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Civil Courts Structure Review: Final Report

The proposal

In July 2016, Briggs LJ published his final report on the structure of the civil courts which set out his proposals for their reform. The proposals seek to make greater use of technological systems within the civil justice system. The report makes 62 recommendations which we have attempted to summarise below. The full report is available [here](#).

The main proposals are:

- **The online court (OC):**

The establishment of an online court dealing with civil disputes of '*modest value and complexity*' without the need to incur the cost of legal representation. It is, however, not a design objective to exclude lawyers. Briggs LJ has retreated slightly from the position in the interim report where the OC largely looked to be a very limited cost regime process, akin to the small claims track. Briggs LJ has now advocated that the obtaining of an (early) bespoke advice on the merits from a qualified lawyer should be an element of the OC fixed recoverable costs regime.

Cases up to a value of £25,000 are to be in scope and this is not just limited to debt only claims. Whilst Briggs LJ has recognised a multitude of issues around the inclusion of personal injury and clinical negligence claims, he has not gone as far as to state that they will be out of scope. That issue is likely to be re-visited if and when the small claims track limit is increased and the impact of that change becomes clear. Possession of homes, professional negligence, and intellectual property claims will also be excluded from the OC.

As reported in our May update ([here](#)), the proposed OC will consist of three stages;

1. Issue / triage

- a menu driven automated process;
- claimants and defendants can set out their case in a manner that can be more easily understood by their opponent and the court;
- lawyers are not necessary – however it is envisaged that lawyers will have access to allow them to assist and represent their clients;
- documents and evidence will be uploaded to the OC.

2. ADR

- uses an as yet undefined system (the report considers telephone, online dispute resolution, face to face mediation and judicial early neutral evaluation as being available ADR solutions);
- case will be subject to attempts at settlement by '*conciliation and case management*' conducted by a case officer/case lawyer;
- proposes to re-establish a court-based out of hours private mediation service in County Court hearing centres along the lines of the service which existed prior to the establishment, and then termination, of the National Mediation Helpline.

3. Determination

- final determination by a District Judge;
- no automatic requirement that there has to be a court hearing (trial) with personal attendance;
- case could well be determined on the papers, by telephone or video;

- complex matters are to be transferred to the existing court structure. However, how the OC rules will interact with the CPR is yet to be determined.

It is proposed that the OC will eventually become compulsory for cases within its jurisdiction. The OC will be separate to the current court structure and a court in its own right. Not only is it proposed that the OC will have its own rules, it will also have its own rule making committee, separate to the Civil Procedure Rules Committee. Primary legislation is already being planned to make the necessary changes allowing the OC to be developed.

It is envisaged that there will be limited recoverable costs in the OC with successful parties being able to recover a small sum for obtaining legal advice on the merits of the case. The report does not propose the level of any fixed costs as the issue is considered to be beyond the scope of the review. Appeals from the OC will be to the Circuit Judge in the County Court and then to the Court of Appeal.

▪ **Case officers**

It is proposed that case officers will perform tasks within the civil justice structure (including the OC). It is suggested that case officers will work in business centres under the supervision of judges who will be responsible for both supervision and training. Whilst the report noted that the term case officer could in theory refer to anyone with a back office function, it is proposed that there will be a team of legally qualified individuals who will discharge some of the functions previously dealt with by judges. It is proposed that a further tier is added to the case officer structure, perhaps called case lawyers, to differentiate the abilities of these non-judicial officers. There remain a number of issues around the extent of the legal qualifications and experience of the case officers and this is yet to be completely ironed out along with detail of the roles and responsibilities of case officers on a day to day basis.

Perhaps the most interesting proposal is that case lawyers should be *“independent of, although employed by, HMCTS.”*

▪ **Number of courts and deployment of judges**

Whilst the intention of the OC is to remove a significant volume of work from the existing County Court structure it is not proposed that the County Court and the High Court are merged into a unified court. That said, there is a move to increase the number of judges dealing solely with civil matters on the basis that it is suggested that current sitting judges devote significantly less than 50% of their time to civil matters. There is also a proposed general principle that no case is too big to be resolved in the regions.

Briggs LJ has commented that the time has come to consider the district registry mechanism of the High Court, although this is beyond the scope of the review. Briggs LJ has proposed that the concept of a district registry as a place to issue High Court proceedings is replaced by a single portal for the issue of all proceedings, after which it should be abolished. There is also a recommendation for the Central London County Court to be nominated as a district registry in the short term.

▪ **Rights and routes of appeal:**

Whilst the method of appeal in the OC is as set out above, it is proposed that there should be a further review of the appeal process in its entirety, to create a more efficient appeal process.

▪ **Enforcement of judgments and orders:**

It is proposed that there should be a single court for the enforcement of all judgments and orders of all the civil courts (including the new OC). All enforcement procedures are to be digitised, centralised and rationalised.

Market impact and unintended consequences

In our update in May, we looked at the impact on the market and possible unintended consequences. Our review of the final report has not altered our views. To view our May update, please click [here](#).

Can we help?

In terms of next steps, Briggs LJ is the architect and it will now be for the builders to put the theory into practice with further consultations likely as things develop. The proposals are very ambitious, particularly in terms of the anticipated scope of the OC as it stands, and those impacted by the proposals will need to keep track of how the project develops over time. 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.



Political Affairs

David Johnson

Partner

DD: 0207 822 7146

marketaffairs@weightmans.com



Innovation & Client Affairs

Bavita Rai

Partner

DD: 0121 200 3499

marketaffairs@weightmans.com



Market Affairs

Kurt Rowe

Associate

DD: 0207 822 7132

marketaffairs@weightmans.com



Scottish Affairs

Doug Keir

Partner

DD: 0141 375 0869

marketaffairs@weightmans.com

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