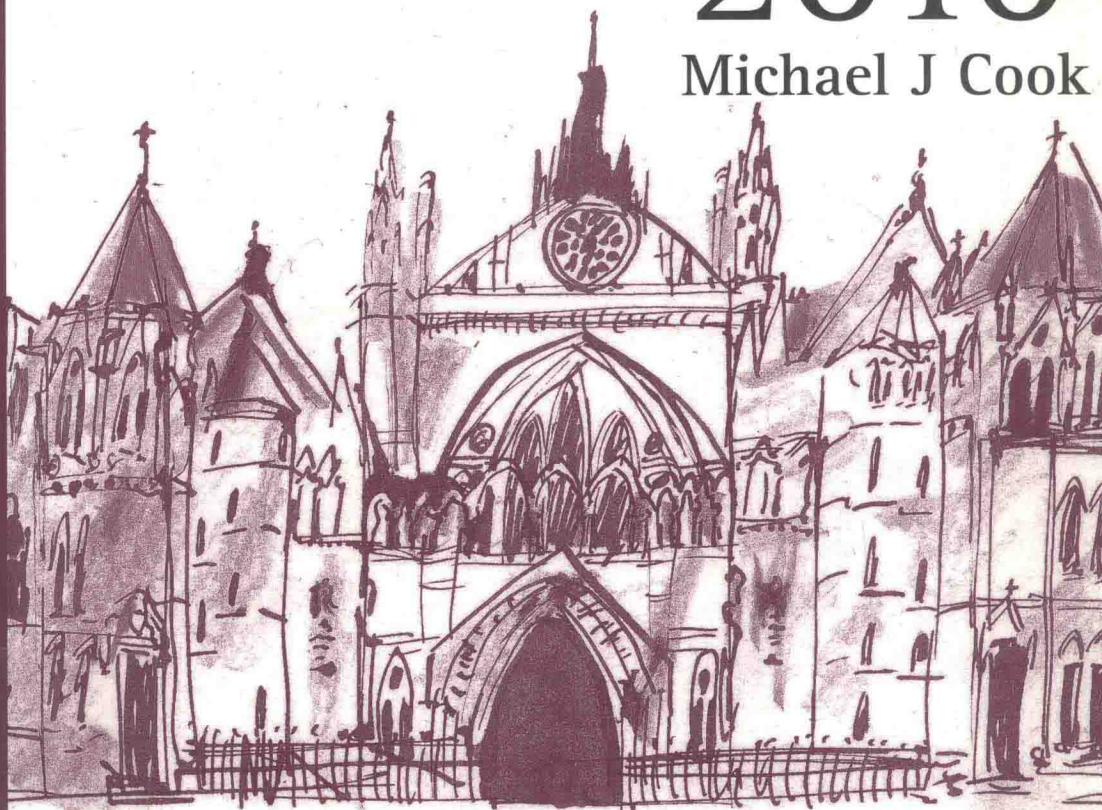


# COOK *ON* COSTS

## 2010

Michael J Cook



A guide to legal remuneration  
in civil contentious and  
non-contentious business



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# **Cook on Costs 2010**

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Michael J Cook



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## Preface

Although the ever-changing landscape of legal costs continues to necessitate an annual publication, I must start with the elephant in the corner of the room – the twelve month Review of Civil Litigation Costs by Lord Justice Jackson, Sir Rupert. As with all elephants in the corner, or mentioning the war in that episode of Fawlty Towers, I do not refer to the Jackson report other than in this preface for two very good reasons. First, it has not yet been published and, second, on past experience even after it has been published nothing, especially any reform requiring primary legislation, is likely to happen for months or years or perhaps ever.

I have seen it all before. The whole of my professional life has been spent both ‘in the present economic climate’ and in holding our collective breath awaiting the outcome of one fundamental review or another, or preparing for some forthcoming earth-shattering piece of reforming legislation. The Esher Report, the Beeching Report, the Royal Commission on Legal Services leading to the Benson Report, the Horne Report, the Woolf Report and the Civil Procedure Rules, and now Jackson. I have been there and got a wardrobe-full of T-shirts.

Four months of fact finding in this country and abroad resulted in a comprehensive 663 page preliminary report with 30 appendices on disc, followed by a further four months of stimulating debate both nationally and in specialist seminars in London. Since then, all has been silence as Sir Rupert and his team of assessors prepare the final report for publication by the year end, when no doubt all hell will break loose. In Sir Rupert’s own words ‘My final report will generate protest from at least some directions and quite possibly from all directions’. I can’t wait.

In the meantime what has been happening in the real world? The law lords have disappeared, and solicitors are no longer ‘of the Supreme Court’ but ‘of the Senior Courts’ which does not have quite the same ring to it. The Supreme Court Costs Office has suffered an even worse fate: it is still the ‘SCCO’, standing for the ‘Senior Courts Costs Office’, but throughout the rules it has now become simply the ‘Costs Office’, which has a certain logic because nowadays much of its work is transferred in from the county courts which are not of course ‘Senior Courts’. I hope that makes it clear.

Remuneration certificates have been abolished and replaced by ... not very much; after considerable consultation and debate a new regime has been agreed for personal injury claims arising out of road traffic accidents which we are told will cover 70%-75% of all personal injury claims with fixed costs in three stages, and the judiciary having failed to control costs by case management are now to try to control cases by costs management using the tools of budgeting and cost-capping. All accompanied by the usual torrent of costs decisions by every level of the judiciary.

My traditional thanks to Nicholas Bacon (Chapter 40), Harry Birks (Chapter 30) and David Chalk (Chapter 42) and to a new entrant, Susan Dunn and her colleagues

*Preface*

at Harbour Litigation Funding on the increasingly important funding of litigation by third parties (Chapter 41). It will soon be *Cook and Co on Costs*.

The law is as at 1 November 2009.

Michael Cook  
Burwood Park

## Foreword to the first annual edition

For litigation practitioners, the issue of costs used to be a relative afterthought. However, over the last decade the pendulum has swung to the point where the funding of litigation – whether the case can be funded and who pays what to whom at the end – has become a new and essential skill for litigators everywhere.

Fortunately *Cook on Costs* has been there in recent years to help the profession steer its way through the costs maze. But even Michael Cook, whose authorship on this complex subject has always kept us up-to-date, has appreciated that the current pace of change is so fast that an annual edition is now required. So that is what he has produced in the first annual edition of *Cook on Costs*. This is an indispensable text for every solicitor, whose own understanding of costs and the funding of litigation by conditional fees, the state or otherwise, is essential to the overriding need to ensure that costs issues are fully explained to and understood by the client.

Like my predecessor, Phillip Ely, who wrote the foreword to the excellent first edition, I am delighted to commend to all firms the timely arrival of *Cook on Costs* 2000.

Michael Napier  
President  
The Law Society

## Foreword to the First Edition

It is my privilege as President of the Law Society to commend Michael Cook's very practical guide to all aspects of solicitors' costs (other than criminal costs).

He modestly suggests that the book does not contain any facts and figures that cannot be found elsewhere. Recognising the ultimate and total dependence of solicitors on the costs which they receive, he presents all those facts and figures with clarity borne of experience. This book adds to the major contribution which Michael Cook has already made to the profession on this vital topic.

It is also a clear response to the need for a definitive and manageable guide to an area which requires such practical and positive skills.

I hope that it will find a place in every solicitor's office.

October 1991

P T Ely  
President  
The Law Society

## Preface to the First Edition

When the publishers asked me to write a preface I cavilled on the two grounds that no-one reads prefaces and they serve no useful purpose. I was told that the purpose is to explain the aims and intention of the work; in other words, why I have written the book and why you should read it. Fair enough. My late partner, Lionel Cranfield, at the end of some heavy litigation used to say, 'Now we come to the interesting part – the costs!'. In the quarter of a century since Lionel was killed in the hunting field, the profession has become increasingly aware that money is the life-blood of a solicitor's practice, but I continue to be perplexed that, in spite of this realisation, most solicitors and their clients lose out financially because of the profession's basic lack of understanding and interest in all aspects of costs. In a College of Law survey of the areas of skills on which solicitors wished the Law Society's new Legal Practice course to be based, costs did not even appear in the list.

And that is why I have written this book. It does not contain any facts and figures you cannot find elsewhere – apart from it being illustrated from my collection of unreported cases – but I have tried to write about costs in an interesting, coherent and digestible way. My aim in writing the book is therefore to impart to you the understanding of, and enthusiasm for, costs that Lionel Cranfield aroused in me all those years ago.

I much appreciate the kindness of Philip Ely in writing a foreword to the book in his year as President of the Law Society. I am seriously indebted to my old friend Master Michael Devonshire of the Supreme Court Taxing Office for reading the manuscript of the book and making many useful suggestions on the condition that I did not mention his name.

The law is stated as at 1 October 1991.

Michael Cook  
Limpsfield  
October 1991

## ACKNOWLEDGMENTS

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