



VOISIN LAW

Here on our idyllic island, it is often said that we can be a little bit behind the times. This is generally said in a homely manner rather than with any sinister or derogatory undertone.

Such a statement can be true. Back in the 70's and the 80's, when a film was released in the rest of the world for general viewing we would see it about 10 years later. When we were still playing glam rock our neighbours across the water were walking around with spiky hair, safety pins and listening to "God Save the Queen". Even today I note that our town is populated by coiffured hair and beards, handkerchiefs, turtleneck jumpers and plaid shirts. Geek chic. No one seems to have told our folk that the hipster revolution is now at an end.

From a business point of view, there can be no doubt that we have, on occasion, been so far behind the curve that we have not actually seen the curve. My own personal bugbear in relation to this relates to gambling. We had a great opportunity in the early 00's to ride the gambling wave like our sister islands, but failed to do so. When we finally realised that gambling was another means to diversify our economy, we were too late to the party. The recent disclosures concerning the aircraft registry are reminiscent of this.

As for the judicial system, it has been immune from 'hick town' accusations. Jersey remains at the forefront of offshore judicial decisions. So when I saw on the Jersey Legal Information Board website that our judicial system was introducing key changes to the procedures and practices of the Royal Court, I could not wait to see what treasures were in store.

The Royal Court (Amendment No.20) Rules 2017 was passed on 20 March 2017 and comes into force on 1 June 2017. Yay! The heading of the first amendment refers to "The overriding objective". Sounds wow. "The overriding objective of the Court in proceedings is to deal with cases justly and at proportionate costs". Terrific news.

This new concept in Jersey will ensure that we have a cost effective and efficient legal system.

Brilliant. Jersey leading the way? Perhaps not. The "Overriding Objective" is embodied in the Civil Procedure Rules used by the Courts of England and Wales. This principle applies to all cases commenced after April 1999.

The concept goes back beyond 1999. Following Lord Woolf's review of the justice system in England and Wales which led to his now famous Access to Justice Report 1996, he concluded that the legal system should be just and the results that it delivers fair in the way it treats litigants and so on. Some 18 years later Jersey has now adopted wholesale these principles.

At the turn of this decade there was much commentary (as one would expect) on the 10 year anniversary of the Woolf reforms. As I understand it, it was generally agreed that the "English" Court system had become quicker and mediated settlement had come to the fore. There remained concerns regarding costs, in particular, the front loading of costs.

I am unclear as to the driver behind the need to adopt the Woolf reforms in Jersey so many years after their introduction in England and Wales. Recent headlines about lawyers absurd costs, incurred in relation



to relatively trivial matters obviously needs addressing. However I do not sense that the Jersey Courts are clogged up with civil litigation. Perhaps they are unbelievably busy with “social” cases such as protection of children and crime but the old days of big-ticket commercial litigation appears to be on the wane.

The explosion of “one man” band firms has added cost competition. Mediation itself is now an industry.

We need to hurry up and increase the jurisdiction of the Petty Debts Court too.

Why adopt a concept designed for millions of people on an Island of 100,000 people? What is so wrong with the current system? Is this another branch of bureaucratic red tape pc?

In the UK, 10 years after the Woolf Reforms, another Lord Justice, Lord Justice Jackson, was appointed to conduct a fundamental review of the costs of civil litigation. Are we going to have to do the same in 10 years’ time?

Frontloading of costs is a concern for me. Litigation is often commenced in the heat of a relationship breakdown commercial or otherwise. With the passage of time people get distracted, new issues arise and generally things calm down. Life goes on. Why not allow litigation to reflect that human response? Forcing everyone into a prescribed rapid Court programme at the very outset when emotions are high does no more than increase costs. The obsession with time is misleading.

Of course, justice delayed is often justice denied but in my view the consequence of that must fall at the feet of the Plaintiff who does not prosecute his/her/its claim. Surely the Court can resolve that issue at the time?

It will be interesting to see how these new rules and procedures play out in the coming years. Let’s hope they achieve their laudable aim. Then again, I had hoped that the days of skinny jeans, handkerchiefs in blazers, big glasses and funny hair had long since passed. Regrettably, that does not appear to be the case.