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"Chaotic" Jackson reforms will mean a "raft of litigation"

25 January 2013

The MoJ's implementation of the Jackson reforms has been chaotic and will result in a raft of satellite litigation, says LSLA president Francesca Kaye

With 1 April within touching distance we finally have some details from the Ministry of Justice (MoJ) around damages-based agreements and conditional fee agreements. It's a start but it's not nearly enough. Stubbornly, the MoJ is sticking to 1 April as D-day for implementation of these major civil justice reforms. It's a risky tactic.

The entire legal profession had been kept in the dark until this week (22 January). It is hard to understand why we've had to wait so long given that we've spent three years debating the reforms proposed by Lord Justice Jackson to overhaul the civil justice system.

Although we have some information now the implementation timetable will still be rushed and there is no news on when the rules and practice directions will be published – without which we are rudderless. There's still significant risk that instead of an integrated package of comprehensive reforms we will see piecemeal implementation as rules and regulations are rushed through to meet this artificial deadline. The Road Traffic Accident (RTA) Portal has already been postponed because of the inability to make changes in time for 1 April.

The MoJ's timing on release of some draft rules and regulations means that judges, barristers, lawyers – the practitioners who have to work with the changes – have been

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operating in a vacuum without being able to train and prepare properly. This is wholly unacceptable. It works against the profession and against the interests of the general public.

In the short term this big bang approach is likely to increase costs to clients, increase risk to both clients and the legal profession, increase satellite litigation, cause delay and uncertainty and, in fact, reduce access to justice. This is not what Lord Justice Jackson intended and not what the Government thought it was doing.

We needed the rules and regulations to be published sooner. If the MoJ has been struggling it should have had the courage to put back the big bang date to allow time for practitioners, the public and the courts to prepare properly for these changes to give them the best opportunity of achieving the intended outcomes.

The delay in providing draft rules and regulations, the lack of IT and the lack of resources at court administrative level and the lack of time for the judiciary to undertake the work required to enable them to practice the increased level of case management envisaged by Lord Justice Jackson risks tipping a system already in crisis into chaos. As it is, as Mr Justice Ramsey told an LSLA lecture on costs management last week this will only work if we all cooperate.

There is no funding to allow the new rules and practice directions to be amended monthly as happened following implementation of the CPR in 1999.

Unless more funding is found any difficulties with the rules will not be addressed until the next rule change Statutory Instrument is issued in October. Six months of mayhem and madness and ample scope for significant satellite litigation arising out of the unforeseen or unintended consequences of new rules.

It's a great shame the MoJ stayed silent for as long as it did. Courage is having the wisdom to know when you are wrong and not to hide behind silence.

Francesca Kaye is president of the London Solicitors Litigation Association (LSLA) and a partner with Russell-Cooke.

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