

Litigation figures back on the rise

A look at the annual figures for litigation in England and Wales shows numbers are up after the surprise fall in 2010



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Statistics for judicial and court activity in England and Wales for 2011 have recently been published by the Ministry of Justice (MoJ). The figures show overall the volume of litigation dealt with by the High Court in London has increased slightly, rising 7%.

This is in contrast to the surprising fall in litigation seen in 2010 (*graph 1*). This will be of interest to insurers as it may perhaps signify a new wave of claims as the difficult economic conditions continue.

To break down that 7% increase, claims in the Queen's Bench division and the Chancery division in London have in fact fallen (although claims across the Chancery division as a whole have risen). The overall increase in claims in London is down to a rise in claims in the London Commercial Court, the Technology and Construction Court (TCC), Companies Court, Bankruptcy Court and Admiralty Court.

One trend apparent from the statistics is contractual claims in particular rose significantly last year. In the Queen's Bench division, the Chancery division and the Commercial Court, such claims have increased substantially (up 44% in the Queen's Bench and Chancery divisions and 48% in the Commercial Court). This suggests parties may be facing increasing difficulties in meeting their contractual obligations at the present time.

Professional negligence claims, perhaps surprisingly, continued to fall in 2011, although at a slower rate than the previous year (*graph 2*). In 2009, there was a notable increase in the numbers of professional negligence claims issued in the London Chancery division and "other negligence claims" issued in the Queen's Bench division in London. In 2010, both categories fell one-third. Last year, the categories fell 20% and 8% respectively.

As in previous years, it was the solicitors' profession that was the subject of the most professional

negligence claims in the Chancery division (the only division that breaks claims down in this way).

It remains to be seen whether the downward trend in professional negligence claims will continue. There must be a good chance such claims will rise again as a result of the protracted economic decline, which at present shows little sign of improving. It may be, at present, parties are biding their time to see if the economy improves before embarking on costly and uncertain litigation against their professional adviser, or they are focusing on more pressing matters such as staying afloat.

We have, in recent times, seen a number of claimants seeking to enter into standstill agreements.

There has been a rise of 7% in the number of claims in the TCC in London (*graph 3*). This reflects a global trend and may indicate a recession-related surge in this area.

Looking ahead

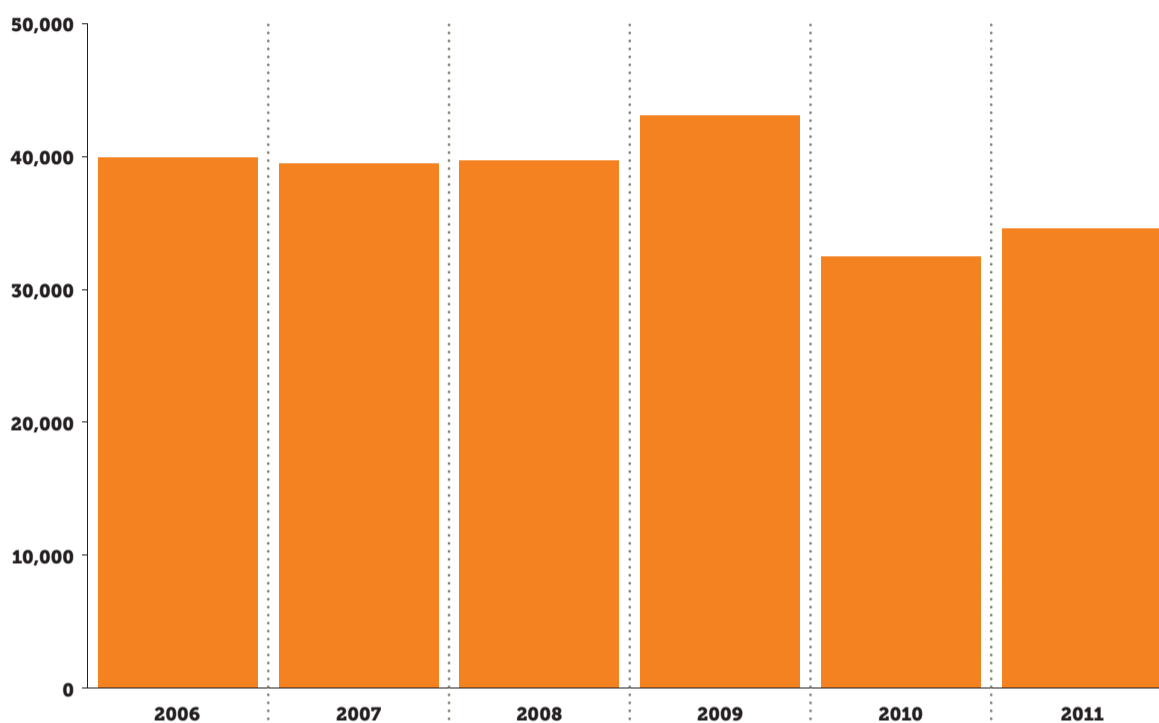
Following the 2009 increase in claims, the subsequent fall in 2010 came as a surprise to many. The slight increase we have seen last year has been more in line with expectation. The difficulties being experienced, not just in the UK economy but worldwide, mean we think it is likely claims will continue to increase.

However, it is not necessarily the case all such claims will end up as litigation. In May, the Centre for Effective Dispute Resolution reported it had continued to see a year-on-year increase of 15% in mediators' workloads since 2010. As a consequence of reforms being brought in next year (*see below*) alternative dispute resolution is only set to increase.

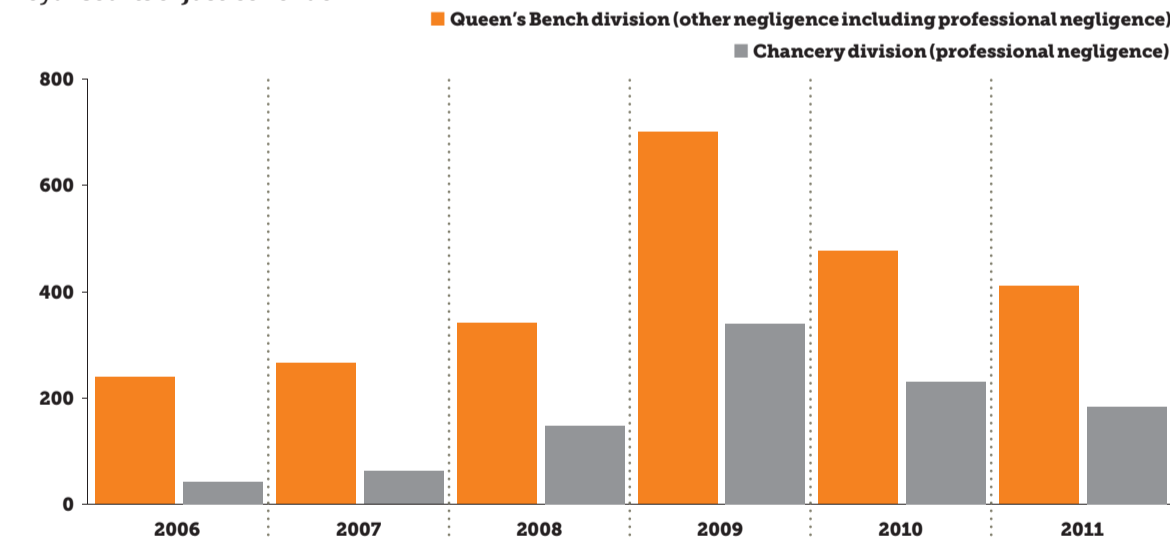
Looking ahead, a number of the reforms proposed by Lord Justice Jackson and implemented by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 are to come into force in April 2013.

The wide-ranging reforms, which mean, among other things, it will no longer be possible for successful parties in litigation to recover a suc-

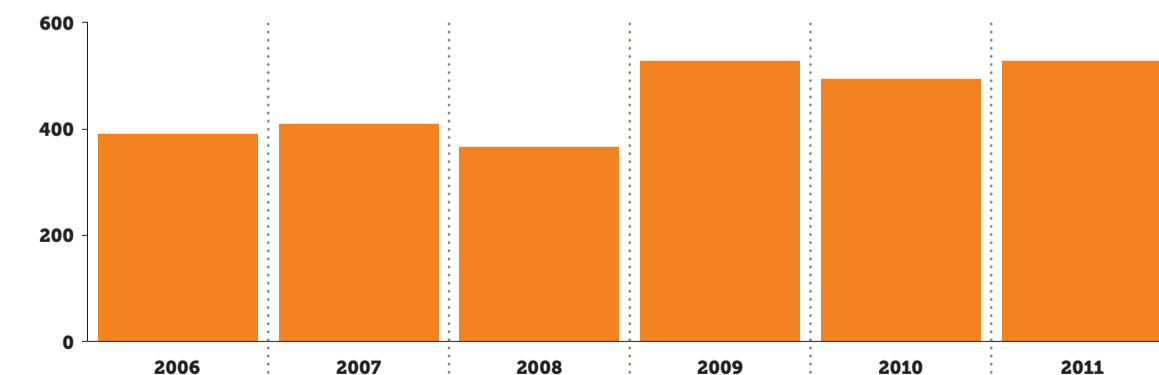
Graph 1: Originating proceedings in the Royal Courts of Justice London



Graph 2: Professional negligence claims in the Chancery and Queen's Bench divisions, Royal Courts of Justice London



Graph 3: Caseload of the Technology and Construction Court, Royal Courts of Justice London



cess fee under a conditional fee agreement or an after-the-event insurance premium from the unsuccessful party, will have a significant

effect on litigation across the board. It may be we will see a surge in claims in certain areas as claimants seek to take advantage of the existing

costs regime before April 2013. We shall have to wait to see what effect the new regime has on claims volumes generally. Watch this space. ■