Personal Injury Practice: An Expert Guide

EDITED BY LAURA SLATER
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Executive summary

WHILE THE Jackson reforms remain controversial, for those working in the personal injury sector there is little question that the impact on how they practise has been enormous. With referral fees banned, success fees capped, damages falling, and insurance premiums rising, for many firms, personal injury work is far less profitable now than it used to be. For firms that stick to ‘business as usual’, post-Jackson, it seems likely that their days will be numbered. For those that embrace the new environment by becoming more efficient, improving their budgeting and project management skills, and above all by focusing on the person at the heart of every personal injury claim, there are significant opportunities to grow and prosper. This expert guide is designed to help firms to recognise and grasp those opportunities.

The most obvious impact of the Jackson reforms on the personal injury (PI) sector has been the rapid consolidation of the market. Many firms and claims management companies (CMCs) have gone out of business; those that have survived have largely done so by scaling up (through mergers and acquisitions), specialising (abandoning less-profitable areas of personal injury), or by quitting the sector altogether. The more insidious outcome of the reforms on the PI sector, arguably, has been the loss of access to justice for thousands of injured people.

This report begins, accordingly, with an overview of the current issues and legislation affecting injured people seeking justice in England and Wales. The president of the Association of Personal Injury Lawyers (APIL), John Spencer, gives an overview of the various bills and other legislation currently affecting personal injury practice, he details the work of APIL in protecting the rights of the injured, and he issues a call to arms for PI solicitors, the government, and society to respond.

Following on from this, with eighteen months gone and eighteen to go until the government’s promised review of the LASPO reforms, a second contributor presents a ‘half-term report’ on the reforms’ impact. With reference to recent
case law and hard statistics, he considers key issues such as sanctions, fixed costs, and fraud, as well as the effect of LASPO upon lawyers, litigants, and the court, and on various types of claim.

Another contributor focuses more specifically on client care in light of the sector-wide changes that have taken place since legal aid for personal injury claims was effectively scrapped in 1999, the current state of the industry, post-Jackson, and the challenges to client care that the new environment presents. Given that these changes are now largely accepted as ‘here to stay’, the author outlines best practice for client care in the new environment, which will also help firms to comply with the SRA’s outcomes-focused regulation, and protect against fraudulent claims.

Also focusing on the ‘golden rule’ of personal injury work – that is putting the client centre stage – another contributor describes his own PI department’s approach to surviving in the post-Jackson landscape. The author shows how a client-centric approach, along with the right technological infrastructure, can help firms to improve efficiency, add value, ensure compliance, and ultimately bring in new and repeat business and referrals. A winning mix.

As the above example illustrates, personal injury does not have to be unprofitable – but in the current environment it has never been more important for firms to select cases carefully, cost them correctly, and project manage them efficiently. One contributor considers how firms can actively manage their risk from initial assessment through to closing, and how they can use case profiling to monitor the performance of their business as a whole. By taking on cases that have a good chance of succeeding, quickly and compliantly closing those that do not, and freeing up value locked in work in progress (WIP), firms can ensure they keep a tight handle on their finances.

In his interim report in 1995, Lord Woolf identified the expense of litigation as ‘one of the most fundamental problems confronting the civil justice system’.¹ In the intervening years, and despite the case management provisions of the Civil Procedure Rules (CRP), judges have continued to complain about the ‘disproportionate’ level of costs relative to the value of the matters in dispute. Since the Jackson reforms, most firms are now becoming familiar with costs management orders and mandatory budgeting and, if they are not already used to working efficiently and sticking to budgets, they will have to learn to do so in short order. One article in this report tackles this thorny area, outlining how to create a budget, and the perils of over- or underestimating costs in light of the new, stricter line courts are taking.
The question of cost is also one of several factors affecting the vital work of expert witnesses. Solicitors must now specify in advance the points they want an expert to address, and how much it will cost to obtain the evidence. In an in-depth article on working with experts, one contributor discusses the ‘subtle shifts in behaviour’ made necessary by the amendments to the CPR as an (often-overlooked) part of the Jackson reforms, and how the new guidance from the Civil Justice Council (CJC), introduced in October 2014, is likely to increase their impact.

With courts now taking an increasingly uncompromising approach to compliance with deadlines, limitations are yet another area coming under increasing scrutiny for PI solicitors. Miscalculations, filing claims late, or filing incomplete claims could result in serious consequences for both the firm and the client. Requests for extensions caused by inefficiencies are unlikely to be met with sympathy by the court. Two articles in this report tackle this tricky area. One contributor analyses rulings in recent limitations cases, while a second article focuses on the on ten prevailing ‘myths’ about limitations which often trip solicitors up.

Finally, the case study which concludes this report provides an example of a firm that is thriving in the new world of personal injury practice. The case study from Asons Solicitors describes the steps that the firm has taken to maintain its client focus as it has grown to international level, from the introduction of key performance indicators (KPIs) to the strategic use of technology to meet the needs of the ‘modern’ customer, and the careful staffing of claims to reduce overall costs without loss of service quality to the client.

At the heart of personal injury (PI) work is the ‘person’: the clue is in the name. And yet, in recent years, as a result of falling profitability in the sector as a whole, PI work has been getting less personal. With a smaller number of firms dealing with an increasingly large volume of work, the danger is that firms lose sight of their client care practices, overlook relevant details, or fail to comply with the rules, practice directions, and court orders. While new technologies, increased standardisation, and the use of non-lawyer staff all play their part in improving efficiency and driving profitability in a post-Jackson landscape, above all, these innovations should be geared toward improving the client experience. Those firms that succeed in becoming more efficient and in growing business, while keeping the client firmly in view, will be those that will outperform the competition in the long term.
Executive summary

References
About the authors

Kamran Akram
Kamran Akram is the principal at Asons Solicitors. Having been involved in its founding and expansion from three to 300 people in just six years, Kamran has had a great deal of experience in leveraging the right skills and technologies to make law firm growth scalable, effective, and profitable. Under Kamran’s supervision, Asons has become Lexcel accredited, has won the ‘Gold’ Investors in People Award, and continues to be recognised for its focus on employee development and retention strategies.

Alan Bacon
Alan Bacon is the senior/managing partner of BTMK Solicitors LLP (BTMK) and the head of their personal injury/clinical negligence department. He was admitted as a solicitor in 1982. Since then he has continuously conducted personal injury/clinical negligence litigation and his case work has been exclusively in this field for over 25 years. In regional term BTMK has a large and dedicated personal injury/clinical negligence department and has corporate and training accreditation with the Association of Personal Injury Lawyers (APIL).

Alan is a member of the Law Society Personal Injury Panel (since 1994) and a fellow of APIL (since 2007, having been a member since 1990). He is a trustee of Headway Essex and the chair of the Essex Acquired Brain Injury Forum. He is a member of the Royal Society of Medicine.

He has had the conduct of a number of high value and high profile claims including representing one of the appellants in conjoined appeals to the House of Lords when the Lords overruled their own earlier ruling as to limitation of actions in personal injury claims arising from abuse/assault.

James Barker
James Barker is head of the personal injury department at North West law firm
Kirwans. He specialises in a wide range of PI matters, including accidents at work, employers’ liability, occupiers’ liability, and Highways Act claims. James also deals with road traffic accident claims and has experience of managing cases where there are issues relating to liability and causation. James is responsible for the development of client services across the department. He is a member of the Association of Personal Injury Lawyers.

**Greg Cox**  
Greg Cox is a partner in Colemans-ctts LLP, a solicitor-advocate, and mediator specialising in litigation and dispute resolution. He has a particular interest in costs and funding issues and has been instructed in many of the leading cases involving costs and funding issues from one of the first summary assessments in 1997, two years before Woolf, through the CFA Test Cases (*Hollins v Russell*), ATE Test Cases (*Rogers v Merthyr Tydfil*), and many others including, most recently, the Mitchell/Sanctions conjoined appeal (*Denton et al*).  

Greg advises and represents solicitors, insurers (including liability insurers, ATE insurers, BTE insurers), government departments, representative bodies, private clients, and others. He lectures, trains, and writes on costs issues and has been instructed as an expert witness in the High Court. Greg is also appointed as an assessor in the High Court on Appeals involving the costs and funding issues and is a co-author of the Law Society’s *Litigation Funding Handbook*.

**Gordon Exall**  
Gordon Exall is a barrister at Zenith Chambers where he is head of the personal injury group. He practices wholly in the area of personal injury, clinical negligence, and civil procedural issues, including limitation and procedural default. Gordon’s practice includes a large number of fatal accident cases in addition to major personal injury claims. Gordon writes the blog *Civil Litigation Brief* which deals with practical issues relating to sanctions, limitation, procedure and costs. He has lectured, written, and broadcast widely on civil procedure, personal injury and fatal accidents. He is the author of the latest editions of *Munkman on Damages for Personal Injury and Death*, *The APIL Guide to Fatal Accidents*, *Personal Injury Litigation 4th edition*, and *Periodical Payments – the New Law*.

**Vijay Ganapathy**  
Vijay Ganapathy studied law at King’s College London and is a senior solicitor.
at Leigh Day. He undertakes industrial disease (mainly mesothelioma and other asbestos disease claims) and complex injury cases including those involving public accidents and child injury.

He is best known for having successfully represented Mr Chandler in Chandler v Cape plc [2012], which set a new legal precedent both in tort and company law as the first case of its kind to hold a parent/group company liable for one of its subsidiary company’s operations.

Vijay is accredited as a senior litigator and holds specialist accreditation with the Association of Personal Injury Lawyers (APIL) for occupational disease and asbestos disease claims. He was recently appointed by APIL to act as an assessor for other solicitors seeking similar accreditation.

He regularly gives talks and has written and contributed to various journals and publications. He has been writing the quarterly personal injury update for Solicitors Journal for the last seven years.

**Ian Gascoigne**

Ian Gascoigne is a member of Eversheds LLP and a partner in the litigation and dispute management practice group. He joined Eversheds as a partner in 1998 and practises in the commercial litigation team. Long interested in the training and development of lawyers, Ian is a regular lecturer on a range of litigation issues for Central Law Training. At Eversheds, Ian is the training principal, responsible for overseeing the progress of the firm’s trainee solicitors during their training contracts.

**David Johnstone**

David Johnstone is managing director at PI-Solutions. Dating back to 1992, PI-Solutions was developed out of experience in the civil litigation sector of the legal services market, initially through involvement in insuring cases. Seven years later, it moved into the administration of funding to solicitors involved in claimant PI when David introduced Bank of Scotland to claimant litigation funding.

David too has experience of change and has had to ride a few unexpected storms, separately involving liquidation and run off, due to circumstances beyond the business’s control in respect of funders exiting the market unexpectedly. However, these negative experiences with positive outcomes have given him the experience and empathy required to deal with the challenges law firms are facing now. His wealth of experience of run off
means he has fine-tuned and optimised systems and processes. In addition, he has gained first-hand, invaluable experience and expertise that he offers to law firms today through PI-Solutions.

David is currently working with several law firms. One of these, Delta Legal, has realised in five months as much value from its work in progress as it would have from a fire sale, and still has two and a half years to run.

Sue Nash
Sue Nash is current chairman of the Association of Costs Lawyers (ACL) and has been a qualified and regulated costs lawyer since 2008, having practised in costs since 1987. She specialises in group action costing and consultancy, as well as in costs budgeting and management. She is MD both of a full service legal costs firm and of a specialist costs software business. As a renowned expert in the field of costs law, management, and budgeting, Sue’s opinion is regularly sought by the media. She also lectures at conferences and is a CPD accredited training provider through the ACL. Sue can be contacted at suenash@costslawyer.co.uk.

John Spencer
John Spencer is one of the UK’s leading personal injury solicitors with over 27 years of experience. Before establishing Spencers in 2008, John built Shoosmiths PI practice to become the second largest in the UK, comprising 450 staff and a £35 million turnover. He is an influential advocate for claimant rights and wholesale reform to the PI marketplace to ensure transparency, access to justice, and the protection of accident victims. John is the president of the Association of Personal Injury Lawyers (APIL) and a fellow since 2006, as well as a Law Society PI Panel member. John is much quoted in the national and professional press and is regularly invited to speak around the world at industry events. John also writes regularly about legal issues on his blog (http://john-spencer.blogspot.co.uk/).