

LSLA

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# Mitchell judgments restore co-operation to litigation – Law Society

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**N**ew guidance in granting relief from sanctions has been widely welcomed across the legal profession.

Master of the rolls Lord Dyson today upheld three appeals relating to relief for non-compliance, saying his guidance in *Mitchell* last year remained 'substantially sound' but that the problem was the way it had been interpreted.



He was critical of the unreasonable approach, as either too draconian or unduly relaxed, which had been adopted in some cases by the judiciary.

The Law Society, which was asked to intervene in the three linked appeals, said Dyson's new guidance should make civil litigation in England and Wales less adversarial and more co-operative.

Law Society chief executive Desmond Hudson (pictured) said today's judgments were 'welcome news' for solicitors and their clients.

'I am pleased to say that as a result of the submissions which were made by the Society, and which were gratefully welcomed by the court, further guidance has been issued.

'The court's previous decision in *Mitchell* and the way it was being applied by the lower courts had resulted in disproportionate penalties and a breakdown in co-operation between parties to litigation, clogging up the system and introducing huge uncertainty into the whole process of civil litigation.'

Peter Kaye, litigation partner at Linder Myers Solicitors, whose appeal on behalf of Utilise formed one of the three test cases, said it will have a significant impact on litigation in the future: 'The new guidance is a very welcome development providing fair, and clear, definitions with regards to the weight of breaches clarifying those which will warrant the court's time and should serve to minimise satellite litigation over trivial matters going forward.'

'A more pragmatic and sensible approach to applications for a relief from sanctions can now be adopted by both legal professionals and the courts as a result.'

PJ Kirby QC, from Hardwicke Chambers, described the ruling as a 'retreat' from what most lawyers understood the effect of *Mitchell* to be.

'Orders should be complied with but this decision allows justice and common sense back into the equation,' he added.

David Greene, a past president of the London Solicitors Litigation Association (LSLA) said 'common sense has prevailed' in heading off the potential for an unwelcome wave of satellite litigation that threatened to result from *Mitchell*.

'With a change in the tests to achieve relief from sanctions we remove the damaging impact that prescribed that only "trivial" breaches should automatically secure relief from sanctions.'

But one of the losing parties in the judgments said it was a 'disappointing decision' after its client had merely acted in accordance with the *Mitchell* decision.

Richard Dawson-Gerrard, partner at the Manchester office of leading national law firm Mills & Reeve, who acted for the respondent in the *Utilise TDS Limited v Davies* case, said: 'The court has affirmed the need to comply with timetables but set out a test for relief from sanction for breach based on "reasonableness".'

'This of course potentially opens the door to uncertainty and tactical abuse.'