

**25 February 2013****Agenda Item: 5****REPORT OF SERVICE DIRECTOR, FINANCE AND PROCUREMENT****PERSONAL INJURY CLAIMS: JACKSON REFORMS TO THE CIVIL JUSTICE  
PROCEDURES****Purpose of the Report**

1. This report is intended to provide an overview of the forthcoming reforms to the Civil Justice Procedures and explain some of the implications for Nottinghamshire County Council.

**Information and Advice****2. Current Position**

- 2.1 In 1999 Lord Justice Woolf completed a review of civil justice and as result under the 1999 Access to Justice Act, the Civil Procedure Rules (CPR) which governs the way in which personal injury claims are handled were introduced. The new rules were intended to give fairer and quicker access to justice.
- 2.2 Whilst the CPR has been successful in some aspects, the unexpected side effect was a massive increase in the fees claimed by claimant's solicitors on successful claims. After the introduction of the CPR, there was also an increase in the number of claims being received, which has been fuelled by the aggressive advertising campaigns of the "no win, no fee" solicitors.
- 2.3 The new Act allowed claimant's solicitors to claim an uplifted fee from the defendant if they were successful, which was intended to compensate for the loss of Legal Aid. These agreements are known as Conditional Fee Agreements (CFAs). Under these agreements the solicitor will not be paid if they lose the case, but if they win they are entitled to claim a success fee, which effectively uplifts the rate they claim by up to 100%. These costs are paid by the defendant. Costs bills are submitted based on hourly rates which are then negotiated down and typically an average reduction of 33% can be expected.
- 2.4 Claimants take "after the event insurance" (ATE), on credit, to protect themselves against any cost they may have to pay the defendant if their claim is unsuccessful. These costs are also recoverable from the defendant if they lose the case. ATE premiums start from around £1,000 and typically range between £1,000 and £30,000.

- 2.5 Typically average claimant's solicitors cost on low value personal injury cases have risen by over 100% since 1999 and now constitute 67% of the overall costs of a claim settlement. This has resulted in a situation whereby, on average, solicitors receive twice as much in costs as the claimant receives in damages.
- 2.6 In light of this, approximately two years ago the Government charged Lord Jackson with reviewing the CPR and introducing a more equitable system, which reduces costs and speeds up the process. Lord Jackson's reforms are now set to be introduced on 1 April 2013, for personal injury claims where the accident date is after the 1 April 2013 or, for disease claims, where the letter of claim is issued after the 1 April 2013.
- 2.7 Despite the imminent introduction of the new regulations, the detail is still being finalised and to a large degree practitioners (including the Risk and Insurance Team) are trying to gear up using assumptions that may change. At this point the industry believes that only part of the reforms will come into place on the 1 April 2013, with the rest being introduced throughout the next twelve months.

### **3. Lord Jackson's Proposals**

- 3.1 Lord Jackson's reforms are far reaching and this report will focus on the reforms to personal injury claims where the value of damages falls between £1,000 and £25,000 (known as "fast track claims") as this is where the County Council will see the most significant impact.
- 3.2 In future, all personal injury claims will have to be submitted via an online "portal". Claims received will have to be acknowledged within one day of receipt. This is the starting point for the changes which are summarised in appendix A. (It is this aspect that is most likely to be delayed and claims will continue to be received in paper form)
- 3.3 The most significant impacts are the introduction of fixed costs for claimant solicitors and the timescales for dealing with claims.
- 3.5 When a claim is successful, claimant's solicitors are currently able to recover their costs from defendants. The costs are based on hourly rates and subject to success fees (an uplift which is allowed in order to balance the claims that are lost for which the solicitors receive no remuneration). Under the new regime claimant's solicitors will only be able to claim fixed costs.
- 3.6 Fixed costs potentially bring significant savings for defendants. There are two "trade-offs" for fixed costs:
  - Defendants will no longer be able to claim their costs if successful at Court
  - Awards for damages are being uplifted by 10%; this follows on from a recent uplift of 9%.
- 3.7 The timescales still have to be finally confirmed but it is thought likely that the defendants will have either 30 or 40 days from receipt of the claim, depending on the type of claim, to investigate and either admit or deny liability. Currently defendants have 21 days to

acknowledge receipt of a claim and then 90 days to investigate and either admit or deny liability.

- 3.8 If any of the timescales are not complied with the claim drops out of the portal process and reverts to the current CPR. Fixed costs still apply but at a higher rate. There may be reasons why we choose to let a claim drop out of the portal, for example, if there are suspicions of fraud and more investigation is required.

#### **4. Implications for Nottinghamshire County Council – Personal Injury Claims Only**

- 4.1 If cases can be kept in the portal process there are potentially significant savings to be made. There are many variables in calculating the potential saving, but based on the claims settled in the last twelve months, had 50% of them settled with the proposed fixed costs, even allowing for the uplift in damages, the County Council would have saved around £250,000.
- 4.2 In order to maximise the savings, a review of the Risk and Insurance Team's working practices and resources needs to be undertaken to ensure there is sufficient capability and capacity to deal with the claims in the timescales. Work on reviewing processes has commenced and the issue of capacity and capability will be addressed through the Finance and Procurement Division restructure.
- 4.3 A particularly important factor will be the co-operation of the Council's Service Departments, as they will need to provide reports and supporting information on claims very promptly. The majority of claims arise from Highways and whilst the team are already working to a 14 day response time, further work will be required to ensure this target can be met in all cases. For other cases, the use of on-site investigations will be extended to make sure that information is captured quickly. Implications of the changes will be cascaded out through the Departmental Risk Groups.
- 4.4 Cases where there are issues of potential fraud need additional investigation and there is no time allowance within the new process for this. If these cases are to be fully investigated, with a view to potentially not settling the claim, they will have to be allowed to drop out of the process. If the causation issues are unproved and the case settles, the claimant's solicitors will be entitled to higher costs than if the claim settled in the new timescales. This additional cost could be as much as £2,300\*\*.
- 4.5 At present, if a defendant (ie the County Council) takes a case all the way to Court and they are successful, the claimant has to repay the defence costs. In most cases they will have either "Before the Event Insurance" (such as the legal protection sometimes included in household policies) or they will have been provided with specialist "After the Event Insurance". Under the new regime if the defendant is successful they are not able to recover their costs but, if the claimant is successful they will still be able to claim costs, albeit at a much lower level than is currently allowed.
- 4.6 When the Council is liable the aim is to settle claims fairly and without delay but, it is important that when it is believed that the Council is not liable or where there are issues indicating fraud that the claims are robustly defended. If necessary these claims should be taken all the way to Court. This approach sends a clear message to claimants and their solicitors and acts as a deterrent to future claims. Under the new system, taking this

approach may incur some additional costs but these are outweighed by the overall benefit of actively defending claims.

## **5. RECOMMENDATION/S**

It is recommended that this report is noted for information.

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**Service Director – Finance and Procurement**

**For any enquiries about this report please contact:**

**Anne Hunt**  
**Risk and Insurance Manager**

### **Constitutional Comments**

5. None – report for information only

### **Financial Comments**

6. None – report for information only

### **Background Papers**

Nil

### **Electoral Division(s) and Member(s) Affected**

Not Applicable

## Appendix A – Summary of Changes Fast Track Claims

Current CPR	Jackson Reforms
<b>Submission of Claim</b>	
Letter of claim sent via the post	Claim submitted via electronic portal
Letter of claim to be acknowledged within 21 calendar days	Defendant to acknowledge claim within 1 working day of receipt
Letter either repudiating or accepting liability to be issued within 90 calendar days of the acknowledgement.	Repudiation or acceptance to be issued through the portal in 30/40* days depending on the type of claim.
<b>Actions Post Admission of Liability</b>	
Both parties agree the appointment of medical experts and commission a medical report.	The claimant submits a settlement pack which includes the medical reports, details of special damages and their valuation of the claim.
Once the medical report and details of special damages are received the defendant assesses the value of the claim and makes an offer. The offer has to be made with 21 days of receipt of the medical report.	Stage One Costs must be paid to the claimants solicitors within 10 day working days of receipt of the settlement pack. Stage one costs are £300**
	The defendant must either accept the claimants offer or make a counter offer within 15 working days of receiving the settlement pack.
An un-quantified period of time then elapses whilst quantum is negotiated and the parties hopefully agree without Court proceedings being issued.	Once the defendant has made a counter offer there is a period of 20 working days to negotiate.
Claimants Solicitors issue their bill of costs which is then negotiated –average bill of costs for cases settled last 12 months c. £5,000.	Fixed cost of £600/£1,300** (depending on the value of damages) payable to the claimants solicitors within 10 working days of damages being agreed.
	If any of the timescale are not met the claim will drop out of the portal procedure and revert back the current CPR timescales, however fixed costs will still apply. Costs vary depending on the type of claim and value of damages, maximum costs £2,500 plus 10% of damages**.

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**Current CPR****Jackson Reforms**

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**If either costs or quantum cannot be agreed the case may litigate**

Case will follow the Court timetable

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Claimant wins at trial – claimants solicitors submit bill costs which is negotiated. Costs likely to be c.£25k paid by defendant (costs will include the permitted 100% uplift allowed under the CFA)

Claimant wins – claimants solicitors claim fixed costs from the defendant.

Defendant wins – defendants solicitor submits bill of costs c. £15k which will be paid by the claimant

Defendant wins – defendant solicitors costs not recoverable.

Note – fixed costs apply if the case settles prior to trial – costs vary depending on value of damages.

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(\* timescales subject to final confirmation)

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