

## **Introduction**

### **1. The Civil Courts before COVID**

### **2. We are not accountants.**

### **3. Less Pre-Action, more action**

### **4. How much to reveal?**

### **5. Remote Hearings**

### **6. Changes to the court rules and processes**

### **7. Relief from Relief?**

### **8. The impact on lawyers and their clients**

### **9. Funding the civil courts**

## **Conclusion**

## **Index**

## INTRODUCTION

This book does not intend to get all sociological about the purpose of the civil justice system. If you want to read about that then study a Jurisprudence course or something similar. The ordinary person may never use a civil court in their lifetime, but on the rare occasion they do, you might expect that they will have some romantic notion that the England & Wales courts are the envy of the world and something we should be proud of. After their first encounter, that rose-tinted view may well be dispelled when the reality of what it's really like hits home, and more painfully so if they lose.

“Civil Justice” can occupy many pages in books by legal scholars. In simple terms, civil justice is the process of how the law affects civil rights and duties and the machinery and resources provided by the state for the resolution of disputes between individuals and organisations. It comprises of the law, civil procedure, courts, and the judiciary. The challenge is to find a system that is reasonably accessible to enable people to enforce their rights and not be too complicated or expensive so that it discourages people from using the system. It boils down to how much civil justice can we afford? The criminal justice system has had a bigger share of the pie in terms of resources in the past couple of decades and the civil justice

system is like the poor relation. This might be because crime is a social evil and there needs to be a suitable process for prosecuting offenders; it is also politically expedient to spend more money on addressing crime than helping people fight their battles in the civil courts.

People fighting battles is a narrow view of the purpose of having an effective civil justice system. It is not just so that the wealthy people can argue over what might seem trivial issues, but it goes hand in hand with a thriving economy. If businesses cannot enforce contracts or collect payments, then ultimately the economy will fail to survive in the modern world. A society which knows that it can escape its obligations or commitments because there is no system to force compliance, is living on borrowed time. It is also naive to think that we can all learn to settle our differences by being nicer people and never resort to legal action. Many years in legal practice has taught me that human beings are not always reasonable when it comes to resolving disputes. On the other hand, why should people have to compromise when they are in the right because the Ministry of Justice is trying to develop more schemes to prevent you becoming a court user. The Court Service is awash with all the right jargon and statements of what you can expect from service standards but, with the state of many courts, especially in the County Court, you do

wonder what actual “service” is being provided. The Court Service must be a rare breed of organisation that can charge fees for providing services but can suffer little or no penalties if it provides no service.

The phrase “the world will never be the same again” is often used following a change in events. It is perhaps over used in response to events which might be important but are hardly world changing. COVID-19 is, however, widely viewed as one of those cases when this phrase is particularly apt. Probably nobody in living memory has experienced a pandemic that has caused a total lock down in society and has caused economic disaster.

The pandemic swept across the western world very quickly leaving politicians to make difficult decisions. The debate about what should have been done and when will no doubt rage on for many years and will exercise the thoughts of historians in the generations to come. Changes had to be made quickly to cope with the worsening situation and the emergency laws had to be brought in. The Courts faced a difficult time with measures needing to be introduced rapidly to avoid a total closure of court business. The COVID crisis has been disastrous for many people, but to the justice system it provided the catalyst to force the courts to embrace the modern digital world in respect of on-line court hearings. It is hoped that this shove in the direction of

the modern world will continue in a post COVID world, and that it will not be a temporary experiment.

What will become apparent as you go through this book, is that you will see that there are more changes that are needed than simply better technology; a whole host of problems exist and some of the areas that need an overhaul are:

1. More resources for administrative staff and the appointment of more judges.
2. More streamlined procedures to enable a faster route to trial.
3. The abolition of costs budgeting.
4. Reform of certain procedures such as “relief from sanctions”.
5. More straightforward disclosure rules.
6. Longer and more flexible court hours.
7. Fair and proportionate court fees.
8. The extension of fixed recoverable legal costs.
9. The relationship between client and lawyer.

Some of the ideas I put forward will be controversial. There is need for radical change. Too often we have reports which describe a vision for the future of the civil courts, but little happens. In the report by the Lord Chief Justice and the

Senior President of Tribunals in September 2016 called “Transforming Our Justice System”, the chapter on civil courts opened by saying:

*Our ambition for the civil courts is that they retain and enhance their world-class position as the trusted jurisdiction of choice for international disputes, while becoming easier to use for everyone, and more proportionate in resolving simpler legal disputes. The system must work for everybody, from international trades with complex market disputes, companies filing claims in bulk, to the individuals filing one-off claims where they feel they have been wronged.*

It is debatable whether the vision of the courts “becoming easier to use for everyone” has been achieved. The section on civil courts continued:

*Our reform will promote the full range of methods of settling disputes more swiftly, at less cost and with greater choice. This is likely to include a number of options, a dispassionate evaluation of the dispute, followed by negotiation, conciliation, mediation or a tailored hearing to resolve the issues on which the parties remain in dispute. These options are designed to minimize combative hearings and help parties settle their disputes with the minimum of stress and acrimony, whether they are members of the public or multi-national corporations. Depending on the complexity of the case – and the needs of all involved – it might be online, paper-based or face-to-face.*

*We want to build on simpler consumer-focused models. In the civil courts, we will automate and digitize the entire process of civil money claims by 2020. These account for more than four fifths of the 1.6 million claims issued in the county courts and the High Court each year – with the vast majority (83%) of which are uncontested.*

*We will speed up resolution as we replace paper and post with digital working currently a 'fast track' claim with a value between £10,000-£25, 000 takes 11 months to be resolved'. Under our new digital model, cases will be handled faster and in a more convenient way, improving the experience for everyone making and defending claims in the civil courts.*

*More needs to be done to control the costs of civil cases so they are proportionate to the case, and legal costs are more certain from the start. Building on earlier reforms, we will look at options to extend fixed recoverable costs much more widely, so the costs of going to court will be clearer and more appropriate. Our aim is that losing parties should not be hit with disproportionately high legal costs, and people will be able to make more informed decisions on whether to take or defend legal action.*

*We also want to do more to make sure that if the court finds in your favour, you can get back what you are owed. We will be extending the powers of the High Court, enabling them to make attachment of earnings orders so that debtors pay back their creditors. The County Court already has this power and this change will provide a further enforcement option for users in the High Court. To make it clearer what will be paid back under those.*

There was little sign by 2020 of the new digital models apart from in the High Court where E-filing had been introduced. It has taken a global pandemic to adapt quickly to a new remote way of working. However, is this a reaction to the crisis or will it be a long-term change for the better?

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