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Decline of the CFA

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NLJ/LSLA survey uncovers marked drop in use of agreements

The Jackson reforms have accelerated the decline of the conditional fee agreement (CFA) market, research shows.

The percentage of firms withdrawing from the “CFA market” has increased post-Jackson from 34% to 51%, according to the second NLJ/LSLA Litigation Trends Survey, published last week.

Simon Duncan, solicitor at Moon Beaver, says: “This is exactly what one would expect to see now that the uplift and after-the-event insurance premium must come out of any recoveries in the claim. The fact is that many claims simply are not large enough to sustain this burden.

“R3, the Association of Business Recovery Professionals, has been lobbying hard to persuade Parliament to extend the ‘insolvency carve out’ that still permits those costs to be recovered from a losing defendant in insolvency cases. However, if this is not extended then a great many insolvency cases will not be run for the same reason.

“There will not be enough money in the claim to make it viable. Not only will unsecured creditors lose out, including HMRC, but in addition many unlawful antecedent transactions will go unchallenged. This cannot be in the public interest. The law of unintended consequences perhaps?”

David Greene, NLJ consultant editor and senior partner at Edwin Coe, says funding cases has to be considered more carefully. Consequently, “in commercial claims, the claim sum will have to be much higher than before to make it work commercially”.

Nearly three-quarters of lawyers surveyed said civil litigation costs have increased not decreased since the Jackson reforms. Respondents also expressed concerns about a lack of consistency in approach throughout the courts.