

# The Jackson Review

Its Impact On Personal Injury Claims Against Local Councils

A 3Sixty Systems White Paper

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# 1. Overview

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In light of the proposed overhaul to the rules and principles governing the costs of civil litigation, as set out by Lord Justice Jackson in the Jackson Review, the claims industry is poised for a significant shake-up which, on the surface at least, will be to the benefit of defendants.

No doubt this will be music to the ears of Council Treasurers dogged by an ever increasing number of insurance claims to defend. However, closer consideration of the likely response of the claims industry, and wider developments in the field, suggest that Councils will still need to make adjustments to their strategy and systems in order to benefit from these changes.

In a time of cut backs and strained budgets, nowhere is the burden of exposure to claimant legal costs heavier than in the public sector. What's more, every penny spent by Councils, including the manpower costs associated with defence, coupled with settlement pay-outs, is literally money that cannot be invested into public services.

Whilst this paper is not intended as a review of Jackson, it notes the key findings and recommendations as they affect personal injury claims against local Councils, highlights the potential downsides to what may at first appear to be positive changes in the law from a council's perspective, and suggests solutions for the future.

## 2. The Jackson Review

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The claimant industry has transformed legal practice for many law firms over recent years and personal injury work has provided a steady foundation for expansion.

Some believe the current '*compensation culture*' encourages excessive, costly and time consuming litigation (due to the minimal financial risk to claimants) and that those bringing cases are encouraged to do so by lawyers who are often awarded a greater proportion of pay-outs than those they represent.

However, with the publication of the Jackson Review in December 2009, the cat was placed firmly amongst the pigeons as it was clear that Lord Justice Jackson's recommendations would seek to redress the balance by introducing changes that would favour defendants.

The Jackson Review<sup>1</sup>, otherwise known as the '*Review of Civil Litigation Costs*', is an extremely comprehensive, 557 page report, written by Lord Justice Rupert Jackson, QC for the Ministry of Justice, following extensive consultation with all interest groups, with the objective of comprehensively reviewing the rules and principles governing the costs of civil litigation and to make recommendations in order to promote access to justice at proportionate cost.

After the Coalition Government announced that it intended to introduce Jackson's changes in full, as expected, a great deal of pressure has come from claimant lawyer bodies for the changes to be considerably diluted.

Having committed themselves to the continuity of lucrative personal injury work, many lawyers and intermediary '*claims farmers*', have subsequently adapted in order to limit any negative impact that the Jackson Review may pose to their income.

As major defendants, it is imperative that Councils do not assume that Lord Justice Jackson's proposals will necessarily result in lower claimant costs and action needs to be taken to understand the recommendations in full in order to protect against well organised and extremely proactive opponents in the claims industry.

### Key Recommendations of the Jackson Review

The Jackson Review begins by disclosing some startling statistics, the main gist of which will be familiar to those responsible for handling such claims in local Councils.

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<sup>1</sup> "Review of Civil Litigation Costs: Final Report" - December 2009 - Her Majesty's Stationery Office - ISBN 9780117064041

*“In CFA cases won by claimants, claimant costs amounted to approximately 158% of damages”<sup>2</sup>*

This statistic was taken from a survey of District Judges assessing costs in litigated cases. As the overwhelming majority of personal injury claims (specifically of the ‘*slip and trip*’ variety) against Councils will be undertaken under a CFA (Conditional Fee Agreement, aka ‘no win-no fee’), paying out claimant legal costs of that magnitude under the current ‘loser pays’ principle (the bulk of which is not touched by Jackson), clearly makes it very difficult for Councils to effectively manage their budgets and resources allocated to repairs.

Therefore, Councils find themselves trapped in a very vicious circle as the more they are under target for repairs, the greater the likelihood of further personal injury claims!

As for claims at the lower end of the scale of value, and which, of course, include most trips and slips, a review of all personal injury claims resolved by one insurer in 2008 concluded that:

*“Average costs in cases below £5,000, which were settled post issue, amounted to almost three times the average damages. Average costs also exceeded average damages in claims between £5,000 and £15,000.”<sup>3</sup>*

There can be no doubt as to the magnitude of the problem of civil litigation costs for defendants faced with aggressive ‘*No Win No Fee*’ marketing and advertising campaigns that, many feel, promote and encourage a ‘*get something for nothing*’ attitude. However, as the remainder of this paper highlights, questions remain as to whether the Jackson Review’s main headline recommendations will actually achieve their intention and Councils, as well as all defendants, need to be prepared.

### **Fixed Fees in Fast Track Claims**

Jackson recommends that claimant costs in personal injury claims in the Fast Track (up to £25,000 in value) should be of a fixed amount and not dependent on the amount of time spent on the case. Disturbingly, this is likely to lead to some claimant lawyers becoming more encouraged than might otherwise be the case to pursue evidence and areas of damage to justify a value in excess of £25,000, thus pushing the case into a higher cost recovery.

The additional ‘double whammy’ downside for defendants is not just the higher cost exposure, but the exposure to higher damages.

### **Success Fees and After the Event Insurance**

A second recommendation is that success fees and ATE (*‘After the Event’*) insurance premiums should

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<sup>2</sup> *Ibid* Jackson Review p.16 para 2.11

<sup>3</sup> *Ibid* Jackson Review p.18 para 3.6

cease to be recoverable from unsuccessful opponents in civil litigation, which will undoubtedly lead to a significant saving for Councils. As one would expect, this recommendation has inevitably come under heavy fire from the claimant lawyers.

Jackson balanced this proposed change by recommending both an increase in general damage levels, plus a provision to end the ability of defendants to obtain an order that their legal costs be recoverable from unsuccessful claimants.

Robert Khan, Head of Law Reform at the Law Society, has pointed out that this provision can only lead to “an increased legal costs burden for police, ambulance and other public authorities”<sup>4</sup>.

Whilst many claims are successful, the removal of a claimant's exposure to a costs order may well encourage more unmeritorious claims of a ‘*worth having a go*’ nature, thus increasing a defendant's overall costs further.

### Referral Fees

It is proposed that referral fees paid by solicitors to 'buy' cases from third parties are to be banned.

Whilst there is no doubt that referral fees have fuelled the claims industry, well managed and more successful solicitor's practices have long ceased buying in cases, preferring to focus instead on direct marketing initiatives.

A ban on referral fees will simply provoke increased marketing effort across the legal landscape, thus counteracting any expected drop in claim numbers that a referral fee ban would initiate.

Additionally, the introduction of Alternative Business Structures in late 2011 (see below), will simply serve to fuel an increase in ‘*legal services*’ marketing and advertising activities.

### Tesco Law

Alternative Business Structures (ABS's) allow non-lawyers to offer a wide variety of legal products and services to the public and well known high street retailers are already gearing up to take advantage of the lucrative opportunities that this change in the law creates.

Commonly referred to as ‘Tesco Law’ (for obvious reasons), the introduction of ABS's effectively paves the way for law firms to team up with more marketing ‘savvy’, well known retailers and banks, thereby increasing awareness of, and accessibility to, legal advice for the general public.

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<sup>4</sup> “Solicitors and others remain divided over desirability of the government's civil justice reforms” Law Society Gazette 7<sup>th</sup> July 2011

We have already seen the reaction from lawyers in anticipation of the commencement of competition from ABS's, with networks of law firms sharing marketing initiatives. As an example of this, *Quality Solicitors* have already struck a deal with *W H Smith* to have a member firm in high street stores to drive new business enquiries and they also have a national series of television commercials planned.

So, despite the best efforts of the Jackson Review to cut the costs associated with claims, ABS's look set to not just negate any impact that Jackson will have, but ironically, to actually increase claim numbers due to the more aggressive selling of legal services as the big brands and networks seek to exploit and dominate the legal market.

## Fix My Street

The rise of the internet and the availability of online websites such as [www.fixmystreet.com](http://www.fixmystreet.com), has opened Councils up to not just an increased number of claims, but also to the prospect of less success when it comes to defending against them.

[www.fixmystreet.com](http://www.fixmystreet.com) enables the public to report street repairs and issues and read responses from the relevant council. Whilst its use in areas of the country seems variable, it clearly has the capacity to fuel the claims industry by providing evidence against councils of repairs notifications not acted upon.

As an example, a recent search on the site produced a damning record<sup>5</sup> of a footpath reported in November 2010 to have many deep potholes. Three months later, the original reporter pointed out that it had still not been repaired, despite the Council being also emailed about the problem.

A month later, in March 2011, four months after first notification, the post's author commented:

*"Progress regarding my initial enquiry has been zero. I have made contact with Flintshire Council, but since my initial contact in November 2010, nothing has been solved and repairs to the public footpath have not taken place. I'm not sure who else to contact about this and the condition of the path is gradually deteriorating to a point where it is unsafe. I have emailed and written to Flintshire Council, all to no avail."*

On the 17<sup>th</sup> May 2011, six months after first notification, the Council responded as follows:

*"This matter has been placed on the maintenance programme".*

Given that liability on trip cases depends heavily on whether the Council ought to have made itself aware, or become aware of, a problem and actioned repairs in a reasonable period of time, this

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<sup>5</sup> <http://www.fixmystreet.com/report/144959>

website can only weaken the prospects of a successful defence and, worse, by publicising unrepaired holes, encourage fraudulent claims for planned and intentional trips.

## 3. The Solution

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Staff reductions, budget cut-backs and the increasingly litigious nature of the general public mean that unless Councils adapt and update their claims management processes, their exposure to claims associated costs will remain an ever tightening noose around their necks.

It's a fact that inefficient claims management is a key contributor to costs and, even in today's hi-tech business environment, claims management is heavily reliant upon an alarming degree of time consuming, paper-based manual administration and data input.

Just as insurers the world over are investing heavily in technology that can deliver significant savings via streamlined processes and automated workflows, Councils must also do the same.

The next generation of claims management systems offer a range of solutions to enable claims to be settled with greater speed and at a lower cost.

### Legacy Systems

Unfortunately, many Councils are faced with the challenge of maintaining aging technology and legacy software systems. When budget constraints mean that a 'rip and replace' strategy is out of the question, there is no alternative but to leverage what is already in place.

But, with up to 70% of an IT Department's time being spent on supporting old equipment, many Councils simply do not have the resources to deliver innovative applications and technology solutions to enhance the claims handling process.

### ClaimsView

ClaimsView, from 3Sixty Systems, delivers the very latest in claims management technology with the added bonus that its feature rich, cloud based\* platform can be configured or customised to match and enhance any Council's claims processes, without breaking the bank. [\*Please Note: ClaimsView is also deployable on premise].

Built using the latest Microsoft .Net technologies, the ClaimsView platform has evolved on the front lines of the volume insurance claims market over the past 13 years. The result is a fully scalable, highly flexible, out of the box claims platform.

## Improved Claims Handling Performance

With detailed statistical data available at the touch of a button covering specific claims and entire claims portfolios, coupled with performance enhancing functionality and built-in best practice, ClaimsView delivers a powerful competitive advantage when it comes to expediting claims to final settlement.

Working in conjunction with in-house IT teams, our bespoke services team provides a full integration service, including integration with Oracle and SQL Databases, accounts and payroll software, Microsoft SharePoint, SAP and other ERP's, as well as other systems and technologies - freeing up IT resource to focus on day to day systems management.

And when it comes to customising the claims platform to meet a Council's exact needs, the system's flexibility allows for fully adaptable and editable workflows, processes and layouts.

As a result, ClaimsView gives you all the benefits of a bespoke claims management solution, minus prohibitive development and implementation costs.

## ClaimsView Key Features and Benefits

- Extremely flexible, fully scalable and highly secure .Net platform
- Multi-user, multi-level access and highly secure extranet
- Advanced search of current and archived files
- Powerful MI reporting and custom dashboard capabilities
- Automated report generation and delivery via email
- Links with email, Word, Excel and PDF for output of reports
- Track and store all outbound and inbound mail/email correspondence
- Links to scanners with email capability to attach documents directly to claims
- Outlook toolbar facility to link email correspondence to claims
- Automatic alerts when new information added
- Diarising of follow up activities
- Click to dial telephone capabilities and inbound call pop-ups
- Detailed claims trends analysis
- Multi browser/any device access
- Batch import of historical data

## 4. Find Out More

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If you would like to find out more about the ClaimsView platform, or discuss your Council's specific claims management needs, please contact **Dean Watmough** on **0333 010 7998**.

Alternatively, please get in touch by email at [dean.watmough@3sixtysystems.com](mailto:dean.watmough@3sixtysystems.com), or you can visit our websites at [www.claimsview.co.uk](http://www.claimsview.co.uk) or [www.3sixtysystems.com](http://www.3sixtysystems.com).

We offer a free, completely confidential, in-depth consultancy service and are happy to provide system demonstrations online, at any of our four UK office locations, or at your premises.

We look forward to hearing from you soon.