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SOUNDINGS

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JACKSON REFORMS

The "Jackson Reforms" were introduced in April 2013. They give paramount importance to efficient and proportionate cost management, and proper compliance with rules, practice directions and court orders.

Why are they necessary?

It will be recalled that in April, 1999 the so called "Woolf Reforms" were introduced. These reforms were aimed primarily at the following:

- placing the parties on an equal litigation footing;
- saving expense;
- dealing with a case in ways which are proportionate to the nature of the case;
- ensuring that a case was dealt with expeditiously and fairly; and
- allocating an appropriate share of the court's resources, while taking into account the need to allocate resources to other cases.

This initiative largely shifted the conduct of litigation from litigants to judges. For instance, Case Management Conferences were introduced to enable the courts to narrow the issues in dispute, set directions for the conduct of a case and review litigants' compliance with previous directions and preparedness for trial.

Part 36 offers were also adopted which enabled the claimant, as well as the defendant, to make an offer to settle at any time before or during proceedings. If the claim proceeded to trial, then any offer made by either party is taken into account when it comes to awarding costs.

Although the Woolf Reforms have largely been heralded as a success, one of the criticisms has been that costs have increased, particularly as the result of having to incur costs on a frontloaded basis.

As a result of this criticism a further set of reforms were implemented. Under these reforms, known as the "Jackson Reforms", courts should:

- ensure litigation is conducted efficiently and at proportionate cost;
- disallow disproportionate costs, even if reasonably incurred;
- impose more transparency, efficiency and reduced costs by firm use of costs management budgets;
- be less tolerant of unjustified delays.

Lord Justice Jackson was asked to review civil litigation costs and his final report was published in January, 2010. Following public consultation his recommendations were enacted in 2012 and came in to effect in April, 2013.

What are the main features of the Jackson reforms?

Cost control features very highly. Different ways of charging clients are now permitted including damages based agreements, which are effectively payment of fees by reference to a percentage of any recovery.

Detailed cost budgets are now required which are approved by the court. Non-compliance with rules, practice directions or court orders is taken seriously by the courts. Unless an extremely good reason is provided for default, relief from sanctions will be refused.

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BY **THOMAS MILLER**

JACKSON REFORMS
continued

This new robust approach to cost control has been clearly shown in the recent Court of Appeal decision in Mitchell MP v News Group Newspapers Limited. By way of background, Mr Andrew Mitchell (a Member of Parliament) was alleged to have insulted a policeman outside Downing Street in September, 2012. He denied this allegation and issued defamation proceedings against News Group Newspapers Limited, the defendant. The court ordered a case management and cost budget hearing.

The defendant timely filed its cost budget but, despite being pressed by the High Court, the claimant's solicitors were late in filing their budget. As a consequence of filing this cost budget late the court limited the claimant's potential cost recovery by treating him as if he had filed a budget comprising only the applicable court fees rather than the anticipated costs of some £506,425. The case was appealed to the Court of Appeal, which endorsed the new robust approach to cost control and the need to comply with deadlines to avoid unnecessary wasted expense. The Court held that:

"We acknowledge that it was a robust decision. She [the High Court Judge] was however, right to focus on the essential elements of the post-Jackson regime. The defaults by the claimant's solicitors were not minor or trivial and there was no good excuse for them. They resulted in an abortive costs budgeting hearing and an adjournment which had serious consequences for other litigants. Although it seems harsh in the individual case for Mr Mitchell's claim, if we were to overturn the decision to refuse relief, it is inevitable that the attempt to achieve a change in culture would receive a major setback.

In the result, we hope that our decision will send out a clear message. If it does, we are confident that, in time, legal representatives will become more efficient and will routinely comply with rules, practice directions and orders. If this happens, then we would expect that satellite litigation of this kind, which is so expensive and damaging to the civil justice system will become a thing of the past."

As was intended, this case has caused much comment in the legal community. Since the Mitchell judgment further reported court decisions have underlined the robust approach to missed deadlines and failure to comply with orders.

Relief from sanctions can be granted but only in limited circumstances, for example where non-compliance is trivial or there is a good reason for the default. In Lakatamia Shipping Co Ltd v Nobu Su a deadline to serve a list of documents was only "narrowly missed" by 46 minutes due to human error. This was not a "good" reason but it was explicable and caused no prejudice to the claimant (who failed to serve its own list of documents). Mr Justice Hamblen concluded that the non-compliance was trivial and that the application for relief had been made promptly. Relief was granted.

In Williams & Georgiou v Wayne Hardy, at a detailed cost assessment the recently appointed costs judge, Master Rowley, assessed the receiving party's costs at nil after it failed to timely serve its statement of costs. No good reason had been given for the failure to comply with the deadline. In a separate case (Long v Value Properties) Master Rowley refused relief when the claimant mistakenly failed to serve copies of relevant conditional fee agreements during detailed assessment proceedings. The judge held that the breach was not trivial and that oversight or human error were not good reasons to grant relief.

This robust approach to litigation management is not limited to issues of cost recoveries. In Associated Electrical Industries Ltd ('AEI') v Alstom UK, AEI were 20 days late in serving their particulars of claim. AEI sought a retrospective time extension and Alstrom sought to have the claim struck out. Mr Justice Andrew Smith emphasised the importance of giving effect to the overriding objective of the Jackson Reforms, that is, enforcing the requirements of the civil procedure reforms. He said:

"The emphasis that the Court of Appeal has given to enforcement of the CPR in order to encourage procedural discipline drives me to conclude that I should grant Alstom's application and refuse that of AEI."

At present the Jackson Reforms do not apply to litigation in the Commercial Court (or to arbitrations). Nonetheless, it can be expected that robust case management is very likely to be applied in the Commercial Court or arbitrations, whether directly or indirectly, in an effort to better control costs.

The Managers consider the Jackson Reforms are to be welcomed and will comment further in due course.

Meanwhile, if Members have any questions please contact your usual contact at your local Managers' office.

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