

Is Woolf working?

April 2009 saw the tenth anniversary of the introduction of the Woolf reforms to civil litigation. As is the nature with such anniversaries, it was accompanied by a flurry of articles and other commentary on the impact of the Civil Procedure Rules (CPR) 1998, which were introduced to implement the recommendations Lord Woolf made in his reports on the civil justice system. Lord Woolf's intention was to reduce costs, delays and complexity in civil court cases. Above all, he wanted to increase access to justice. However, opinion is sharply divided on whether or not his reforms have succeeded in these aims.

In discussing the reforms, some commentators seem to mistake access to justice as meaning access to a court hearing and lament the reduction in trials to which the introduction of the CPR has contributed. LAG believes that most users of the civil justice system want their cases resolved justly with the minimum of delay and to avoid a hearing if at all possible. More settlements are now reached and cases resolved by alternative dispute resolution procedures. The increase in cases settling has also had a positive impact on delays in the courts system. These improvements were because of Lord Woolf's tenacity in driving through possibly the most radical change of the civil justice system in 200 years, and for that he deserves plaudits.

Lord Woolf also wanted to reduce excessive adversarialism in the civil courts system. Again, the reduction in hearings points to a change in culture, with parties moving away from fixed positions to greater co-operation to negotiate solutions to the matters in dispute, though this has come at a price. Costs are now frontloaded in cases with much time and effort being spent on pre-action protocols and the earlier exchange of information between the parties. In addition, parties have been forced, under the CPR, to bring forward what they would have done nearer the trial in the old system.

Perhaps Lord Woolf's most ambitious reform was to shift the management of cases away from the parties and the courts system to the judiciary. It would seem that there are inconsistencies in approach among the judiciary to case management. In some cases the parties are allowed to let deadlines go by without penalty, while others are penalised for not following case-management directions.

In LAG's view, ten years of experience in working under the CPR has not changed judicial culture in every corner of the civil justice system. Lord Woolf suggests that more training of both the judiciary and practitioners is needed for this to happen. LAG agrees with Lord Woolf, but the main problem is one of resources. Many practitioners believe that often the judiciary has insufficient reading time to get to grips with a case in order to make useful, case-management directions. For case management to have a greater impact, the judiciary needs to be better resourced. However, court fees are already set at prohibitively high levels because of the government's policy of making the courts system self-financing. This is driving up costs and excluding many people from taking cases, especially if they are not backed by legal aid or insurers. In the present climate, it is unlikely that the civil justice system will receive the cash injection needed from central government to better implement judicial case management. LAG fears that for the foreseeable future, active case management will be caught in a halfway house between Lord Woolf's vision and a pragmatic, budget-led approach.

Case management is also hampered by the complexity of the CPR. Peter Thompson QC, a general editor of *The Civil Court Practice*, revealed that there has been a 550 per cent increase in the book's extent due to the introduction of the CPR.¹

It is the cost to clients which remains the greatest barrier to justice. Empirical studies on the costs of civil litigation indicate they have risen at above the rate of inflation. One study concludes: '... the findings appear to support a strong overall Woolf effect towards increased costs'.² Perhaps the greatest driver of costs has been the introduction of no-win, no-fee agreements and the costs of after-the-event insurance. Lord Justice Jackson's review of civil litigation costs deals with these and other matters related to costs (see page 4 of this issue).

Lord Justice Jackson sees his report, *Review of civil litigation costs: final report*, which was commissioned by the then Master of the Rolls, as continuing the process Lord Woolf started. Although LAG does not agree with some of Lord Justice Jackson's recommendations, we hope that his report sparks action on the problems of complexity and costs in the civil justice system, otherwise any progress that might have been made in the past ten years will be lost.

1 'Woolf's litigants', NLJ, 27 February 2009, p293.

2 Paul Fenn, Neil Rickman, Dev Vencappa, *The impact of the Woolf reforms on costs and delay*, Centre for Risk & Insurance Studies, 2009.

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