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Briggs LJ Civil Courts Structure Review: Update

The review

In December 2015, Briggs LJ published his interim report on the Civil Courts Structure Review with the final report due in July 2016. The structural review takes place in tandem with the court modernisation / reform plan. We have issued an update on the matter previously; please contact us if you would like a copy of our earlier update.

An audience with Briggs LJ

We recently attended two roundtable forums with Lord Justice Briggs and Mr. Justice Stewart hosted by the Forum of Insurance Lawyers and the Westminster Policy Forum. At these forums it was re-emphasised that:

1. The review is about structure not procedure and costs.
2. The court transformation project has a £750m budget. Funding was released in April 2016 and will cease in April 2020. Some of the funding for this project is coming from the sale of the court estate and some is “new” money.
3. Personal injury and clinical negligence and more complex matters appear currently to be out of the scope of the online court (“OC”), unless access to justice issues arise such as an increase in the small claims track (“SCT”) limit.
4. The development of the OC will not be delayed pending the outcome of the consultation on any changes to the SCT threshold (the consultation, along with other consultations, are due after the referendum). This is because any change to the SCT threshold will have occurred before implementation of the OC, which is expected to be in 2020.
5. It is not currently envisaged that a claim will transition from the low value EL/PL or RTA portal to the OC at stage three. This is due to the portal being designed ‘by lawyers for lawyers’. It is, however, interesting that the next release of the portal is mooted to allow claimants to access the portal without the need for legal representation. Should this come to fruition, this may lead to a review of the point.
6. The OC will have its own set of rules and its own “rules committee”.
7. The OC will have three stages: triage, conciliation and resolution.
8. Judicial led “mediation” is being considered within the three stage process, in an attempt to mitigate any access to justice issues that may arise in the OC which envisages parties being able to utilise the process without the benefit of legal representation.
9. Limited fixed costs are being considered which may allow a claimant to arrange for representation at a hearing, or a limited advice at the start of a claim on the merits etc. The Law Society and the Solicitors Regulation Authority are already considering if and how, solicitors could be permitted to offer such unbundled legal services.
10. The OC is likely to develop claims centres where work is handled (electronically) by case officers prior to allocation to a local trial centre convenient for the parties.
11. There will not be an increase in the number of judges, however, there may be potential for greater judicial specialism through the OC. All court centres will have a two judge minimum. Designed to bolster “judicial led mediation” allowing one judge to deal with the “mediation” and another to ultimately hear the matter at trial to prevent any conflict.
12. Allegations of fraud are likely to take a case out of the OC and into the standard Part 7 procedure.
13. The drive to fix costs in personal injury claims will continue on the back of support from the government. It is likely that this will start in clinical negligence and NIHL claims before moving to multi-track claims.

14. The OC will have a simplified appeal process and a consultation regarding the Court of Appeal is coming soon, the crux will be the suggestion that the test for permission to appeal will move from reasonable to substantial prospects of success.

What next?

Briggs LJ is continuing his round table discussions with key stakeholders in the run up to the delivery of his final report. What is clear is that he is listening to what people have to say and there is still an opportunity to help him shape his view of the future court landscape.

We will be keeping a watching brief and will report back as soon as there are any further developments. In the meantime, should you wish to discuss this in more detail, or would like assistance with any other matter, please do not hesitate to get in touch.



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