

## **Preparing for Woolf**

for

The Law Society

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## **SUMMARY**

### **Aims**

This study looked at the extent of organisational arrangements being made put in place by solicitors' firms in preparation for the reforms to civil justice. An additional objective was to identify a suitable methodology for regularly monitoring how firms were adapting to the changing legal environment.

### **The firms**

Questionnaires were sent to the head of civil litigation in 100 firms. The sample was chosen at random from Law Society lists subject to the constraint that it included:

- ten sole practitioners;
- 50 firms with between two and four partners; and
- 40 firms with five or more partners.

By the end of the time allotted for firms to respond 31 completed questionnaires had been received. No sole practitioners returned a questionnaire. Nineteen (61%) of the 31 responding firms had between two and four partners and 12 (39%) had between five and 13 partners. The total number of fee-earners in the 31 firms ranged from four to 50 while the number spending at least half their time on civil litigation was between one and 26.

### **Findings**

- For all but two firms, personal injury and medical negligence accounted for more than five per cent of their gross fees from civil litigation.
- Fee income from private clients was important to all 31 firms. Fees from medium or small businesses were of importance to 27 (87 per cent).
- All firms had both privately-funded and legally-aided clients. All but one undertook work on a 'no win no fee' basis.
- Work for corporate or public sector clients was mostly billed by fee-earners' time.
- One firm with 12 partners used an automated risk assessment package in deciding whether to undertake work on a 'no win no fee' basis. Another six-partner firm used a manual package developed in-house. All others relied solely on their own experience or consulted colleagues.
- All firms estimated likely damages and the probability of success at the start of the case although only two in three recorded this in writing.
- The extent to which other case management tasks were regularly undertaken differed between firms: for example, 19 firms (61 per cent) conducted a cost benefit analysis for the client while 16 (52 per cent) prepared a timetable for key stages of the case. However, only 4 firms (13 per cent) and 6 firms (19 per cent) respectively recorded the results in writing.
- There was no correlation between the size of the firm and the likelihood that it undertook the specified case management tasks or recorded the results in writing.
- A majority of firms felt that the Woolf reforms would cause the volume of their work to reduce (68 per cent) and profits to fall (87 per cent). Other effects expected by a majority

were closer supervision of fee earners (68 per cent), increased efforts at settlement (65 per cent), less use of counsel (87 per cent) and greater use of technology (71 per cent).

- Twenty-eight firms (90 per cent) said they would lose some work as a result of the increase in the small claims limit to £5,000. Two of these firms thought they would lose half their caseload to the small claims procedure but this may have been based on the erroneous assumption that the increased limit would apply to personal injury cases.
- The types of case most vulnerable to the increased small claims limit were debt and small commercial or contractual disputes. One in three firms said they would lose such cases to the small claims procedure.
- Fee income from claims of up to £10,000 were described as very important or quite important by 27 firms (87 per cent). Nine firms (29 per cent) could not routinely recognise that a claim would be under £10,000 within eight weeks of receiving instructions. This could make it difficult for these firms to challenge track allocation by the courts.
- Twenty-two firms (71 per cent) said they would have difficulty in complying with the 30 week timetable in fast track cases while 21 (68 per cent) would have difficulty with the likely ceiling on costs.
- None of the firms in the survey had completed their preparations for the impact of the changes to civil justice but 22 (71 per cent) had begun to prepare. The other nine firms (29 per cent) had done nothing by way of preparation at the time the study was conducted.
- The preparatory step taken by the greatest number of firms was improvement to IT which 13 firms (42 per cent) had already put in place. Other preparations included improvements to staff supervision (39 per cent), implementing better case management (29 per cent) and arranging training (16 per cent).
- Between 23 per cent and 32 per cent of firms indicated that they would welcome help from the Law Society with each of the preparatory tasks cited above.

# 1 INTRODUCTION

## 1.1 The study

This is the report of a study into the preparations being made by solicitors' firms that undertake civil litigation for the reforms arising from Lord Woolf's recommendations and the proposed changes to civil legal aid. The study was carried out by Richard Woolfson and Joyce Plotnikoff on behalf of the Research and Policy Planning Unit (RPPU) of the Law Society.

## 1.2 Background to the study

The final report of Lord Woolf's enquiry into civil justice was published in July 1996<sup>1</sup>. It called for a fundamental shift in the ethos of civil litigation which has traditionally allowed the parties to dictate the pace at which cases proceed. In the new environment, the courts would take control by assigning cases to "tracks" according to their value and complexity and by ensuring that the timescales established by the court at the outset were adhered to. The details of Lord Woolf's recommendations have been discussed, reviewed and amended over the last two years but the government has recently reaffirmed its intention to implement reforms from 1 April 1999. Nevertheless, changes continue to emerge: the small claims and fast-track limits have been revised upward and the publication in final form of the Rules, Practice Directions, forms and pre-action protocols will not take place until January 1999, just two months before implementation.

Equal uncertainty surrounds the proposed changes to civil legal aid. These also date back to July 1996 when the government of the day published a White Paper on the subject<sup>2</sup>. In June 1997, the in-coming Lord Chancellor tasked Sir Peter Middleton with reviewing both the civil justice and the legal aid reforms. Following publication of the Middleton report<sup>3</sup>, the Lord Chancellor announced in October 1997 his intention of introducing fundamental reform to the legal aid system. "No win no fee" arrangements were to be made available for a much wider range of cases (they had been introduced for personal injury cases in 1995). At the same time, litigants in civil cases involving claims for money or damages, including personal injury cases, would no longer be eligible for legal aid.

There has been much subsequent debate about the fairness and practicality of the Lord Chancellor's plans for legal aid. As a result, it has been conceded that medical negligence claims should continue to be eligible for legal aid. The timetable for introduction of the changes has also been put back: while the extension of conditional fees will proceed as soon as the legislative calendar allows, the withdrawal of legal aid from personal injury cases, originally scheduled for June this year, will not now take place before October 1999. The delay has been welcomed by both sides of the legal profession.

This ever-changing backdrop poses significant problems for solicitors as they try to re-structure their operations to ensure survival in the new environment. A previous study<sup>4</sup> revealed the difficulties encountered, particularly by High Street firms, in procuring computer

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<sup>1</sup> Access to Justice (Final Report), Right Honourable the Lord Woolf, Master of the Rolls, July 1996

<sup>2</sup> Striking the Balance - the future of legal aid in England and Wales, July 1996

<sup>3</sup> Review of Civil Justice and Legal Aid, Report to the Lord Chancellor by Sir Peter Middleton GCB, September 1997

<sup>4</sup> Woolf at the Door: A Study of the IT Needs of Litigators, Joyce Plotnikoff and Richard Woolfson. Research Study No. 30, The Law Society, 1998

systems capable of meeting their future needs. This study looked more generally at the preparations being made by firms to enable them to adapt to the brave new litigation world.

### **1.3 Study aims**

The study sought to obtain information on the extent of organisational arrangements being made put in place by solicitors' firms in preparation for the reforms to civil justice. The information was needed to assist the Law Society in estimating the impact of the changes and in deciding what advice and services it should provide to civil litigation solicitors. An additional objective was to identify what information the profession could be asked to provide on a regular basis to assist in on-going monitoring of how firms were adapting to the changing legal environment.

### **1.4 Acknowledgements**

The researchers would like to thank the solicitors who commented on the design of the questionnaire used in this study and those in the 31 firms that returned completed questionnaires. We are grateful also to Suzanne Burn, Secretary to the Law Society's Civil Litigation Committee, for her helpful advice in planning the work, designing interview schedules and preparing a letter of introduction to the firms included in the study. John Jenkins of the Research and Policy Planning Unit provided support and guidance throughout the project.

## **2 METHODS OF RESEARCH**

### **2.1 The firms**

One hundred firms of solicitors were selected to receive the study questionnaire. They were drawn from a computerised list prepared by the Law Society of firms that have at least one solicitor on the Personal Injury Panel. The firms on the list were drawn from all areas of the country and the selection was random, subject to the constraint that it contained:

- ten sole practitioners;
- 50 firms with between two and four partners; and
- 40 firms with five or more partners.

### **2.2 Questionnaire design**

Suggested topics to be covered in the questionnaire were provided by the Law Society. When these were incorporated, the resulting document was rather long and requested from firms a wide range of figures relating to their fee income from civil litigation. In order to test the likely impact on the response rate, the questionnaire and a covering letter from the Law Society was sent to ten firms chosen at random but representing the same range of sizes as the full sample. An envelope with a FREEPOST address was included for return of completed questionnaires but no responses were received.

In order to investigate how to achieve an acceptable response rate, ten new firms were contacted by telephone. The researchers spoke to a partner responsible for civil litigation in each firm and requested his or her help in the form of comments on the content of the questionnaire. All but one agreed to assist and the questionnaires were sent to and discussed with these nine firms. The main criticisms related to the overall length of the questionnaire and the difficulty that firms would experience in producing figures broken down in the manner requested. These points were also mentioned by three other firms which the Law Society contacted for comments independently.

The questionnaire was revised in the light of the comments and a shorter and simplified version was produced. Some layout changes were also introduced to make the questionnaire more distinctive and it was printed on yellow paper to make it more eye-catching. The final version is reproduced at Annex A to this report. The Law Society revised the cover letter laying even greater stress on the importance of the information to the Society in its discussions on the implementation of the reforms. In June 1998, the revised package was then sent to the head of civil litigation in the 100 chosen firms.

By the time of the specified date for return in mid-July, 31 responses had been received. Respondents had taken between five and 15 minutes to complete the questionnaire and the average completion time was 11 minutes.

### 3 ANALYSIS OF RESPONSES

#### 3.1 Introduction

In this chapter the responses provided by firms are analysed. Unless stated otherwise, percentages are of the 31 firms responding to the survey, even though some firms may have failed to answer individual questions. Some percentages do not total precisely because of rounding errors.

#### 3.2 Responding firms

##### *Size*

No sole practitioners returned a questionnaire. Nineteen (61 per cent) of the 31 responding firms had between two and four partners and 12 (39 per cent) had between five and 13 partners. The total number of fee-earners in the 31 firms ranged from four to 50 while the number spending at least half their time on civil litigation was between one and 26.

##### *Fee income and types of work*

All but one firm indicated what proportion of their total fee income came from civil litigation.

**Proportion of gross annual fees from civil litigation by number of partners**

Proportion of gross annual fees from civil litigation	Number of partners in firm		Total
	2 - 4	5 or more	
25% or less	5 16%	3 10%	8 26%
26% - 50%	6 19%	6 19%	12 39%
51% - 75%	6 19%	2 6%	8 26%
More than 75%	2 6%		2 6%
Total	19 61%	11 35%	30 97%

All firms indicated which types of litigation work they undertook:

**Types of work undertaken by firms in the survey**

Type of work	Number of firms that undertake this type of work	Number for whom such work accounts for more than 5% of gross fees from civil litigation
personal injury/ medical negligence	30 97%	29 94%
consumer/ debt/ contract claims for individuals	29 94%	9 29%
commercial litigation	25 81%	14 45%
landlord & tenant (inc. housing repairs)	25 81%	4 13%

Construction and insolvency were each cited by one firm as a type of civil litigation undertaken. They accounted for more than five per cent of the fee income of these two firms.

*Clients*

Most firms in the survey acted on behalf of plaintiffs more often than defendants. One firm did not respond to this question.

**Number of partners in firm by proportion of plaintiff work**

Proportion of litigation undertaken on behalf of plaintiffs	Number of partners in firm		Total
	2 - 4	5 or more	
50% or less	4 13%	1 3%	5 16%
51% - 80%	3 10%	2 6%	5 16%
81% - 90%	6 19%	7 23%	13 42%
Over 90%	6 19%	1 3%	7 23%
Total	19 61%	11 35%	30 97%

Respondents were asked about the relative importance to their firm, in terms of fee income, of different types of client:

**Client types and importance in terms of fee income**

Type of client	Importance as a source of fee income		
	Very important	Quite important	Not important
private clients	27 87%	4 13%	0 0%
insurance companies	5 16%	7 23%	19 61%
other large commercial firms	3 10%	5 16%	23 74%
medium/ small businesses	8 26%	19 61%	4 13%
local or central government	2 6%	1 3%	28 90%
trade unions or professional bodies	0 0%	3 10%	28 90%
voluntary organisations/ charities	0 0%	8 26%	23 74%
NHS Trusts	0 0%	2 6%	29 94%
Quangos	0 0%	0 0%	31 100%

In addition to the above client types, one firm indicated that London agency work was very important to them as a source of fee income.

*Funding methods*

The funding methods used by private clients were as follows:

**Funding of work undertaken on behalf of private clients**

Funding method	Number of firms with clients funded in this way
clients pay their own fees	31 100%
legal aid	31 100%
'no win no fee' arrangements	30 97%
trade union assistance to clients	30 97%
legal expenses insurance	21 68%
<i>pro bono</i> work	9 29%

The funding methods used by corporate and public sector clients were as follows:

**Funding of work for corporate or public sector clients**

Funding method	Number of firms with clients funded in this way
billing by fee-earners' time	23 74%
fixed fees	7 23%
block contract/ retainer	2 6%

### 3.3 Management of civil litigation

In 23 firms in the survey (68 per cent), a single person had overall management responsibility for all civil litigation undertaken. Sixteen firms (52 per cent) used information on the number of claims being handled when assigning cases to fee-earners.

Respondents in the 30 firms that undertake work on a 'no win no fee' basis were asked how they assessed risk in such cases. As in the previous study of the IT needs of litigators, there was little use of software risk assessment packages for this purpose.

**Risk assessment methods for 'no win no fee' work**

Method of risk assessment	Number of firms using this method
I consult colleagues	20 65%
I rely solely on my own experience	8 26%
I use a software risk assessment package	1 3%
I use our own manual risk assessment package	1 3%
Total	30 97%

The firm that used a software package had 12 partners and the firm that had developed its own manual package had six partners.

Firms were presented with a list of case management tasks that might be performed at the start of a case. They were asked if it was their regular practice to carry out each of the tasks and, if so, whether the results were recorded in writing.

### Case management tasks

Task	Firms that routinely did this at the start of a case	Firms that recorded the results in writing
consider options other than litigation	23 74%	7 23%
estimate damages likely to be obtained	31 100%	19 61%
estimate the probability of success	31 100%	21 68%
conduct a cost benefit analysis for the client	19 61%	4 13%
prepare a timetable for all key stages of the case	16 52%	10 32%
discuss and agree with the client the results of the above	25 81%	14 45%
develop a full strategy based on the outcome of the above actions	16 52%	6 19%

There was no evidence of a correlation between the size of the firm and adoption of the practices listed. For instance, of the 19 firms that conducted a cost benefit analysis for the client, ten had between two and four partners while the other nine had five or more partners. Two in each size category recorded the results in writing. The 16 firms that prepared a timetable for key stages of each case were evenly split; eight had between two and four partners and eight had five or more. Five in each size category recorded the results in writing.

### 3.4 Lord Woolf's reforms

#### *General impact*

Firms were asked how the changes to civil litigation due to be introduced in 1999 would affect their work.

### Views of the likely effect of reforms to civil justice

Possible impact	Firms that thought the reforms would have this effect		
	2 -4 partners	5 or more partners	total
volume of work will increase	5 16%	2 6%	7 23%
volume of work will reduce	14 45%	7 23%	21 68%
profits will rise	1 3%	0 0%	1 3%
profits will fall	17 55%	10 32%	27 87%
caseloads of fee earners will get larger	6 19%	4 13%	10 32%
caseloads of fee earners will get smaller	10 32%	4 13%	14 45%
closer supervision of fee earners	13 42%	8 26%	21 68%
increased efforts to settle early	13 42%	7 23%	20 65%
increased use of ADR	3 10%	3 10%	6 19%
increased use of information technology	15 48%	7 23%	22 71%
earlier use of counsel	6 19%	0 0%	6 19%
greater use of counsel	0 0%	0 0%	0 0%
less use of counsel	16 52%	11 35%	27 87%

There were no striking differences of attitude between the smaller and larger firms. Only small firms expected to make earlier use of counsel. A majority of small firms felt that caseloads of fee-earners would get smaller but there was no consensus on this point among larger firms.

The one respondent who expected profits to rise pointed out that this would be in the longer term only. In the short term, profits were expected to fall.

#### *Small claims*

Respondents were asked about the proportion of their litigation cases they might lose if the small claims limit was increased to £5,000 for all claims except personal injury<sup>5</sup>.

<sup>5</sup> Since the survey was conducted, the increased small claims limit of £5,000 has been confirmed. However, the limit for personal injury will remain at £1,000 and this figure will also apply to housing disrepair cases which previously were subject to the £3,000 limit. In addition, eviction and harassment claims will be exempt altogether from the small claims procedure

**Percentage of litigation caseloads that would be lost to a £5,000 small claims limit**

Percentage that would be lost	Number of firms
0%	3 10%
1% - 5%	13 42%
6% - 10%	7 23%
11% - 20%	5 16%
21% - 50%	3 10%
total	31 100%

Two firms thought they would lose half their caseload to the small claims procedure. One of these had three partners and seven fee-earners but derived less than 25 per cent of its total fee income from civil litigation. The other had 12 partners and 27 fee-earners and relied on civil litigation for between 25 per cent and 50 per cent of its income. However, this firm (and three others) thought that the lost cases would be lower value personal injury, even though the question assumed that these would not be subject to the higher limit.

The kinds of cases firms expected to lose to the small claims procedure were as follows (some firms cited more than one type of case):

**Types of work that would be lost to a £5,000 small claims limit**

Type of work	Number of firms that would lose such cases
debt	10 32%
small commercial/ contract	10 32%
consumer	7 23%
personal injury	4 13%
housing	3 10%
accidents not involving injury	2 6%
holiday disputes	2 6%
all claims except for personal injury	2 6%
neighbourhood disputes	1 3%

*Fast track*

At the time of the study, the increase to £15,000 in the upper limit value of claims that would qualify for the fast-track had not been announced. Questions about the fast-track therefore referred to claims involving less than £10,000. Firms were asked about the importance to them of fee income derived from such cases.

**Important to firms of fee income from cases involving claims of less than £10,000**

How important is fee income from cases claims of less than £10,000?	Number of partners in firm		Total
	2 - 4	5 or more	
very important	10 32%	5 16%	15 48%
quite important	7 23%	5 16%	12 39%
not important	2 6%	2 6%	4 13%
total	19 61%	12 39%	31 100%

Firms of all sizes depended on fee income from cases that will fall into the fast-track category. Firms were also asked at what point they were generally able to recognise that the value of claim would be less than £10,000. Most could do so at an early stage.

**Stage at which firms could recognise that the value of a claim was under £10,000**

Stage	Number of firms
immediately on receipt of instructions	12 39%
after an investigation of 1-8 weeks	10 32%
more than 8 weeks later	3 10%
no general pattern	6 19%
total	31 100%

Firms were then asked how easily they would be able to comply with the timetable and costs constraints proposed by Lord Woolf for fast track cases.

**Ease with which firms could comply with fast track constraints proposed by Lord Woolf**

Constraint:	Ease of compliance				Total
	Very easily	Quite easily	With some difficulty	With great difficulty	
Taking a claim for less than £10,000 through to trial:					
for fixed costs (inter partes) excluding disbursements in the region of £2,500	1 3%	9 29%	13 42%	8 26%	31 100%
within a 30 week timetable	1 3%	8 26%	16 52%	6 19%	31 100%

A majority of firms felt that they would experience difficulty in complying with either of these proposals. One four partner firm said it could comply very easily with both proposals but only 'at considerable cost to ourselves'. This firm also pointed out that the case timetable was subject to matters outside its control.

*Preparations for change*

Firms were asked what stage their preparations for coping with the impact of the changes had reached. None had completed their preparations but 22 (71 per cent) had made a start. The other 9 (29 per cent) had done nothing at the time the survey was carried out. Seven of these firms had between two and four partners while the other two had five and eight partners respectively.

For all but one of the firms that had made no preparations, civil litigation accounted for less than 50 per cent of their total fee income. The exception was a two partner firm that drew between a half and three-quarters of its income from representing plaintiffs. Despite its lack of preparation, this firm felt that it would be able to cope quite easily with the fast track conditions.

The survey requested further detail of preparations in specific areas and whether firms wanted help from the Law Society with respect to these.

**Stage of firms' preparations in specific areas and whether help wanted from the Law Society**

Aspect of preparation	Stage reached		Help wanted from the Law Society
	Already undertaken	Planned	
improving firm's IT	13 42%	10 32%	7 23%
improving supervision of staff	12 39%	9 29%	9 29%
implementing better case management	9 29%	15 48%	10 32%
arranging training	5 16%	16 52%	8 26%

Improvements to IT were further advanced than other forms of preparation but even here, less than half the firms had completed the necessary work. Of the seven firms wanting help from the Law Society in improving their IT, six had between two and four partners. This need of smaller firms for help with their computer systems reflected the findings of the previous study on IT needs of litigators<sup>6</sup>.

### 3.5 Attitudes to Woolf

Some respondents took the opportunity of the survey to express their views on the changes to civil litigation and legal aid and the likely impact on the profession. Their comments are reproduced here:

'I see the changes as a challenge, not necessarily the end! However, there are concerns over the ability of small firms to gain sufficient work given the resources of the major players. The loss of legal aid is not a major problem but an opportunity. The loser will be the general public' (four partner firm)

'Case management properly thought out, applied and documented is essential in litigation and will be more so with the fast track' (seven partner firm)

'In a rural area such as this the bulk of non-personal injury litigation involves claims of less than £5,000. Nonetheless, these are important to the clients who invariably have little chance of success without legal assistance. Large companies as defendants employ solicitors even for small claims. The court procedures are a mystery to Joe Public. In personal injury claims the amount of work required to pursue a matter properly is subject to an irreducible minimum which means that a small claim can be as expensive to pursue as a larger one' (two partner firm)

'The county courts cannot cope with the volume of work at the moment. If tighter timetables are to be introduced it will cause extreme problems to

<sup>6</sup> On 1 July 1998, after the questionnaire had been distributed, the Law Society simultaneously published the research report on the IT Needs of Litigators and announced the launch, in partnership with ICL, of a new IT package for the profession

solicitors acting for parties. Automatic directions have caused far more problems than they have solved. They have increased the fees incurred by parties. The new proposals will discourage litigation' (6 partner firm)

'It is clear that the proposed changes and changes already occurring will mean the demise of the general practitioner and disappearance of the sole practitioner and the small, and even some medium-sized, practices. We shall finish up like big stores with various departments in them with vast amounts of time taken up in filling in forms and pressing buttons' (six partner firm)

'Personal injury claims are a completely separate area to the rest of civil law and warrant separate rules. Overall, I would be in favour of fixed costs as long as they were fair and subject to annual review to avoid disputes with insurers and their costs draughtsmen which cause delay' (four partner firm).

## **4 CONCLUSIONS**

### **4.1 Introduction**

This study provided information on current practices and future plans with respect to civil litigation in 31 solicitors' firms that undertake such work. It covered arrangements being made by firms in anticipation of the changes to civil procedure and civil legal aid. Areas where firms would welcome assistance from the Law Society were identified. Respondents expressed views on the likely impact of the changes and the ease with which their firm would be able to adapt to the changes. The study also demonstrated the kinds of question which firms would answer and the likely response rate if a postal survey of the profession relating to the changes were to be conducted on a regular basis.

### **4.2 Impact of the reforms**

Most responding firms, large and small, expected a detrimental effect on their business from the reforms. Two-thirds felt that the volume of their work would reduce and 87 per cent that profits would fall. Only one firm expected increased profits and then only in the longer term. However, firms did not think that more litigation would be avoided as Lord Woolf had hoped. Three-quarters of firms said that they routinely consider options other than litigation at the start of a case but only 19 per cent expected use of alternative dispute resolution to increase as a result of the reforms.

More stringent control would be exerted on the management and cost of cases. This would take the form of closer supervision of fee earners (68 per cent of firms), less use of counsel (87 per cent) and increased efforts aimed at early settlement (65 per cent). Greater reliance on technology was expected (71 per cent) but there was no consensus as to whether caseloads of individual fee earners would rise or fall.

Much of the focus of Lord Woolf's reforms has been on the fast track and multi track. However, responses to this study suggest that many small firms are vulnerable to the increase in the small claims limit to £5,000. Work for private clients was of importance to all the firms that responded to the survey and a quarter said they would lose more than 10 per cent of their fee income from civil litigation as a result of the increase in the small claims limit. Only three of the 31 firms said they would be unaffected by the change. Damage may be reduced by the exemption of personal injury and housing repairs but debt recovery and small commercial or contractual disputes remain at risk.

The introduction of the fast track will also affect most firms that responded to the survey. Eighty-seven per cent said that fee income from claims of less than £10,000 in value was very important or quite important to them. Two-thirds of these firms said that could usually assess that the value was in this range within eight weeks of receipt of instructions. The remaining firms may experience difficulty in including a certificate of value on the claim form which will be used to initiate proceedings. This in turn could place them at a disadvantage should they wish to challenge a track allocation decision made by the court.

Most firms in this survey expected to have difficulty in complying with the demands of the fast track in relation to both costs and timetable. Changes to the timetabling requirements are unlikely but the government has issued a further consultation paper on costs which asks for comments on various implementation options, including the exemption of personal injury cases from the fixed

pre-trial costs regime. Such a move would be welcomed by many respondents to this survey although this may be related to the preponderance of plaintiff work undertaken.

Less concern was expressed about the changes to legal aid and one respondent described these as 'not a major problem but an opportunity'. All but one firm was already taking cases on a 'no win no fee' basis even though few had put in place formal risk assessment procedures. Firms may also have derived comfort from the government's announcement of a delay in the withdrawal of legal aid from personal injury cases which was made during the period allowed for return of questionnaires.

### **4.3 Preparation for change**

The transition to a more controlled approach to the management of cases appears to be underway but still some distance from completion. Nine firms (29 per cent) said that they had already implemented better case management procedures and 15 (48 per cent) that they planned to do so. Future surveys may look for an increase in the proportion of firms that conduct a cost benefit analysis for the client (61 per cent), prepare a timetable for key stages of the case (52 per cent) and develop a full case strategy (52 per cent). It is certainly to be hoped that more firms will generate an audit trail of these activities: in general, fewer than half the firms who undertook these tasks recorded the results in writing.

The previous study of the IT needs of litigators found that firms were slow in taking action to update their computer systems in preparation for Lord Woolf's reforms. Responses received during the current study confirmed this picture: 13 firms (42 per cent) had already upgraded their computer systems although a further 10 (32 per cent) had plans to do so. Other forms of preparation were even less advanced, despite the concerns described above about the impact of the changes. Improvements to staff supervision was underway in 12 firms (39 per cent) and planned in a further (29 per cent). Training provision had been arranged by five firms (16 per cent) and was planned by 16 (52 per cent). Nine firms (29 per cent) admitted that they had done nothing by way of preparation at the time the survey was carried out. The general lack of urgency may be attributable in part to uncertainty about the precise details of the reforms but given the imminence of the implementation date, it seems likely that many firms will not have completed their preparations in time.

In each of the aspects of preparation about which firms asked, around one in three said they would welcome the Law Society's assistance with their preparations. This suggests that there is still significant scope for the Society to expand the guidance it offers solicitors on putting in place plans to survive in the new civil justice environment.

### **4.4 Viability of the study methodology**

The researchers were asked to consider whether the approach adopted to this study could be used as a basis for regular monitoring of how the profession was adapting to the civil justice reforms and the impact on their businesses. The experience of piloting the questionnaire demonstrated that the overall length must be kept short. Where questions ask for figures concerning the firm's operations, the information must be readily available without the need for a special data collection exercise. Wherever possible, questions should require tick-the-box answers in order to reduce completion time and simplify analysis of the results. The final

question should give respondents the opportunities to express views on relevant topics not covered elsewhere in the questionnaire.

Subject to these constraints and an average completion time of under 15 minutes, the results of this study suggest that a response rate of around 30 per cent can be expected from a postal survey of the profession.

The lack of any responses from sole practitioners is of concern. Part of the explanation may be the focus in the questionnaire on organisational issues which are clearly of less relevance to single partner firms. Nevertheless, it would be of interest to receive feedback as to how such firms are preparing for and coping with the changes. To obtain this, future surveys may require to over-sample from this group.

**ANNEX A**  
**The Questionnaire**

**LAW SOCIETY SURVEY ON PREPARATION BY SOLICITORS' FIRMS FOR  
PROPOSED REFORMS TO CIVIL LITIGATION AND LEGAL AID**

*Questionnaire for firms undertaking civil litigation*

**Your answers are confidential: neither you nor your firm will be identified by name in any report arising from the survey. Most questions require 'tick-the-box' answers. Where figures are asked for, please give your best estimates.**

**For the purposes of this questionnaire, the term 'civil litigation' excludes family work.**

**The Woolf reforms and changes to civil legal aid**

The following questions are about the impact on your firm of the reforms arising from Lord Woolf's inquiry into civil justice and the proposed removal of civil legal aid for cases involving monetary claims.

1. Please tick the appropriate boxes below:

<b>Possible impact</b>	<b>Lord Woolf's proposals and/or changes to civil legal aid will have this effect</b>
Volume of work will increase	<input type="checkbox"/>
Volume of work will reduce	<input type="checkbox"/>
Profits will rise	<input type="checkbox"/>
Profits will fall	<input type="checkbox"/>
Caseloads of fee earners will get larger	<input type="checkbox"/>
Caseloads of fee earners will get smaller	<input type="checkbox"/>
Closer supervision of fee earners	<input type="checkbox"/>
Increased efforts to settle early	<input type="checkbox"/>
Increased use of ADR	<input type="checkbox"/>
Increased use of information technology	<input type="checkbox"/>
Earlier use of counsel	<input type="checkbox"/>
Greater use of counsel	<input type="checkbox"/>
Less use of counsel	<input type="checkbox"/>

2. At what stage are you firm's preparations for the expected impact of the changes?

- We have already completed our preparations
- We have made a start on preparation
- We have done nothing yet.

3. Have you undertaken or do you intend to undertake the following activities as part of your preparation? Would you like to receive help from the Law Society to undertake any of these activities?

Activity	Already undertaken	Planned to do	Tick if help wanted from the Law Society
Improve firm's IT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Improve supervision of staff	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Implement better case management procedures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Arrange training	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### The value of individual claims

#### *Small claims*

The government is proposing to increase the small claims limit to £5,000 for all claims except personal injury. If this goes ahead:

4. What percentage of your current caseload do you think you would lose to that procedure? \_\_\_\_\_% of caseload

5. What types of case would you expect to lose to the small claims procedure?  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

#### *Fast track cases*

Please consider cases handled by your firm in the last year which involved claims of less than £10,000.

6. In general, at what stage were you able to recognise that damages would be likely to be less than £10,000 (please tick)?

- Immediately on receipt of instructions
- After an investigation of 1–8 weeks
- More than 8 weeks later
- No general pattern.

7. How important to your firm is the fee income derived from civil litigation cases involving claims of less than £10,000?

- Very important
- Quite important
- Not important

8. How easily do you think you will be able to comply with the fast track procedures recommended by Lord Woolf?

Aspect of Woolf proposals	Ease of compliance			
	Very easily	Quite easily	With some difficulty	With great difficulty
Taking a claim for less than £10,000 through to trial:				
for fixed costs ( <i>inter partes</i> ) excluding disbursements in the region of £2,500	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
within a 30 week timetable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Characteristics of firm**

9. Please complete the following information about the number of fee-earners in your firm and the number who spend half their time or more on civil litigation:

Category of fee earner	Total number in firm	Number spending half their time or more on civil litigation
Partners	_____	_____
Associate & assistant solicitors	_____	_____
Trainee solicitors	_____	_____
Legal executives/ paralegals	_____	_____

10. Please give your best estimate of the proportion of the total annual gross fees earned by your firm that are derived from civil litigation:

- More than 75%
- 51% - 75%
- 26% - 50%
- Less than 25%.

11. Please indicate whether your firm undertakes the following types of work and, if so, whether it accounted for more than 5% of the firm's gross fee income in the last year:

Type of work	Tick if undertaken	Tick if it accounts for more than 5% of gross fees from civil litigation
personal injury/ medical negligence	<input type="checkbox"/>	<input type="checkbox"/>
consumer/debt/contract claims for individuals	<input type="checkbox"/>	<input type="checkbox"/>
commercial litigation	<input type="checkbox"/>	<input type="checkbox"/>
landlord & tenant (inc. housing repairs)	<input type="checkbox"/>	<input type="checkbox"/>
other major work types, please specify: _____	<input type="checkbox"/>	<input type="checkbox"/>

**Management of civil litigation caseload**

12. Is there is a single person within the firm who has overall management responsibility for all civil litigation undertaken?  YES  NO

13. Is information on the number of claims being handled used in assigning cases to fee-earners?  YES  NO

**The clients**

14. What proportion of your fee income from civil litigation is derived from:

Defendants? \_\_\_\_\_%

Plaintiffs? \_\_\_\_\_%

15. Please indicate the importance of each of the following categories of client as a source of fee income in the last year.

Type of client	Importance as a source of fee income		
	Very important	Quite important	Not important
Private clients	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Insurance companies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other large commercial firms	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Medium/small businesses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Local or central government	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trade Unions or professional bodies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Voluntary organisations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NHS Trusts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Quangos	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify which)			
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Funding methods**

16. Which of the following methods are used to fund disputes handled by your firm?

a) *Private clients*

<b>Funding method</b>	<b>Tick box if used</b>
Clients pay their own fees	<input type="checkbox"/>
Legal aid	<input type="checkbox"/>
'No win no fee' arrangements	<input type="checkbox"/>
Trade Union assistance to clients	<input type="checkbox"/>
Legal expenses insurance	<input type="checkbox"/>
Pro bono work	<input type="checkbox"/>
Other (please specify)	
_____	<input type="checkbox"/>
_____	<input type="checkbox"/>

b) *Corporate or public sector clients*

<b>Funding method</b>	<b>Tick box if used</b>
Billing by fee earners' time	<input type="checkbox"/>
Fixed fees	<input type="checkbox"/>
A block contract/retainer arrangement	<input type="checkbox"/>
Other (please specify)	
_____	<input type="checkbox"/>
_____	<input type="checkbox"/>

17. If your firm undertakes work on a 'no win no fee' basis:

b) Does your firm monitor the proportion of its total caseload that is undertaken on a 'no win no fee' basis?  YES  NO

a) How do you assess risk before deciding to accept a case on a 'no win no fee' basis?

- I rely solely on my own experience
- I consult colleagues
- I use a software risk assessment package
- I use another method ( please describe)

## Case management

18. Which of the following does your firm carry out as a matter of course at the start of a civil litigation case? Are the results routinely written down in the case file?

Activity	Tick if done	Tick if results recorded in writing
Consideration of options other than litigation	<input type="checkbox"/>	<input type="checkbox"/>
Estimation of damages likely to be obtained	<input type="checkbox"/>	<input type="checkbox"/>
Estimation of the probability of success	<input type="checkbox"/>	<input type="checkbox"/>
A cost benefit analysis for the client	<input type="checkbox"/>	<input type="checkbox"/>
Preparation of a timetable for all key stages of the case	<input type="checkbox"/>	<input type="checkbox"/>
Discussion and agreement with the client of the results of the above	<input type="checkbox"/>	<input type="checkbox"/>
Development of a full strategy based on the outcome of the above actions	<input type="checkbox"/>	<input type="checkbox"/>

19. Please use the space below for any other points to wish to make about the forthcoming changes to civil litigation and legal aid.

20. How long did it take you to complete this questionnaire? \_\_\_\_\_ minutes

**Thank you for your help with this survey**