

Sarah Robson: Inside the portal

Sarah Robson is a barrister with Alpha Court Chambers who specialises in breaches of RTA portal procedures



How long have you been with Alpha Court Chambers?

I have been with Alpha Court Chambers since the beginning of '09, so three or four years. It is a small chambers, we have no clerk and no building.

How do you find that arrangement?

Well, you don't get all the office politics that you get with any job! But seriously, I think the clients like that because they can come straight to you, they are not fielded off by a clerk. It's a much more honest approach because I have set my fees, so the client has to talk to me about how much they pay me - and why they haven't paid me!

How long have you been involved in personal injury?

I was called to the Bar just over ten years ago now. On the personal injury front I do mostly road traffic accidents, and before portal came along I was mostly doing RTA fast tracks and I was seeing a lot of premature issue cases there. Then with the advent of the portal, it was natural progression really into doing portal fall out cases.

You do a lot of defendant work don't you?

I do both sides. I believe it makes you a better advocate doing that, because you have a better appreciation of what the other side are likely to argue.

Why do so many people still not follow the portal rules closely enough? Is that just an error on their part in terms of not reading the details, the small print?

I think that's the case. I am often surprised at how poorly solicitors grasp what the portal rules are. But they catch me out as well sometimes! There is for example a rule for how long you have got to pay damages at stage two negotiations: that quite often catches people out because they have heard that you have fifteen days to pay or ten days to pay, but haven't appreciated that the timeframe differs depending on whether the parties have reached agreement or not. Then there are added complications of a further different start point based on whether you're dealing with normal or Additional Damages. It's not helped by the fact that all the portal rules are scattered throughout the White Book. You really do need to read the rules very, very carefully.

I am still finding new things out about it all the time and constantly getting phone calls from solicitors saying I have got this scenario which is completely new to me. We're still at the very formative stages at the moment of portal law.

What's the most important case you've been involved in?

Jaykishan Patel v Fortis Insurance Ltd LTL 11/1/2012 (2011) is probably the most useful decision because it's a long judgment with lots of helpful obiter comments. The judge found that parties should not lightly remove claims from the portal and should never do it on technical grounds. It's really worth a read to get to grips with portal rules and principles.

Given all these complications and mixed understanding do you think that the RTA portal has been a good idea in retrospect?

It was a nice idea and it has done its job to some extent, but it has created a lot of extra work. It hadn't eradicated the problem it set out to get rid of, it's simply moved it. Before we were getting lots of arguments about premature

issue, now we are getting lots of arguments about wrongful fallout.

And what do you make of the changes that are happening now then?

There are a lot of people out there saying that the portal just won't be ready in time. I think that what they should do is extend the RTA cases to £25,000 first and then gradually bring in the EL and PL cases. Perhaps start with just the very simple ones, starting them under £10,000, just to iron out the problems. I'm also very concerned that the draft protocol says that witness statements will be allowed. How can you test witness evidence? There is no opportunity to cross examine under the portal rules. It should either be a streamlined, simplified process without witness statements, or it shouldn't be and you should be able to do everything as in Part 7 cases, such as raise Part 35 questions. You can't pretend it's this streamlined process if you are going to start having things like witness statements. ●

Robson on...

Grammar...

I refuse to use the word 'exit' as a verb. I think that is very American, even though it is now technically correct British English.

Martial Arts...

I am a black belt in Taekwon-do and am a qualified instructor now, and I've got my own club. I teach children (we call it a Tigers club), because somebody already covers the area for adults. But he's quite happy because we then feed the kids into his club once they are too old.

Being a member of a chambers without a physical office...

It is a little lonely, you can't just walk down the corridor into a colleague's room and say 'hey what do you think about this?'