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A brave(r) new world?

Leigh Callaway forecasts what 2015 has in store for litigators

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By the start of 2014, litigation in England & Wales had undergone a fundamental and wide-ranging transformation. Eighteen months on, the reforms implemented following Lord Justice Jackson's Review of Civil Litigation Costs have to a large extent "bedded in". Arguably, we now have a better grasp of both the opportunities and challenges that face the profession and our clients.

Efficiency & co-operation

The objectives of Jackson LJ's review are to be lauded, and following the "bump" in the road in the form of the *Mitchell* decision (*Mitchell v News Group Newspapers* [2013] EWCA Civ 1537, [2014] 2 All ER 430), the subsequent judgments in *Denton, Decadent and Utilise* [2014] EWCA Civ 906, [2014] All ER (D) 53 (Jul), have clarified the court's approach to relief from sanctions and the test to be applied when faced with breaches of court orders or the CPR. In short, the message to litigators is that the court will expect parties to (1) agree reasonable extensions of time which do not imperil future hearing dates or disrupt the conduct of the litigation, and (2) co-operate and not unreasonably refuse requests for time extensions.

Moving into 2015, we can expect to see a significant reduction in the number of interim applications for relief. With the *Denton* decision, and the recent amendments to the CPR (particularly the introduction of the "buffer order"), we can hope to see an increased level of co-operation between the parties (which had all but disappeared post-*Mitchell*), coupled with a rigorous but, hopefully, common sense application of the rules.

Streamlined litigation

2015 will also see further progress with the other aims of the Jackson reforms, namely a reduction in bureaucracy and a streamlined court process.

The first step is an emphasis on electronic working. The implementation of such a system is underway, with the start of a mandatory electronic "Caselines" bundle e-pilot scheme in the Supreme Court and the Privy Council (from 1 October 2014), and the adoption, by the Chancery Division of the High Court, and the Technology and Construction Court, of the CE-File electronic file system (from 1 October 2014 and 10 November 2014 respectively) by which all documents lodged with the court are scanned and stored electronically rather than hard copy. Similar systems, including electronic filing of court documents by the parties, will continue to be introduced throughout 2015.

We can also expect an increased emphasis on efficient, shorter, pleadings. The 2014 revisions to the Commercial Court Guide now, for example, specify that statements of case should be limited to 25 pages unless the court gives permission (paragraph C1.1(b)). Although such rigorous requirements are not in place in the Queen's Bench or Chancery Divisions (the Chancery Court Guide only states that statements of case should be "as concise as possible"), it is surely only a matter of time before a similar approach is adopted.

When coupled with an increased use of full docketing, and hands-on judicial-led case management, these changes make it clear that a perhaps long-overdue modernisation of the court is underway.

Funding

A corollary of the drive to control costs is an increased demand from clients that the profession adopts alternative methods of funding their claims allowing access to justice and, where appropriate, sharing the risk. The Jackson reforms have not been the death-knell of alternative funding as many predicted. Rather with clients becoming increasingly aware of the third party funding market, we will continue to see growth in this area. All solicitors are, of course, obliged to discuss possible funding options with clients (or else potentially be found negligent).

In 2015, recoverability of success fees and after-the-event insurance premiums will likely once more be an issue, as the last of the cases involving agreements entered into during the pre-April 2013 rush come to trial.

The most significant changes to litigation funding in 2014 came in the form of the deep cuts to legal aid funding. The continuing effect of these cuts cannot be understated: successful applications for legal aid are down, demand on the pro bono community is up, and the number of litigants in person has dramatically increased (a matter which Lord Dyson has said has increased miscarriages of justice as litigants are unable to obtain proper representation, while simultaneously increasing pressure on the court as it struggles to assist these individuals). It is hard not to conclude that the cuts are ultimately a false economy, but regardless, further cuts and the associated fallout can be expected.

The litigator in 2015

Where, then, does this leave the litigator in 2015? With a client-driven increase of alternative funding arrangements, and the court's emphasis on co-operative and streamlined litigation, efficiency, cost effectiveness, and flexibility are the key. Ultimately, though, what a client desires remains the same—a litigator who is pioneering, entrepreneurial and invested in the client's business. NLJ

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