

THE IMPACT OF THE JACKSON REFORMS ON COSTS AND COSTS MANAGEMENT

This firm is a diverse practice with an experienced personal injury team, which has been in existence for over 30 years, taking on a broad range of personal injury claims from low value portal claims to catastrophic injury cases.

Almost one year on from the changes implemented by the rule changes and LASPO, we would describe the changes as a "perfect storm" making the ability to represent claimants at all levels as being the most challenging ever faced.

In respect of costs budgeting, this has been seen to increase the costs per case, rather than reduce them. We are being required to produce costs budgets to the end of case, in cases where liability is admitted and there is really no prospect of the case having to go all the way to trial. The costs of preparing budgets and trying to take into account every contingency for the life of a case is adding to the costs of the case which are then unrecoverable.

We are facing costs hearings in person and the true cost of attending those hearings is not reflected in what we can recover.

An example of this is a case being dealt with in Exeter County Court at the moment. There was a directions hearing on the 2nd January, ordered to be in person. The Judge then made directions at that hearing almost as agreed between the parties, save for bringing forward a couple of dates, but then did not deal with costs budgeting, although both parties had filed form H's. A further hearing was ordered to take place in person a few weeks later to deal with the costs budget. There is then going to be a further CMC which will take place by telephone later on. Had this case been dealt with prior to costs budgeting and the rule changes, it is likely that there would not have been a hearing at all and that the directions agreed between the parties would have been approved by the District Judge and as liability is admitted, the case is likely to settle amicably anyway.

The decision in *Mitchell* in respect of compliance with the rules is making life very difficult. In the past it was accepted that parties could agree extensions to the time table without the need to make an application to the court to vary the time table if court dates would be unaffected. This allowed the administration of cases to run smoothly, in large part where delays were not due to any default on the part of the Solicitors. We have now been placed in the position where we have to make an application to vary the time table where medical experts are not able to comply with due by dates, or witnesses do not return paper work, where in the past this could have been dealt with by agreement. We are, therefore, lodging applications with the court to vary time tables with consent orders and we understand this is having a considerable effect on the work of the court, as well as increasing costs.

In terms of the overriding objective the idea that proportionality or a rigid adherence to the rules can override the principle of ensuring justice is done between the parties is in our view a retrograde step.

In terms of overall profitability and access to Justice, one year on in personal injury work, it is not yet possible to know the impact of the reforms, as the work has a "long tail" in respect of payment of costs. We predict, however, that profitability will fall and access to justice will be reduced. It is likely that it will be very difficult to run fixed costs cases profitably. There has already been consolidation in the market place as a result.

In terms of payment of referral fees, the prohibition has merely distorted the market even further. Major players have set up ABS' to circumvent LASPO in respect of referral fees. Big business ABSs (largely the same insurance companies who defend claims) have been able to set up and run their legal arms at a loss while making offers to customers which are uncompetitive , using the new rules to put even more financial pressure on traditional law firms and distorting the market. The fixed fees have been set too low and the insurance ABSs are for instance compounding the problem by saying they will not be charging a success fee while announcing to the financial markets that they do not expect their legal services arm to

contribute to group profits for the foreseeable future. (See announcement by Allianz this week.) The new rules have allowed this uncompetitive practice to develop unhindered and in the medium to long term access to justice will be adversely affected. It will be interesting to see whether the offer not to charge a success fee will remain once the competition in the form of traditional law firms has gone out of business or no longer undertake Personal Injury work.

Overall, the reforms have not been good for access to justice and consumer choice will become even more restricted as time goes on.

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