

**Evaluation of the Pilot of the Docketing of Files at
Leeds County Court and Registry.**

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Contents:

Acknowledgements

Summary of Findings

Context for the Pilot

- **What are the perceived benefits of docketing**
- **What problems have prevented docketing thus far**

Methodology

The approach at Leeds

- **Outline of the Pilot**
- **Details of the process**
 - **Procedure**
 - **Experience**
- **What advantages have accrued**
- **What are the limitations**

Conclusions

Evaluation of Docketing of files at Leeds County Court and Registry.

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Summary of Findings:

- Docketing depends on an effective process for the allocation and distribution of cases. At Leeds that includes a system of ‘own listing’ and judicial specialisation which appear to bring additional benefits but are not key to docketing.
- The administrative staff are the key players in ensuring a docketed case gets back to the right judge at the right time.
- Leeds’ system of docketing builds on an informal system operated for a number of years. In that sense the ‘working culture’ at Leeds allowed for its smooth introduction as a formal case management mechanism.
- Basing the docketing pilot on previous informal practice has meant that docketing has been introduced in a relatively light touch sense in that it attached to district judges alone and includes only pre trial case management not the trial itself.
- To include circuit judges within an effective docketing system would require much more fundamental change.
- Practitioners did not see it as necessarily beneficial that the pre trial judge and the trial judge should be the same person.
- The district judges have been able to reflect on a number of advantages brought through docketing:
 - Satisfaction in bringing a case to settlement or trial
 - Greater opportunity to steer the case and check its progress
 - More consistent case management
 - Less ‘forum shopping’ or opportunities to mislead the judge
 - Potential for time to be saved in preparation and at trial.
- At Leeds, a larger court centre, there was no discernible loss of flexibility or inefficient deployment of resources caused by docketing. Small court centres may find that docketing reduces flexibility

- There have been no significant financial implications to Leeds to run the abbreviated docketing scheme.
- During the relatively short pilot period there was no clear perception from the judiciary that docketing would or did reduce costs but cases were managed better and were better prepared for trial.
- Local practitioners had not perceived a difference in costs to date though there was a perception that ultimately fewer management hearings might be necessary.
- The abbreviated docketing pilot brought advantages using existing resources and without major reorganisation. There is little to prevent its adoption in larger court centres other than the potential reluctance attached to a change in working cultures.

Context for the Pilot.

The immediate context for our report is the *Review of Civil Litigation Costs: Final Report* (2009) conducted by Lord Justice Jackson (the “Jackson Review”). In broader terms, our report forms part of an ongoing conversation around case management in civil justice, an area of concern which was brought into focus by the Woolf Report, *Access to Justice* (1996). The Jackson Review itself deals with a broad range of cost management issues in civil justice. Docketing falls under the discussion associated with Recommendation 81 in the Review:

Measures should be taken to promote the assignment of cases to designated judges with relevant expertise.

This recommendation also raises the issue of judicial specialisation, which is not the focus of our report, and is also not, as a matter of logic, a necessary precondition to docketing. Nonetheless, it should be noted that at Leeds, where this research was conducted, the docketing system sits in a context of explicit judicial specialisation.

Docketing itself does not have a single agreed definition, although the underlying principles seem to be relatively clear. The process involves the assignment of a particular judge to a particular case. The Jackson Review, Preliminary Report, referred to docketing in these terms:

5.9 The docket system. The system of assigning a case to one judge from issue up to and including trial is sometimes referred to as “docketing”. The “docket” is then the collection of cases which a particular judge is managing. It is extremely difficult to operate a docket system in England and Wales, because of the way that the judiciary are organised.¹

This approach envisages docketing as the management of a case by a particular judge all the way through to and including trial if necessary. It should be noted, however, that the docketing system at Leeds encompassed the pre-trial process, but not the trial itself.

Potential benefits of docketing

The potential benefits of docketing have been identified in a number of contexts. The source of the benefits is judicial continuity, which may lead to:²

¹ The Review of Civil Litigation Costs: Preliminary Report (2009) paras.5.9, p.433.

² These potential benefits are drawn from and / or informed by The Review of Civil Litigation Costs: Final Report (“The Jackson Report”) (2009); Report of the Scottish Civil Courts Review (“The Gill Report”) (2009) para. 20,

1. The earlier narrowing of issues and the corresponding closing off of opportunities for the reopening of 'dead' issues, with the potential for earlier settlement
2. The earlier fixing of dates for hearings, and associated clarity for parties
3. Fewer, but more valuable case management conferences
4. Savings in time and costs, in both preparation and hearings, given that the docketed judge may already be familiarised with the case and may not need to 'get up to speed' as might be the case for a different judge
5. Consistency of judicial approach during a case, which in turn, creates certainty and predictability for legal representatives
6. Less opportunity for 'forum shopping' for a 'friendly' judge, and less likelihood that a judge's lack of familiarity with a case might become a tactical consideration for legal representatives
7. Greater judicial satisfaction through managing the case to a conclusion

There does appear to be a general sympathy in principle towards docketing. Even though the broader case management and costs agenda remains contested, docketing itself has attracted support in a range of contexts.³ The *Report of the Scottish Civil Courts Review* ("the Gill Report") in Scotland recommended the adoption of a docketing regime in civil courts, and the discussions leading to the Final Report of the Jackson Review identified a body of opinion favouring a move towards docketing. The Jackson Review also draws on experience in other jurisdictions to support the case for docketing.⁴ Even Professor Zander, who has been a notably robust critic of other aspects of case management, has suggested, in his contribution to discussions of the Gill proposals, that there are potential benefits from docketing.⁵

Why has docketing not taken off before now?

Nonetheless, docketing has been floated in the past and yet not taken forward. Lord Woolf, in the Interim report on *Access to Justice* (1995), stated (emphasis added):⁶

p.103; Victorian Law Commission (2008), Report of Civil Justice Review, Chapter 5; District Judge Giles, 'Docketing of files at Leeds County Court and District Registry', (2010) unpublished.

³ For example, see: The Review of Civil Litigation Costs: Preliminary Report (2009) paras.5.11 - 5.13, p.434.

⁴ *Op cit.*, chapters 58 and 60.

⁵ Zander, M, 'The Report of the Scottish Civil Courts Review (The 'Gill Report')', Conference Paper, 1 December 2009, <http://www.scottishciviljustice.ac.uk/reports/MZander.pdf>, accessed 5 December 2011.

⁶ Lord Woolf, *Access to Justice: Interim Report* (1995), <http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/civil/interim/chap11.htm>, accessed 5 November 2011.

2. One way of achieving continuity of management would be by the allocation of a "docket" of cases to each individual judge, which is the practice in many jurisdictions in the United States of America. This provides a sense of judicial involvement and responsibility in the management of what is, in effect, a judicial caseload. *However, it requires a degree of continuity which our system only provides at present in some of the specialist jurisdictions.*

3. The introduction of "single docket", whereby a case is allocated to a single judge from the outset for management and trial, would provide continuity and commitment *but, in our present system, it would do so at the cost of flexibility and the efficient deployment of judges. It would not allow for the flexible movement of cases to the appropriate level of judge* The complexity of a case can change as a result of case management. In a single tier judicial system, this is not a problem *but it would result in unnecessary and potentially inappropriate use of judicial resources in a two tier judicial system. In addition, a wholesale move to such an approach would lead to a far more specialised judiciary.*

Notwithstanding the potential benefits of docketing which Woolf himself recognised, the stratified nature of the judiciary couple with the different roles taken by judges in different 'layers'; overall capacity in the judiciary; and the implications of judicial specialisation were obstacles which, at the time, could not be surmounted. Docketing was not viewed as a matter for realistic practical implementation.⁷

The concern remains live that docketing may have negative impacts on the flexible deployment of judicial resources, particularly in smaller court centres. Although the remit of the Jackson Review does not extend to judicial deployment, deployment is clearly a relevant factor in understanding the possibilities and limitations of docketing schemes.

The potential benefits of docketing provided a framework for our consideration of the Leeds pilot scheme, and we have organised the discussion of the experience at Leeds around the specific potential benefits identified by District Judge Giles.⁸ Our report suggests that some of the benefits are more readily apparent than others in the Leeds scheme. We have also given consideration to the extent to which the benefits which seem to exist in the scheme are attributable to docketing itself or to other aspects of case management practice at Leeds.

⁷ Professor Zander, *op cit.*, in his contribution to the discussions of the Gill Report, suggests that the relatively smaller size of the Scottish system may make docketing more of a realistic proposition there than in England and Wales.

⁸ *Op cit.*

Methodology

The pilot project at Leeds involved the formal introduction of the docketing of cases to district judges for pre trial management. A qualitative approach was used to explore the perceptions of key court staff and a majority of the judges (district and circuit). It was felt that statistical data would yield little of definitive consequence given that the pilot was the formalisation of an existing process so there would, for example, be unlikely to be a greater throughput of cases. In addition, cases reach settlement for such a wide range of reasons that, in a short pilot, it would not be possible to attribute through statistics any effects on settlement to docketing. A small number of local practitioners were also consulted, though given the short time frame, their responses were largely based on a perception of docketing as a concept than the observation of practical effects.

In depth semi structured interviews were carried out beginning in November 2010 through to November 2011 with court staff and the judiciary. The views of local practitioners were sought between September 2011 and January 2012. The results in this report draw on those qualitative results.

Outline of the Pilot Project

The basic notion behind docketing is that it ensures continuity. However, this cannot be fulfilled unless there is a process in place that ensures a case is listed before the same judge each time and that it is done so at points in which the case demands it. The methods adopted for distributing the case files are crucial in bringing about effective docketing of cases.

The docketing pilot administered at Leeds involves the management of individual multi track cases by a single named judge, who is responsible for that case up to, but not necessarily including, the trial. The pilot involved only district judges. The involvement of circuit judges was a serious consideration – a docketing system that saw management of multi track cases from allocation through to the completion of the trial would, of course, have to include circuit judges by necessity. However, the complexity involved in bringing about such a scheme at Leeds (echoing one of the problems identified by Lord Woolf over a decade ago) saw the scope of the pilot narrowed to include management pre trial but not through the trial itself. The judges involved in docketing cases are, therefore, all district judges. Deputy district judges and circuit judges are not involved in a formal docketing process.

From this perspective it might be argued that the pilot has sidestepped some of the issues that are seen as a barrier to the introduction of docketing. However, if the pilot brings advantages that also accrue with a ‘full’ docketing process that continues through to the completion of the trial then it might be possible to introduce this less intensive version of docketing more easily at less overall cost.

Procedure at Leeds.

Distribution of cases.

The method of ensuring a case reaches the appropriate assigned judge is key to the success of the docketing process. At Leeds there is a system of ‘own listing’ which has clear implications for the operation of the allocation and distribution of cases. It is a fundamental feature of the Leeds process and therefore requires some discussion, but it is clear that this is not an essential prerequisite for the introduction, or efficient performance of, docketing. The docketing pilot only applies to those cases on the multi track. To describe the process:

1. Following the creation of a claim file, Claims Section ensures the files are made available to an allocating judge. Cases which very clearly fall within a specialist area (Leeds has a number of clearly identified areas that are covered by judges specialising in those fields) that is not covered

by that day's allocating judge should be held back and passed directly to an appropriate district judge.

2. The allocating judge determines the relevant track for the case. If it is a multi track case the judge is faced with three choices:

(a) If it is within his area of specialism he will be expected to docket the case to himself;

(b) If it is a 'general' case (i.e. a case type that has not been denoted as a specialist area) he will also be expected to docket the case to himself;

(c) If the case falls into another judge's area of specialism the case will be sent immediately back to orders section for redistribution, the original judge having identified the relevant specialist area. (As noted above, cases falling clearly within a specialist area would be held back but, on occasion, the specialist field is not readily apparent to those in Claims Section and therefore the allocating judge available on the day who could not take such cases within his specialist areas would be expected to identify the area before returning it for redistribution).

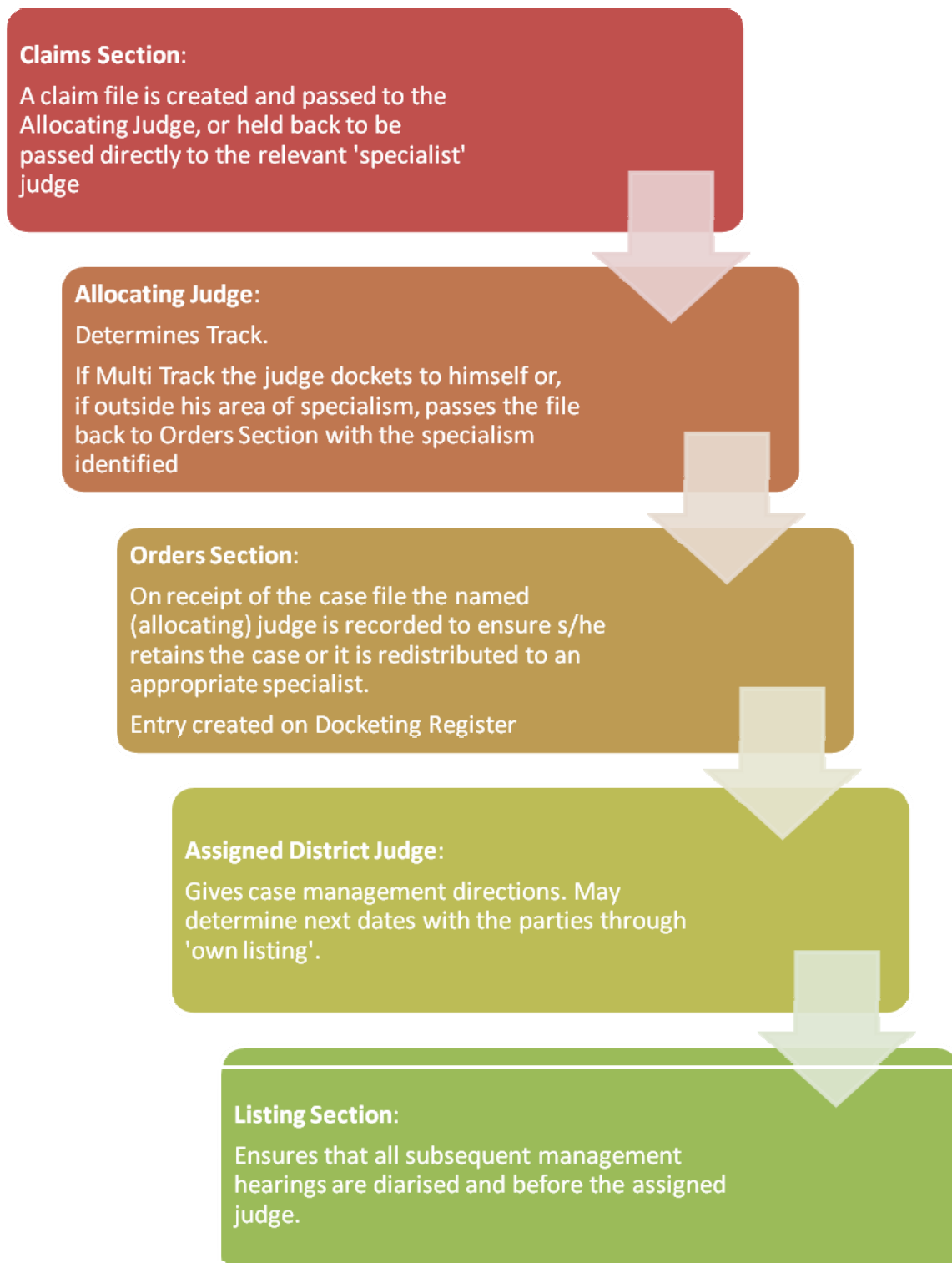
3. Orders Section receives the cases back from the allocating judge and mark the files with the name of the judge to whom the cases has been docketed. This ensures that the case files are always distributed to the appropriate judge and at the appropriate time; that Orders Section has an up to date list of judges' current civil work so that they can allocate appropriately the cases that need to be redistributed; and that Orders Section can maintain a consolidated list of judges' workloads over a period of months to ensure a degree of proportionality on overall workloads so far as possible (though it is recognised that the district judges work is very varied and a record of civil business may reflect only a small part of the overall workload). A list of docketed cases is maintained on a Docketing Register.

If a case file has been returned to Orders Section from the allocating judge for redistribution they would then refer to the current workload list of each district judge exercising the specialism identified and redistribute accordingly. As the allocating judge has defined the case type it allows for a more efficient redistribution process.

4. Case files are passed by Orders Section to the relevant assigned judge for case management directions.

5. The assigned judge gives case management directions and informs the Listing Section such that all future case management can be performed by the same judge.

Figure One:



Each district judge at Leeds has completed a questionnaire to denote what his 'specialist' areas of expertise are. This, coupled with docketing, is to ensure that management through specialist knowledge of the area is given to each case by the most appropriate judge. Whilst the distribution of cases to particular judges because of their specialist knowledge or expertise has and does happen on an informal basis across the court system, during the period of the pilot at Leeds, specialist categories have been identified more formally alongside a list of judges dealing with those areas to ensure a more nuanced approach and fewer 'general' cases. Under the pilot, eleven specialist areas⁹ have been identified, chosen partly on the nature of the work brought to Leeds.

Own listing provides for judges to list future hearings before themselves. Each full time district judge at Leeds has own listing days built into his schedule. The usual pattern would be that for three weeks of the month the judge would have two 'own listing days' per week. The fourth week would be a court week where no own listing is provided for. On the 'own listing days' the judge dealing with cases docketed to himself can arrange the time and date with the parties when they need to be seen and issue other relevant directions directly without the need to involve Listing Section in the identification of diary time. This ensures that the management of the case has begun at an early stage and a timetable has been set in motion. The judge would keep Orders Section and Listing Section fully informed of the progress of the case but own listing means that s/he is managing the timetable and the pace of the case from the outset. This system can place the burden of finding time slots that are suitable for the demands of that case squarely on the judge, though this is not essential. For less urgent issues it may still be the listing office that determines an appropriate date within the judge's calendar.

Management

Docketing does not affect the tools available for case management but ensures that, through the continuity of the pre trial stage being managed by a single judge, and the familiarity the judge has with the case file, a number of consequences should follow. These include, amongst other advantages: the opportunity to timetable cases more precisely; the prospect of being able to check on the progress of the case; the possibility of prioritising the more urgent cases; and a consistency in approach. Placing a case before the same judge throughout its pre trial stage however, might in theory reduce flexibility such that the process of management becomes delayed. For example, if a particular judge is absent (in a short term situation in which little notice could be provided) or has a particularly heavy workload then it follows that if a case has

⁹ There is a further category denoted as 'other' which includes all cases not falling within a designated specialist area.

been assigned to that judge it must be delayed until the diary allows for it to be dealt with. Such a rigid approach to docketing would potentially have this effect; however, the process in Leeds is such that in urgent situations another district judge (preferably with the relevant specialism) could be drafted in to assist with management. This decision would be made on a case by case basis though the typical response would be to attempt to keep the management of the case moving.

The Experience at Leeds

For a number of years there has been an informal system of docketing at Leeds coupled with own listing and specialisation (albeit, the latter to a much lesser degree). Therefore, there has been no clear break between the past and the present such that clear differences and outcomes have been experienced. Nonetheless, it has been possible to gather qualitative data from the district judges and court staff involved in the pilot to see if any of the anticipated benefits of a formal docketing system have been realised. Local practitioners have also provided some data though it was clear that such views were based more on the notion of docketing rather than a perception that the process at Leeds had ‘changed’ in some way. None of the local practitioners interviewed were aware that a formal pilot was in operation.

Judicial Continuity

Docketing is driven by continuity. That is the reason for it. [District Judge]

Formally docketing a case only takes place in the multi track which consists of, by definition, the more complex cases which might require a tailored approach to management by the judge. Cases in the small claims track and the fast track will often only appear before a judge for written directions. As such, there is no genuine opportunity for continuity. With complex cases there would appear to be obvious benefits of continuity in allocating a case to an individual judge throughout its pre trial stage.¹⁰ At Leeds the idea that judicial continuity could lead to a number of benefits was well accepted, and these potential benefits are considered below. However, it was also suggested that the idea of continuity alone being advantageous and worth pursuing should not be overestimated: not all civil cases, even those in the multi track, would see the benefits of continuity because some don’t have any genuine continuity about them:

¹⁰ For example, a partner at Herbert Smith commented: “There’s got to be informed case management. The last thing you want is an ill-prepared judge” in K. Dowell, ‘Woolf Reforms: Lawyers continue to wrangle over merits a decade on’ (2009) *The Lawyer*, June 8th.

Civil cases in truth don't all need docketing. For example, certain types of cases need to get moving but a large personal injury claim might not come back for nine months or so and the particular judge may not have any better recollection of that case than anyone else. [District Judge]

This does not of course militate against docketing or suggest that there may be drawbacks, but simply that the perceived benefits of docketing for a judge in terms of continuity may not always be apparent in every case.

It was suggested that continuity of itself brought some administrative advantage:

There is a huge administrative advantage to it ... because it means the work is evenly distributed and from the staff perspective if something does happen on a case then rather than having to [look for another available judge whose time is also scarce] it can be taken to the judge whose name is on it and who will then deal with it. [District Judge]

Such an advantage might, on occasion, be outweighed by the inflexibility this might bring about and the potential for consequent delay, but the issue of flexibility is discussed below. Firstly, the advantages linked to continuity will be considered.

Time could be saved for the judge in preparation.

Lord Woolf, who rejected the idea of docketing in 1996 due to the practical problems surrounding implementation, said in 2006: "If a judge does not know what case he is going to be hearing next, how can he do the preparations for that case which could perhaps be done on the lean days in the case he is hearing at the time?"¹¹

This is very difficult to quantify other than to seek the perception of those involved. Whilst intuitively one might anticipate this advantage to accrue it was not readily apparent as an aspect of docketing so much as an advantage of specialisation. The perception was that judges may often not remember a case because it is docketed to him or her.

It is overplayed to say that because [a case] is docketed to you, you will remember about it. [District Judge]

Nevertheless, when the case was explained a second time:

¹¹ R. White, 'Woolf calls on judges to make better use of powers', (2006) *The Law Society Gazette*, July 27th.

... it would ensure that the relevant points would be picked up much more quickly, and that is perhaps the principal saving. [District Judge]

Arguably, it removes the need for a full explanation of the issues each time the case comes before a judge. In addition, time savings appear not only through some knowledge of the case at hand but through dealing with other similar cases which enabled the nuances and key issues to be identified and dealt with. This potential advantage is perhaps rather more closely linked to the idea of docketing *and* specialisation. In Leeds there has been less overall support initially for the idea of specialist judges rather than docketing, which is seen as a formalisation of good practice, but the two concepts do appear to have mutual benefits.

It was felt very clearly that advocates favoured dealing with the same judge in a case, which would be a benefit of docketing, but that judges with specialist knowledge of the area and who were docketed to a case were of greater benefit still. There was a clear sense that specialist advocates prefer specialist judges. This is also very clearly supported by data from outside of the pilot study.¹²

Docketing has greater benefit if we are a little more specialised mainly because of the support from the professions. They prefer to see, for example, that a chancery judge has got a chancery case. They would like us to be very specialised. [District Judge]

It was recognised by court staff and many of the district judges that specialisation can enhance some of the benefits brought about by docketing (in this instance, the savings made in preparation time) but it was also very clearly stated that specialisation and docketing are mutually beneficial but not mutually dependent.

Specialisation makes [docketing] better, more valuable. [District Judge]

There is no reason why a judge can not be assigned to a case whatever the case type. Indeed, the additional aspect of specialisation might bring a minor disadvantage to the administrative staff because if there is a case to list it cannot simply be placed before any available judge – the choice is restricted – but to date this has not caused any problems at Leeds - a larger court centre.

Though difficult to quantify it was also suggested that there might be modest improvements in the allocation process in that case files falling within a clear specialist area could be assigned to the most appropriate judge more quickly, without the need for it to be placed within a group of

¹² For example, see: The Review of Civil Litigation Costs: Final Report, (2009) para. 3.5 p.431.

files awaiting allocation which might otherwise involve some movement of the files between judges and Claims Section.

It may reduce ‘forum shopping’.

The clear perception that emerged from a number of interviews was that advocates certainly prefer an application to be heard by the same judge who heard the previous one. There is a desire for a consistent approach to be taken. Nevertheless, it was also reflected that consistency is not *always* what an advocate wants:

... where the parties are not particularly happy with the particular district judge assigned then consistency is not always welcome. [Practitioner]

There has been limited evidence that some advocates have engaged in ‘forum shopping’ – hoping to get cases before a particular judge – in an attempt to get a favourable result in a pre trial application, but that has not been a major abuse. Nonetheless, it was suggested that the docketing of cases reduces that as a possibility.

The judge could check progress.

A clear advantage of docketing should be that the assigned judge can keep a closer check on the progression of the case. In reality it was suggested that in many cases it was the position that given the time taken for the case to return to court the judge would not have a clear recollection of previous events, but would recall “the main thrust of it”. This was not seen as a disadvantage – when cases were not called back for several months it was because a need for closer management was often not necessary. In more complex cases the judge could call the case back at a date mutually agreed (through own listing) and, it was perceived, a series of tailored directions leading to that point would be more likely to be respected as there was a clear target to work towards.

If a judge was to say to someone ‘deal with a particular point in a case by a certain date’ and that hasn’t happened then they have to answer to that judge - the one who set the timetable. It’s a harsher discipline than being in front of another judge who would not have details on what was taken into account when the timetable was set. [District Judge]

This echoes some of the language of the Jackson Report which stated that, “judges should take a more robust approach to case management, to ensure that (realistic) timetables are observed and

that costs are kept proportionate.”¹³ Certainly, the issue of being able to be more robust about holding the parties to the timetable was seen as a clear advantage – one could be more robust in holding parties to a timetable that has been determined by the same parties previously.

It should produce more consistent management.

The Jackson Report commented that:

In practice, many CMCs resulted in directions which were close to formulaic. A practitioner stated that CMCs were most effective in ancillary relief proceedings in family cases. This was because the judges had read the papers and were able to narrow issues. One district judge stated that in the county courts district judges were hampered by lack of IT. Very often the first he knows of a problem in a case is when he sees the pre-trial checklist. District Judge Cawood (who sits in Portsmouth) stated that all bigger cases should be docketed to specific judges, in order to achieve consistent case management.¹⁴

The district judges at Leeds did not recognise the problem of formulaic case management hearings (possibly because informal docketing and own listing has been evident for a number of years) but there was an explicit recognition that with docketing the parties would experience one management style that was consistent as opposed to “many pairs of hands all having a go at the case” [District Judge]. It was also suggested that consistency can and does benefit court users because individual judges have their own idiosyncrasies. Practitioners recognised that docketing brings the advantages of certainty and predictability.

Solicitors prefer the devil they know; they know the idiosyncrasies of judges; they don’t like inconsistent forms of management in the same case. [Judge]

For example, a particular judge might be rather stricter on adhering to timetables than another. When the parties are aware of this they are able to work more cooperatively with the judge through having a clearer knowledge of what is expected. It was certainly perceived by practitioners that docketing brought more consistent management. The point was also made that judges can also get to know the advocates in the case, and vice versa, which again aids cooperation and the more efficient completion of business. A further claim was that specialisation also provided the additional benefit of producing consistency as the relevant judge would have a clearer knowledge of the demands of the case from the outset, and specialisation in

¹³ The Review of Civil Litigation Costs: Final Report (2009) para. 6.8, p.xxiii.

¹⁴ Ibid. para. 2.5, p.388

particular helped the judge to narrow the issues but this was also seen as a consequence of docketing.

It is hoped, though there is little evidence to date, that consistent management by specialists might also reduce the number of directions hearings overall, through close attention to the key issues at hand, and ultimately this will lead to a speedier process.

It has produced better decision making and more consistent decision making, and specialisation has helped that too. [Judge]

Further, though the quote above suggests that the lack of IT caused problems for district judges in only being made aware of any problems potentially very late in the day when the case files were delivered to them, this was not an issue with docketing. The judge would be alerted to any problems with his own docketed cases on an ongoing basis and this was not hampered by any lack of IT.

Greater opportunity to steer a case.

This was seen as a key benefit of docketing and was even more so when linked to the notion of 'own listing'. The benefit of own listing was that it was a "huge advantage" to be able to inform the parties immediately of the next date on which they would need to appear and then directions could be tailored to that date with certainty that it was already fixed. The availability of own listing was seen as a beneficial factor in this regard but both the judges and the court staff were clear that this was not an essential element.

Court staff had the perception that the ability for a judge to steer a case meant that management was more efficient and the time taken over case management in individual cases was reduced too.

It's difficult to pick out reasons why but looking back over [concluded] cases the ones that were docketed appeared to have been resolved more quickly. [Court staff]

The judges thought this was a clear possibility but was essentially immeasurable. There was no clear conclusion drawn by practitioners though it was suggested that a docketed case might need fewer case management hearings. It was thought by the judges that the docketing pilot led to greater control over the case which in turn should lead to fewer adjournments.

If it's managed better with greater control and suchlike there might be fewer adjournments; it might get to trial quicker; and be better prepared. The allocation might

be a bit quicker too – instead of cases being allocated in date order, specialist cases would be identified more quickly and moved on to the appropriate judge. [Judge]

The question was posed whether docketing, and the benefits of consistent management by (in the Leeds example) a specialised judge who would be able to ensure that the case remained focussed on the key issues and was therefore steered appropriately, might promote settlement. There was no clear evidence to support this though it was a reflection that:

Docketing might lead to an earlier and more focussed trial which might ultimately encourage settlement but settlement itself relies on so many factors. [District Judge]

The case might get to court quicker as a result and would certainly be better prepared for trial. [Judge]

Local practitioners thought that a docketed case ought to save time in terms of preparation; however, there was no clear evidence of a greater throughput of cases. It is also, of course, the case that most multi track actions do settle in any event but the ability to keep the parties fixed on the key issues was beneficial in itself.

Less opportunity to ‘mislead’ the judge.

It was seen as a further advantage of continuity that it makes it easier for an assigned judge to correct mistakes or misleading information given by advocates whether intentionally or otherwise. This is subject to the caveat that the assigned judge might not have a clear recollection of a case last seen many months previously but it was also thought that there would be less likelihood of misleading information being brought to bear.

A related point was made that consideration should be given to the idea that if docketing was to be adopted nationally it would be important that a judge who docketed a case should also be the one who sets the budget. It would be hard for a judge to recall in six months exactly why s/he set the budget for a case at a particular level but much easier for the assigned judge than someone else and:

It would certainly dissuade parties from misleading the judge as to the budget if he set it at the outset. [District Judge]

Increased judicial satisfaction in steering a case to conclusion.

Docketing allows for better management and a greater sense of satisfaction as a result [Judge]

It was generally accepted that there was a greater sense of judicial satisfaction in being able to manage a case through to its conclusion. This was particularly true of cases falling within the judge's specialist area for obvious reasons. However, docketing might mean that district judges would have to docket some cases to themselves that were of a mundane nature that prior to the formal docketing pilot would probably not have been kept by the judge giving the initial directions. Nevertheless, there was no sense that such mundane cases were falling disproportionately upon some judges and, even with those cases, there was a deal of satisfaction in steering them through to conclusion rather than appearing in the pre trial stage to make management decisions in a less coherent setting.

It would be appropriate to conclude that of the benefits identified at the outset of the pilot almost all have been recognised by many of the district judges. Of the ones that are difficult to evidence, namely, time savings both at preparation and hearing, many judges still felt that there was a perception of saving or, at worst, no difference. Given that informal docketing already existed at Leeds it would have been very difficult to establish further savings through a formal pilot. Practitioners too perceived many of the benefits related to consistency, certainty, predictability and saved time.

What are the Limitations?

Early Teething Problems

Given the history of informal docketing at Leeds the pilot did not raise any major problems in administration.

The thought of docketing was massive but the reality is that it isn't a drain on resources, it isn't difficult for us to do and it isn't difficult for the judges. [Court staff]

The administration of the system is really no different than it was before other than it only applies to multi track and we call it docketing. [Court staff]

Local practitioners were not aware that a docketing pilot was in place and this may be attributed to the fact that: (a) there has been no clear break between old informal practices and the formal pilot scheme; (b) the formal pilot caused no administrative issues so was not 'seen'; (c) a short pilot would inevitably reduce the effect of any benefits brought by docketing.

There were some minor difficulties though these have been worked through during the pilot.

- Initially there was a problem with some district judges not keeping Orders Section informed that they had docketed a case and as a result it would not appear on the docketing register. This was a relatively minor problem as it did not prevent the case file getting back to the right judge as their order would have asked for it but it did prevent an accurate picture of which cases were docketed to whom being maintained. One result is that there is doubt as to how accurate the docketing register has been but also recognition that such inaccuracy of itself that is not a significant problem. The docketing register was established for Leeds' own convenience and to ensure a degree of transparency in docketing such that staff and judges could see to who cases were docketed and their case type. However, the evidence suggests that the register has not been referred to on a regular basis and its efficacy is being considered.
- Another early problem was that some district judges were docketing cases to themselves that were outside their stated areas of specialism, but when the case files were returned to Orders Section, directions would have already have been given by the allocation judge. Now that there is familiarity with the specialist categories this has ceased to be an issue. Again, this was a teething problem with the administration of the system that had no detrimental effect on the management of cases.
- A further issue confined to the early days of the pilot was that when allocating cases the judge would not always identify the case type to ensure that it could be accurately recorded on the register. The importance of this was that if it did not fall within the allocating judge's specialist field it would have to be redistributed and this can be done more quickly if the case type is known. An allied problem was that sometimes a case type was identified which did not exist on the Leeds list of specialisms. To counter this problem Leeds chose to identify a case type as 'other', that all judges would be available to manage.

Two further observations were made:

There have been no real issues around docketing itself but more around the specialisms.
[Court staff]

There was some initial tension around the idea of whether judges ought to be 'general practitioners' or specialists but this was not central to the docketing pilot.

It has been an important safety valve at Leeds that a judge can pick up a case outside of his specialist field if necessary because he was the only available judge. [Court staff]

Docketing can reduce flexibility by limiting the number of judges available. Leeds has sought to ensure that flexibility is retained so far as possible by ensuring that in those few instances where a specialist was not available the case, if necessary, was still allocated to a district judge to give directions.

Aside from reconsidering the utility of the docketing register the court staff were clear that the pilot had been a success from the administrative perspective and no changes were necessary.

The Involvement of Circuit judges.

Those responsible for the conduct of the pilot at Leeds recognised from the outset that to use circuit judges was simply too difficult to include within the docketing pilot. Their varied itineraries and the difficulty of establishing their availability with a degree of certainty are the key problems. Without considerable reform to the existing process circuit judges cannot be used in docketing if its effect is to be maximised.

Why have circuit judges not been included?

In the multi track the classic position is that case management will be undertaken by a district judge but tried by a circuit judge. This instantly creates a different scenario from the classic US notion of docketing where the judge is responsible for everything including pre trial case management and the trial itself. It also reflects a difference from the system more recently adopted in Australia.¹⁵ The difficulty of introducing docketing to a tiered and multi jurisdictional judiciary was also a problem recognised in the Woolf Report.¹⁶

In the vast majority of multi track cases the first time a circuit judge will see the case files will, in all likelihood, be on the eve of the trial – the circuit judge doesn't get to see and therefore manage the case before the trial. Occasionally, if a problem has arisen in the pre trial stage of a case and it has been sent to the circuit judge he may wish to retain management of it to prevent the problems arising again. This is a reflection of an informal docketing process and that works more particularly for those who are at one court centre for the vast majority of their time. However, for most circuit judges there are three particular problems associated with docketing: listing patterns; geography; and itineraries.

¹⁵ For a review see: Australian Law Reform Commission, Review of the Federal Civil Justice System, (1999) Discussion Paper 62; See also, Victorian Law Commission, Report of Civil Justice Review, (2008) Chapter 5.

¹⁶ Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales, *op.cit.*

1. Geography:

At Leeds there are 7-8 different circuit judges who could do multi track trials. Of those only 2 are actually based in Leeds. Of the others some do, for example, family and civil work; others do a combination of family/civil/crime. In addition to the different jurisdictions, there is the obvious 'problem' connected to circuit judges – that of working at different locations within the area. These two problems combined means that even if a circuit judge did see a case file at an appropriate time to take on the management, he would be unlikely to want to do so because, for example, in two months time he may be doing crime work for a couple of months in another location.

Working in different jurisdictions and different areas really doesn't lend itself to docketing – that would always be the case in the country but also in a place like Leeds.

[Judge]

2. Itineraries:

The problems of geography might mean that the perceived benefits that docketing brings arguably would be less apparent, but further, docketing might actually bring disadvantages by slowing a case down when coupled with a lack of flexibility within the diary. For example, one circuit judge at Leeds does family, crime and civil work in 2-3 month periods. If that circuit judge had just done a case management conference towards the end of the civil period then, without more, the docketed case would have to come back to that judge in four to six months time which might not suit the needs of the case.

3. Listing patterns.

Multi track cases have a high settlement rate; a consequence of which is that when forward listing cases for trial they are at least triple listed in the knowledge that spaces will appear in the diary. For example, each week there might be two circuit judges sitting and one district judge. There are likely to be lots of fast track cases listed which can be tried by either, and multi track cases listed which would be done by a circuit judge or recorder. If there are just two circuit judges sitting then six trials will be listed with the likelihood in practice then they would result in one trial each taking place. However, if the six cases had been docketed there is a reasonable chance that the two that did reach trial were assigned to the same judge. If all cases went to trial then listing would be much less of a problem from a practical perspective but a high settlement

rate (which is desirable) means that over listing must occur. It was suggested that a system of docketing which keeps cases with a circuit judge throughout the process inevitably leads to a less efficient listing process. Currently, the more efficient listing process is to pool the cases bound for trial and they are taken by the judge whose notional workload has melted away through settlement.

The more things you docket the more difficult listing becomes. It becomes very difficult to list final hearings which are the ones that tend to settle. [Judge]

The difficulties of having a system that takes into account docketing, specialisms and circuit judges availability are huge. The easier solution is to deal with the type of work done by circuit judges work than attempt to devise a system that works with their current patterns. Circuit judges can work in five or six different areas – it's conceivable that they may be needed in all those areas at the same time – whilst this exists it just isn't possible to ensure continuity. In terms of priorities, civil would always be the poor relation.

The current view at Leeds is that the combination of problems faced when trying to assign cases to circuit judges is, without considerably greater administrative changes, prohibitive.

Docketing circuit judges with civil work can't be looked at in isolation – we simply don't have the control over their sittings like we do with district judges. [Court staff]

In sum, circuit judges are very flexible whereas docketing is not. However, docketing cases for pre trial management and retaining a more aggressive listing process for circuit judges brings advantages from both perspectives.

Interestingly, the practitioners did not see the need for the judge dealing with pre trial management to be the same as the trial judge for the benefits of docketing to accrue. The emphasis appeared to be placed upon the advantages brought about at the pre trial stage, perhaps naturally given the proportion of multi track cases that do not in fact reach trial.

Deputy District Judges

Deputy district judges were not formally a part of the docketing pilot. It was noted:

They couldn't become fully involved in docketing as they simply aren't available in the same way to be able to effectively manage cases at the same speed. They would potentially have to involve others in case management - defeating the objective. [Court staff]

Nevertheless, deputies could be used on occasion to deal with urgent issues where the district judge was unavailable at very short notice. The administrative staff therefore would find it very useful if the deputy district judges were also declaring their list of specialisms so that they could be used most effectively in docketed cases should the need arise. However, the lack of a clear picture of what a deputy district judge's itinerary and availability is, is a further disincentive to including them in any ongoing case management process.

It was noted that the use of docketing and specialist judges could potentially impact upon the career development of deputy district judges and their ability to gain relevant experience and expertise. At Leeds, their work is limited to 'general' cases and small claims issues. Any cases that fall within a specialist area are automatically given to a district judge, potentially obstructing a deputy's ability to gain valuable experience and expert knowledge of case management in specialist fields. This had not been a major practical concern as yet through what must be seen as a relatively short period.

There have been a small number of cases where deputy district judges have allocated cases to the multi track and then made directions. Due to the fact that deputies are not included in the docketing pilot, when these cases are returned to Orders Section they have to be reassigned to a district judge who can docket the case. That judge may then want to issue further directions. It might be questioned whether when such cases are allocated they ought immediately to be returned to Orders Section for distribution to a docketing judge who can begin the case management process.

Workload

One issue with the docketing pilot at Leeds is that Orders Section, who maintains a list of docketed cases, only has access to the judge's list in regard to his civil work. There is no global list in relation to other types of work, for example, family. The own listing process at Leeds provides the judges with an amount of time that s/he must use at his own discretion, and the very strong feeling was that the time is used to maximum effect. However, if administrative staff were allocating cases then they would need a fuller picture of judicial commitments. Where the court staff do allocate or redistribute they do give attention to attempting to ensure proportionate workloads. Within each specialist case type there are a number of judges exercising that specialism. This ensures that work can be redistributed if a particular judge has a heavy schedule or if a backlog is apparent. Though it has not happened at Leeds, if a judge's workload did become too heavy such that it could not be absorbed by listing cases for later than would normally occur, it was suggested that the other specialist within that field would seek to take a

greater share or the administrative staff would redistribute accordingly. Though this has not occurred it is a potential problem given that docketing would reduce a judge's flexibility somewhat.

What has been recognised at Leeds is that own listing coupled with docketing can mean that cases might build up during a judge's short term absence (a longer term absence would be taken into account). Nevertheless, although this led to some cases being listed somewhat later than would be preferred, such backlogs were short term and were relatively quickly addressed. It should be added that the docketing system was also not that rigid in that, where it was felt appropriate, another judge (ideally a specialist in the same field) would step in to manage any urgent issues in the assigned judge's absence.

Listing.

An issue identified early in the pilot process was that some district judges had done more allocation lists than others and as a result had allocated more specialist cases (often the more desirable cases to manage) to themselves. Clearly, if this is a problem at all it is one of listing rather than docketing. A possible solution to this issue could be that, once the case type had been identified, the case could be allocated by court staff to the judges on a rota basis. This might add some small additional time to the process through more case types needing to be identified before being handed back to Orders Section by the district judge for distribution. In any event, this was considered in Leeds to be an early teething problem rather than a fundamental issue as none of the judges interviewed expressed this concern as the pilot drew to a close.

Reduced Flexibility

It has to be recognised that the time a district judge devotes to the management of multi track cases in the civil system is but a small proportion of their work. In docketing such cases to an assigned judge (particularly 'specialised' judiciary) this reduces the flexibility in their itineraries still further. The potential problem is that, despite district judges' itineraries being published approximately two months in advance, given the amount of flexibility which necessarily must be built in, the itinerary will often look vastly different to the original version. It may be impossible to identify a particular allocation judge on a given day and therefore the allocation judge becomes, effectively, whoever is available (for example, because a case has settled). This works in a large court centre as there is still the flexibility for the judge to assign cases to himself or ask them to be redistributed. What might be more problematic in a smaller court centre is that by

assigning cases to a district judge for its pre trial management this reduces his flexibility, and that of the listing officer, still further. A smaller court centre might have, for example, three district judges and one circuit judge who might come for a few days a month to try multi track cases. Formal docketing and specialisation would minimise flexibility for listing. If each judge specialises and has cases assigned on that basis the court staff might be faced with very different waiting lists for each judge, leaving dissatisfaction for all - judiciary, professions court users and court staff.

In a small court docketing would possibly be too much of a straightjacket. [Judge]

It was clearly stated by both judges and court staff that in small courts the issue of docketing and specialisation in a rigid sense is likely to reduce flexibility to the point that the advantages gained by docketing would be outweighed by disadvantages such as delay. Though it was thought that a degree of informal docketing and specialisation might occur in smaller court centres where practical as a matter of good practice:

The lack of a critical mass here [in smaller court centres] would be problematic as you couldn't really have a list of different case types [specialisation]. [Court staff]

It was suggested by some district judges that a major obstacle to the wider introduction of docketing would be court staff. There were benefits to docketing for judges and court users (as discussed earlier) but court staff responsible for listing cases might see docketing as a more difficult process for them given that the number of judges who they can get a case in front of is greatly reduced.

There hasn't been an incentive for listing [officers] to do it – and they hold the key. Docketing is not really about now but about what happens next time the case comes around and that has always been in the province of the court staff listing it. There has been no incentive for them to keep cases to a particular judge, but there is actually a disincentive in that it makes life more difficult for them. [District Judge]

That informal docketing has existed at Leeds for a decade has meant that there were no such obstacles from the court staff when the pilot was introduced but it was clearly viewed as a potential barrier to the use of formal docketing in other court centres.

The need for investment in IT.

It is clear from the Jackson Report that there is a need for a strategic approach to the use of compatible information technology systems across the court structure. Despite this overarching

context the court staff at Leeds found that the relatively straightforward process of docketing required nothing in addition to the existing IT infrastructure. The district judges were asked about the potential advantages of 'e-working' but all were clear that the docketing pilot can and did work well with existing paper based management.

Costs

There is no evidence that costs overall have reduced, though it was noted that the interviewees did not anticipate that this would be an inevitable outcome despite a potentially more streamlined and efficient process.

It was never going to save costs. There has been no cost benefit but we didn't think it would have. [Judge]

Like other case management measures undertaken since the Woolf Report, there may actually be a concern that costs may be front loaded.¹⁷ Docketing may impose front loaded costs if the judge who is assigned to the case issues a range of directions in attempt to aggressively manage the case, or takes the case at a pace unexpected by the parties. It was not possible to discern this in a short pilot study, though the practitioners' perception was uniformly that there had been no perceived front loading effect. The hope from the judicial perspective was that case management through a close analysis and attention to the key issues will lead to settlement or a more focussed trial which may reduce costs in the long run. However, as part of a package of measures in part aimed at the reduction in costs of civil litigation this is an issue that requires close scrutiny.

Working Culture

The functioning of any organisation is dependent not merely on the quality of the procedures which regulate the organisation, but also, and arguably more so, on 'softer' issues such as the cultural norms, and informal practices which inform the behaviours of members of the organisation. There was some evidence that the pilot at Leeds is successful because of the culture evident at Leeds rather than simply that the procedures adopted were robust. There appeared to be shared understanding of what docketing was, and also a shared 'buy in' to what it was for:

¹⁷ See for example: J. Peysner and M. Seneviratne, 'The Management of Civil Cases: A snapshot.' (2006) *Civil Justice Quarterly* 312; T. Goriely, R. Moorhead, and P Abrams, *More civil justice? The impact of the Woolf reforms on pre-action behavior*; A. Higgins, 'The costs of case management: what should be done post Jackson?' (2010) *Civil Justice Quarterly* 317.

Docketing and own listing work at Leeds because that is how the system has grown up.
[District Judge]

It was suggested that docketing had been easy to administer. If so, why was it not in existence across the board already?

It's about the relationship you have with your judiciary – it's a team effort – you've got to be on the same wavelength. I'm sure the process isn't flawless but we are very lucky – there is a culture that we work together – open communication continuously – and we can be honest with them and they with us. [Court staff]

This may be relevant to any roll-out of docketing: the adoption of a docketing scheme would need the 'buy in' of both judges and court staff if it was to work effectively and satisfy the objectives laid out.

The system works because judges and court staff alike have bought into it. One view might be that new systems of docketing might be more effective where the court managers are wholly responsible for allocation. Leeds suggests this might be problematic because the allocation manager would have to have a very good knowledge of how to identify a case type – and very often this is not clear from the particulars of claim. The Leeds informal system of judge identification of case type worked so that is what they have continued with. Relationships between judges and court staff may also help with the efficient listing of similar general cases. Albeit that there is no formal process in place, judges can make Orders Section aware of the issue and of the desirability of docketing to the same judge or group of judges.

The professional histories of judges may also inform culture, and hence the implications of implementing or rolling out docketing. Clearly, this will depend significantly on the individuals concerned. It was suggested at Leeds that District Judges, being drawn from the solicitors' profession, have been exposed, in that context, to significant professional change. This has included, for example, the general movement of the profession towards specialisation. They may be therefore less instinctively resistant to change where change has been a normal aspect of their professional life. (It should also be recalled here that the Docketing Pilot at Leeds was not a significant change in any event as it had been preceded by a period of informal docketing.) It was also suggested that the situation may be different for Circuit Judges. Having been drawn more from the Bar, where a culture of individual self-direction is more prevalent and where change has arguably been less impactful, they may see change as more challenging. (It should be noted however that at Leeds, the obstacle to bringing Circuit Judges within the docketing

scheme was not cultural in the sense described here, but was practical, as we discuss elsewhere in this Report.)

It is reasonable to assume that the size of a court centre, and the overall judicial capacity at that centre, is likely to impact on its culture and practices. So, at smaller centres, there may already be some forms of informal docketing in place and it might be queried whether formal docketing would add value or even diminish existing value through formality reducing flexibility. Smaller centres would be less likely to be dealing with the more complex business which benefits most readily from docketing, as that business gravitates to larger centres in any event.

To what extent does 'own listing' bring additional benefits?

It is apparent that the Leeds system of own listing adds a number of additional benefits to the docketing system. Court staff did not view own listing as essential but did recognise its overall utility. It was suggested that the pilot scheme had been relatively “easy to run”, partly because informal docketing had already been recognised prior to the pilot but also because of the own listing process. Though difficulties surrounding judges’ itineraries has long been seen as a barrier to the introduction of docketing, own listing has enabled this problem to be eased somewhat for the district judges. District judges at Leeds manage their own diaries to a large extent, certainly in regard to civil business, and this means that they are able to timetable hearings at the most appropriate point for the individual case. Court staff also recognised that own listing enabled judges to timetable hearings far sooner than they could themselves as “they have a much clearer picture of the real demands upon their diary”. Sometimes court staff might not be able to see time in the diary to timetable, for example, an application to the docketed judge. Nevertheless, when forwarded to the judge for his consideration it could be slotted in to the diary more quickly than court staff were able to do. Over listing was seen as a common practice amongst the district judges and court staff were aware that this saved time but was simply something that they could not replicate. Nonetheless, despite these added benefits, the court staff reflected that docketing itself could save time and that it could be introduced without the need for own listing, but the latter provided the additional benefit. One reflection was that the own listing system demanded that judges were robust when listing to ensure that cases were not over listed and the parties called back unnecessarily. This would run counter to many of the perceived benefits of docketing and also to Lord Justice Jackson’s comment that too many formulaic hearings were taking place. However, it was emphasised that this was not a problem that had occurred in practice.

The district judges too described the system of own listing at Leeds as not an essential aspect of docketing but a useful addition:

Any system that enables a case docketed to judge A to get into the list of judge A will permit docketing...

but that it could bring additional advantages:

You can achieve docketing without own listing but the disadvantage is ... that you are building more delays into the system without it. [Judge]

Own listing is not the key. Docketing would work without own listing but it would not work as satisfactorily. [District Judge]

Though there was anecdotal evidence of distrust surrounding own listing elsewhere, and the willingness of all judges to list fully, this was not an issue at Leeds where a culture of own listing is well established.

An advantage of the Leeds listing process is that the judge can identify the case type immediately and either take it himself (and become the assigned/docketing judge) or return it to 'orders section' specifying what the case type is. Each judge has access to the spreadsheet of docketed cases and can refer to this when returning cases to the orders section. This both reduces the time taken to allocate a case to the most appropriate judge in the first instance but also ensures that when cases are returned to orders section they can be more easily redistributed following a clear reference to the case type.

The district judges recognised that through having greater control over the management of their own schedule this was of particular benefit to the court user, whereas their own schedule was probably more pressed as a result of over listing.

The fundamental issue is that judges can list a case knowing when it needs to come back – and to complement that, a judge can squeeze things into the calendar that the staff simply wouldn't dare. [District Judge]

The benefit to court users was that they were able to obtain a return date immediately as the judge could consult with the parties and his own (electronic) diary to agree a date. This was seen as a small but significant benefit.

Own listing was also seen to provide for a more efficient use of judicial time. It puts the judge in greater control. Without this system, it was suggested that orders would have to be drawn up more tightly to ensure that the case came back at the appropriate point, though even then there would be a degree of second guessing how far court staff might be behind on listing.

Another practical benefit of own listing was said to be the flexibility it provides for judges, which was seen to be increasingly important

I am a great fan of own listing. It allows me to be much more efficient, to get the cases in when they are needed ... it has drawbacks too ... it won't suit every court but docketing doesn't need an own listing system [District Judge]

I think there is a benefit to the docketing system of own listing because the judge to whom the case is docketed is then in charge of when the next hearing is to be and it slightly increases that judges ability to control the progress of the case, but it's far from an essential component. [District Judge]

At Leeds, when a judge docketed a case to himself he will identify the relevant specialist area and then inform the court staff. Without own listing it was thought that court staff might, prior to assigning a case, have to seek a judge's advice as to what a particular case type is, and that this might add some delay to the process dependent upon the particular listing method adopted elsewhere.

To conclude, the judges and staff at Leeds explained that own listing brought additional benefits and, because it is a central feature of the listing process, it required analysis as part of the context for docketing. Nonetheless, all parties were equally clear that the two concepts (own listing and docketing) were independent of each other and did not stand or fall together.

Does specialisation bring additional benefits?

It was recognised earlier in the report at p.19 that specialisation did appear to bring additional benefits to docketing. It was equally clearly expressed that specialisation and docketing need not go hand in hand.

Docketing is essentially just case management and this can be performed to some degree by any judge – and this is traditionally what has happened. Specialisation is the aspect that aids efficiency. [Court staff]

Specialisation was held, by some, to enhance management and the quality of decision making. It should be recognised, however, that the need for district judges to define their specialist areas did cause some initial difficulties. On the one hand there are those who consider the district judge to be the equivalent of the 'general practitioner' whereas others were of the opinion that specialisation is a natural consequence of an increasingly specialised legal profession. Having survived these initial difficulties it did appear that specialisation aided docketing without

restricting unduly restricting the flexibility of court staff in listing. It was thought, however, that specialisation was a benefit only available to the larger court centres. Though smaller court centres would practice a degree of informal specialisation, any more than this would be too rigid and might cause delay.

Conclusions

The docketing pilot at Leeds was viewed as a success to a greater or lesser extent by all interviewees. It was a limited pilot in that the decision not to include the circuit bench ensured that the pilot only covered pre trial management and sidestepped some of the issues identified by Lord Woolf some 15 years ago. Nevertheless, it is worth reflecting on the benefits of docketing referred to in the Gill Report:

The benefits of expeditious decision making, consistency of approach and experience in the particular field are fundamental to successful case management. A docket system will also assist in creating a more specialised judiciary at sheriff court level. If our proposed reforms to the jurisdiction of the Court of Session are implemented the volume of business will be such that it will be possible for a judge to manage a case from beginning to end. Although case management may, to a degree, front load costs, there may be overall savings if cases are dealt with more expeditiously, if issues are identified at an early stage and case preparation is limited to those issues genuinely in dispute. Proactive management by a specialist judge with knowledge of the case may facilitate settlement or in those relatively few cases that proceed to proof, the scope of the hearing can be limited to the key issues. This will result in savings for the parties and for the court.¹⁸

Given that the vast majority of cases do settle then it might be suggested that the form of docketing undertaken at Leeds still delivers most, if not all, of these benefits. It was noted throughout that the key to docketing is in the hands of the court staff. On the issue of seeing docketing in a more formalized elsewhere it was commented:

The framework is there – it’s clear what you need to achieve [getting the case before a judge at the right point] and one size will not fit all – but docketing of itself should be possible across the board. [Court staff]

¹⁸ Report of the Scottish Civil Courts Review (“The Gill Report”) (2009) para.44 p. 109.