At Thompsons, we can see the significant advantages which may accrue from bringing the English and Welsh civil courts service into the 21st century with a serious programme of investment in digitalisation. The Reform Principles are, for the most part, uncontroversial. We would welcome such modernisation.

Our major concern is that modernisation should not be piecemeal or token, or, fundamentally, come at the cost of reducing access to justice and the quality of the courts service available to working people. We take comfort from Briggs LJ's succinct and helpful exposition at paras 2.23-2.24 of the need for "an affordable recourse to an expert, experienced and impartial court".

We would very much wish to see a new system unlike the current one, accurately characterised at para 5.14 whose "strengths and advantages are there to be enjoyed primarily by those sufficiently wealthy to be able to pay for the professional cost of legal representation, coupled with rapidly rising court fees" and where "most ordinary people" "struggle to benefit from the strengths of our civil justice system" (para 5.23).

We therefore regret that we are far from convinced that Lord Justice Briggs' wide ranging proposals ('the proposals') are a suitable and appropriate response to the difficulties facing the civil courts today. We question the extent to which they are suitable for all case types.

We especially question whether the government will provide the civil courts service with the necessary funding and other resources to allow the proposals to be effectively implemented even at a future time "most unlikely to be…earlier than four years hence, even if the funding proves sufficient" (para1.15)'.

With regard to the online court ('OC'), we note the government's mixed track record in delivering complex ICT projects on time and to budget, as alluded to by Briggs LJ at

para 5.132. Last month (January 2016) the National Audit Office's report[1] said that a third of major government projects due to be delivered in the next five years are 'in doubt' or 'unachievable' unless action is taken to improve delivery. Over 25% of these projects are ICT projects. We note, also, delays in the Employment Tribunal remissions scheme being brought to fruition.

Inequalities in people's ability to access online services are at risk of being overlooked. According to 2015 ONS figures[2], 11% of adults (5.9m people) in the UK have never used the internet. Those without access to the internet or technical know-how, for example to scan and upload documents onto a portal system, must not be cast aside in the creation of a new system that will suit only the IT literate.

Around 74% of adults in the UK use mobile devices to access the internet and a significant proportion of these only use mobile devices to do so. In the absence of evidence to the contrary there must be a real risk that there will be many without the necessary equipment to scan, print or upload documents to the OC.

We are concerned, too, by the assumptions upon which the proposals are based and the caveats littered by the author throughout. For example, in paragraph 2.19 Lord Justice Briggs admits that he is assuming both that a paperless court is technically possible and that it will receive the necessary government funding. Our current experience of the UK courts is that they are woefully inadequately provided with ICT equipment – the sharing by all District Judges in a court of a single laptop computer is we understand far from uncommon - so we question the extent to which the move to an online court is possible without very significant additional funding in equipment, the maintenance of that equipment and the system to support it, as well as the necessary training to ensure its effective use.

[1] https://www.nao.org.uk/report/delivering-major-projects-in-government-a-briefing-for-the-committee-of-public-accounts/
[2] http://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2015

Quite apart from any transition to a paperless system, the court's own internal processes must improve before introducing high levels of IT. Lord Justice Briggs refers to Central London County Court and its perceived administrative inefficiencies. It is a court we have used as a firm and a perception we have experienced as a reality. The fact is, a digitised inefficient system will still be inefficient.

Similarly, in paragraph 6.10, the author caveats 'the genius of this innovative approach' with 'if it can be made to work'. We are concerned a radically novel system for delivering justice based on such uncertain foundations.

In an era of ongoing austerity, we also know that the government is highly adverse to spending money. The 2015 Autumn Statement set out that the Ministry of Justice is expected to make departmental savings of 50% by 2019-20 and overall resources savings of 15%. Can we really be sure that the Treasury will support the significant investment required given its general direction of travel and given that there is no guarantee that the new system will drive meaningful savings within any set timetable?

Briggs LJ perhaps reveals the thinking underpinning his approach when he states (para 3.3) that the Jackson Reforms were "primarily directed to curing very serious abuses and disproportionality in the cost of conducting personal injuries litigation" and that (para 5.46) "wildly disproportionate expenditure still occurs" in personal injury litigation. It is, however much our view may be dismissed as self-serving, not a picture we recognised before the Jackson reforms and certainly don't recognise since. Of course, if costs claimed are wildly disproportionate, defendants are able, and as should, challenge them and, in view of the new proportionality test, will likely be successful.

Briggs' proposals assume that all cases will go to the OC. If that becomes the public's perception, too, then it will quickly mean that many litigants will have no incentive to negotiate or seek other forms of dispute resolution before entering the court system. Currently, lawyers are often able to keep cases out of court and a high proportion of

personal injury ('PI') cases settle without court proceedings. If all disputes go through the OC, even with an automated triage system, the court's workload will surely increase significantly. There is already evidence of that now with the increased number of litigants in person ('LIPs') taking up more of the court's time.

Going to court should be a last resort step in terms of dispute resolution. There is reference to disproportionate cost in paragraphs 5.24 and 5.37 in low value claims. What is overlooked, however, is the fact that thousands of claims settle without court proceedings and without 'disproportionate' cost. The courts usually only see those (small percentage of) cases where attempts at negotiation and alternative dispute resolution have been exhausted.

Likewise, those cases where court proceedings are commenced usually settle. Only a very small proportion of cases go to trial. While costs *may* be disproportionate in those very few cases, that is because all other avenues have been exhausted and the disputes between the parties are highly contentious.

Removal of costs shifting could encourage a nonchalant or, worse, vexatious attitude to negotiation, evidence and pleadings. Those claimants who do engage lawyers could lose a substantial proportion of any damages they recover by way of costs. Without costs shifting the risk of a large bill from a lawyer combined with court fees could deter legitimate claims and defendant insurers could take advantage of not having to pay for their conduct in costs.

The notion of "increasing motor and employers' liability insurance premiums" (para 5.46) is, again, highly contentious. Since LASPO, claimant lawyers' costs have been hugely reduced without any consequent reduction in premiums[3]. We very much doubt whether

[3] '£7 billion windfall for car insurers over four years' - http://www.thompsons.law.co.uk/road-traffic-accidents/7-billion-windfall-car-insurers-over-4-years.htm

the ‘mischief’ of very high costs linked to ever-rising insurance premiums, seemingly taken as a given by Briggs LJ, in fact exists.

Briggs LJ recognises himself at para 5.45 that PI litigation is an obvious example of an area where “the cost of legal representation does not lead to the result that individuals are forced either to litigate in person or to forgo access to justice.” We submit that that is a desirable state of affairs and one to be spread across the civil justice system rather than being further restricted to an ever smaller class of cases.

We note at para 5.17 the “suspicion that some solicitors’ firms seek to secure better charging rates by issuing proceedings in London” and would merely comment that while our own regional offices do issue some cases out of London, that that is primarily to benefit from specialist lists such as the Mesothelioma List in the Royal Courts of Justice. Such lists tend to have the result of mitigating costs by means of effective expert judicial case management.

We are both concerned and alarmed that Briggs LJ appears to assume that the small claims track limit for all personal injuries cases “is likely soon to be raised to £5,000” (para 6.38). This prejudges the outcome of a consultation which the Ministry of Justice has not yet even commenced into this issue and which is based on the Chancellor’s comments in the Autumn Statement which were wholly related to road traffic accidents.

We note Briggs LJ’s comment that “There is growing pressure for an upwards extension of a fixed costs regime across the whole of civil litigation”. There is no pressure from claimant lawyers or claimants themselves, or from anyone who believes in truly equal access to justice, though we note Lord Justice Jackson’s recent IPA Lecture on the topic.

We firmly believe that any pressure for increased fixed costs should be resisted. Fixed costs are, in our view, and we have seen no evidence to the contrary, an opportunity for

the paying party to force cheaper, lower settlements on claimants and to avoid or mitigate the consequences of their own misbehaviour, both their initial breach of duty and then their failure to engage in constructive dialogue with the injured party.

We note and share Briggs LJ's concerns over the effect of exponentially increasing court fees on the ease of access to justice.

Thompsons is a claimant law firm dealing mainly in personal injury ('PI') cases, but also significantly in employment rights ('ER') and it is significant that these proposals would not work equally well for both types of case.

PI cases (beyond very low value claims) should be excluded from any requirement to be processed in any OC. We are therefore pleased to see the conclusion of Briggs LJ in paragraph 6.47 that 'the exclusionists [that is, those who favour excluding personal injury cases from the Online Court] currently have the stronger case'.

PI cases often require the development of a close relationship between the claimant and the solicitor and part of the skill of the solicitor is in building a strong rapport with the client in what may be highly sensitive and personal circumstances so as to allow for a proper assessment of the nature of the claimant's injuries and indeed the strength of his claim. Anything other than a face-to-face dialogue may be to the detriment of the claimant.

There is a very clear danger that the online process would overly simplify the process of bringing a PI claim. If the OC were to include PI claims, even restricted to those of the very lowest value, claimants should be entitled to expect serious reassurance that the online system would ask the right questions, in the right way, to capture the wide range of injuries a person can sustain. We would also need to understand how improperly filled-in online forms would be checked and dealt with. For example, in relation to limitation periods it can be fundamental to a case's prospects of success that a claimant

provides the correct date of knowledge. We query how the new system would ensure this kind of information is correctly stated.

In part, the proposals seek to mitigate the chances of the system failing the user by training special Case Officers. Quite apart from the question of how the expense of hiring and training enough Case Officers would be met, we are concerned that the line between judicial and community oversight is not well-defined. For example, decisions on limitation periods must be kept firmly within the remit of a judge and not delegated to a Case Officer.

We welcome the proposal (para 7.35 to 7.38) that Case Officers' decisions should be subject to judicial reconsideration.

However, it is worrying if, as paragraph 12.8 states, there is a 'steady-state ambition…to make the OC compulsory for cases within its competence'. Before rushing headfirst into a new regime that does not work for all, we call on the government to first consider a long-term, comprehensive trial so that problems can be remedies and cases not suited to the OC can be taken outside its competence.

Lord Justice Briggs is right to suggest that enforcement in the civil courts is perceived as being slow, ineffective and inexpensive (paragraph 5.97). We would suggest that that perception is accurate and if effective steps are to be taken to improve the enforcement process, we would welcome them.

The idea of aligning the Employment Tribunal (ET) and the Employment Appeal Tribunal more closely with the civil courts is problematic. If the ET is moved into the civil court, then litigants may be dealt with by a non-professional judge and may receive a lower quality of hearing as a result. If ET were to move into the civil court then the current procedural rules of the ET should be maintained.

The move to an online system inevitably raises concerns about access and the user experience, which we share. There is a still a large percentage of our client base who won't feel comfortable using an online system and it may be a barrier to some who would otherwise progress with confidence. Given that good access to the internet is still not enjoyed by all, there will also be those unable to access the OC regularly, consistently, or at all.

The withdrawal of Civil Legal Aid has brought an increase in the number of LIPs. We question whether the proposal to introduce an OC is simply an expedient response to relieve courts of responsibility to cater for them. Without solicitors to advise them LIPs also face numerous hurdles to bring a case, for example how would they deal with evidence gathering from lay witnesses and medical experts? Meanwhile, defendant insurers will still have legal representation or, at the very least, claims handlers with legal expertise, to the disadvantage of the lay claimant.

Finally, Lord Justice Briggs explains the urgency with which his proposals need to move forward. We would recommend a more cautious approach that includes wide and deep consultation with all stakeholders. As explained at paragraph 1.12.1, this 'first stage' consultation has only been conducted informally with a limited number of consultees and we encourage the author to now proceed with a more comprehensive and transparent approach. We hope, also, that the next iteration of his proposal will be substantially more in-depth, and be accompanied by the necessary impact assessments for consultees to make full and well-informed judgements.

For further information

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