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Court of Appeal Provides Valuable Guidance on Jackson Reforms

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Lord Justice Jackson's recommendations, which were by and large implemented in their entirety and came into force on 1 April 2013, were intended to be "*a coherent package of interlocking reforms, designed to control costs and promote access to justice*". As far as many commercial litigators were concerned, the most significant elements of this package involved costs budgeting and a firmer approach to case management.

While some judges appear to have embraced the new philosophy and enforced strict compliance with procedural requirements and deadlines, others have continued to take a less draconian approach. The most notorious example of the former attitude was the decision of Master McCloud in *Andrew Mitchell v News Group Newspapers Ltd* [2013] EWHC 2179 (QB). In this case, having failed to file a costs budget until an hour before the CMC (when it should have been lodged seven days' earlier), the claimant's budget was limited to court fees and his application for relief from this sanction was subsequently refused. By contrast, in *Re Atrium Training Services Ltd and Connor Williams Ltd* [2013] EWHC 1562 (Ch), the applicant was permitted a fifth extension of time for disclosure (albeit on an *unless* basis) because the respondent had failed to demonstrate that it would suffer a real prejudice if the extension was granted.

The Mitchell case has now been heard by the Court of Appeal ([2013] EWCA Civ 1537), which has endorsed the robust approach taken by Master McCloud and held that, going forward, relief from sanctions for a failure to meet deadlines or otherwise comply with rules and orders "*should be granted more sparingly than previously*". In particular, the Court of Appeal indicated that the grant of relief would only normally be appropriate where the breach in question was truly trivial or there was good reason for it (essentially an unforeseen reason outside the control of the party concerned, such as an accident) and that requests for extensions of time were likely to be viewed far more favourably than retrospective applications for relief.

While acknowledging the harshness of its decision, the Court of Appeal expressed a hope that the judgment would "*send a clear message*" to the legal profession and reiterated that the Jackson reforms represented a "*change in culture*" aimed at ensuring routine compliance with rules, practice directions and orders.

Following this decision it seems likely that there will be fewer expressions of judicial disapproval regarding parties who have tried to take advantage of an opponent's technical breach of the sort seen in *Re Atrium* (where Henderson J warned litigants against opposing timely applications for extensions in circumstances where there was no prejudice) and *Rayyan Al Iraq Co Ltd v Trans Victory Marine Inc.* (23 August 2013) (where the defendant's attempt to exploit the claimant's mistake - serving particulars of claim two days late - was reportedly described as "*regrettable*").