IMPACT OF JACKSON ONE YEAR ON – COMMENTS

In Brief

The Focus on costs and procedure that is currently being administered in the wake of the Jackson Reforms bears little or no resemblance to the system of justice that has been administered in this Country for many years.

As a consequence, the principle of justice, as well as faith and respect in the judicial system is under threat if not lost already

1. The Application of Mitchell

The refusal to grant relief from sanctions and the late filing of a Costs Budget initially by Master McCloud and then endorsed by the Court of Appeal has had disastrous consequences on the practical progression of litigation.

All Orders, it seems, are now to be seen as providing not simply a list of procedural dates but rather each date is seen as a limitation period, a point at which the Defendant or indeed a Claimant may apply to strike the other party out for failure to comply. The application in this way is draconian and has caused huge unrest amongst both Claimant and Defendant practitioners, the vast majority of whom litigate cases sensibly and refer back to the Court when needed.

The impact of the application of the Jackson reforms in Mitchell is:

- Orders seen as providing a series of limitation date triggers
- Many more applications are having to be made for matters which normally would be agreed between the parties but now require court approval. This not only detracts from the focus on the case itself but most probably takes up unnecessary court time and increases overall costs of litigation.
- There will no doubt be an increase of professional negligence claims
- This will lead to an increase in litigation in general and PII premiums

The comments that "Justice" is not the key factor is stark and unpalatable to the profession. The demands to comply with all orders as if "unless" orders is completely unworkable and has already led to very many hearings.

2. Costs Budgeting

The Precedent H form is:

- Confusing
- Does not cater at all well for high value catastrophic injury cases

- Requires a huge amount of work to have any semblance of accuracy (and even then it is bound to be inaccurate)

- Is being used as a tactical tool by Defendants putting in low budgets in order to undermine a sensible Claimant budget.

- Is being reviewed by Courts who are unused to dealing with the costing of cases and insufficient training has been provided. The SCCO at least does see cases on a regular basis and so has a better idea as to the reality of costs.

- In particular in relation to Personal Injury/Clinical Negligence work it is very often the case that facts upon which the court needs to adjudicate are developing as the case progresses. It is a moveable feast which cannot be predicted.

The budgeting hearing is carried out at an initial CMC and before Directions are set (when it may be unclear as to whether or not there is to be a split trial which clearly can be a significant issue in terms of costs).

There appears little recognition of the practicalities of undertaking this task at the early stages of a case, particularly in complex clinical negligence and personal injury claims that might run for many years. The option to revert to the Court for an amendment of the budget at a later stage is cumbersome, costly and will result in unnecessary procedural arguments throughout the lifetime of the claim.

Cases are being stalled. Directions would usually be agreed between the parties without the necessity of the matter going before the Court save for approval. Instead each case now has to go to a hearing, something that appears not to have been envisaged or planned for and that must be taking up a huge amount of Court time as a consequence.

By way of example we had a cost budgeting hearing last week. It was listed for 30 minutes. It in fact took 2 ½ hours.

- This is contrary to CPR 1.1(2) which seeks to save expense in a proportionate and expeditious way allotting to it an appropriate share of the court's resource.

- And CPR 1.4(2) in that the case should be dealt with without parties needing to attend court and so ensuring that the case proceeds quickly and efficiently and so saving expense.

3. Example of Delay

The effect of the reforms has also led to considerable delay in the prosecution of proceedings and therefore injustice. For example we issued proceedings in a Clinical Negligence claim which is straightforward and where liability was admitted during the Pre-Action Protocol period. There is a significant dispute in relation to quantum of damages.

Proceedings were issued on 9 August 2013. The claim form, particulars of claim, Schedule of Damages and reports on condition and prognosis were served very shortly afterwards. A defence was finally served on 2 January 2014 (the defendants applied for an extension of time). The parties were required file the N 181 by 5 February 2014. On the 25th of February 2014 the court ordered that there be a CMC fixed for 30 June 2014.

The order for directions to the CMC contains no procedural steps save that there are three different dates to lodge documents prior to the CMC and we are asked to (as the claimant's solicitors) draft the following additional documents: –

1. Summary of the case incorporating the main factual and legal issues

2. A chronology

3. Draft directions

4. A composite summary of the parties cost budgets.

In the pre-Jackson world only item 3 would have been required. Moreover, the CMC would have taken place in February 2014 at the very latest.

The unintended consequence of the Jackson reforms directly has led to: –

1. Substantial delay and injustice

2. An increase in the costs.

Furthermore, the claimant should be entitled to judgement and an Interim Payment. (Which we requested on the form N181 which was ignored) We are now faced with making a separate application for this prior to 30 June 2014.

The procedural steps as noted above are not untypical. Clearly the old system was not perfect but the new system is slow and cumbersome. Taking into the account the matters raised above in relation to court deadlines in our view makes it totally unworkable.

Conclusion

Fundamentally the reforms were brought in without proper consideration of the practical consequences on the day to day workings of personal injury cases. Everyone, even the judiciary is struggling with the sense of these reforms and serious consideration must be given to the unnecessary bureaucracy now faced by all. Our Court system has strived for many years to be a streamlined example of Justice; that reputation is at real risk.

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