

Judicial Pilots for the Civil Litigation Costs Review

Introduction

Many of the Review's recommendations are being taken forward by the judiciary, and are being overseen by the Judicial Steering Group (JSG). A number of pilots are being undertaken to trial some of the recommended case and costs management at a range of court centres. The JSG is grateful to all of the judges, practitioners and court staff taking part in the pilots, which are summarised below. All of the pilots are being monitored – either by the Ministry of Justice or independent academics.

Costs Management – Technology & Construction Court/Mercantile Court¹

This is a voluntary pilot, and it originally commenced in June 2009 at Birmingham Civil Justice Centre following discussions with users of these two specialist courts. A new pilot began on 1st October, 2011 to run for one year at all Mercantile and TCC court centres.

The objective of this pilot is to manage the litigation so that the costs of each party are proportionate to the value of the claim. The Judge assesses and discusses with the parties whether an individual case is suited to a costs management approach and should form part of the pilot. If it is, the parties submit and exchange detailed budgets for their estimates of costs in the case. The pilot is following Practice Direction 51F - http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/contents/practice_directions/pd_part51g.htm.

Defamation Costs Management²

The objective of this pilot is to manage the litigation so that the costs of each party are proportionate to the value of the claim and the reputational issues at stake and so that the parties are on an equal footing.

This pilot commenced in October 2009, and ran in its original form until 30th September 2011. Some revisions have been made to the pilot Practice Direction (51D) with effect from 1st October 2011, in order to address issues which arose in the first two years. The revised pilot will run until 30 September 2012.

The pilot is trialing a mandatory costs budgeting process at the Royal Courts of Justice and Manchester Civil Justice Centre. The Practice Direction can be found here: http://www.justice.gov.uk/civil/procrules_fin/contents/practice_directions/pd_part51d.htm. This provides for parties to prepare early costs budgets and exchange them in discussions with the other parties. It also provides for the court to approve or disapprove the budget at each stage of the proceedings.

¹ This pilot relates to Chapter 48 of the Review's Preliminary Report

² Chapter 32 of the Review's Final Report covers defamation and related claims

Concurrent Evidence³

This procedure is also known as ‘hot-tubbing’, taking its name from the practice of opposing expert witnesses in a case all giving evidence at the same time, and thus areas of common ground and difference are identified at the outset of a case, with a judge chairing the discussion. This is a practice commonly used in Australia.

A proposal for concurrent evidence to be piloted at Manchester Civil Justice Centre was discussed with specialist court users, and then introduced in June 2010 on a voluntary basis using guidelines (rather than rules and practice directions). It has been opened up to Chancery cases.

Provisional Assessment of Costs⁴

The Costs Review’s final report had examined the possibility of lower value bills of costs being given a provisional assessment. The judge carries out a detailed assessment on paper – if either party is dissatisfied they can request an oral hearing. This pilot is a mandatory one applying to bills where the base costs claimed are £25,000 or less. The pilot is being conducted at Leeds, Scarborough and York County Courts, and commenced in October 2010. It has been extended to 30 September 2012. A Practice Direction for the pilot can be found here - http://www.justice.gov.uk/civil/procrules_fin/contents/practice_directions/pd_part51e.htm.

It is hoped an evaluation report on the pilot will be published in late January 2012.

Docketing⁵

The Costs Review’s final report looked at a suggestion that measures should be taken to promote the assignment of cases to designated judges with particular expertise in that field of law – known as ‘docketing’. This is being piloted at Leeds Combined Court Centre, and the pilot began in November 2010, and was extended to run to 31 October 2012. The special areas of expertise and experience of all judges are recorded, and where possible (given the various demands on judicial and court resources) suitable cases are allocated to them.

It is hoped an evaluation report on the pilot will be published in February 2012.

December 2011

³ This pilot relates to Recommendation 80 of the Final Report

⁴ This pilot was proposed in Chapter 45 of the Review’s Final Report

⁵ This pilot is based on Recommendation 81 in the Review’s Final Report