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Survey uncovers real cost of reform

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Second NLJ/LSLA Litigation Trends Survey tracks impact one year on from Jackson

Nearly three-quarters of lawyers say civil litigation costs have increased not decreased since the Jackson reforms, according to the second *Litigation Trends Survey* by NLJ and the London Solicitors' Litigation Association (LSLA), published this week.

Civil litigators responding to the survey of LSLA's 1,400 members bemoan a return of pre-Woolf adversarial days, noting an increase in rigid, aggressive behaviour and an unhealthy obsession with point-scoring. Such behaviour was elbowing out pre-Mitchell pragmatism, flexibility and co-operation between parties, which used to get the job done sensibly for clients.

Asked if case management behaviour on specified time limits had altered as a result of Mitchell, 72% of respondents said "Yes".

Seamus Smyth, partner at Carter Lemon Camerons, comments: "Mitchell has served to reinforce the need for absolute compliance with rules, orders and timetables.

"More resources go into ensuring this compliance—which increases cost, at least for the next few years—and the management of litigation is to that extent tighter, but not otherwise different in principle."

The survey states: "It is generally agreed that timetables have extended with both parties being more cautious about setting deadlines that they might struggle to meet.

"This is increasing both costs and delays in litigation with County Courts in particular said to be 'at crisis point' following the Mitchell decision."

Respondents also expressed concerns that the need for strict adherence to deadlines coupled with a lack of consistency of application throughout the courts have led to satellite litigation.

Commenting for the survey, Ted Greeno, partner at Quinn, Emanuel, Urquhart & Sullivan, says: "Sanctions, like targets, distort behaviour.

"It is surprising that the centuries-old aim of doing justice between the parties has been abandoned in the interests of administrative cost savings."

The survey also details the views of litigators on after the event insurance, conditional fee agreements, damages-based agreements, access to justice and changes in litigation strategy.