

## Ten Years of the Civil Procedure Rules

*By Adam Manning*

The greatest shake up in over a hundred years of the UK's civil claims procedure was ushered in, with little public fanfare, during April 1999. Out went the old Rules of the Supreme Court, which had by then spent over a hundred years guiding lawyers and the courts, and in came the shining new Civil Procedure Rules (CPR). The CPR has set out the rules by which civil cases, including personal injury claims, are fought and there were high hopes they would counter many of the perceived problems with the old system.

Too many, court cases entailed great delay and expense and it was these two chief ills Lord Woolf, then Master of the Rolls, had in mind when given the task of reviewing and reforming the civil system. At the conclusion of a case, the legal costs to be paid by the losing party were sometimes vastly in excess of the compensation claimed. Cases could go on far longer than most people would consider they ought too, especially given a society being driven at a faster pace with modern technology. It seemed lawyers were the ones controlling the progress of a case with seemingly endless delays and trials being put off indefinitely. Something had to be done.

Perhaps the most fundamental change has been to emphasize the power that judges have in setting guidelines, or directions as they are called, for the progression of a claim. It was the judge that would manage a case, not the lawyers. An important part of this is allocation; each claim is allocated to one of three "tracks". The lowest value cases are dealt with by the Small Claims Track. Above this is the Fast Track and this is often where many personal injury claims, for example a whiplash injury from a motor vehicle accident, are allocated. In fast track claims, a judge will set down an estimated date for the trial at the start of legal proceedings which gives the claimant and defendant a deadline to work too. Higher value claims, such as those requiring orthopaedic evidence, are dealt with in the multi-track.

The rules also place a greater need on parties to a case to cooperate and swap information, particularly at the start of a claim. A complex health and safety claim involving an accident at work might entail large amounts of documentation. It is quicker and less expensive if this is disclosed early rather than, as sometimes happened before the CPR, much nearer the trial. The intention here is to support efforts to settle a claim as early as possible to avoid legal costs becoming disproportionate. Offer making to reach a settlement is strongly emphasized. Part 36 of the rules, which deals with offers, helps focuses the parties' attention on settling as a well placed offer can be greatly advantageous to the party making the offer.

In the arena of personal injury claims, the CPR has been allied with the advance of the Conditional Fee Agreement (CFA), often encapsulated in the well known phrase "no win no fee". To replace legal aid, which had been abolished for personal injury claims, CFAs were introduced with the attraction for solicitors of a success fee if they won a case, an enhancement on the legal costs if the claim was successful. Additional changes to the CPR brought in the idea of a fixed success fee for certain types of claim such as road traffic accidents or an injury at work. In the particular area of injuries from a motor accident, further rule changes fixed what the claimant's lawyer can charge if the claim is settled without issuing legal proceedings at court and is under a certain size.

This idea of fixed legal costs has always been bubbling under during the lifetime of the CPR. Indeed when reviewing the civil legal costs scene, Lord Woolf came close to introducing fixed costs for most fast track cases far beyond the limited circumstances in which they exist at present. This in the end did not take place but in recent years far ranging consultation has taken place in which the idea has re-surfaced.

Indeed the results of this consultation went further and proposed a new system for lower value road traffic accidents with the desire of speeding up the claims process in straightforward cases so that the injured party might get their compensation sooner. In this new, quite revolutionary, system legal costs for dealing with the claim were reduced to reflect the simpler process. Considering the in depth consultation that took place it is surprising this system has yet to be implemented – perhaps for political reasons. Nevertheless, it does show how the CPR has encouraged a spirit of creative innovation when looking at the civil claims system.

The new spirit of promoting efforts towards a settlement was also implemented in the CPR with its reference to Alternative Dispute Resolution. Recently this has led to encouraging the use of mediation to facilitate an agreement and parties may now be at a disadvantage later if they fail to take part in mediation. Whether the enforced use of mediation sits well within a system that is fundamentally adversarial in nature is an interesting point but it remains the case that this can be a useful means to settle a claim quickly, which is often a key requirement for most claimants.

A further innovation since the introduction of the CPR for personal injury law is the more widespread provision of rehabilitation for seriously injured claimants. Studies have shown that the timely treatment and assistance of claimants, particularly in getting back into work, can be of great benefit to them alongside actual compensation. A code dealing with this is now in place and defendant insurance companies are required to consider the provision of rehabilitation, such as physiotherapy or occupational therapy, at an early stage.

The Civil Procedure Rules were implemented to generally widespread support and to date judges and lawyers remain largely positive about the changes that they brought in. The rate of change to the rules shows no sign of letting up and this has important implications to the way the modern lawyer approaches claims management. Advising clients requires a lawyer to pro-actively look ahead and have a clear understanding of all the latest changes and how they impact on the progression of a claim.