

## JACKSON'S DILEMMA

It is only since 1999 that the most radical changes to the civil justice system for over 100 years have been made. It was only 2000 when practitioners dealing with personal injury law were faced with major funding reforms, with legal aid largely being replaced with the use of conditional fee agreements.

The haste with which the funding reforms, in particular, were made led to years of uncertainty, with the new regime only settling down in recent times. Yet we now face proposals for further reform.

It is usually accepted that the injured person should be at the centre of the system but what many do not seem to recognise, in the drive to change the personal injury system, is that the focus has increasingly shifted to process rather than people. That is not how it should be.

It is worth remembering that claimants are individuals forced by circumstances, rather than through choice, into the alien world of claiming redress. I do not think it is acceptable in 21<sup>st</sup> century Britain for that system to assume each, unique, individual can be processed simply by adopting a formulaic approach.

What really drives this move from people to process? I fear it is just about money. Not value. Just cost. Of course, cutting costs will benefit the insurance industry, which happily accepted premiums to cover the contingency of having to pay compensation for needless injury, but is that where the focus of the system should really be?

I fully accept the primary responsibility of insurers must be to their shareholders, just as the duty of insurance lawyers is to their clients. But claimant lawyers have the responsibility to care for the interests of injured people and APIL will remain totally committed to that responsibility as its response to Lord Justice Jackson's review is developed.

The key focus of that response will be the needs of the injured person. With that in mind some of the issues raised by Lord Justice Jackson are of particular concern.

- The small claims court is simply not the place for the injured individual. The small claims limit, in personal injury claims, should remain at £1,000. It is worth remembering that the new scheme for dealing with lower-value road traffic accident claims, which represent the majority of personal injury claims under £5,000, is scheduled for introduction in April 2010. When so much effort has been made, by both side of the industry, to agree this scheme there would be no sense in talking of change before it has even come into force.
- Away from the road traffic scheme fixed costs are not appropriate for personal injury claims. That is because predictable costs need a predictable process. Apart from a scheme with clear parameters, such as the new system for road traffic

claims, there is a real risk that fixing costs gives an unfair advantage to the well-resourced defendant. That is because such a party can choose to incur costs, irrespective of whether such costs can be recovered, to try and achieve the end result, if necessary by simply outspending the poorer party. That does not reflect the way the rule of law should work.

- Damages should continue to be assessed, on a case by case basis, by judges, reflecting the losses and needs of the individuals involved. We have not reached the stage at which computers can be relied upon to deliver the correct level of damages by properly reflecting individual need.
- The effective management of cases and control of costs by procedural judges is to be welcomed. That will require allocation of cases to suitably 'ticketed' specialist judges in a way which has been a real success in areas such as clinical negligence and mesothelioma. Ideally, the individual procedural judge will see the case through all the case management stages if an effective system of 'docketing' can be devised in courts where this is not yet usual practice.
- It is essential the focus of our system is kept on justice, not simply process and cost.

These, and most likely other, points will be covered in APIL's response to the costs review, to ensure the injured individual has a voice which is not drowned out by the noise generated on process and cost.

After a decade of uncertainty, whilst new procedural and funding systems have become established, we need time to reflect before launching into yet further reforms, with the risk of making changes almost just for the sake of change.

It is essential our legal system remains open and accessible to the individual who must be able to deal, on as equal terms as possible, with commercial concerns. The law must remain about people not process.

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