The Law Society Gazette

Skeleton arguments 'not rocket science' – Jackson

25 November 2014 | By John Hyde

Topics: Costs, fees and funding, Litigation

The legal profession is failing to get the message about preparing better skeleton arguments, Lord Justice Jackson has said.

The architect of last year's civil litigation reform used a Court of Appeal judgment to 'speak more bluntly' about the 'poor quality and excessive length' of some skeleton arguments in the upper courts.

Jackson said that an appellant in a dispute over whether to commit a defendant for contempt of court had produced '35 pages of rambling prolixity' which made it difficult to track down the relevant facts, issues and arguments.

The appellant was represented by Adam Tear, instructed by Duncan Lewis.

The judge noted that the Court of Appeal has previously deprived successful parties of the costs of preparing their skeletons but said mild rebukes were no longer enough.

Jackson said: 'As anyone who has drafted skeleton arguments knows, the task is not rocket science. It just requires a few minutes clear thought and planning before you start.

'A good skeleton argument (of which we receive many) is a real help to judges when they are pre-reading the (usually voluminous) bundles. A bad skeleton argument simply adds to the paper jungle through which judges must hack their way in an effort to identify the issues and the competing arguments.'

Jackson said an appellant's skeleton should not normally exceed 25 pages and would usually be much shorter.

Lawyers should provide a 'concise, user-friendly introduction' for the benefit of judges, with cross-references to relevant documents and authorities.

He ruled that although the successful appellant in the case, *Inplayer Ltd & Anor vs Thorogood*, was entitled to costs they could not recover the costs of the skeleton argument.

Readers' comments (15)

Anonymous | 25 November 2014 02:59 pm

"Cliches - they're not rocket science".

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Dominic Cooper | 25 November 2014 03:24 pm

Jackson is much maligned - unfairly in my view. His judgments make sense and show a quality often regrettably absent from those of his colleagues: judgment!

Let's not forget that much of what he suggested in his review has not been brought into force, but that he is (not quite as much now, but still) remembered for what he didn't do (namely the Mitchell decision which was actually Dyson).

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John James Cox | 25 November 2014 05:20 pm

I should have thought he wasn't maligned nearly enough. Nothing short of an open revolt by the entire profession simply refusing to comply with some of his absurd procedural innovations would meet the case.

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david crawford | 25 November 2014 06:33 pm

Tweeking the old High Court Practice would not have been rocket science either, Jackson. But no you had to have your legacy and the two professions have to try to make some sort of sense of it.

What on earth possessed you to think you could produce a better set of rules than anyone else?

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Anonymous | 25 November 2014 07:59 pm

If Judges would actually read such arguments that are put before them and all the other preparatory work that is undertaken, then the parties and their representatives might have some faith in the process, but it is no suprise that people lose faith, when it is perfectly clear to me that through work overload and under resourcing mean the Judges are happy to kick the can down the road all the way to Trial, when somebody else will actually look at the issues and resolve them.

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Marshall Hall | 25 November 2014 08:07 pm

Jackson is the main cause of literally squillions being wasted in his ludicrous charade of the new rules.

But note - even when he 'blows the judicial gasket' about skeleton arguments, he does not even utter one peep directly about the Barrister responsible for the farce.

If it had been a Solicitor then LJ Jackson would have named and shamed him all over the judgement....

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Anonymous | 25 November 2014 08:35 pm

Teflon Man expounds the theory of civil litigation again!

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Thomas Tidswell | 25 November 2014 08:49 pm

Does one derive the opinion that not only has Westminster been overrun by an unfriendly power but the upper judiciary also?

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CHARLES VERNON HUME PITT | 25 November 2014 11:19 pm

Freddie Frog should remember that prolixity does not improve an argument it merely bores the reader. Thus brevity should be the watchword. Has he not been asked by a judge what is your best point?! It means nothing you have said up to this point convinces me!

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Anonymous | 26 November 2014 04:28 am

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