The Jackson Reforms: One Year On
A survey

On 28 February 2014 we sent an email to Civil expert witnesses on the Bond Solon mailing list. We asked them the following questions:

- The Jackson reforms to the Civil Procedure Rules were introduced in April 2013. Their aim was to streamline civil litigation, increase access to justice, cut costs, speed up the process and focus on key issues at the outset of any matter. What is your experience of the Jackson reforms so far?

- Minds were concentrated by Mitchell v News Group Newspapers Ltd last November, when the Court of Appeal restricted the solicitors' costs budget of more than £500,000 to court fees of £2000 because the firm was late filing its budget. In other cases, "disproportionate and unreasonable" budgets were not approved. This was as a direct result of the Jackson reforms. Have you had any experience of the courts being tough under the new regime?

- Have you had any experience of hot-tubbing? If so, what was it like?

The main area has been clearer Court timetables and tighter deadlines for Reports. Solicitors have been firmer that reports can not be received beyond the given date. I tend to be an Expert who keeps to deadlines so I have not experienced too much change. Also as I assess maybe 12- 15 cases per year this is not a huge number for experiences.
Occupational Therapist

The full extent of the Jackson reforms have not in my experience as yet had much effect as far as experts are concerned although there are indications that instructing lawyers need rather longer term budgeting advice/estimates when claims are about to leave the protocol stage or otherwise when an action is commenced. I anticipate that this trend will continue.
Despite my handling of around 25/30 expert instructions per annum I have yet to experience, or be asked to partake in, a hot tub with the other side`s expert although sometimes taking the lead in trying to narrow differences In relatively informal without prejudice discussions.
Valuation Services

The reforms has led to an approximate 60% reduction in my psychiatric medicolegal workload. As I work full time for the NHS in the short term has made life less stressful but I suspect I no longer have the option I had considered in the future of going part time and doing more medicolegal work. I have noticed I am approached by agencies more frequently who are wanting me to see clients without prior access to their notes which I refuse to do. About 30% of my quotes are turned down by the solicitors. The most common scenario is of cases where there is a civil claim by patients with extensive or complex pre-existing psychiatric histories. In these cases the prior history needs to be recorded in detail and there are complex issues to discuss in relation to causation. In most cases the size of the claim is too small to warrant the cost of my report but I am not in the position to cut corners as these are the cases most likely to be challenged. In contrast clients with no pre-existing psych history can still be seen within acceptable budget. This obviously does raise issues about equitable access to justice/compensation.

We are now fully in the Jackson era, with costs decisions coming out almost weekly. In regard the budgets, it seems to me the legal profession is still in a stick everything in the budget and see what happens mode. However, the rules are specific in regard to recoverable costs, in that the budget should be drafted under the concept of proportionate costs. My view and it has been since I spoke on the first conference when Jackson LJ presented his draft report (CLAN conference JUNE 2009) is that parallel budgets should be produced . One for the client of actual costs and one for recoverable proportionate costs. For experts, it is therefore vital that all estimates-budgets-quotes are prepared as accurately as possible. I predict once the procedural aspects of Jackson settles down, there will be a far more forensic examination of the budget by both the parties and the court. So back up information about fees-charges by an expert in a specific field will be important to justify the expert fees in the budget on a proportionate basis. A client may want the top QC to deal with his dispute with his neighbours barking dog. The court is highly unlikely to accept this as proportionate costs in the budget.
Jim Diamond, Costs Lawyer

In brief, as a midwifery expert witness, I have observed a substantial increase in requests from solicitors to compile a preliminary short form report (as opposed to a report which includes a full chronology and detailed facts section). Furthermore, there is a demand for a much tighter timeframe for completion of the report than before the publication of the Jackson reforms.
Midwifery

The implications of the Jackson reforms are a topic of current and ongoing debate for myself and other experts at Harrison Associates. In particular, the possibility that solicitors will come back to us to reduce or repay our fees, if the court disallows some of the incurred costs. This is of concern given

that we provide quotations for our work based on many years of collective experience, which are then accepted under contract by the solicitor. Once the work has started or finished we then have no control and or ongoing knowledge of how the solicitor continues to manage the case. As expert witnesses we are impartial and are specifically precluded for being remunerated based on the outcome of the case whether that be a reduction of our fees upon completion of the case or us receiving additional payment in response to an outcome perceived as successful by the solicitor. The other main effect of Jackson has been the issue of solicitors meeting deadlines and expecting us to omit or be vague regarding the dates of reports and documents we have relied upon. This is because other experts' reports are being finalised very close to the court imposed deadlines. Not being transparent about information we have relied on in our reports is in conflict to our obligations under Part 35 of the CPR, and The College of Occupational Therapists Medico-Legal forum have become so concerned about this, they have produced a short article to highlight this problem to our members.
Jan Harrison, Harrison Associates
The article by the College of Occupational Therapists can be found at:
www.bondsolon.com/Media/Default/Articles/College_OTs_Guidance.pdf

The main change to our expert work is the amount of detail we have to provide prior to undertaking the majority of cases. This is no bad thing as we are able to give costs for all stages of the process; this is then accepted before we agree to take on the case. We realise that we have to ensure our work is carried out within the proposed time frame and the report submitted by the agreed date. Some solicitors have approached us asking us to undertake work at £81 an hour. As all our work is for those with neurological / catastrophic injuries, we politely inform these lawyers that we cannot provide a report at that fee. The fee for a detailed physiotherapy report for our clients who invariably have significant and residual disability is in my opinion a proportionate cost. Having informed the solicitor that we will not accept instruction at £81 an hour, to date, our fee structure has been agreed other than in four cases.

Please find below as requested some issues experienced by IEW:

- Much tighter budgets being sought, forcing total quotations from the outset. Some problems caused when three lots of further questions were asked. Almost impossible to bargain for. Message: cover every eventuality and go beyond to ensure you get paid your dues
- Hot tubbing mentioned in Court by Judge...for 2 of our experts. He then changed his mind, asked the 2 experts to go out and come up with a shorter JS as a result of evidence heard in open court. Message: Be ready for all eventualities in a new culture
- No known effects for two members. Message: some reduction in instructions or far fewer cases going forward as chancers. Even evidence of Defendants (major ones)deciding to settle as a much cheaper option
- Solicitors bartering for work to be done for less, bearing in mind the size of the claim and the small volume of disclosures. Message: this is what Geoff warned of at the Seminar
- Attempts to get free letters of response on letter and statements to assess the claims chances of success. Message: It has always been there. We should NOT be charitable and keep our costs alive. Possibility that it is massively on the increase
- Much tighter deadlines are being set within the infrastructure, and Solicitors are realising the impact of possible sanctions if court order deadlines are not met. Message: get a copy of the court Order yourself at an early stage or you may find completing your report become Everest like more than was normal in the past
- Single Joint Expert role....projecting costs ahead has proved you almost need a crystal ball to quote at the outset. Message: as with the other one, try to go into every fine detail of what may happen towards a possible Hearing or settlement in order that you are not "paying the Court" because it was not in your quotation at the outset.
- Some small evidence of solicitors trying to evade cancellation fees. Message: already given strongly by Steve at the seminar. Get to Agreement signed in the first instance
- Northern Ireland.....not applicable here yet. Message: those who do work in NI ,some of the above and the contents of the seminar will not be relevant.

William D MacKay, Chairman of Expert Witness Institute (IEW)

My experience of the Jackson reforms so far has been that medical reporting agencies have paid lip-service to the costs budgeting requirements by including a paragraph in relation to this issue within their generic pro-forma instructions but have done no more than this. Solicitors have also tended to include a request for fee indication in letters of approach whereas previously they may have only stated "we will be responsible for your reasonable fee". What has happened increasingly is that I have found that I have been asked to provide a fee indication in such letters of approach without adequate case details on which to base any estimate and almost always without any sight of or indication of volume of associated records and documents. The result has been that at the "front end", ie during the approach and instruction stages, more work has been generated rather than less.
I have noticed far more work being conducted by e-mail, with online records provided. It is apparent that some firms of solicitors have now abandoned low value personal injury claim work. However, others appear to have attempted to enter the "Dental negligence" market, without direct expertise in this niche market. The result is that initial instructions and investigations, far from focusing on the key issues, have been muddled and have failed, for instance, even to appreciate that general dentists in this country are in the main responsible for their own acts and omissions, so that attempting to sue a dental practice assuming them to be vicariously liable for an individual dentist is unlikely to be successful and will prolong rather than shorten the process. Again, therefore, I have found that much time has been spent, unpaid, at the "front end", educating and advising in such instances. What I have not experienced, however, is any fall-off in instructions or volume of work. In fact there has been significant expansion for me, so that I now occasionally have to decline instructions due to volume of work.
I have not personally experienced any problem relating to costs. However, I suspect this is mainly because I ensure that I have strictly agreed terms in place with instructing parties regarding my own fees, which include a "non-remission on costs assessment" clause. I am also strict with chasing payment of unpaid fees and do not entertain deferment in any circumstances. My administrative secretary is dogged in pursuit of any fee unpaid after 30 days following rendition of an invoice, underpinned by agreed terms of engagement at the outset.

It is difficult to work out what the exact effect of the Jackson Report has been. During the last 18 months personal injury work has been less plentiful, but the work is more complex and I am able to charge the same fees. With regard to clinical negligence, solicitors are beginning to ask for preliminary reports for quite a low fee, presumably to try and filter out cases which are non starters. Clinical negligence has become half my work, but it is much less well paid and if I charged the fees I did two years ago, no one would instruct me. The greatest change is that demands on expert witnesses are increasing as the remuneration decreases and that it is even more vital for experts to be properly trained as experts and experienced in their own field. In my opinion the latest need is for training in the techniques of forensic writing.
Personal injury and clinical negligence

I should just like to briefly state that I have found the Jackson reforms to have been of benefit in speeding up cases. I do however have a concern that if the Court does not use a reasonable degree of discretion with regard to the regulation imposed through timetables, that the outcome reached in Mitchell v News Group Newspapers Ltd. could become much more commonplace. I think that my view might be summed up as follows: 'Whilst slackness should be put to the sword of cost, the latter should never be the means by which justice is frustrated in circumstances where justice should reasonably be expected.'
Consultant Surveyor

Little change noticed. My terms and Conditions have not changed and have not been challenged. I have always been very selective and the Solicitors who know me as well as the agencies seem to value speed of response over saving funds by haggling. Not sure what would happen if one tried to put the fee up.
Ophthalmology

I've noticed very little change! Only on one occasion has a solicitor mentioned any limit on my fees (which were less than the limit anyway!). I have not been asked for any budgetary breakdown other than my hourly rate. I have not been asked to specify in detail the areas that my report will cover.
Consultant in Emergency Medicine

I do not intend to present a long complaining diatribe (as is justified) but offer a few observations.

- I still believe it is a little too early for EW to have a major input to your questions. As you know, traditionally we get instructed last minute (as in my last 4 appointments!). However, it is sadly abundantly clear that not one instruction over the last 12 months has required a full costs estimate to trial (merely for a Report). In a current case of accountancy negligence in which I am acting for the claimant solicitor, I knew there was possibly only a 50 : 50 success rate, I have had to shame the experienced litigator into providing a full cost estimate to trial. Such that the claimant is wondering how the costs can be so high.
- My personal experience is that industrial and commercial concerns (without deep pockets) are reluctant to access justice where I am convinced it would be fair to do so. Hence, I believe that fairness and justice are becoming rare.
- There is definitely an increase in LP's and instances where people are seeking advice on only certain aspects of the claim. I personally find it most disappointing. It really does mean that access to justice is becoming restricted to the wealthy.
- In a current commercial case, the Judge as taken a hatchet to the parties requests on disclosure, wholly arbitrarily, which has left us struggling to provide a well argued evidential case.
- I honestly cannot see Rupert having a material impact upon increasing access to justice, reducing costs and improving timetables.
- I am well aware of the Mitchell case. However, my experience as an example is that attending Court for say 10 am means you may get on about 11 am or even later or re-arrange. It is the parties that are regularly penalised.

Forensic Accountant

The issue around budgets is the one that affects me. Solicitors sometimes still write to instruct me with minimal information e.g. not telling where the client lives, the amount of paperwork in terms of pages and instruction that is more than 'a psychological report.' İ then have to go back to them and time goes by ... solicitors with whom I work regularly know to provide this information so I can quickly give a costing. This is mostly about the lack of knowledge about psychology versus psychiatry and also about psychological assessments and what they involve. They take time and consideration especially with children and especially if the client has autism spectrum disorder for example. This is also why as much background information as possible is essential. For example, if a child has a Statement of special educational needs then there will be a psychological assessment and reviews by the school: these can save time and, if carried out recently, some testing. Thus saving money in the claim. In my opinion there could be more joint expert psychological assessment as there was some years back. Especially in educational psychology: recently I have noted how similar opinions have been in personal injury and clinical negligence cases: perhaps a study needed here?
Educational psychologist involved in personal injury/medical negligence assessment of implications for education of client

The main thing we have noticed is a collapse of this kind of work for accountants! All NIFA members are suffering.
Forensic Accountant

I have written approximately 30 reports since the introduction of Jackson, and yes there have been a number of issues that have affected me.

- At first, solicitors were very unsure about how the reforms would affect them, especially those who operate on CFAs. Immediately I was being asked to provide, along with my CV,

availability and skill set, detailed fees all the way through to the trial. Difficult when I had no case bundle or instructions. This has now eased back but still remains.

- I was being put forward as an expert without being asked. Judges wanted to know who the experts were to be much earlier than previously. Once appointed it has been hard to get taken off the court directions, but I have had to request this on several occasions. However it has been easier to get the trial/procedures delayed so I could meet the court deadlines than replace me.
- Costs. Costs have been set much lower than before and apportionment has cut in big time, although often at the request of the defence rather than the judge.
- I have had cases where the judge has set the expert costs midway through the procedures at CMCs at levels that have made it not worth my time. However I now find myself having to negotiate my final invoices with instructing solicitors as my invoices have come out much higher than the costs allowed, but after the event. This is still ongoing.
- I have not had problems with my report has been excluded for being late. Due to other commitments, illness and other supportable reasons, several have been late. However the court has been happy to change the date of the finish date for my report and in turn the follow up questions. I have even had hearings set back without any real problems. So no change here, in fact my experience suggests things have improved.

So to summarise, my main issue is with fees and that they are getting lower all the time, even though my cases are not legally aided. The defence is using Jackson to reduce their clients cots rather than the courts stating what's what.
Solicitors are still unsure how courts will react to requests and the system has still to settle down but there is a better understanding than 12 months ago. However there is still more to be done from the courts point of view if the Jackson reforms are to work across the board.
Investment consultant and market analyst

Solicitors are bullying and even threatening experts that cases will collapse and it is OUR fault if deadlines aren't met. This is all well and good but most experts are practicing doctors and medicine throws up unpredictable workloads that make deadlines on expert work difficult even though intentions are good. In my view that will out people off doing the work. I had flu recently and was told by an instructing solicitor that I would be held responsible for costs if my report was not in on time. I sat up til three am with a fever. Is that right?
More instructions are asking for fixed fee causation only reports
Cardiologist

There can be nil doubt that Jackson has done a damn good job :
In addition to what you say below , proportionality is too a key feature
It has taken time for the affects to bite in and of course Experts can be some way down the process :
Those for whom I work, Insurers and The Legal Profession , are all saying that Experts are seeing :

1. A massive decrease in instructions
2. When instructions do come, they are more limited and therefore bring much less income per case
   E.Gs :
   a. In the past Principals would ask for a full CPR35 report every time : Very seldom now
   b. Now all they usually want is a quick overview , not CPR35 compliant , but just an emailed advice

I have noticed The Courts becoming unwilling to accept my non-available dates for a Hearing and when I do provide those dates, I have been asked for detailed reasons why I am unavailable on particular dates .
To be fair as far as Part 35 Q & As go and Joint Statements, The Courts are giving a very fair timescale
Overall : We have to move with the times but I am sure "Things will never be the same". Despite this, Well done Jackson I find myself having to say
Forensic Approach to Motor Engineer/Assessing

My current raft of work is with a very large mental health NHS foundation trust in North-west England which is one of the largest such in the western world and also dealing with specialist state-registered healthcare practitioners who work in the operating room in the acute health sector.
Do date, the Jackson Reforms seem to have had little impact on the mental health Trust's activities in dealing with such issues. This in part may be due to the utter lethargy evident in the NHS as a whole and the mental health sector more so. Further, I have seen no evidence of impact yet been imparted into 'fitness to practice' hearings which have not yet evidenced a likelihood of proceeding to court.
However, in my experience of dealing with individual clients and smaller organisations I would say that there has been a most noticeable impact: litigants are now becoming more aware of fast-tracking; and organisations, who in the past have been sluggish and reticent to engage, are being rudely awakened to such.
Whilst I have much experience of so-called 'hot-tubbing' in presenting evidence to government and parliamentary hearings, in the civil courts arena I have thus far not engaged and do not envisage this changing in the short-term due to the nature of cases I deal with. However, some of my colleagues have been engaged and report that they found it a rather rushed affair where they were not able to fully present evidence as they had wished. For run-of-the-mill cases this may be appropriate but I forsee clients in complex issues could be disadvantaged.
Doctor and Director

My experience is that the solicitors are becoming more anxious than before to have reports and answers to questions answered in time. I have kept up so far but I am thinking of doing a few less reports per week than I used to so I can be sure to comply with the new timetables.
Consultant Orthopaedic and upper limb surgeon

Jackson may be speeding things up a little in certain areas due to strict and at times unrealistic time limits for the production of reports and Joint statements. I look forward to actual evidence on this matter.
However, I am not at all sure that access to justice has improved at all in the Civil arena and it has clearly not been improved in the criminal one.
Cases are poorly defended or argued because of time limits as well as cost limits, medical experts are moving out of my area back into private or NHS work because of draconian time limits and fears of litigation against them if not complied with. In complex cases there may well be very many "key issues" and if the evidence has not been gathered (e.g. because of lack of time to get full medical documentation and lack of time or permission properly to consider the complexities) then justice is denied. Key issues may well only come to light after much obtaining of docs and much time spent considering the matters.
Of course such time should be proportional but safeguards to ensure that have been in place for a very long time; new regulations were not necessary. In my experience they are just a set of weapons for everyone to beat each other over the head with (J v lawyers, lawyers v other lawyers, lawyers v experts, experts v other experts, dreadful medical report agencies v experts, J v experts).
I have noticed much more inefficiency creeping in because of a piecemeal approach to report requests. If there is no leeway to await the full evidence it will inevitably take more time and cost to get up to speed with a case when a further tranche of documents arrives several days after the premature production of a report to meet the time limit and then a further report is needed.
I have not (yet) had experience of the Courts being as tough as in Mitchell. In fact I wrote to the Court on one occasion when I felt that a time limit to produce a report was entirely unreasonable and the Court relented and gave me another 6 weeks. The instructing solicitors had been unwilling to do this.
Consultant

I have never been busier.....no effect at all.
Dentist

The Jackson Reforms are good medicine with bad side effects. Since April 2013, when these were introduced, I observed the following:

- Money is being saved by drastically cutting legal costs and legal aid nationally. Britain cannot spend beyond its means.
- Illegal immigrants cannot use legal loop holes freely.
- British Ethnic Minorities, especially Asian and Black British with limited income, are unable to get Legal Aid. Consequently, they are denied justice when aggrieved. Beware; human bitterness can lead to crime.
- The Human Rights along with Cultural, Religious, Secular and Ethnic (Racial) considerations in litigation have gone with the wind.
- However, every action is followed by equal and opposite reaction. It is possible that winds may change. Justice may be available to everyone.

Expert Witness in Cultural, Religious, Secular & Ethnic (Racial) Issues in Litigation

Yes I have been affected. A minority of lawyers (mainly civil) have been forced to offer me tiny fees which I have had to refuse. The few criminal cases I've dealt with don't seem to have this problem.
Fortunately I already have a waiting list of cases and sometimes I already have to give them unrealistic future dates with my present fees, so I have no compunction when offered unrealistic fees
My rooms at Harley St are expensive and sometimes the fees available are so microscopic I would have to pay out at my own expense just to see the patient
Doctor

So far the Jackson reforms have not impacted on my work, I guess to date I have been fortunate
Tissue Viability

Increasingly we are resolving issues at expert conferences which take place at Court (aimed at creating statements of areas of agreement and disagreement) resulting in no need to call experts on either side to give evidence.
We still are getting 25 K jobs, and it would seem that the need for experts who can handle the most complicated cases never dies, especially as we suspect that the honeymoon period, where ex FSS personnel became independent experts may come to an end when they realise that it is not that easy to sustain.
Payments by the LSC are speeded up but transfer from the solicitors is slowing down.
The Courts sometimes are giving us the run-around: eg one Court refusing to pay for 10 hours of time at Court over two days as the principle witness failed to appear, and so the Court did not sit. (We were still there in the "Zone" waiting and preparing to be called in for cross examination).
Others make excuses for limiting payment (eg The case was easy so the fee per hour is cut, and you were only there for two hours) (what do you do with the rest of the day when you arrive home at 1800?). Others pay the entire fee.
Coroners Courts are a disaster for experts with travel and mileage refused and also hours paid per day paid limited to two and half. We shall simply avoid attending them.
Doctor

The Jackson Reforms have had a significant impact on my work over the last year. Whereas I was used to be instructed on average twice a month, last year I only completed 8 court reports related to care proceedings the entire year. In the past I have been directly approached regarding my availability, and requesting a fee estimate, after a group of solicitors (for each party) had already met and agreed that they wished to instruct me. These days I am approached as part of a 'pool' where I am competing with an unknown group from which the court generally select the one who provides the lowest quote; in which case qualifications and experience count for nothing. This causes myself and my colleagues considerable concern.
For example, bearing in mind that most of us underquote for the amount of hours we put in, I recently quoted £3500 to assess two parents and their child in a private law case, who was believed to be on the autistic spectrum, and was undercut by someone who agreed to do it for far less. I only know this because I contacted the solicitor to ask for some feedback. He told me that the Clinical Psychologist's fees would be paid by legal aid and as they had to cover the solicitor' costs, court costs, and the

barrister, there would not be enough 'left over' to cover what I was asking for. Clearly, the Expert Witness in this case was not viewed as essential, whereas my understanding of the information led me to believe that it was imperative to the outcome (i.e. with whom the boy was going to reside). Dad had allegedly threatened to kill the mother and kidnap the child; contact had broken down; and it was dad who had taken the mother to court.
I have also advised the court that I am unable to do what I have been asked in the limited time I have been given – be it number of hours or weeks they have allocated to a case. When giving evidence, and being cross-examined by a barrister, I have stated that I do not have some of the information because I did not have the time as explained in my report. This was a case in which I advised the judge directly before I even took the case on because he questioned my fee estimate and told me to reduce the number of hours and I explained what would happen if I did so. Nevertheless, the barrister made a big thing in court about my professionalism, not doing my job properly, not caring about the child, putting more emphasis on how much I would earn from the case etc etc. and generally making me feel uncomfortable (which, of course was the plan).
Anyway, these days, I am quoting ridiculously low fees because I need the work, but I am looking for a more lucrative form of income. The problem is that I care hugely about these children and families and I guess caring always costs. However, I am a highly experienced Clinical Psychologist and having just learned that the government are now talking about putting funding into providing therapeutic intervention for children post adoption I can see a new role opening up for me in the future.
Finally, as you can see I am not happy about the Jackson Reforms. I fear they do children and families a great disservice, and I am worried that justice is not being served. The problem is that we will not know what the fallout is for a long time, despite HHJ Munby's statement that they are receiving justice much quicker. How does he know? Who is evaluating the outcome? How do we know that children are being removed when they should be, or staying with parents when they should be? A great deal of my work as an expert seemed to gathering evidence that social workers, guardians, and other professionals had missed. Maybe this was because I had more time, took more or time, or because of the way I communicate and connect with people. This meant that so often I appeared to be 'fighting' to have children rehabilitated to their parents which was not what social services were suggesting; or alternatively, trying to get SS to understand that some mothers were never going to change and that their children needed to be removed as soon as possible. It always astonishes me how many 'chances' mothers get, and how much expense the court will go to again and again when the evidence is so stacked against some people. I cannot understand why we don't have something like a procurator fiscal in this country who looks at cases and decides whether or not a care case is financially justifiable. Perhaps this is where the court should be looking to save costs.
Consultant Clinical Psychologist

I haven't been affected by Jackson reform at all so far. The reason for it might be that all cases I am working on currently have been started long before April 2013.
Consultant in Pain Medicine

The Jackson Reforms have in reality done little to streamline civil justice and had the opposite affect on access for the man in the street.
Fees have in fact risen due to the uncertainty and in respect of experts it is easy to get into a bidding war which some legal practices encourage.
I am aware of many experts that have said that it is not for them and now do not take instructions. This will only erode the expertise pool in any discipline as the emphasis will end up being on cost and not quality.
The question is would you rather drive a Ford or BMW, the down side is you cannot get a BMW for Ford money no matter how you try. It is better that market forces create the cost. I have had experience of giving an estimate for a report based upon information given and when the instruction has been excepted a blizzard of paper follows with a short letter reminding me of how much and for what, needless to say I resigned. This is sharp practice which is being driven by the reforms. Better? I do not think so.
Fenestration Surveyor

Following the Jackson reforms my 'Family Law' work over the past year appears to have become non-existent. In those cases where a Psychologist assessment report has been felt to be necessary, the Court then denies this (for reference my hourly rates are always as guided by Legal Aid, and their set time allowances. Meanwhile I have refused work as I have been asked by Solicitors to 'hold' the time.
The late notification that the case is not to proceed then means I am left without work / income!
On work agreed within the Family Law Courts over the past year I have had trouble getting paid when the client 'did not attend'!
For reference I would note that 'Criminal' instructions have also reduced.
The Legal Aid Agency frequently state that they will not pay travelling time to Solicitor offices to meet with clients and 'allegedly' state to Solicitors that I should do home visits!!!! It appears that issues of 'safety' are ignored!
Both prior to and post Jackson reforms, despite having provided / agreed 'Prior authority' for estimates for case work, payment from the Legal Aid Agency is 'significantly' delayed – over a year in many cases. Late payment fees which I only apply after one year after invoice date (even though my terms and conditions state that I may apply these after 28 days - are totally ignored when payment is finally received. I have to have to pay overdue charges to Banks etc. and have to pay my invoices on time. If not I get charged late payment fees!
I am often asked to provide assessments / reports for the Court at very short notice, and may have to see a client one day and provide a report by the next ……and thus have to stay up most of the night to complete to meet the deadline for the Court……I do not get additional payment for this 'unsociable hours work', and again may not get paid for months and months!!!!!!!!!
The new payment guidelines for Experts (Psychologists) as of December 2013 has further eroded my income and those instructions I do receive mean I do the same amount of work (which is often more than has been estimated for as when estimating I am not provided with a draft letter of instruction, nor any indication of how much documentation I will need to view – thus an estimated time for reading materials might have been one hour and then I have been given 7 volumes of arch lever files. Legal Aid will only 'allow' me to charge' one hour for as this was the 'estimated time')
Overall whilst I understand the need to reduce the amounts paid by the legal Aid Agency the reduction of fees, and the limitations on hours to do an assessment, means that after many years of working as an Expert Witness, and having recently obtained one of the new PG Certificates in this area, I am currently reviewing whether I will continue in this filed.
Chartered Psychologist

The best way to reduce costs would have been to give all parties guidance on how to minimise the amount of material that needs to be absorbed and produced by experts. This was ducked / not understood.
For experts, the reforms have bureaucratised matters impressively - average admin time per instruction has trebled - but as yet have changed little else.
Having to predict future work on a case is difficult given the huge number of variables. Pre-Jackson I had had bad experiences of agreeing limits to costs before assessing the Claimant, only to find at examination some clinically and legally complex problems that had either not been mentioned BY the instructing party (a minority) or TO the instructing party (a majority). I was keen not to repeat this on a larger scale so took to quoting high for work with a view to coming in under budget on most occasions. To be on the safe side I also increased my hourly rate and, given the volatile stock market and poor bank deposit interest rates, promoted the idea of end-of-case payments.
This has worked thus far. There has been no discernible downturn in income/cashflow or referrals, though there has been a noticeable shift to choosing my (18% higher) end-of-case rates. There is a risk that some firms will go under, leaving me with irrecoverable losses but my impression is that those that always cut corners are getting more and more shoddy while the solid performers are learning to float above it.
Experience of courts being tough under the new regime:
A wee bit of bluster and chest puffing, a lot of instructor angst but nothing real thus far. It may have increased the level of respect though, which would be a good thing.
Whoever thinks that hitting people for missing deadlines will cause greater efficiency in the medium term knows little about how higher performers operate.
Consultant Psychiatrist & Medico-legal expert in Adult Psychiatry

Predictions by some pundits that medical experts will have to cut their fees or return to their day jobs have not proved true, for me at least. The reforms have not had any noticeable effect on the volume of my work, which has continued to grow at a steady pace. I possibly get more instructions directly from solicitors rather than through agencies. I have noticed that solicitors are more focused than ever on Court deadlines and I suspect that experts who can meet these requests will be used more and more.
Consultant Psychiatrist

I only have a small medico-legal practice and have not noticed any significant difference on my practice since the Jackson Reforms were introduced.
I have not had to attend court for any of my cases, and therefore have not encountered any problems associated with disproportionate or unreasonable budgets.
Consultant Orthopaedic Surgeon

This is an interesting question as I have not noticed a great deal of difference. The only thing is that the Courts are not so lenient over meeting deadlines, but even so I have had several cases in which the deadlines for joint meetings have been severely delayed for a variety of procedural and other reasons.
Chronic Pain

I have noticed little change except for some medicolegal firms lowering the fees they wish to pay.
I have declined to get involved with these companies.
Doctor

I conduct expert witness reports on industrial disease (occupational hygiene) topics. I haven't any direct knowledge of the Jackson reforms, as I deal with solicitors who I presume are complying with the rules. I have noticed there is more emphasis on deadline dates and requests for more detailed costings estimates.
What I have noticed is that the demand for my expert witness work has fallen off the cliff this last year. I rather suspect it is because a lot of disease claims are being held up whilst the parties see how the Jackson reforms pan out. Disease cases can be very long winded and I suppose a year or so delay is not too significant. I must say from my perspective, I can only give it another six months otherwise I will need to finish work completely and retire fully (I am currently 67 years of age, 68 in July, but I was hoping to earn a decent income from expert witness work for a few more years). Whilst I am in the somewhat luxurious position of being able to pick and choose to some extent, I still feel I need to be "on call" for a normal work week even if the demand does not warrant it. I have been trading as an independent expert witness for over 30 years and I must say this is the worst "slump" I have encountered. I hope it is not because my client solicitors are suddenly finding better or cheaper experts to instruct - many colleagues say the same thing when I contact them by phone.
Occupational Hygiene

Only insofar as they require estimates to be submitted of costs when there is little data on which to base such an estimate. For example, I have been required to give an estimate for the time it would take to review three level arch files and report on the contents. I had no idea without spending considerable time what they contained, so estimates were in reality guesses.
Chemical Engineer

Several cases now seen under the new sussex family justice council recommendations.
www.sussexfamilyjusticeboard.org.uk
http://www.sussexfamilyjusticeboard.org.uk/july2013/4738_pocket_guide_public_law_fd.pdf

Main issue for me seems to be significant variation between what is written in the expert preliminary enquiry form, and the subsequent letter of instruction.
A good example is a case earlier this year when in the initial expert witness pilot forms I was asked to do:
'A paediatric assessment of XXXX'
The eventual LOI was as in the attachment (I have cut and pasted from the much longer pdf letter).
I saw the child within one week of the LOI and submitted the report within two weeks, and the Court have - so far only allowed me one extra hour - despite my invoice and accompanying letter explaining why my invoice was for a greater amount: (extract)

> You will note that the invoice is for a greater amount than had been previously agreed by the Court. I realise at this point that you cannot give any guarantee that the Court will agree to any additional amount beyond that which it is has already approved, however I would like to set out the following reasons why I have submitted an invoice for a higher amount.
>
> - I was originally asked to provide a paediatric assessment of xxx. I provided my original estimate on this basis, prior to receiving the letter of instruction.
> - The letter of instruction which I received on 7/1/14 asked considerably more detailed questions than I had expected from the expert's questionnaire
> - The more detailed nature of the questions required careful examination of the submitted testimony to understand whether this fitted with the nature of the injury, and to reference my arguments
> - Extra time was taken to marshall supporting research evidence from the medical literature
> - Considerable extra material was received during the second week of January in addition to the original Court bundle. (I notified yourself on 16/1/14 that this would take extra time to read and assimilate)
>
> I hope that the Court will find the report helpful in coming to a decision in its findings. Within the spirit of the changes which have taken place since last April to speed up the Court process, and in addition to my normal job, I have made every attempt to complete the report within two weeks of receiving the letter of instruction, and within one week of seeing xxx.

As far I can see - the Court can't have it both ways! They want to speed up the time, but aren't giving me the information initially to be able to give them an accurate estimate. So what I take from this experience is that next time I will have to say when I get the LOI that I can't proceed until the Court can agree a revised estimate so I don't get caught out again.
I always bill for less hours than it takes me anyway (More fool me maybe?)

No difference to previously except 'my' cases have led to more appeals!
Chartered Land Surveyor

My experience has been that referrals have reduced somewhat. Also, budgets have been tighter, though this depends quite a lot on specialisms and personal track record. There are still some room for negotiation. I cannot comment in the intended increased access to solicitor support, but it certainly has not increased my case load so far.
Educational & Child Psychologist

Yes I have suffered adversely from the Jackson reforms.
I had been involved in a protracted (three years) and difficult case acting as an expert witness when the case went to Court shortly after the reforms came in. My fees, which covered the entire period, were cut by 40%. I had no redress, but more importantly, I received no explanation. The duration of the case owed much to the fact the other side were acting on a conditional fee agreement.

My field is commercial litigation for metal commodity contracts (broken contracts, fraud, etc). I only accept an appointment on my T&C which includes the fact that my terms for costs are not subject to assessment and will be due to me according to my T&C whatever the court might decide on Assessment. Hence Jackson has not affected me in this respect. I have always found that the clients

appointing me were very happy with my performance.
As regards hot-tubbing: a variation of this has only happened to me once which was in a Stockholm Ch of Commerce Arbitration. I had about half a day warning and was told that I would have the floor the following morning and be able to X-examine the other EW directly. I made my apologies to the Tribunal if my natural attempt to get at the truth might not follow their normal protocol and then laid into the EW on the other side (who's Report had errors in it for millions of dollars, and he was an accountant….) . If that was "hot-tubbing" Swedish style then I would rate it as very positive.
I am very aware of the need to have the right experience for each case so very often I turn down offers of an EW appointment but because of my contacts in the industry I manage to recommend another person who would be a suitable EW. In the last few years, for each appointment I have accepted I must have passed on the names of other EW's for at least 3 other disputes. I ask for nothing in return, (unless they like to buy me a lunch) but have found in the long term I also receive appointments as EW from others who have passed on my name to the lawyers.
What shocks me are EW's who will accept anything and are happy to perform as a hired gun just to earn the fees. Usually there are American lawyers involved but the expectations/obligations on an EW are the same under American Law as for the UK so it is then left to the EW on the other side to expose the hired gun and let the judge/jury/tribunal decide who is right. Sometimes it is hard to do this without appearing as an advocate instead of the Independent we are expected to be. I was so incensed by a judge's decision in the UK High Court several years ago that I considered was wrong that the QC who had appointed me took the case to appeal (and won!).
Metal Commodities

I have no experience myself either of "hot tubbing" or of the impact of the Jackson reforms on my own medicolegal practice, which does not currently involve giving evidence in court. However, the self-funded loser may face enormous costs if they lose their case, as one of the doctors I support has just found to his cost. He is now faced with a total of £500,000 costs and damages because he was dumped by his defence body for alleged breach of contract (he allegedly failed to inform them of the exact nature of the work he was doing in an independent Out of Hours Call centre). Furthermore, his contract with the defence body concerned was "discretionary" and not one that had a straight direct transfer of liability. This is becoming increasingly common with all defence bodies, who are now using this to avoid the rapid increase in costs of multiple medicolegal jeopardy. I appreciate my response to your request is not strictly relevant to the problems faced by medical experts, but as you asked for our views and experience; I thought I should respond.
Doctor

They aren't working.
Surgeon

In my small practice I have yet to see any substantial effects from Jackson, but am sure they will come as more cases come forward. Meanwhile, I hear negative mutterings from Solicitors and Barristers, Barristers are particularly nervous of the leading management role given to instructing Solicitors who I understand will have control of the budget/ fees.
As to other matters, I am aware of but have not yet experienced hot-tubbing (concurrent evidence) but am very interested in the method, to avoid the possibility or perception of bias, as well as the other : so called blind evidence ?
Surveyor

I now provide estimates of costs based on the size of the medical records I need to review.
Doctor

I am not sure if it is as a direct result of the reforms re cost but I find that my instructions now come at the last minute - say two/three/four weeks before exchange of reports whereas hitherto it was so

much more relaxed. As a consequence I find myself having to turn down some opportunities. By the same token, I do find that I have days, even weeks, when I am idle.
Not sure if it was a direct result of Jackson but I find I do many more experts' meetings than before, which is a good thing. I have had one where we had the meeting before the exchange of reports: I didn't think this worked as well as report first, then the meeting.
Hot tubbing:
I have had experience of this and it was very successful. The main problem was over the unsuitability of the witness box for holding 2 people and the bundles. In the event, we used the press box but it was awkward for the stenographer. It certainly cut down on time but I felt sorry for counsel who were almost cut out of the process as the judge took total charge. Must have helped the judge no end. I would certainly welcome hot tubbing again, particularly if we can get the courtroom layout sorted out.
Banking Expert

What is your experience of the Jackson reforms so far?
One effect has been a slight but noticeable increase of additional work in preparing such estimates. The more concerning effect is the setting of strict deadlines by the courts without reference anyone else's diary, particularly for joint reports. Whilst a time limitation or deadline may appear reasonable to a judge it fails to take account that three other judges have set the same deadlines for similar cases. This happened to me twice in the last month or so and included in such periods were appearances in the Courts.
I have had to refuse two legal aid cases due to LSC refusing my usual fee and offering a substantially lower one. May save them money but not very good for the defendant if he has to get second best or no one at all.
Have you had any experience of the courts being tough under the new regime?
Rather coincidentally I have just spent the last two days sitting in county court (matter is still live so I cannot disclose who and where) listening to arguments on the very subject of missed deadlines and the Mitchell case was much quoted along with some others. Arriving for a trial set for 1.5 days it ran 2 days without one word of evidence and was then adjourned to a future date as no time remained. This was not costs related but service of required documents, statements, lists and witnesses within the stated deadlines set by the court. Solicitors acting for the claimant for some reason failed to meet such deadlines on three separate occasions. At an earlier hearing they had been refused permission to rely upon expert evidence due to late service. At the trial an application (initially made a week or two prior to trial) to rely upon witnesses and witness statements (now 5 months after the deadline) was refused by the judge leaving the claimant to pay costs and now to start a trial without any witness evidence (Written or Oral) to rely upon.
Have you had any experience of hot-tubbing? If so, what was it like?
Not as yet experienced this and not in favour of it.
On a personal note the Jackson reforms have had one effect on me in that I am now very seriously considering withdrawing from Civil work entirely as it is becoming far too much hassle to bother with.
Collision Investigator

I have to say that I have not experienced much regarding this. There has always been a drive to cut costs with fixed pricing etc - So I guess I have seen quite a bit of "we cannot go above a certain fee" which I am sceptical about.

Fees paid to GPs for medical reports have dropped further from £150 few years ago, to £65 1-2 years ago, to now £50 per report. Some agencies will only pay once case has settled.
GP

As a Medicolegal expert, I find the Jackson reforms are a pain in the neck! I receive countless letters and emails from Solicitors and Legal agents asking for costs of preparing a report. A lot of them are a complete waste of time but I still try to answer them. Because of my speciality as an Ophthalmologist, the reports are invariably very complicated, ranging through all types of eye and brain injuries Even though I am extremely(modestly) experienced, I often find it very difficult to estimate how long it will

take me to prepare a report. I now run the risk of underquoting my anticipated costs and then finding that if instructed, I have to undertake several hours work for what turns out to be half of what I would have originally charged. But maybe that is what Lord Justice Jackson wanted! I also find I am now being asked to do screening reports for free-- they call it "Pro Bono" or for perhaps £300 when the work takes several hours.
Consultant Ophthalmic Surgeon

Personally, the Jackson reforms have affected fees in a big way. I have been asked to give a precise figure of costs prior to producing a report without any leeway. Cases obviously can become more complex than expected but we as Experts as expected to negate this somehow. Also, solicitors often state that I may have to pay back some of my fees if the Court deems it excessive!
GP

To be honest - haven't noticed much change yet.
Consultant Psychiatrist

With regard to *1. I found that there has been no improvement in streamlining Civil Litigation, deadlines imposed by the Court for service of documentation or meetings, the appointment of Experts is still not complied with. For example, in the last month, two instructions have been issued with a request to produce a Report in ten or fourteen days, when I find that the Court Order allowing for my appointment was dated January. Solicitors seem to be able to get round these deadlines without too much difficulty.
With regard to *2. I think I am fairly well down the lower end of the scale but I have now incorporated into my Terms and Conditions for the Appointment of an Expert, where it is agreed with the Solicitor, that in signing it, he/will comply with the Jackson Reforms. There is however now a clear tendency to avoid a Contract between the Expert and the Instructing Solicitor. I receive instructions to agree my Terms and Conditions for providing the Report with the Client, which is an added complication. I therefore have to keep the Client advised on instructions I may receive from the Solicitor, because ultimately the Client is responsible for the fee incurred.
With regard to *3. There have been two suggestions, but no takers. From discussions with persons who are involved in litigation it appears that either one of the Experts is not prepared to do this, or the Judge does not wish to be involved.
Chartered Surveyor

I am an ENT surgeon and do a fair bit of noise-induced hearing loss and personal injury.
The only real difference I have seen is the frequent request for altered/reduced/deferred payment terms. The other thing I have seen is a request from instructing parties to have my audiologist assess hearing prior to my seeing the claimant. Only if there is an obvious NIHL do I proceed to see them and produce a report. If not then they are to be sent away. Not a very satisfactory state of affairs as many claimants are keen to have some kind of explanation for their real or perceived problem.
ENT Surgeon

I have not noticed any significant difference to my orthopaedic medicolegal practice since their introduction.
Orthopaedic Surgeon

I must confess that I have not noticed a huge difference as a result of the Jackson reforms. Those differences I have noticed relate to claimant firms asking for a more detailed and precise breakdown of costs (but I used to do that anyway), firms being adamant that there are Court imposed timetables

to stick to (but I tend to keep to deadlines anyway) and a tailing off of the very few fasttrack cases I have undertaken.
Psychologist