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Kaye: Mitchell fall-out “depressing”

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***London litigators lament post-Mitchell
“game playing”***

The rigidity introduced by the *Mitchell* judgment has fractured co-operation between solicitors, while costs budgeting has driven up law firms’ costs, according to a survey of civil litigators.

The poll of the London Solicitors Litigation Association’s (LSLA) 1,500 members found *Mitchell* had profoundly affected behaviour.

The LSLA quoted one litigator as saying: “There is a lack of co-operation amongst solicitors to sensibly extending deadlines, as it is seen as a chance to get your opponent possibly struck out. Hence, there is more game playing than sensible co-operation.”

Almost three-quarters said costs budgeting had increased costs to their firms overall and just under two-thirds said the same about new rules on disclosure.

One litigator said: “There are now difficult tactical considerations around the costs budgeting process and different applications by different judges. It is increasing antagonism between parties over perceived attempts to take tactical advantage and appears to be being inconsistently applied.”

In other findings, more than half of those surveyed said they had stopped offering conditional fee agreements since recoverability ended. Six months ago, only about a third gave the same answer.

Damages-based agreements were shunned by 74% of respondents because of lack of clarity around the rules. In the last survey, 71% said they did not offer them.

Some 60% said that although the non-recoverability of after-the-event premiums had had an impact, they were still able to find reasonably-priced cover for clients.

Francesca Kaye, immediate past president of the LSLA, said: “We used to have a level of co-operation between parties and the court, well-run cases progressed by agreement, and a case only went to court if there was something you really couldn’t agree on. The system was flexible [and] worked to everyone’s advantage – it paid to talk.

“The very robust *Mitchell* judgment has introduced a demoralising rigidity; now everyone is covering their own back and what’s best for the client is being sidelined by a slavish obsession with deadlines. It’s depressing.”

She continued: “Consideration of costs was always part of the case planning process for most litigators. What’s changed, as in *Mitchell*, is that we are now faced with a rigid process, with forms that don’t work and uncertainty around court decisions...

“It’s a shame for Jackson LJ that the way in which the [Ministry of Justice] introduced his reforms has unleashed a backlash of negative sentiment. This is probably being exaggerated by a sense that the MoJ isn’t finished yet and that litigators face further changes meaning the litigation practice environment will continue getting tougher.”

The poll was undertaken in association with the *New Law Journal*.

<http://www.litigationfutures.com/news/litigators-join-voices-lamenting-post-mitchell-game-playing>