

A report of substance.

As the interim report of Lord Justice Jackson's review of the civil litigation costs regime arrives, Peter Smith looks into what will happen next.

The long-awaited interim report of Lord Justice Jackson's review of the civil litigation costs regime has finally arrived. However, those looking for a clear indication of what Jackson's final recommendations will need to wait a little longer.

Lord Justice Jackson has looked in depth at a wide range of aspects of the civil justice regime and addressed them individually. However, as he himself acknowledges, many of these are tightly interrelated and the adoption of any suggestions in one area will inevitably have an effect on many others. For this reason, a truly accurate analysis of the likely outcomes will require intensive study of the interim report – no mean task for a document that runs to 650 pages – but what can be said with some confidence at this stage is that the report is a very thorough and well-researched piece of work. This is a document of some substance both literally and, given the thoroughness of Jackson's approach, figuratively.

As befits a senior judge, Lord Justice Jackson has taken a factual rather than subjective approach to the task and the interim report is not a prescriptive list of recommendations. Instead, each section is an accurate and coherent analysis of the *status quo*, a summary of the arguments for and against the present situation, a number of options for how this could be changed and some consideration of the ramifications of each. There is little indication in most of the report as to which of the outlined options he is likely to favour and he categorically states that he retains an open mind on most of the issues under debate.

Establishing the facts

Lord Justice Jackson and his team have clearly gone to great lengths to establish the facts and make sure that nothing important is excluded. The evidence displayed in the interim report is comprehensive and these are the facts on which Jackson's conclusions will be drawn. It would be very surprising if much significant new evidence is included in the final report, which will be published at the end of the year. It is also very unlikely that any recommendations which finally emerge from this process could be challenged on the grounds of dubious evidence. He has gone as far as including dissenting views in the notes and few parties will be able to complain that they have been ignored.

As a result, the forthcoming consultation period – which extends to the end of July - will be critical to the final shape of the report. Lord Justice Jackson will no doubt be well able to cut through the maelstrom of opinion, lobbying and special pleading that has and will be directed at him. The only opinions he will be taking into account are those of directly interested parties rather than any controversy that is stirred up in the press.

Any lobbying will have to be done directly rather than through the media. Moreover, if submissions to the consultation are to gain any traction, then they will need to be well-reasoned and backed up with evidence. Jackson is prepared to be unpopular if need be and is unlikely to be impressed by either sentiment or special pleading.

Prepared to be controversial

Second-guessing what his final verdict will be is very difficult at this stage, but he has already said that he is prepared to be controversial and to take on vested interests for the benefit of the system as a whole. So while he acknowledges that most aspects of the costs regime are there for sound reasons, he does not seem afraid to upset individual groups if - as he sees it - the wider interest is served.

Lord Justice Jackson was selected to lead this review in part because of his background in the Construction Court, which has insulated him from the day-to-day arguments that have raged in other divisions of the High Court over conditional fee arrangements and recoverability. This enables him to be particularly objective.

He can bring an outsider's view to the civil costs system, even to areas where the views of practitioners and other interested parties are generally unanimous. One prime example is the principle of 'loser pays', which he notes is agreed to be an accepted part of the system, but is one of the few areas in the interim report on which he expresses a personal view: "I don't think it's right".

Different rules

Another theme emerging from the interim report is that he does not believe that 'one size fits all'. He seems prepared to recommend different rules for different situations, whether that is by type of claim - such as employment or personal injury - or by size of claim. It is notable that personal injury claims receive a lot of attention in the report as a whole, although Lord Justice Jackson has also commented that no area of civil litigation will be ignored in his final recommendations.

The other outstanding question over the Jackson Review is when – and indeed, if – his recommendations will be put into action. The final say lies with the Ministry of Justice and, although it publicly welcomed the review when it was commissioned by the Master of the Rolls, relations between the MoJ and the judiciary have been rather prickly in recent years and some of Lord Justice Jackson's recommendations may prove too politically uncomfortable, whether for this government or the next.

Moreover, with the final report not due until 31st December - and an election expected by May next year - it is quite likely that the implementation of Lord Justice Jackson's conclusion could be postponed until next summer. The Jackson Review promises some fundamental changes to the civil costs regime, but the pace of change may be slower than some people expect.