

BOOK REVIEW

Stuart Sime & Derek French, *Blackstone's Guide to The Civil Justice Reforms 2013* (OUP, 2013)

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In November 2008 Sir Rupert Jackson was appointed by the, then, Master of the Rolls, Sir Anthony Clarke, to carry out a fundamental review of one of the perennial problems that affects the English civil justice system: excess litigation cost. Less than ten years after the last set of reforms – the Woolf Reforms – aimed at curing this problem had been implemented, more reform was needed. Sir Rupert's review, which concluded in December 2009, found that the predominant cause of the continuing crisis was excess cost generated by the operation of conditional fee agreements ('CFAs'), a form of litigation funding, which in turn were primarily used to finance personal injury litigation. Other causes were the failure to implement some aspects of the Woolf Reforms, such as docketing or the introduction of a fixed cost regime. Others still arose from the practical operation of the Woolf Reforms. Having identified the problems, Sir Rupert recommended wide-ranging reform, which was, broadly speaking, implemented on 1 April 2013 by a combination of primary legislation (the Legal Aid, Sentencing and Punishment of Offenders Act 2012), changes to the Civil Procedure Rules, and judicial decision (*Simmons v Castle* [2012] EWCA Civ 1039 and [2012] EWCA Civ 1288).

Blackstone's Guide to the Civil Justice Reforms 2013 is the first detailed commentary on the Jackson reforms. It is written by experts in the field, who bring both detailed theoretical knowledge and practical experience to the work. It is lucidly written and easy to navigate; that it is, is all the more impressive given the timescale that the authors would have had to work in as the detail of many of the reforms was neither finalised nor publicised until shortly before they came into effect.

The Guide is divided into fifteen chapters, which are supplemented by copies of relevant Statutory Instruments. Of those chapters the first three deal with general introductory matters, such as the background and nature of the reforms, transitional provisions concerning legislative changes and the reform of legal aid. The latter reform was unconnected to the Jackson Reforms. Sir Rupert's reforms were in fact predicated on their being no further changes to the legal aid scheme. Changes were made however and

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brought into force at the same time as the Jackson Reforms. Given this, and the fact that they will necessarily interrelate with the reforms, consideration of those changes was unavoidable.

The substantive chapters cover all areas of civil procedure that are affected by the reforms: case management; cost management; cost-capping orders; disclosure; expert evidence; costs (of course); Part 36 Offers; ADR; Appeals; Damages for pain, suffering and distress; and specialist proceedings. Each chapter roughly follows the same pattern. They start by providing necessary background, a discussion of the problem, the treatment of it in the Jackson Reports and the specific recommendations made. They then go on to a practical explanation of the nature of the reforms introduced; where they can be found i.e., which statutory instrument or rule of court; and how they are intended to operate in practice. In order to explain the proper approach to be taken to the new rules, the authors have fleshed out relevant parts of chapters by reference to the Jackson Implementation lectures; the series of lectures given primarily by Sir Rupert Jackson, Lord Neuberger MR and Sir Vivian Ramsey that explained how the reforms were intended to operate. While these lectures are publicly available, there is a real benefit in seeing them placed in context in a discussion of the rules themselves; although one caveat might be made here. Discussing applications for relief from sanctions under the revised CPR r. 3.9 the authors suggest that Lord Neuberger MR, in the 9th Implementation Lecture, outlined how the proper approach to them should, post-April 2013, be the one that had previously been taken by the Court of Appeal in cases such as *Hoddinott v Persimmon* [2007] EWCA Civ 1203, [2007] 1 WLR 806. The point made in the Implementation Lecture is that a strict approach to such applications should be taken. The authors take this to mean that the same test applied in *Hoddinott* should apply to applications under r. 3.9. A careful reading of the lecture shows it does not go that far, although it is a possible interpretation of it. Caution needs to be taken here.

That quibble aside the exposition in each chapter cannot be faulted, even where the chapter is itself a little thin as a consequence of the lack of detail in the Jackson recommendation or implementation itself. The chapters on ADR and Appeal, for instance, fall into this category due to fact that the reforms themselves were, at best, minimal. That the authors did not feel the need to bolster these chapters with unnecessary and unwarranted detail is a real benefit, both in terms of concision and accuracy. Perhaps the most useful chapter is chapter ten, which deals with, amongst other things, with the revisions that have been made to the CPR's costs provisions. Those

provisions form part of what has to be the singularly trickiest part of the CPR to navigate. The reforms have not made this any easier, not least because they introduced new provisions, deleted old ones and, perhaps most problematically, moved other provisions around: what was CPR r. 44.1, for instance, is now r. 43.2, while what was r. 44.2 is now 44.3 and so on. The scope for confusion and wasted time searching through the rules for provisions that have shifted place is undeniable. The authors however helpfully provide the means to avoid the hours of fun this aspect of the reform could give. They provide a destination table showing the correspondence between the old and new provisions, helping the busy practitioner and judge to go straight to the right rule. It is but one example of many in a book that ought to deservedly be the first port of call for anyone who wants to gain a detailed, practical, understanding of the post-Jackson landscape.