

Putting Jackson into practice

It is now just over a year since the “Jackson reforms” changed the way in which much civil litigation is conducted. From an expert’s perspective, two of the most important aspects of the reforms are the requirement to prepare cost budgets at an early stage, for cases in which the claim is valued at up to £10 million, and the enforcement of strict timetables for the production of reports. There is therefore increased emphasis on the need for cost-effective and timely expert input.

Forensic accountants who approach their work in a professional manner aim to provide an efficient and economical service. Accountancy evidence can nevertheless be complex and/or voluminous, which means that it can be time consuming and thus expensive to analyse. This newsletter puts forward suggestions aimed at making financial expertise more affordable in the new litigation climate. Although the Jackson reforms do not apply to criminal cases, many of the suggestions are relevant to such cases in the light of the continuing restrictions on legal aid funding.

Early involvement of accountancy experts

It is more important than ever for instructing solicitors to involve accountancy experts at a very early stage in proceedings so that experts can help solicitors identify the financial issues and the extent to which they can assist.

The agreement at the outset by both parties to a dispute to a list of documents to be relied upon by accountancy experts can reduce the time spent on the review and analysis of such evidence by focusing the experts’ attention on the most directly relevant issues.

Advice or expert report?

In many civil cases it will be more cost-effective to ask expert accountants to prepare an assessment of the financial evidence on an advisory basis for their instructing solicitors rather than a report for disclosure. This approach saves costs as an advisory letter is a less formal document than an expert report which, being effectively a final witness statement by the expert which must comply with the Civil Procedure Rules, requires a minimum level of time costs irrespective of the size of the claim.



Mediation and pre-trial discussions

There are indications that mediation is being used to a greater extent since the Jackson reforms were introduced. Accountancy experts can be used in a wider variety of ways in mediations than is possible in Court. Experts may be asked to attend a whole mediation, part of it or none of it. They may be asked to meet together before the mediator in a process known as “hot-tubbing” or they may be asked to work together to submit a framework for quantifying a claim.

Single Joint Experts

The use of Single Joint Experts has helped to manage the cost of litigation for several years. Important considerations from the expert accountant’s point of view are that the parties need to ensure that the expert’s instructions are as clear as possible and that Single Joint Experts are provided with the information they request on a timely basis so that the timetable set by the Court can be complied with.

The use of expert accountants appointed on behalf of each party can by contrast increase costs as two accountancy experts may consider the same information but come to very different conclusions. Moreover, in addition to producing at least one report each, experts may be required to prepare a joint statement, setting out areas on which they agree and those on which they disagree. Our experience shows that the scope for agreement between accountancy experts can be limited. Although it is unlikely that the use of a Single Joint Expert will reduce costs by as much as 50% when compared with the total cost of party-appointed experts, substantial savings may be possible.

Conclusions

Accountancy experts and their instructing lawyers are having to work together more closely to meet the stringent requirements of the post-Jackson litigation environment. It is also necessary for more work to be carried out by accountancy experts and solicitors in the early stages of a case than was usual prior to the reforms to ensure that the strategy in relation to quantum, the scope of the work and the material to be reviewed are agreed.

To obtain further details of our activities or to benefit from the firm’s experience and expertise, please contact George Sim or Rakesh Kapila.

Please note that this newsletter has been written for the general interest of readers and is intended for guidance only. It is therefore essential to take specific professional advice before taking any action.



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