Lord Justice Jackson: It wasn't sexy work but I'm proud of it

The judge has retired after a decade of tackling inflated legal costs

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- Law

Lord Justice Jackson, 70, is leaving the Royal Courts of Justice this week
FIONA HANSON FOR THE TIMES

The task was "neither glamorous nor sexy"; a poisoned chalice that made him "extremely unpopular". Yet, Lord Justice Jackson told *The Times* this week, the "blunt and inescapable fact" is that his reforms achieved significant reductions in litigation costs.

That, of course, was the aim. Ten years ago he was charged with the "unenviable" task of tackling costs amid concerns that they were often excessive. "Lawyers," he says, "generally don't like change and they particularly dislike anyone meddling with costs." Irate letters to newspapers and "onslaughts in the legal journals" ensued.

This week he is assessing his record. The moment is apt: he is retiring from the bench as he reaches 70 and was busy filling crates for shredding from his room in the Royal Courts of Justice. How does he see his legacy? "I believe my reforms streamlined and improved the process of litigation, and they have substantially reduced costs while promoting access to justice."

Costs are still too high. But he saw the abolition of many forces behind excessive costs, such as "success fees", under which lawyers took on cases for nothing and, if successful, as much as

doubled their normal fees. Litigants can no longer claim back insurance premiums taken out to protect against the costs.

Together with success fees, one party could end up at risk of "paying up to four times the cost of the action while the other party paid no costs, regardless of whether they won or lost", he says.

He also saw off referral fees, paid by lawyers to have accident claims sent to them. These added a "thick layer of costs", he says. "Solicitors were competing for business by paying ever higher referral fees. The beneficiaries of that competition were claims management companies and other referrers, not the injured claimants." The ban, in April 2013, significantly reduced the cost of personal injuries litigation, he says.

The Royal Courts of Justice in London
ALAMY

He also brought in case management reforms to control the timetable and cost of cases; better enforcement of court orders; the use of joint experts, known as "hot tubbing"; and "qualified one-way cost shifting" in personal injury cases, which meant that unsuccessful claimants generally did not have to pay defendants' costs, removing the need for hefty insurance premiums.

The reforms were a shock to the legal profession. "But if you talk to the wider public and court users, I think they will find they are welcome." Costs management and limiting recoverable costs to what is proportionate "starkly divided [legal] opinion", but now are mainly accepted, despite further guidance keenly awaited from the Court of Appeal.

Critics say fixed costs threaten access to justice because they drive specialist lawyers in complex cases from the market. "I don't accept that," he says. The figures for new claims have continued to rise. He says his detractors "did not like losing recoverable success fees, even though they were massively driving up costs. And some people do not like cost budgeting."

What has been “deleterious” to access to justice, however, are the cuts to legal aid and huge rises in court fees, he maintains. He “greatly regrets” both, but on this his recommendations have been ignored.

On the whole, though, his reforms have taken root. The task has been all-consuming, but he insists: “Judges do what they are asked to do. I was happy to do it.” He was ideally suited to the job. Precise, punctilious, schoolmasterly, he can cite the relevant report paragraph in any answer. And his focus has been unabated, bar a short illness some years ago from which he returned fighting fit.

A second batch of reforms came in 2017: he floated the idea of extending fixed costs to all civil cases up to £250,000 and the lord chief justice and Master of the Rolls asked him to look into it.

His report proposed fixed costs and streamlined procedures for non-complex cases for claims up to £100,000 and a pilot to test capped recoverable costs in business and property disputes up to a value of £250,000. To the relief of lawyers, on medical negligence claims he proposed a lower level for fixed costs for claims up to £25,000. The plans are still with ministers, but he is confident they will be implemented.

There are other issues: the costs management regime controls only future costs and not those run up before litigants formally embark on budgeting at the start of a case. There is also disclosure: his idea of a “menu” of disclosure orders has not worked; most opt for standard disclosure. He strongly backs proposals for limited disclosure to which parties would have to comply.

He now returns to his old chambers, at 4 New Square, as an arbitrator and adjudicator and will be one of the judges at the new commercial court headed by Lord Woolf in Kazakhstan.

Lord Justice Jackson does not speak of a so-called compensation culture. But if there was one, he ended it. “I have never used the phrase. I found in place a highly unsatisfactory system. I was given the task of tackling it — promoting access to justice, but controlling costs. It has been a difficult task. But I have done my best.”

Reforms still on the table

Lord Justice Jackson’s second set of reforms are still being considered by the government. They include:

£250,000
Upper threshold for claims in a pilot for recoverable costs in business and property cases

£100,000
Upper threshold for non-complex claims where fixed costs will apply

£25,000
Upper threshold for medical negligence claims where fixed costs will apply

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https://www.thetimes.co.uk/article/lord-justice-jackson-it-wasnt-sexy-work-but-im-proud-of-it-fg30fkrp9