

Civil Costs

Fifth Edition

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CIVIL COSTS

Fifth Edition

By

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Senior Costs Judge

of the Senior Courts Costs Office



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CIVIL COSTS

For DDH and in memory of TLH

FOREWORD

Civil Costs, now in its fifth edition, is a major textbook on this important topic. The author is the Senior Costs Judge. He has unrivalled experience of civil costs, gained from a unique position in the judicial hierarchy.

The fourth edition of this book was a *vade-mecum* for me, when I was carrying out my own Review of Civil Litigation Costs in 2009. That edition was published in 2007 and dealt comprehensively with all the costs issues of the day. Since then much has changed. I have no doubt that this new edition will deal equally comprehensively with the recent developments in this field.

Senior Costs Judge Peter Hurst is a prodigious worker. In addition to his extensive judicial duties, he gave up many hours to assisting me as an assessor during the Costs Review. Subsequently he has made a major contribution to the implementation of the recommended reforms. He has chaired working groups, assisted with the establishment of pilots and undertaken much drafting. He is therefore in a position to comment authoritatively on the numerous reforms which come into effect in April 2013.

Costs are a major factor in every case. Sadly, costs sometimes exceed the sum which is in issue in the litigation. Thus the rules governing the incidence and assessment of costs are just as important as the rules governing the assessment of damages. The importance of costs as a discrete topic has not always been appreciated by practitioners. Hopefully, this will change with the advent costs management and the other rule amendments (including amendment of the overriding objective) which come into force today.

This book merits a place on the shelves of every civil practitioner. I shall certainly be consulting it when hearing any costs appeals which may from time to time come in my direction.

Rupert Jackson
The Right Honourable Lord Justice Jackson
April 1, 2013

PREFACE

In the five and a half years that have passed since the fourth edition of this work there have been fundamental changes in the Court's approach to the costs of civil litigation. These changes have been brought about largely because of Sir Rupert Jackson's Civil Justice Costs Review. On November 3, 2008 Sir Anthony Clarke MR announced the setting up of the review, which commenced in January 2009. The final report was presented to the Master of the Rolls in December 2009. I was asked to be one of the assessors to the review. Sir Rupert worked unceasingly throughout that period and kept to the very tight timetable.

Sir Rupert's recommendations fell into two groups: those which could be dealt with by rule amendments and those which required primary legislation. The Government accepted virtually all of the recommendations and embodied those requiring primary legislation in Part 2 of the Legal Aid Sentencing and Punishment of Offenders Act 2012. The rule amendments are contained in the Civil Procedure Rules (Amendment) Regulations 2013. There have also been various statutory instruments dealing with certain aspects of the reforms. Sir Rupert was subsequently asked to oversee the implementation of the reforms which he did until April 2012 when Sir Vivian Ramsey took over. I was asked to chair the working group revising the Costs Practice Direction. This involved first amending and re-ordering the Costs Rules. The Costs Rules are now contained in Parts 44 to 47 each with its own Practice Direction. Part 48 contains the Transitional Provisions.

The most obvious and fundamental changes are the abolition of recoverable success fees and ATE insurance premiums and the banning of referral fees. The overriding objective has been strengthened and a new test for proportionality has been inserted which effectively reverses the decision in *Lownds v The Home Office*. Perhaps the most far reaching of the reforms relate to costs management and costs budgeting. This will take place in the majority of multi track cases. All members of the Judiciary have received training on this topic which is, of course, entirely new.

In the meantime litigation about costs has continued almost unabated. With the introduction of the new rules we have the prospect of several years' litigation under the old rules as well as the inevitable satellite litigation under the new regime.

As ever I am very grateful to the Costs Judges for their help and suggestions. My thanks are also due to Catherine Hurst and my PA, Lisa

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