Jackson LJ: a lasting legacy

Dominic Regan marks the end of an era & sets the record straight

On 7 March Sir Rupert Jackson celebrates his 70th birthday and will retire from the judiciary. I have been stalking the poor man since the summer of 2009. It was in Manchester that I first encountered him. He was on the road, taking soundings about reforms. Upon being promoted to the Court of Appeal he received the call to pop in and have a chat with the then Master of the Rolls. Lord Justice Jackson emerged with a monstrous task. He had a year in which to review the civil litigation infrastructure. His objective was to deliver justice at proportionate cost.

Drastic change

The final report, which he delivered one bitter morning in January 2010, was a blockbuster. The detail was comprehensive, while the recommendations went far beyond anything anticipated. His condemnation of 'grotesque' costs generated by allowing the recovery of additional liabilities stood out. The fundamentals of funding had to change. Several commentators (not me) said, 'It will never happen'. It did. On 1 April 2013 over 100 rule changes took effect. From the overriding objective to Pt 36, from costs to sanctions, drastic changes were made.

While some had immediate and devastating impact, not least the demise of success fees which derailed many a practice, other elements remain unclear five years on. The concept of proportionality is as elusive as ever. Costs management was clarified at last by *Harrison* last summer. Some judges remain unconvinced by the utility of budgeting. They find it technical and time consuming.

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There are two areas where Jackson has been traduced. He was bitterly upset by the allegation that the abolition of legal aid was his idea. Nothing could be further from the truth. He saw that civil legal aid was broadly efficient. Crass political forces removed a legal gem from society.

Worryingly, many may equate the Jackson legacy with the Andrew Mitchell 'Plebgate' saga.

Setting the record straight

Let me set the record straight. Sir Rupert never went near the *Mitchell* action. Any blame must first be attached to the solicitors acting for the MP. They did not comply with an order for service of a budget. Master McCloud declined to grant relief and directed that the penalty enshrined in CPR 3.14 should apply. This meant that the claimant was to be treated as having filed a budget limited to court fees only. The Court of Appeal upheld this tough decision. It was open to the master to make her decision and that was the end of it.

Jackson did sit on the *Denton* trilogy of appeals which restored common sense to relief applications. Pointedly, he declared that it was never intended to introduce a harsh regime of almost zero tolerance.

While synonymous with reform, it would be a travesty to ignore the day job. Indeed, the *Supplemental Report on Fixed Recoverable Costs* published in July 2017 was researched and written in tandem with sitting in the Court of Appeal. The most obvious contribution is his unique judgment format. Each one begins with the naming of parts, a simple statement of how many component parts there are and what each segment addresses. It certainly makes the judgment easier to navigate. Others have not emulated this style.

Practitioners rejoiced with two decisions that refreshingly recognised the exigencies of modern litigation practice. In *Minkin v Landsberg* [2015] EWCA Civ 1152, [2015] All ER (D) 153 (Nov) he endorsed the legitimacy of acting under a limited retainer. The defendant solicitor had been instructed to draft an agreement which enshrined the terms upon which assets would be divided upon the divorce of the claimant client. This duty was faithfully discharged. The unfortunate solicitor was sued because her client contended that the deal was a bad one and the solicitor ought to have pointed this out. Nonsense; it was proper to act on a specific brief and there was no overarching responsibility to proffer advice beyond its confines.

A parasitic claim against a firm of solicitors was also dismissed. In *Thomas v Hugh James* [2017] EWCA Civ 1303, [2017] All ER (D) 20 (Sep) he flung out an action where solicitors were accused of negligence in not compelling a client to pursue a head of loss. The client, who was adult and competent, had elected not to make the claim which had been clearly explained to him. Sir Rupert was worldly in his awareness of how much work can realistically be done on a tight budget.

He has bravely dissented on a few occasions, generally in favour of claimants, again dispelling the myth that he is biased against them.

The man will not disappear. He will join the ranks of arbitrators and is a member of the new court established in Kazakhstan. I will miss him. Our civil structure has been transformed more by him than anyone else in living memory. That is his legacy. **NLJ**

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