

Foreword

On Monday 26 April, 1999, the new Civil Procedure Rules, Practice Directions and forms published in this volume will come into force, heralding the beginning of a programme of the most fundamental change to the civil justice system since the reforms of Lord Selborne in the 1870s. They amount to a unified code of civil procedure which will apply to all civil courts, ending unnecessary distinctions of practice and procedure between the High Court and the county courts. Plain English has been adopted throughout, so far as is consistent with the technical nature of the subject matter.

The new Rules and Practice Directions derive from concerns similar to those which motivated the work of Lord Selborne: widespread public dissatisfaction with the delay, expense, complexity and uncertainty of pursuing cases through the civil courts. That dissatisfaction found its most powerful voice in Lord Woolf's two Reports on Access to Justice.

Lord Woolf adopted a wide-ranging consultative approach when seeking potential solutions to the difficulties faced by the civil justice system; that is an approach I have adopted and applied as my proposals for reform have developed. There are many groups and individuals to whom I owe a debt of thanks for their hard work in bringing these reforms to fruition. In particular, the judiciary, the legal professions, consumer groups, academics, representatives of business interests and advice agencies have given of their time and experience to assist my officials and court staff in their plans and preparations for the first stage in the process of modernising civil justice.

The essence of the reforms is enshrined in Part 1, which articulates that the Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly. To further the overriding objective, courts are required actively to manage cases. As part of case management, procedural judges will allocate cases to the small claims track, the fast-track or the multi-track, taking into account a number of factors, including the financial value and the complexity of the claim. Directions will be given and orders will be made which provide for parties to perform only that work which the court deems necessary to bring about a just resolution of the dispute. Managing cases in a proportionate way will exert a strong downward pressure on costs. It will enable the court to reduce the scope for parties to manipulate procedure for tactical advantage. By removing unnecessary work and focusing on the issues in dispute, it will enable cases to move through the system more quickly.

We must not forget, however, that we should see litigation as the last and not the first resort in the attempt to settle a dispute. That message is reinforced by the introduction of two Pre-Action Protocols, covering clinical negligence and personal injury cases. The Protocols prescribe pre-action behaviour, including early exchange of information, to facilitate settlement of a dispute as soon as possible. Where compliance with a Protocol does

not lead to settlement prior to the issue of proceedings, it should mean that the case is sufficiently well-prepared when it is issued to move quickly through to trial. Parties who fail to comply with the Protocols will be penalised by the courts. One of the tasks for the next phase of reform is to increase the number of protocols so that the greatest possible number of cases fall within their scope.

It will take some time before the full benefits of the new system are seen: we cannot expect such wide-ranging and fundamental changes to deliver all our objectives overnight. It will clearly be crucial that we monitor the impact of the changes. Moreover, the Civil Justice Council has a statutory role in keeping the civil justice system under review and advising me on its further development.

The reform programme that I announced in Cardiff in October 1997 has been a great collective effort driven forward by the commitment of the judiciary and Government officials. I would like, particularly, to thank Lord Woolf and the members of the Civil Procedure Rule Committee for the tireless work that they have put into the refining of the new Rules; the Vice-Chancellor, Sir Richard Scott, and the members of his working group for drafting the new Practice Directions; and the members of the Clinical Disputes Forum and the Personal Injury Protocol Working Group for overcoming their traditional adversarial positions to produce the first of the new Protocols.

The message for all those in the civil justice system, judges, practitioners and court staff alike, is that the changes being introduced in April are as much changes of culture as they are changes in the Rules themselves. We have to be ready to be proactive, not reactive. And we must see this as the beginning, not the end, of the process of change

A handwritten signature in black ink, reading 'Irvine of Lairg'. The signature is written in a cursive, flowing style with a large, prominent 'I' and 'L'.

The Right Honourable the Lord Irvine of Lairg,
the Lord Chancellor⁵