk/Resources/JCO/Documents/Reports/jackson-final-report-140110.pdf>
- Proposals for Reform of Civil Litigation Funding and Costs: Implementation of Lord Justice Jackson's Recommendations:  
<http://www.justice.gov.uk/downloads/consultations/jackson-consultation-paper.pdf>
- Government response to the consultation:  
<http://www.justice.gov.uk/consultations/jackson-review.htm>
- Legal Aid, Sentencing and Punishment of Offenders Act
- <http://www.legislation.gov.uk/ukpga/2012/10/contents>
- Civil Justice Reforms – Update on the implementation of Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012  
<http://www.justice.gov.uk/civil-justice-reforms>

### **5. Publication:**

- The ECtHR's decision has been widely published, and the subject to considerable comment, in press and broadcast and internet media and has been published in law reports in (2011) 53 E.H.R.R.5; 29 B.H.R.C 686; The Times, January 20, 2011.

### **6. Dissemination:**

- The Government considers it is unnecessary to disseminate the judgment further because the changes it is making to the 'no win, no fee' CFA arrangements were widely published and address the concerns arising from this judgment.

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7. **State of execution of judgment:**

- The Government considers that all necessary measures have been taken and the case should be closed.