Here is a salutary tale about how the good intention of the Court system can actually result in a very unsatisfactory conclusion for parties to a piece of litigation.
I must declare a professional interest in this matter. However I think it is important that while the Government is carrying out its 'Access to Justice Review', any potential hiccups in our civil justice system are highlighted.

This is a simple tale of plaintiffs issuing proceedings against a defendant and then doing nothing with those proceedings.

Under our Royal Court Rules, the Master of the Royal Court can issue in a Circular to all relevant parties a list of cases which he considers are liable to be dismissed under the Rules if nothing has occurred on the case within a prescribed period of time.

In this particular case, the Order of Justice was served in May 2013. An Answer was filed in June 2013. Thereafter nothing happened. In truth, the Plaintiffs should have applied for directions in September 2013; for a number of reasons they chose not to do so. The Master distributed the Circular on the 16 February 2015. The Plaintiffs applied (as permitted) to be allowed to continue with the proceedings, notwithstanding their failure to progress them in any meaningful fashion for nearly two years. That hearing took place on 20 April 2015.

The whole point of the Circular is to ensure that cases do not fall into a 'black hole' and that judicial control may be exercised in order to progress the litigation swiftly and fairly.

This supports the Royal Court's stated and laudable objectives that parties should get on with litigation and to conclude it within a reasonable timeframe and at a reasonable cost.

Following much (costly) argument, the Plaintiffs' application to be allowed to continue with the proceedings succeeded. The Master found that it would be 'inappropriate and unfair to deprive the Plaintiffs of one final opportunity in pursuing their claims at trial, so long as there is no further inordinate and excusable delay'.

Notwithstanding the Plaintiffs' success, the Defendant was awarded its costs of the application.

The Plaintiffs appealed the Master's decision, primarily in respect to the award of costs. The appeal was heard on 1st October 2015 before the Royal Court and a judgment was issued on the 26 January 2016. In essence the Royal Court did no more than tweak the Master's order. Essentially the Defendant's ability to recover costs was reduced by 50%.

Leaving aside the merits or otherwise of each parties' arguments concerning the application, what struck me as particularly odd about this (and similar cases) is as follows:

2 years had passed and nothing had happened. The case was in the final throes of a death rattle.

The Court interfered with this as a result of powers it has granted to itself. It gave the Plaintiffs 'CPR' and thus resuscitated the action.

The fact of the matter is that the Plaintiffs had not progressed their claim. That was their choice. Why not leave it at that? The Court, nevertheless, is keen to avoid cases falling into 'black holes' of inactivity. I understand this but one wonders why the Court did not interfere after, say, the deadline for directions had passed in September 2013? Why leave it for so many months perhaps lulling a Defendant into a false sense of security that the claim 'has gone away'.

The Defendant did nothing wrong. Why would it bring financial pain and wasted management time upon itself by encouraging the Plaintiffs to pursue an action against it? As a result of the Court's interference, the Defendant has now incurred significant and adverse cost and time, in circumstances where it was already under attack.

On any analysis, the Circular caused both parties to incur thousands of pounds of additional costs and wasted valuable Court time.

Moreover, in an effort to minimise costs and ensure the swiftness of litigation, the process caused by the Circular itself took nearly a year. The reality is that the case is no further forward than when the Master issued the Circular in January 2015. The Plaintiffs issued their claim nearly 3 years ago. The Circular has not achieved its aim. The parties are poorer.

On the face of it, how can this be justified? While one wholly understands and supports the view that litigation should be conducted in a swift and cost efficient manner, if the parties have simply 'downed tools' then why does the Court feel duty bound to interfere with that process and leave an unsatisfactory resolution, particularly for a Defendant? Why should the Court ensure that a case is progressed when the party bringing that claim has failed to do so?

Perhaps this is a situation where we have adopted principles from our friends in England and Wales but, arguably, such principles have no place in this jurisdiction. Or, perhaps…. I haven't got a clue what I am talking about!

For further information on any matter relating to Litigation in Jersey contact Dexter Flynn or any member of the Voisin Litigation team.