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Look out litigants!

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Are litigants the latest victims of the government's austerity measures, asks Georgina Squire

Almost two years since the Jackson reforms, the effects of the new regime are still unfolding. 2014 will be remembered by many as the year the Court of Appeal clarified *Mitchell*, ending the flood of pre-emptive applications (lest we be in breach!) and helping litigators sleep easier at night. However, we have yet to see the full impact of the Jackson reforms. With 2015 already presenting further challenges to litigators, we continue to attempt to navigate Jackson's brave new world. So, five months into 2015, what developments should litigators be alive to?

Courts, forms & procedure

As we know, in 2014, the rules changed so that only claims in excess of £100,000 could be issued in the High Court, leading to a lot of cases being transferred to the county courts. We are seeing many claims well in excess of the £100,000 threshold being transferred to the county court. All county court claims are now processed by a central management system in Salford (the County Court Money Claims Centre (CCMCC) until the matter is allocated to a hearing centre (which usually occurs after directions questionnaires are filed).

This means advanced planning for litigators:

- if a claim has to be issued in the CCMCC ensure there are no limitation issues looming, as it can take several days to have a claim issued;
- get documents in order before filing, to reduce further delays, and
- allow enough time to meet filing deadlines, ie factor in a few days for posting etc.

Court fees

Perhaps one of the most significant developments for litigators is the increase in court fees, effective from 9 March 2015. Claims worth between £10,000 and £200,000 now attract a court fee of 5% of the amount claimed, including interest. For litigants seeking to bring claims worth over £200,000, the issue fee has increased to a staggering £10,000.

Already the impact is being experienced where those with claims that now require a £10,000 issue fee are thinking twice before using the court system assessing alternative avenues, regardless of whether they have a strong claim.

Perhaps with cases like this in mind the recently departed justice secretary, Chris Grayling, announced his intention to review the effects of the increase in civil court fees. While this may well lead to a welcome extension of the fee remission scheme, it seems unlikely there will be a reduction in court fees. For now, at least, the onus falls on the parties to achieve early pre-action settlements, if they are to avoid having to pay hefty court fees.

Hourly rates

The current guideline hourly rates (GHR), which were under review by Lord Justice Dyson, remain in force for the foreseeable future. Practitioners across the country may have breathed a sigh of relief that the Civil Justice Council's proposals were rejected (they would have seen a net reduction in fee-income of 5% for all fee earners), but Dyson LJ was keen to emphasise that trends in the legal services market were rendering GHRs less and less relevant. We have seen this in 2015 in the judiciary's use of proportionality as a driving principle in assessing costs and the greater adoption of (and familiarity with) cost budgeting in civil cases. The trend, as Dyson LJ sees it, is towards the wider use of fixed costs in litigation, a point being lobbied with ministers, with the view to ensuring this element of the Jackson reforms is implemented.

So, what does all of this mean for litigation practitioners in 2015?

- Dealing with the county court—plan ahead: (i) be mindful of limitation issues; (ii) get your documents in order to avoid further delays at the CCMCC; and (iii) give yourself a few extra days to meet filing deadlines (to account for posting, etc).
- Think even more carefully as to which court to issue in. Even claims exceeding £100,000 are being transferred from the High Court to the CCMCC.
- Unspecified claims now attract an automatic court fee of £10,000. At the outset, litigants must factor in this fee when assessing whether a claim is commercially viable to pursue.
- In specified claims, practitioners should take care to ensure the level of court fee is calculated including the total amount of the claim plus interest.
- Consider the funding of fees, including the use of third party funding arrangements. It remains to be seen whether after the event insurers will be prepared to offer insurance to cover disbursements alone.
- For individual claimants, recourse to the ombudsman may become a more attractive and cheaper alternative to pursuing redress through the courts.
- The increased fees will likely increase pressure on disputing parties to enter into meaningful settlement negotiations before proceedings are commenced. We may see greater use of ADR, with mediators' fees likely to be cheaper than court fees in many cases.

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