

APIL Guide to Costs and Funding

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PREFACE

April 2013 saw a fundamental change in civil litigation which went further than just the so-called ‘Jackson reforms’. Out went ‘loser pays’ in personal injury litigation and recoverable additional liabilities, whilst in came qualified one-way costs shifting, a new definition to proportionality, budgeting and provisional assessment.

The early uncertainty of how the courts would tackle these changes (not helped when almost before the ink was dry on the revised rules the senior judges decided to exempt the commercial courts from budgeting when this was supposed to apply to all litigation) was soon replaced by a feeling of shock, some anger and then closely followed by bewilderment. The Court of Appeal’s first clarion call in the *Mitchell* case sent a shudder through practitioners. Realising there was going to be a much harsher regime in which they would be practising was one thing; the somewhat mixed way in which the judges applied it was another. Some appeared to ignore the Court’s phrase *de minimis* and set about applying a scorched earth policy to every application for relief. Shortly after that and as a result of this mood parties began to stop agreeing even routine extensions of time for fear they may be doing their client a disservice by eschewing a potential windfall result of a debarring or even striking out order. The Royal Courts of Justice Masters then sought to calm the mood with the unusual step of issuing their draft direction in clinical negligence cases in the RCJ only by which the parties were given a limited disposition to agree extensions of time, to be followed in other cases. And so the new climate has arrived and although the *Mitchell* decision arose out of budgeting and the filing of the fearsome Precedent H, we still await guidance on what budgets will be allowed and how the court will determine what is proportionality in each case.

Against this background APIL and its authors hope this book is both timely and of some comfort. The authors, whilst having a specific interest in the subject of costs and funding, are also practitioners. Hence they have attempted to help the practitioner with background, detail and guidance to all of the elements of the new world of costs and funding. The busy practitioner will need to become familiar with the new funding alternatives and the greater scope for the claimant to be charged for the work they benefit from. Then they will need to be well informed as to both the value of the claim and the costs involved in winning it so that they can produce a reasonable budget that anticipates the court’s view on proportionality. Finally, they will need to be

ready to support their costs claims in one of the three ways of having their costs determined by the court: summary and detailed assessment and the new provisional assessment.

The authors hope that this book will go some way to helping the busy practitioner navigate their way through the new and challenging reforms that run through the litigation. They wish to thank Tony Hawitt their editor for his guidance and significant involvement in the book, particularly the sensitive way he tells a lawyer how to write!

Grateful thanks are also offered to Victoria Walne, solicitor, for her assistance with the chapter on qualified one-way costs shifting and to our partners and colleagues for their help and support whilst this book was written. All and any errors are our own and we apologise for them!

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