# An evolving role

**Sue Nash** reflects on the transformation of the costs lawyer

I have been 'costing' for the best part of 30 years, and our profession has changed out of all recognition during that time. As I stand down as chair of the Association of Costs Lawyers, this seems an appropriate time to reflect on where our profession started and where it now stands.

The ability to recover the costs of a legal action was first introduced in 1267 and has continued to evolve ever since. The title 'bill of costs' originated in the first decade of the 17th century, when lawyers were obliged to give an invoice/account of their costs. But it was not until 1728 that it became obligatory to have a bill of costs 'taxed' by an independent judicial officer. That, in due course, eventually led to the formation of the specialised court now known as the Senior Courts Costs Office. Meanwhile, the process of taxation is of course now known as 'assessment'.

By 1977, the role of costs clerks in quantifying legal costs had become a more specialised role and costs practitioners were – as indeed many still are – referred to as law costs draftsmen. There was an increasing number of these legal practitioners, many of whom worked independently, although a considerable number worked in-house for firms of solicitors. An enlightened and forward thinking group formed the Association of Law Costs Draftsmen to exchange knowledge and ideas and introduce a code of conduct for those practising in the area of legal costs. Formal training was also introduced.

Meanwhile, in 1986 the Rules of the Supreme Court (Amendment No 3) replaced the old party-and-party basis of assessment with the standard basis, which allowed for recovery of a 'reasonable amount, reasonably incurred' and did away with the majority of the previous scale items. More analysis was now needed to be able to draw a bill of costs accurately, and demand for specialist practitioners in this area increased.

This demand grew hugely following, firstly, the Conditional Fee Agreements Regulations 1995 and, secondly, the enactment of the Woolf reforms through the Civil Procedure Rules in 1999. Hard on the heels of the CPR came the CFA Regulations 2000 which permitted recovery of success fees and after-the-event premiums (and also introduced CCFAs). The 'costs wars' ensued and saw the birth of what is now a thriving 'costs bar', with the first specialist costs QC appointed in 2003. There are currently five practising costs specialist QCs.

On 1 January 2007, in recognition of the increasing skill-set and professionalism of members of the Association, the Association of Law Costs Draftsmen Order was enacted. This gave senior members of the ALCD – then known as Fellows – rights of audience and the right to conduct costs litigation, along with the ability to go on the court record.

Under the Legal Services Act 2007, the association was recognised as an approved regulator and, in accordance with the act, the ACL delegated the key regulatory function to its own regulator, the Costs Lawyer Standards Board (CLSB) in 2011.

At the same time, those who had met the education and qualification requirements were retitled as costs lawyers, and the Association changed its name to the Association of Costs Lawyers.

The Jackson reforms – many of which were enacted through the Legal Aid, Sentencing and Punishment of Offenders Act in April 2013 – have thrust costs, and those who practise in this area, into the forefront of civil litigation. Today, costs lawyers have become an accepted, respected, and integral part of the legal landscape. Costs lawyers – either independently or on behalf of the ACL – have been invited to be involved with all major Ministry of Justice and judiciary led consultations on all recent initiatives and proposals that affect legal costs. Currently, the association is contributing to consultations on costs budgeting/Precedent H, the new format for the bill of costs, fixed recoverable costs and the civil courts structure review.

But costs are still seen by a large section of the judiciary as being an unnecessary evil. As far back as 1820, Lord Bentham described costs as 'the grand instrument of mischief in English practice', and this view has been expressed in various ways by many senior judges since the turn of this century. Meanwhile, Lords Neuberger and Dyson have made clear their desire to see certainty as to, and control of, the costs of proceedings by the introduction of a greater range of fixed recoverable costs.

> Costs are seen by the judiciary as an unnecessary evil

Side by side with this is the issue of access to justice. With the virtual destruction of legal aid over the last decade, it is obviously essential that other ways are found to ensure that ordinary citizens of ordinary means are able to enforce their legal rights. Lord Justice Briggs is tasked with heading the Civil Courts Structure Review, and the work of his team is being informed by two influential reports; Delivering Justice in an Age of Austerity and Online Dispute Resolution. His preliminary report came out last autumn and is being consulted on prior to the final report being delivered this summer.

Many of the current proposals and ideas being considered will fundamentally change the practice of costs lawyers, but in our comparatively brief history, we have shown that we are adaptable to change. The increased skill-set of costs lawyers – which now, among other things, embraces practice management, compliance and costs management – should ensure that the demand for skilled and regulated costs lawyers will not diminish any time soon.

*Sue Nash is immediate past chair of the Association of Costs Lawyers*