

# LSLA/NLJ Litigation Trends Survey 2020



As members prepare for an expected spike in litigation, LSLA president **Chris Bushell** (pictured) is determined to ensure that mental health and diversity and inclusion remain key priorities for London's litigators

2020. Not really the best year, was it? Some might even say the worst... ever. All of our lives changed. However, as the results of the annual LSLA/NLJ survey show, there appear to be positive takeaways from our 2020 nightmare, particularly if you're in the business of litigation (see extended feature on p17).

Perhaps unsurprisingly, most respondents (74%) feel that the litigation market is growing. Few would argue with the proposition that the deal we have reached with the EU is better than no deal. However, even with a deal, it is anticipated that Brexit will continue to generate a significant amount of litigation, and the courts are preparing for that accordingly. A spike in Covid related litigation is also anticipated by 89% of respondents. So the mood music appears to be that we will not be twiddling our thumbs as litigators. We should also not underestimate how fortunate we are, unlike others, to have work to do.

Covid has also forced almost all of us to embrace virtual hearings and electronic bundles to keep the litigation show on the road. The survey results show an overwhelming thumbs up (89%) for the courts to make greater use of virtual hearings and electronic bundles in a post-pandemic world, particularly for more procedural hearings or interim applications. However,

few would quarrel that virtual hearings tend to be more tiring (particularly for the judges, advocates and transcribers) and that trials with live evidence are best done in person, if circumstances allow.

Unsurprisingly, Covid has also prompted a lot of feedback around mental health and the way in which we work. This is a demanding job that we do. It will always require periods of intense work and some degree of stress and sacrifice. We can't escape that. However, many respondents (quite fairly, in my view) have called for action on unreasonable billable hours targets, arbitrary deadlines, presenteeism and respecting work/life boundaries. For those of us that are business owners, it is not appropriate to put the onus back on staff to manage their own mental health and well-being. I think it will also be very interesting to see what the partners of the future look like. Might there be a shift away from the all-rounder to more of a focus on different types of partner role according to particular skill sets and strengths? Might there be greater flexibility in terms of hours and remuneration to allow people to become partners who might otherwise see the role as incompatible with their commitments outside of work?

Greater flexibility around agile working will also likely stay with us post Covid, with many respondents having commented

on how escaping long commutes and the confines of the office environment has allowed them to spend more time with their loved ones, or do more exercise than perhaps they might otherwise have been able to fit into their schedules. However, the survey results also suggest that long term working from home is not healthy or sustainable for most people. In particular, many junior members of the profession clearly feel that their training and experience has suffered, and are keen to return to an in person environment for at least part of the week.

Possibly turbocharged by the tragic killing of George Floyd in May, there has clearly been a step change in approach to diversity and inclusion within the profession, with 93% of respondents saying there has been change for the better in the past 12 months. Is there more to do? Of course. An awful lot more. And it is important to keep in mind that this is not just about ethnicity or gender. However, this is a hugely positive statistic from a largely depressing year, and I think people can now see real change happening, as opposed to just lip service.

2020 was also a busy year re CPR reform. The disclosure pilot was extended for another year and the survey results continue to show that the profession is split as to whether it is a good or bad thing, which seems to chime with the feedback separately obtained and considered by Professor Mulheron. Only 26% of respondents were in favour of the pilot (in its current form) being made permanent in 2022, whereas the majority (37%) believe we should just revert to CPR 31. The rest favour making further amendments to either the pilot (22%) or CPR 31 (15%).

We are also about to see change in the way that trial witness statements are prepared in the Business and Property Courts, with a new Practice Direction and Appendix likely to take effect from 6 April this year. I was a member of that working group and our chair, Mr Justice Andrew Baker, will be delighted to see that the majority of respondents (albeit only by a whisker—51%) support the controversial new requirement that witness statements must identify (by way of a list appended to the statement) what documents, if any, the witness has referred to, or been referred to, for the purpose of providing the evidence set out in their statement. And for those of you not already familiar with the new Practice Direction and Appendix, I would urge you to become familiar with them now as in many cases work will have already begun on proofing witnesses and drafting statements due to be signed and served after April.

NLJ

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