

The Jackson Reforms

Laura Ford, Solicitor Pinsent Masons



Laura explained that the Jackson Reforms were implemented on the 1st April 1st 2013. The Reforms represent the biggest change to civil procedure (including claims for compensation in respect of personal injury) in England and Wales since 1999.

Proportionality - Aims of Jackson Reforms:

Lord Justice Jackson was tasked to look at civil litigation claims, (specifically in relation to lawyers' fees), to promote access to justice at proportionate cost.

Costs:

Cases need to be considered in mind of the costs involved. Costs need to be considered at *all* stages of a case, before, during and afterwards when lawyers are looking to recover their fees. A questionnaire has to be completed in advance of the trial in which the parties must consider whether expert witnesses will be required and what the likely costs of those experts will be.

Advantages and Disadvantages:

The process is lengthier than before but the aim is that litigation is more manageable in the hope that the reforms will eventually lead to reduced costs in litigation. On the negative side, the reforms will create uncertainty, which may be particularly worrying for lower-value personal injury claims where the costs incurred may far outweigh the compensation being claimed.

Birmingham Law Courts:

Laura added that Birmingham courts are already looking for evidence that the costs have been considered in light of the Jackson Reforms. Other courts may be slower to adopt the Reforms and there may be some inconsistency between courts and judges. Time will tell.

'No Win – No Fee & the 'Compensation Culture':

These fees, which attracted high sums, are now banned. They were very lucrative because a sum was awarded each time there was a referral from one agent to another. An example of how referral fees worked is the 'no win no fee' scenario, where an individual contacts the claims management company, which in turn contacts solicitors etc. and the referral fees are paid through this chain. It was considered that this encouraged a 'compensation' culture and forced losing insurance companies to increase their premiums, at the detriment of society as a whole.

Qualified One Way Costs Shifting ('QOCS'):

QOCS applies to all personal injury cases, including clinical negligence. If the claimant is successful, they will be entitled to recover their costs from the defendant. If the claimant is unsuccessful, they may be vulnerable to costs orders, but only to the extent of the damages they would be entitled to. There are some exceptions however the reason for the introduction of QOCS was that it was considered for some time that claimants had enjoyed protection from adverse costs orders and there were good policy reasons for maintaining this protection.

Health and Safety:

Following the Lofstedt Review in 2011 recommended that:

- Strict Liability:
Regulatory provisions that impose strict liability or 'no fault' duties such as the Provision and Use of Work Equipment (PUWER) Regs 1998, should be qualified with 'reasonably practicable' where strict liability is not absolutely necessary, or alternatively amended to prevent civil liability from attaching to a breach of those provisions.
- Burden of Proof – From the Claimant to the Defendant:
This amendment has gone even further than the recommendations, i.e. the Enterprise and Regulatory Reform Act 2013 (which received Royal Assent on the 25th April 2013, although there is no confirmed date when it will come into force), amends the Health and Safety at Work etc. Act 1974 as follows:

Those claiming compensation regarding a breach of health and safety legislation will now need to prove that the employer responsible has not just breached the regulation but been negligent as well.

This therefore reverses the burden of proof from the claimant to the defendant, and so in future, it will be for the claimant to prove the employers' negligence before their claim can succeed.