



Lord Justice Rupert  
Jackson's Civil  
Costs Review: *What  
it means for us*

Nicholas Bevan  
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*Bond Pearce*

# The Man



- Lord Justice Rupert Jackson
- Former President of the Technology and Construction Court



# The Team

## **The panel of assessors:**

- o Mr Justice Cranston
- o Professor Paul Fenn
- o Senior Costs Judge Master Peter Hurst
- o Jeremy Morgan QC
- o Michael Napier QC
- o Andrew Parker
- o Colin Stutt

# The mission

## The terms of reference:

- Establish how present costs rules operate and how they impact on the behaviour of both parties and lawyers.
- Establish the effect case management procedures have on costs and consider whether changes in process and/or procedure could bring about more proportionate costs.
- Have regard to previous and current research into costs and funding issues; for example any further Government research into Conditional Fee Agreements - 'No win, No fee', following the scoping study.
- Seek the views of judges, practitioners, Government, court users and other interested parties through both informal consultation and a series of public seminars.
- Compare the costs regime for England and Wales with those operating in other jurisdictions.
- Prepare a report setting out recommendations with supporting evidence by 31 December 2009.



# Key objective

Sir Anthony Clarke MR has set Jackson the following overarching objective:

*'To carry out an independent review of the rules and principles governing the costs of civil litigation and to make recommendations in order **to promote access to justice at proportionate cost.**'*



# Timescale



- Commissioned
- Stage 1 fact finding **December 2008**  
concluding with Preliminary Report (8 May 2009)
- Stage 2 consulting, ends: **31 July 2009**
- Stage 3 final report deadline: **December 2009**

Our opportunity to influence the report ends **on Friday 31 July**



# The Preliminary Report

- A preliminary summary of his fact gathering exercise; preparing the ground for debate
- No recommendations (as such)
- Tentative recommendations and initial sympathies are voiced
- No 'sacred cows'
- No single panacea
- Is proportionality a sacred cow?

## Where to find it

- Online version of the Preliminary Report:  
[http://www.judiciary.gov.uk/about\\_judiciary/cost-review/preliminary-report.htm](http://www.judiciary.gov.uk/about_judiciary/cost-review/preliminary-report.htm)
- Online version of APIL list of Questions extracted from the report:  
<http://www.apil.org.uk/>



# Where to look within the 653 page report

## 'Must reads':

- Part 1 Chapter 2, for his summary of the fundamental issues
- Part 4, for his review of funding litigation
- Part 6, dedicated to personal injury:
  - What should the small claims track limit be?
  - Should there be one way costs shifting?
  - Can transaction costs be reduced?
  - Can general damages be made simpler



# The options for costs reform:

- Replacing the unpredictable and difficult to curb hourly charge system with a predictable 'fixed costs' regime, for most types of case
- Abolishing or revising the traditional 'loser pays' principle
- Abolishing the prohibition against contingency fees, to allow successful outcomes to be rewarded without imposing a ruinous burden on the losing party
- Reversing statute law from 1999 that enables a winning party to recover their success fees and the cost of after the event legal costs insurance from the losing party
- The creation of a non profit making funding agency that will also provide a measure of protection from an opponent's costs
- Encouraging greater use of BTE insurance
- Contingency fees and the CLF / SLA schemes



# Options for civil process reform:



- Early court intervention in cases to:
  - stop costs running out of control by close budgeting of different stages,
  - limiting the obligation to disclose documents
  - Hot tubbing of experts
  - Restricting the issues in dispute to those that are critical to the claim
- In personal injury claims, using a points system backed up by software to automate the calculation of general damages



# Getting personal

## Key issues:

- Increasing the small claims track limit
- Introducing a one way (partial) costs shifting
- Return to pre 2000 position so that additional liabilities are not recoverable costs
- Extending fixed costs across the Fast Track
- Reducing can the transactional cost of processing claims
- Automated processing of damages – Colossus style

# Fixed costs

## Procrustes view of proportionality



# Getting real

- Backing from the judiciary
- Political backing
- Primary legislation
- Secondary legislation
- Elections



# Likely outcomes in PI



- Retention of existing small claims track limit
- Extension of fixed fees
- Incorporation of elements of the streamlined process
- Possibly one way costs recovery
- ???



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