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Mastering litigation in 2015



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Georgina Squire analyses what litigators can expect from the year ahead

It is almost two years since the Jackson reforms, yet the effects of the new regime are still unfolding. The past year will be remembered by many as the year the Court of Appeal clarified Mitchell, bringing an end to the flood of pre-emptive applications (lest we be in breach) and helping litigators sleep easier at night.



However, there is little doubt that we have not yet seen the full impact of the Jackson reforms, and it is likely that the next 12 months will present further challenges to litigators as we attempt to navigate Jackson's brave new world.

Costs and funding

This continues to be a hot topic and remains an issue for small to medium-sized firms. Those involved in insolvency litigation, the last bastion for recovering costs under conditional fee agreements (CFA) and after-the event (ATE) insurance post-April 2013, should be aware that the exemption currently enjoyed under LASPO 2012 is due to expire in April 2015. These costs will no longer be recoverable from the defendant post-April 2015, but will come from the insolvent estate. Although claimant litigators still have a few months until the exemption expires, now is the time to get your house in order as ATE insurance can take a while to sort out, particularly if the litigation is complex. Do not delay in signing your insolvency clients up to a CFA and arranging ATE insurance – now is the time to act.

Costs budgets and the courts' role in managing costs will no doubt continue to prove challenging in 2015. In the past year, there was little consistency in the approach to costs management – it varied depending on the court and the judge. Some judges took an active role in managing the budget, while others did not try to hide their lack of interest in the exercise. In 2015, litigators will need to master the art of sticking to a (sometimes greatly reduced) costs budget and managing clients' expectations in relation to costs recovery. This will mean regularly monitoring the budget and applying to vary it if unexpected changes arise in the litigation.

Courts, forms and 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. For medium-sized firms, this means that a lot of litigation that historically would have run in the High Court must now be dealt with at county court level. Moreover, the court system changed so that all county court claims are 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). In the past few months, it has also become apparent that even claims in excess of £100,000 are being transferred from the High Court to the county court, so six figures is not necessarily the magic number to keep a claim in the High Court.

What does this mean for litigators in 2015? It means advanced planning: if a claim has to be issued in the CCMCC, make sure there are no limitation issues looming, as it can take several days to have a claim issued. Get your documents in order before filing to prevent further delays, and give yourself enough time to meet filing deadlines (ie factor in a few days for posting, etc).

So, let's start as we mean to go on in 2015:

- Insolvency litigators: be aware of the expiry of the exemption under LASPO 2012 in April 2015. If you are a claimant litigator, finalise CFA and ATE arrangements now.
- Get to grips with costs budgets: keep them under constant review and apply to amend your budget if the course of the litigation unexpectedly changes. Don't forget to manage your clients' expectations regarding costs recovery.
- What court should you issue in? Even claims exceeding £100,000 are being transferred from the High Court to the CCMCC.
- Plan ahead when dealing with the county court: (1) be mindful of limitation issues; (2) get your documents in order to avoid further delays at the CCMCC; and (3) give yourself a few extra days to meet filing deadlines (to account for posting, etc). SJ



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