Ministry of JUSTICE

Research Summary 1/10

Monetary claims in the county courts (1996-2003)

Ministry of Justice

The purpose of this study was to analyse the civil monetary claims regime in the county courts following the introduction of the Civil Procedure Rules (CPR) in April 1999.

These rules were designed to increase certainty about the way a case would progress through the courts and to reduce the need for party-led interlocutory applications for an order, sentence, decree or judgment at an intermediate stage between commencement and termination of a case. In order to achieve this, the rules introduced a case management system for defended cases. The first stage of the system was the allocation of cases to one of three tracks – small claims, fast and multi – for on-going management by the courts. This allocation usually followed the completion of an allocation questionnaire by the parties to the case. The system also introduced more judicial management of the case with listing questionnaires and the possibility of an allocation hearing, case management conferences, and pre-trial reviews.

Key points

- This study analysed data collected in 2002 and 2003. Since this period the CPR changed significantly.
- The number of claims in the civil court declined by 29% between 1997 and 2003.
- The research showed that the new procedures were being followed correctly in most cases. In particular, listing and allocation questionnaires were generally completed on time and trial windows were given in line with recommendations.
- This study made some limited comparisons with cases from the pre-CPR period. Data on cases from seven county courts allocated to the fast and multi-case management tracks, between September and December 2002, were compared with data on defended monetary claims collected from the same courts between 1996 and 1998. The pre-CPR data were collected by Professor Hazel Genn as part of an unpublished research study. Significant efforts were made to remove any differences between the two datasets in order to remove biases, but it was not possible to account for all. In particular, Genn's sample referred to defended cases which means it is not directly comparable with the sample collected for this research. In addition, the impact of the reforms was likely to have reduced the number of simpler claims that came to court (as reflected in the drop in the number of total claims indicated above), thereby increasing the complexity of those that remained. However, the research indicates that, for cases which reached the court stage, there was little evidence of change in case duration comparing the pre CPR with the post CPR cases. There was some evidence that the timeliness of the outcome tended to be more certain post CPR. Pre CPR cases were more likely to be either short (less than six months) or much longer (18 months or more). Post CPR cases were more likely than pre CPR cases to last between six and 18 months.

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First published January 2010
ISBN 978-1-84099-347-9
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Context

The Civil Procedure Rules were introduced in April 1999. The introduction of the CPR was one of many reforms made to the management of cases in the county courts following an independent review of the civil justice system conducted by Lord Woolf in 1996. These reforms applied to the dispute resolution and litigation in the civil justice system, covering cases such as the recovery of money owed, personal injury claims and other forms of negligence.

Lord Woolf's review highlighted that the civil justice system was too expensive, too slow, too uncertain, too fragmented, too adversarial and unequal. Underpinning the reforms introduced as a result of Lord Woolf's report was the philosophy of judicial control of litigation by case management, whereby cases would be managed by the court as opposed to being managed by the disputing parties.

The first stage of this case management was the allocation of cases to the small claims,[1] fast or multi-track following the completion of an allocation questionnaire. The framework for fast track cases could be regarded as an 'off the peg' system. There were provisions for standard disclosure: a trial lasting up to one day with limits on oral expert evidence and all to take place within 30 weeks of allocation. The multi-track offered a bespoke system for larger and more complex cases. There was the possibility of using case management conferences and pre-trial reviews to manage issues, expert evidence, and disclosure. As a result of these processes, trials were expected to be shorter and less expensive. Appeals from the parties on case management decisions were meant to be kept to a minimum and dealt with as swiftly as possible.

There was a substantial decrease in litigation activity following introduction of the civil justice system reforms. The total number of civil claims issued in England and Wales declined by just under a third (29%) between 1997 and 2003.[2] In the courts studied in this research, this ranged from a fifth (19%) to three-fifths (59%), revealing the huge variation in workload changes between courts over this period. The large decrease in claims actually issued did not necessarily mean that there was a comparable decrease in the number of cases brought to legal practitioners. No robust numbers could be attached to the pre-issue stage. However, it was widely accepted by policy makers and other key stakeholders in the civil justice system that once the reforms were introduced in 1999 much of the activity that would previously have taken place after issue of the claim took place earlier. Work was front-loaded in the case in order to encourage co-operation and earlier settlement and to make sure that cases that needed a court-based resolution came to court in a better state of preparation.

While the courts had lost part of their workload in terms of volume of cases, this had to be weighed against increased input into those cases that came under the case management regime. Indeed, as Peysner and Seneviratne (2005) pointed out, case management could only work because overall numbers had declined.

Approach

This study analysed actual case data

Data for cases post-CPR were collected from seven county courts (Cambridge, Central London Civil Justice Centre, Luton, Newcastle, Nottingham, Reading and Worcester[3]) between September 2002 and December 2003 by researchers employed by the Ministry of Justice. Data were taken from monetary claims allocated to either the fast or multi-track. Pre-CPR data, from the same courts, for defended monetary claims that were not dealt with under the small claims procedure were collected by Professor Hazel Genn as part of an unpublished research study. This study took data from allocated claims rather than defended claims to enable more information to be gathered about how cases were managed.

A sample list of cases for data collection was created by downloading the Caseman[4] records for

1. As the procedures for small claims only underwent minor change following the introduction of the CPR they were not included in this research.
2. As identified by Her Majesty's Court Services (HMCS) business management information.
3. These were the same courts Genn collected data from.
4. Caseman is the court's software programme on which records are made and kept.

all cases allocated to the fast or multi-track with an issue date no earlier than August 1999. The actual data were collected from hard copy court files. The following information was gathered: the subject matter and value of cases; the types of litigants bringing and defending cases; how the case was managed; the nature of the outcome; and the value of the settlement or award, time taken and costs.

As in Genn's study, the data collection procedure was adjusted to enable comparisons to be made between cases arising from personal injury and other matters. Personal injury cases made up a large proportion of defended litigation in most county courts. Therefore, non-personal injury cases were deliberately over-sampled to generate a sub-sample large enough to enable comparisons to be made.

After discarding for non-qualifying cases, the final sample for analysis of post-CPR data comprised 2,120 cases in seven courts. Unfortunately, in spite of extensive attempts, the authors were unable to retrieve data from Genn's older data file for the Central London Civil Justice Centre. Therefore, in making comparisons between the two studies the authors excluded data relating to this court. However, comparisons between the two studies were successfully made for the other six courts.

Overall, 1,797 post-CPR cases were available for comparison purposes with the 1,496 pre-CPR cases from Genn's revised dataset after cases with claim values up to £5,000 had been excluded from the latter; these being likely to have been allocated to the small claims track had they been brought post-CPR.

Although the sampling method was designed to limit selection bias, the actual final sample relied on being able to locate the files at the courts. The files associated with cases that had been transferred in from other courts were often not located. This was possibly because the files had been returned to their home court on completion. At Newcastle, files were stored in three places and were difficult to locate. In Cambridge, files for cases issued before March 2000 were being purged, with files from satellite courts purged first. This resulted in a lower number of cases than expected from these courts.

As a result, the sample from Cambridge contained a slightly higher than representative proportion of cases actually issued there. It was clear that at Central London, too, there had been some purging of files.

It is difficult to quantify further differences between the samples due to the CPR's aim to encourage claims to settle out of court, this being likely to have resulted in the disputes sampled post-CPR being more complex and problematic.

Results

Case characteristics

As indicated, the research identified a number of changes since the introduction of the CPR. All differences highlighted between the post-CPR and Genn's data are statistically significant.

- The number of civil claims issued in the county courts declined by 29% between 1997 and 2003.[5]

- There were few counter claims in personal injury cases before and after the introduction of the CPR; however, there was an increase of non-personal injury cases involving counter claims following the reforms (32% compared to 19%).

- The research also indicates the value of claims and counterclaims was higher after CPR. The median value for non-personal injury specified claims was £12,300 in this study (around £11,200 after adjusting for changes in the Retail Price Index (RPI)) compared to £8,842 in Genn's study (after excluding cases with claim values up to £5,000). Genn found that nearly half (49%) of counterclaims were for £1,000-5,000 whereas this study found only a fifth (20%) of counterclaims were for up to £5,000 and over two-fifths (43%) for £5,000-£15,000.

- The research suggested that the proportion of those legally represented in non-personal injury cases (excluding those arising out of road traffic accidents) rose after the introduction of

5. As identified by Her Majesty's Court Services (HMCS) business management information.

the CPR (only 4% of non-personal injury cases had no representation on either side before CPR compared to 14% in Genn's study).

Use of new procedures

The data indicate that most cases proceeded in line with guidance.

- Allocation questionnaires, which assist with the allocation of a case to a particular management track, were generally completed on time following the introduction of the CPR. In most cases (84%), both parties filed these within seven days of the deadline.

- A stay was requested by one or both parties in just under half of all cases, with defendants more likely to request a stay. Interestingly, a stay was ordered in under three-fifths (58%) of cases where both parties requested one.

- An allocation hearing was ordered for a quarter (24%) of cases. This constituted a fifth (19%) of those subsequently allocated to the fast track and three tenths (31%) of those subsequently allocated to the multi-track.

- Cases were generally allocated to a track in line with the parties' preferences. In around three-quarters of cases, both parties specified the track to which the case was subsequently allocated. Moreover, parties generally adhered to claim value as an indicator of track suitability.

- The extent to which the parties sought to use joint experts was a significant indicator of their compliance with CPR (parts 28 and 29). In around a third of cases where expert evidence was sought, joint experts were requested by the parties.

- Almost all fast track cases were given a trial window starting within 30 weeks of allocation, in line with CPR (28.2(4)). Similarly, almost all multi-track cases were given a trial window starting within 50 weeks of allocation in line with the HMCS target in 2003. Only 15% of cases were given more than one trial window.

- Like the allocation questionnaires, the listing questionnaires were generally completed in a reasonably timely manner (both parties filed them within seven days of the deadline in around three-quarters of cases). Both parties stated compliance with directions in exactly half of fast track cases and just under a third (29%) of multi-track cases where the listing questionnaire information was available.

- Almost all claimant and defendant estimates of trial time, as stated on listing questionnaires, were for a day or less in fast track cases. Around half were for longer than one day in multi-track cases. It was rare for parties to have very different expectations of trial length.

Case management

There were no directly comparable data to compare the post- and pre-CPR landscapes in terms of what occurred during the case management process. However, the research shows that following the introduction of CPR, case management conferences were fixed in over a third (37%) of cases (17% of fast track cases and 60% of multi-track). Listing hearings were ordered in around one in ten (12%) cases (9% of fast track cases and 16% of multi-track cases). Pre-trial reviews were fixed in less than one in ten (8%)cases, (3% of fast track cases and 14% of multi-track cases).

Outcomes

Cases where joint experts were ordered were more likely to settle than those without joint experts, as were those where Part 36 offers[6] were made (though the number of cases involving Part 36 offers was low). As expected given higher claim values, disposal values were higher post-CPR.

Case duration

As Genn's study involved defended cases rather than cases that had reached the stage where they were allocated to a particular case management

6 One of the innovations in the CPR was to allow claimants to make an offer to settle as well as defendants. Claimants and defendants could now make offers relating to a variety of issues, not just to the sum of money at stake. However, the rules still provided that a defendant's offer of a monetary sum must be supported by a payment into court. These were known as Part 36 offers.

track, the issue to disposal times in the post-CPR study were expected to be higher even if there was no difference in timeliness pre- and post-CPR. However, the overall median times were very similar at 313 days post-CPR and 314 pre-CPR. Settled cases took a median time of 307 days compared with 329 days pre-CPR. Cases disposed of at trial took a median time of 328 days compared with 306 pre-CPR.

However, the timeliness of the outcome tended to be much less certain in the cases in Genn's study. Pre- CPR cases were more likely to be either short (less than six months) or much longer (18 months or more). Post-CPR cases were more likely than pre-CPR cases to last between six and 18 months.

Payments into court

Payments into court for personal injury cases increased after the introduction of the CPR but there was no change for non-personal injury cases.

The data also suggest an increase in payment amounts, the time it took for payments to be made and the time between payment and disposal.

- The median amounts for the first payments and second payments were £5,000 and £2,566 in this study (£4,550 and £2,330 respectively after adjusting for changes in RPI), compared to £3,500 and £1,500 in Genn's study.

- The median length of time from issue to first payment was 199 days compared to 143 days pre-CPR.

- The median length of time from first payment to disposal was 78 days compared with 57 days pre-CPR. The time to disposal from the second payment was 37 days compared with 31 days pre-CPR.

Implications

The results from this study show a number of significant differences in the monetary claims in county courts after the introduction of the CPR in 1999. These generally relate to case characteristics and payments into courts. The research also shows that the timeliness of the outcome tended to be more certain post-CPR. However, it is otherwise inconclusive regarding differences in case duration and outcome. As a result, there are only limited indications of the effect of the CPR on the perceived slow and adversarial nature of the civil justice system, as identified by Lord Woolf.

The research does show, however, that CPR and HMCS guidelines were being followed in most cases. In particular, listing and allocation questionnaires were generally completed on time and trial windows were allocated in line with recommendations. This adds to evidence that the CPR, and in particular the case management process, was able to increase certainty regarding how a case would progress through the court.

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