Sanctions and justice

My article entitled "An attitude problem...." (*NLJ*, February 19) was based on anecdotal reports of what the judges were being taught at the celebrated "Woolf seminars" and on press releases from the Lord Chancellor's Department ("the knives are being sharpened ... "). It suggested that whatever the judges were being taught might be shared with practitioners in the trenches. It made the point that judges implementing the well-intentioned and potentially beneficial Woolf revolution should also be aw of the realities of life for ...nts involved in litigation and should not make unreasonable orders or maintain unrealistic deadlines. Most problems in litigation arise not because solicitors are idle or incompetent but because, sometimes, clients lack resources and time. So I concluded:

"The new regime is going to be difficult enough as it is but it will be far harder if the judges see it as a procedural battle between themselves and practitioners with practitioners exposing themselves to sanctions every inch of the way."

It was written before re ; Mr Justice Lightman's article on sanctions in your March 5, edition but apparently given as a speech to a judicial seminar on February 9. Having read it, I can only say that the lessons are being shared to an extent but my worst fears about these seminars appear to be confirmed.

His Lordship is thankful that he is no longer a practitioner and so is not exposed to the increased risks which he describes with such relish. He thinks that practitioners will face a "tidal wave of claims". He anticipates keeping the Court of Appeal busy. That may have sounded amusing at a sociable gathering of like-minded judges but I would not like to show it to my clients when their cases are in the tender care of court centres round the country who will have been influenced and encouraged by this particular attitude.

"Sanctions" are all very well but the context in which they are imposed needs to be tempered with awareness of the commercial realities faced by practitioners and their clients. I do not wish my clients to be at risk of a debarring order just because they have been unable, despite my best efforts, to give me full instructions or "information" and some keen but over-stretched procedural judge in a distant court gets all enthusiastic about "case management" without seeing the bigger picture. I want to explain why, in all good faith, a response may take time because my clients are unavailable, genuinely uncontactable or, as is most likely, third party input is required. I want my arguments to be dealt with on their merits, not to follow a party line imposed by the Judicial Studies Board. Four or five extra weeks to enable the proper preparation of a statement of case or the provision of further information will not really undermine the pristine elegance of the system, whether we are talking fast-track or multi-track.

The new system may be better at achieving its aims and better in the long run at achieving "justice" (however that is now defined). However, the "front-loading" referred to by Mr Justice Lightman as a good thing in driving cases out of the system at an early stage will not make dispute resolution any cheaper for clients. It will, as an absolute certainty, "front-load" their legal costs in preparing to comply with the new requirements. Clients are not going to like the new "terms of business" which solicitors will shortly be issuing for their information but that is another story.

Niggardly time limits and swingeing sanctions create neither the perception nor the reality of justice. Better justice derives from increased understanding of customer needs and more efficient court administration and communication. If the newly available sanctions are imposed over-robustly, the penal culture will simply increase satellite litigation. The courts should temper their enthusiasm to penalise and expunge cases from the system. They should apply the rules in a measured reasonable way which will avoid the flood of appeals and tidal wave of insurance claims which Lightman J foresees.

I live in hope, not expectation, but I think that the judges and those charged with their training should stop treating practitioners as the problem. They should apply the new rules with an awareness of how solicitors and their clients actually operate. Sanctions should not be the sole focus of the new system. In which case, the new rules have some hope of working in the way which best becomes them: to benefit customers of the system rather than to gratify the judges and satisfy the Treasury. o

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Practice Direction

Is it possible that the genius in the Lord Chancellor's Department who arranged for hundreds of pages in the new Civil Procedure Rules to be headed (in the Internet version at least) with the words "PRACTICE DIRCETION" (*sic*) is related to the Home Office functionary who proof-read the report of the Stephen Lawrence inquiry?

I think we should be told. o

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Statutory privilege defences
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• a new fast-track procedure which will provide a prompt and inexpensive remedy in less serious defamation cases.

The main provisions not yet in force are:

• Sections 2.4: Offer to make amends: This is a new statutory defence for a person who has offered to make amends for his defamatory publication. It should encourage early disposal of many claims. New Rules of Court will be required.

• Sections 8-11: Summary disposal of claim: These sections introduce new powers of summary disposal of defamation claims exercisable by the judge sitting without a jury. Summary relief can include damages up to a ceiling of £10,000 and an order that the defendant publish a summary of the judgment.

Last June, Geoff Hoon MP, Minister of State at the Lord Chancellor's Department, said that the Government intended to bring the outstanding provisions of the Defamation Act 1996 into force as soon as reasonably practicable. It still does.

• Last week Lord Lester was also busy. He tabled a question for the Lord Chancellor asking why the new Civil Procedure Rules abolished the Old English word "writ" and the mediaeval Latin word "affidavit" whilst preserving the legal Latin word *certiorari* and the legal Latin word *mandamus*.

The Lord Chancellor replied that "affidavit" had not been abolished and the committee had not yet got around to dealing with *certiorari* and *mandamus*. As for writ it had been modernised into "Claim Form". It was all a question of modernisation but not dogmatic modernisation. o