

CIVIL LITIGATION COSTS REVIEW SURVEY

Prepared for LexisNexis

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INTRODUCTION

In 2010, Lord Justice Jackson published a major review of the costs of civil litigation (*The Jackson Review*), with recommendations designed to control the disproportionate costs and promote access to justice. Major aspects of these recommendations have been embodied in the *Legal Aid, Sentencing and Punishment of Offenders Act*, which aims to cut civil litigation costs and reduce the government's legal aid bill. It comes into force in April 2013 and will have a significant – and controversial – impact on the legal profession.

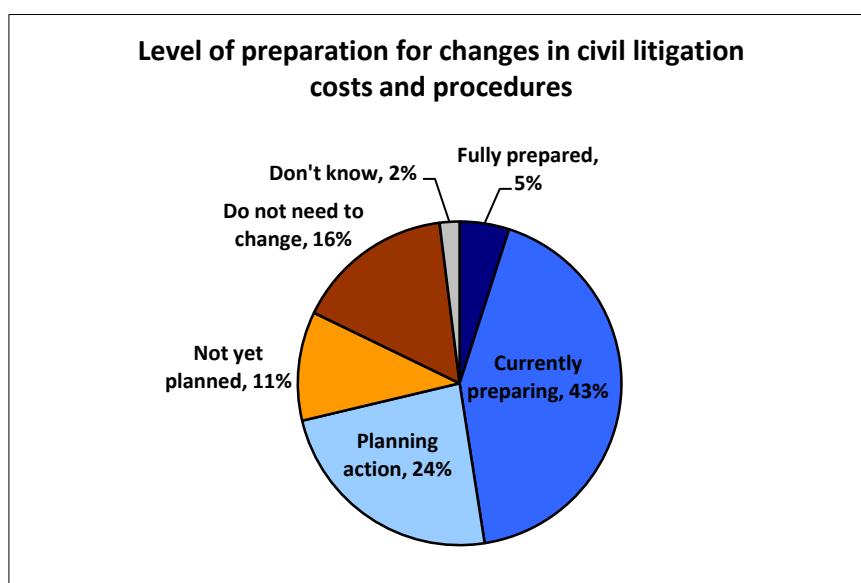
This document summarises the principal findings from a survey commissioned by LexisNexis, publisher of *Cook on Costs*, and conducted amongst senior decision-makers and influencers in law practices in England and Wales. The survey was designed to assess the extent to which law practices are prepared for the changes that the Act will bring about next year, what they have done or are doing about it, and what impact they think it will have on them and their business.

102 short telephone interviews were carried out between 12th and 23rd November 2012 by the field team of DJS Research on behalf of David Burton Associates, who designed and analysed the survey. Participants were selected from purchasers of *Cook on Costs*.

MANAGEMENT SUMMARY

1. Preparation for changes brought about by the Act

Fewer than half of law practices in our survey appear to be actively making changes to prepare for the impact of the Act in relatively few months' time, with only 5% 'fully prepared', although a further one in four are still planning what action to take. More than one in four have not made any plans or do not think that they will be affected by the changes taking place. As one or two commented, they still consider there to be some uncertainty around the implications of the Act and are adopting a 'wait and see' approach.

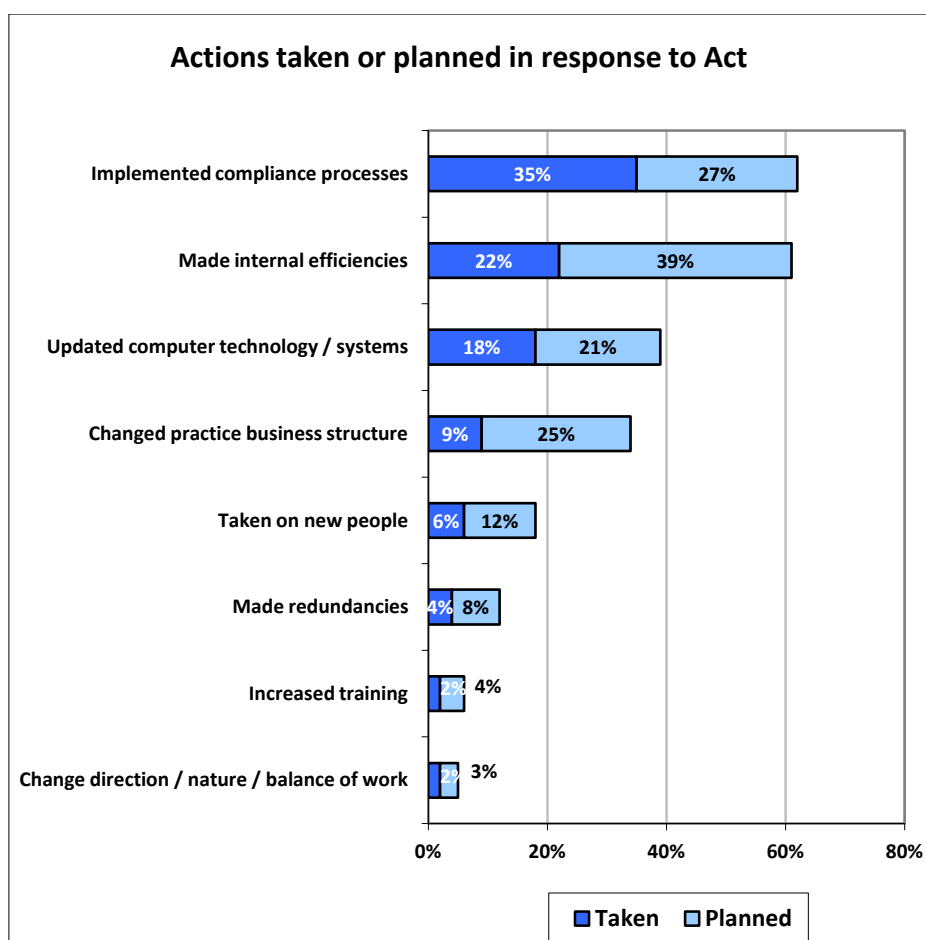


More than one in three – and half of medium size practices (6-20 partners) – say that they have already implemented necessary compliance processes in response to the requirements of the Act, although, for some, this may mean that they believe their existing compliance processes already meet the Act’s requirements. A further quarter are planning to implement the appropriate compliance processes. However, this leaves nearly 40% who have neither taken action in this respect nor are planning any action – whether they think their present processes adequate or are uncertain whether they need to take any action or what they may need to do.

Around 60% have also made (22%) or planned internal efficiencies – this is particularly the case amongst smaller practices (69% of those with 1-5 partners) – and close to 40% have updated (18%) or planned to update their computer technology or systems.

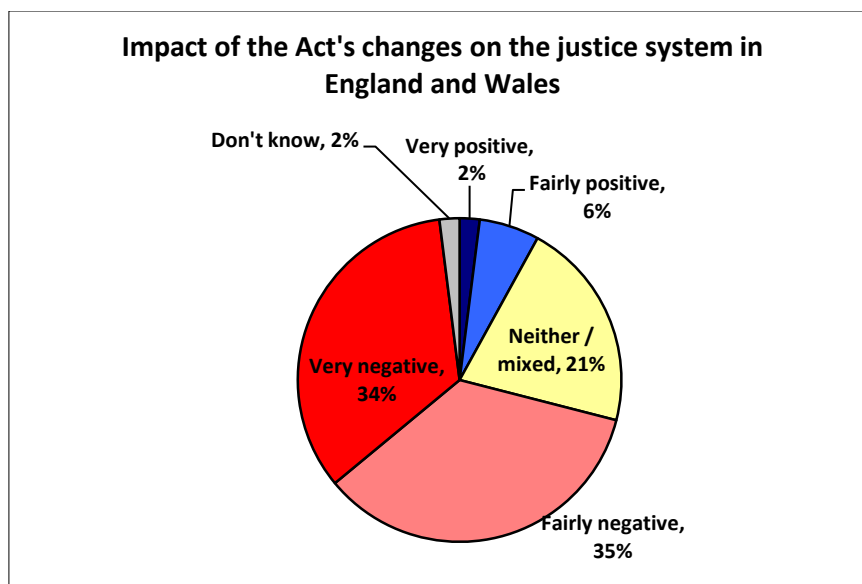
However, the Act may have more fundamental effects on the legal market in England and Wales. Nearly one in ten say that they have already changed their practice’s business structure, and one in four that they have planned this. There may also be staff movements, although, on the positive side, more have taken on or planned to take on new people (18%) than have made or planned redundancies (12%).

Other actions suggested by a small number of practices included increased training, client communications, changes in the direction, nature or balance of the practice’s work and new partnerships or relationships.

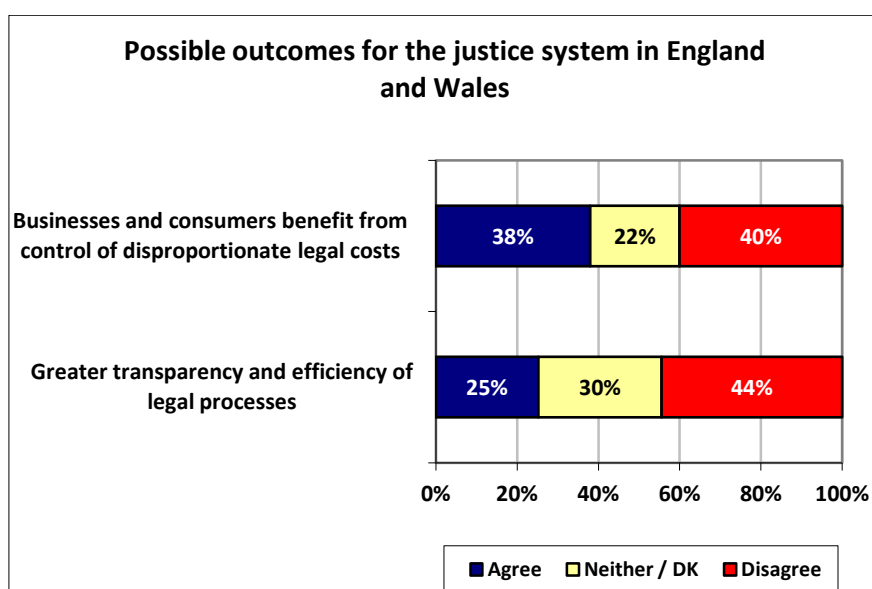


2. Impact of the Act on the justice system in England and Wales

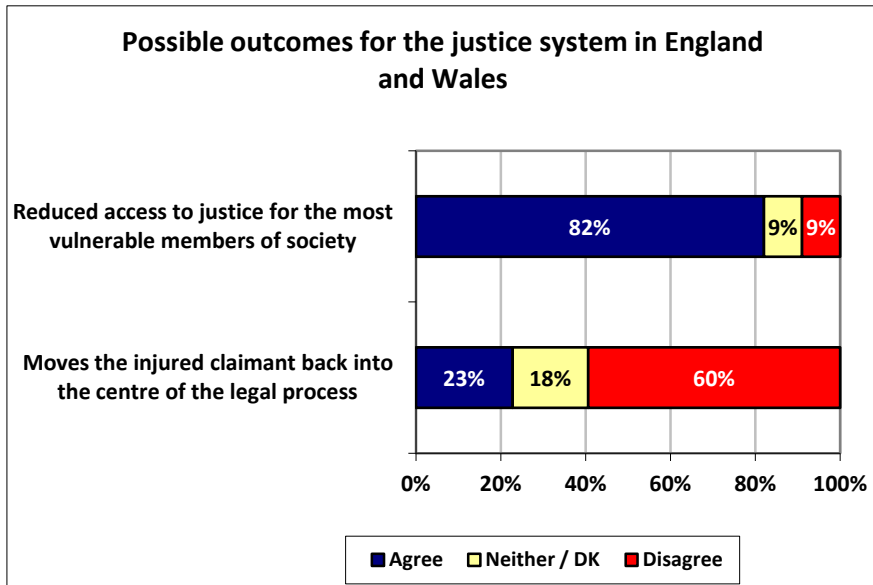
Whilst there has been much debate about the implications of the Act and the various changes that will be introduced in April, 70% of those interviewed believe that, overall, they will have a negative impact on the justice system in England and Wales. This is felt most strongly by those in medium and larger practices (over 80% negative). Only 8% are positive in their view of the Act's impact in this respect.



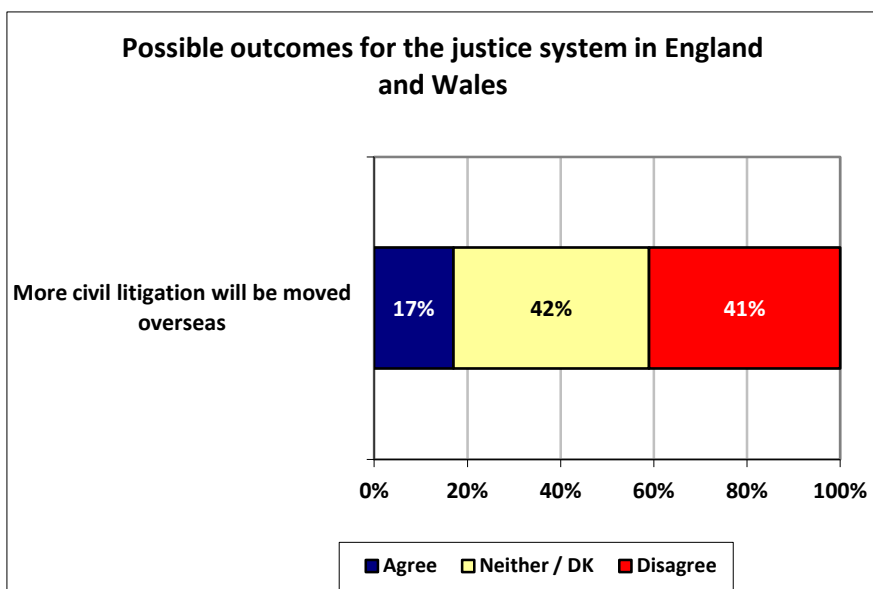
On some key aspects of the Act, views are less negative, particularly in respect of costs and efficiency. More than one in three of those in our survey do believe that 'businesses and consumers will benefit from control of disproportionate legal costs' and one in four that there will be 'greater transparency and efficiency of legal processes' – although, in both cases, more are likely to disagree than agree with these outcomes.



On the other hand, those in our survey are more concerned for the impact on those seeking justice. Over 80% agree with the view that the Act will result in ‘reduced access to justice for the most vulnerable members of society’. Few subscribe to the proposition that some have suggested that it ‘moves the injured claimant back into the centre of the legal process’, a majority disagreeing that this is a likely outcome.

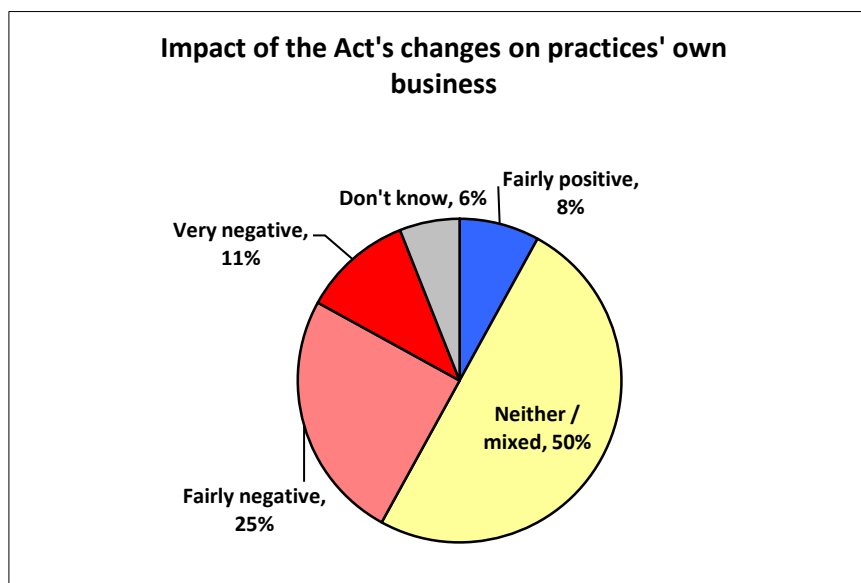


Whilst some commentators have suggested that one possible outcome of the Act will be to drive some civil litigation overseas, relatively few of those interviewed concur with this view. Medium and larger practices are a little more concerned that this may be a possible outcome than smaller practices.



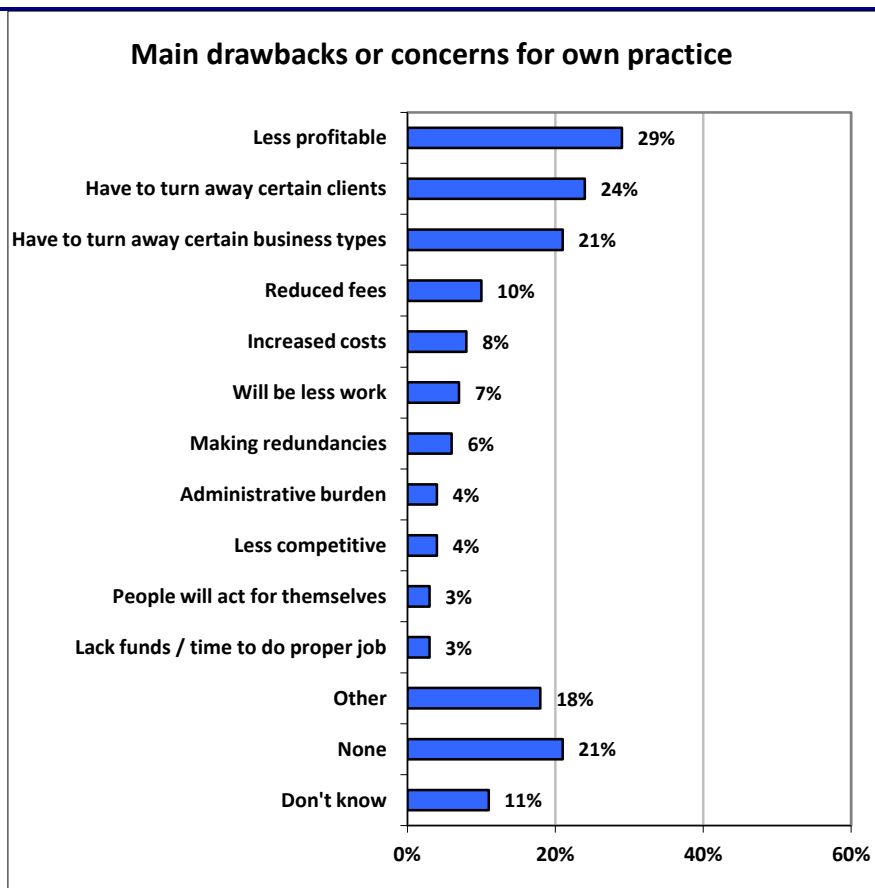
3. Impact of the Act on practices' own business

Whilst most of those interviewed have negative perceptions of the Act's impact on the justice system generally, they are less likely to see it impacting negatively on their own business. Little more than one in three believe that it will have a negative effect, and few see it as 'very negative'. It is possible that many consider that they will be little affected or are still waiting to see what the full implications are for their own business. The larger and medium practices are more likely to anticipate a negative impact than those in smaller practices (59% of those with 21+ partners, 42% with 6-20 partners, compared with 28% with 1-5 partners). 8% do envisage a positive effect on their business.



Two-thirds of those in our survey do identify particular drawbacks or concerns for their business. In particular, they highlight impact on their finances – lower profitability, reduced fees and higher costs – and business flow – having to turn away certain clients or types of business and less business overall. The medium and larger practices are more concerned about the financial impact, the smaller practices the loss of business.

Relatively few express particular concern about having to reduce staffing levels, although this might be anticipated as a possible outcome of reduced business and reduced profitability. There is also little apparent concern that the requirements of the Act – which include new electronic cost management systems – will add to the administrative burden on the practices.



On the other hand, little more than one in five can identify any benefits for their practice in the Act's implications for the business. A few do identify improvements in cost control (7%) and efficiency (4%) – particularly the medium and larger practices – and a possible reduction in overheads (2%). A small number also welcome the removal of referral fees (3%) and greater transparency (3%). A few practices – the smaller firms – do see that the changes may offer them some potential to pick up extra business that other firms will no longer handle. Two-thirds see no benefits at all, and one in ten do not know – again, perhaps they are waiting to see.

SAMPLE PROFILE

This summary is based on 102 telephone interviews. The profile of participants is as follows:

Practice size		Region		Type	
1 partner	13	Greater London / South East	47	Solicitor	92
2-5 partners	48	Midlands / East / South West / Wales	27	Barrister	10
6-20 partners	24	North East / North West / Yorks & Humber	28		
21+ partners	17				