

# JACKSON REFORMS:

## 10 THINGS YOU SHOULD KNOW (BUT WERE TOO FRIGHTENED TO ASK)

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# 1. What do the reforms cover?

- i. Funding
- ii. Changes in the litigation process
- iii. The Management of Costs
- iv. Fixed Costs
- v. The process of assessing costs
- vi. Miscellaneous Reforms e.g. ban on referral fees

## 2. How has the overriding objective changed?

- Enable the Court to deal with cases justly and at proportionate cost.
- Proportionality will apply to costs and case management at all stages.
- Applies to management of all cases post 1 April 2013.

## 2. How has the overriding objective changed? (cont/d)

- Now includes: enforcing compliance with rules, practice directions and orders (r.1.1 (2) (f))
- New rule on relief from sanctions - r.3.9
  - simpler, shorter, tougher
- Court may contact the parties to monitor compliance (r.3.1 (8))

# 3. What is meant by proportionate cost?

- “New Test” r.44.3 (5) - Reasonable relationship to:
  - sums in issue;
  - value of non-monetary relief;
  - the complexity of the litigation;
  - any additional work generated by conduct of paying party;
  - and any wider factors involved such as reputation or public importance.
- What is a “reasonable relationship”?
- No further guidance – “case by case basis”

### 3. What is meant by proportionate cost? (cont/d)

- Proportionality trumps reasonableness and necessity (r.44.3 (2))
- Disproportionate costs not allowed
- Why is “necessarily incurred” mentioned in the rule?
- Indemnity Costs

# 4. How will costs be managed?

- CPR 3 – The Court's Costs and Case Management Powers
- Multi-track cases commenced on or after 1.4.13
- r. 3.12 - Court should:
  - manage steps to be taken and costs to be incurred to further the overriding objective

# 4. How will costs be managed? (cont/d)

- Costs Budgets:
  - Filing and exchange – Precedent H
  - Effect of agreement?
  - Costs already incurred?
- Costs Management Orders (r.3.15)
- Costs Management Conferences (r.3.16)



# 5. What is the significance of the costs budget?

- Case management (r.3.17)
- Assessing costs when CMO (r.3.18)
  - “good reason” to depart from budget?
- 8 pillars of wisdom (r.44.4)
- 20% difference - reasonable reliance (44nPD.3)

# 5. What is the significance of the costs budget (cont/d)?

- Revision to budgets – “significant developments in litigation” (3E PD.2.6)
- Limit to costs of budgeting and costs management process (3E PD.2.2)

# 6. What about the rules of evidence?

- Estimate of costs of expert and identify issues
- Tension between r.35.1 and overriding objective
- Concurrent expert evidence – “Hot-tubbing”
  - 35PD 11.1 to 11.4
- Directions re witness evidence - r.32.2 (3):

# 7. QOCS: When might the Defendant recover costs?

- Costs Orders v Enforcement (r.44.14)
- No Permission required:
  - Limit of C's damages
    - Part 36
    - Interlocutory Orders
    - Issue-based orders
  - Strike out (r.44.15):

# 7. QOCS: When might the Defendant recover costs (cont/d)?

- Permission required (r.44.16):
  - Fundamentally dishonest
  - Financial benefit of person other than C
  - Not claim to which Section applies
- Counterclaims or Additional claims (r.44.13 (2))

# 8. What's new about Part 36?

- New r.36.14 (3)(d)
- “Reward” for Claimants – “additional amount” of up to £75,000
- 10% up to £500,000; 5% above £500,000
- Applies to offers made on or after 1 April 2013

# 9. How has the position re offers on costs changed?

- Part 36 offers (r.47.20 (4)) where assessment proceedings commenced post 1.4.13
- Replace 47.19 offers
- Other admissible offer (r.44.2)
- Offer in open letter (r.47 PD 8.3)

# 10. How is provisional assessment meant to work?

- Less than £75,000
- Bills lodged after 1.4.13 whenever work was done
- Suitability for provisional assessment?  
(r.47.15 (6))
- New proportionality test - split bill?



# 10. How is provisional assessment meant to work (cont/d)?

- Papers filed?
- Points of Dispute and Reply – Precedent G
- Decisions noted on Precedent G - within 6 weeks
- 14 days for the parties to agree total sum
- Request oral hearing in 21 days
  - – costs consequences

# 10. How is provisional assessment meant to work (cont/d)?

- How and when are costs of assessment decided?
- Open letter and sealed envelope with Pt 36 or similar offers filed
- Statement of costs – what about D's costs?
- Written submissions on costs of assessment (47nPD.4.6)
- Limitation of costs recoverable to £1,500