

Costs Lawyer Standards Board

28 May 2020

Impact of coronavirus on Costs Lawyers Survey results

In May 2020, we surveyed Costs Lawyers about the impact of coronavirus on their practice and their clients. We received responses from practitioners with a variety of practising arrangements, including those working in solicitors' firms (47% of respondents), in costs law firms (33%), as sole practitioners or consultants (17%) and in-house (3%). Overall, 21% of the profession contributed to the survey.

In general, the profession is cautiously optimistic, but there is uncertainty about what the future holds. Some Costs Lawyers have experienced a drop in their workload, while others have more work to do than before the crisis. A small (but not insignificant) minority are worried about the viability of their practice or their ability to continue as a Costs Lawyer. The majority have embraced new technologies or innovations and are working from home for the first time. This has brought benefits, through increased flexibility, but also challenges, ranging from managing paper-based systems to the health impacts of isolation. The courts have been slow to adapt, which is causing delays and difficulties with hearings. Some Costs Lawyers are concerned about being able to obtain enough CPD points in 2020.

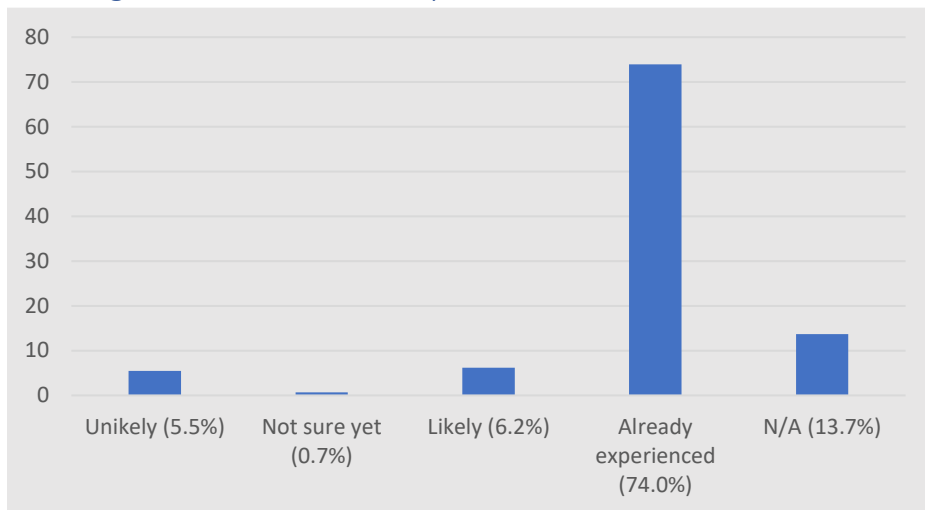
This report contains a detailed analysis of the survey results. If you would like more information about the survey or our findings, please email enquiries@clsb.info. Readers should be aware of limitations in the survey data, due to sample sizes for some categories. These are explained on page 11.

Personal impacts during 2020

We asked Costs Lawyers how likely it was that they (personally) would experience the following impacts of coronavirus during 2020.

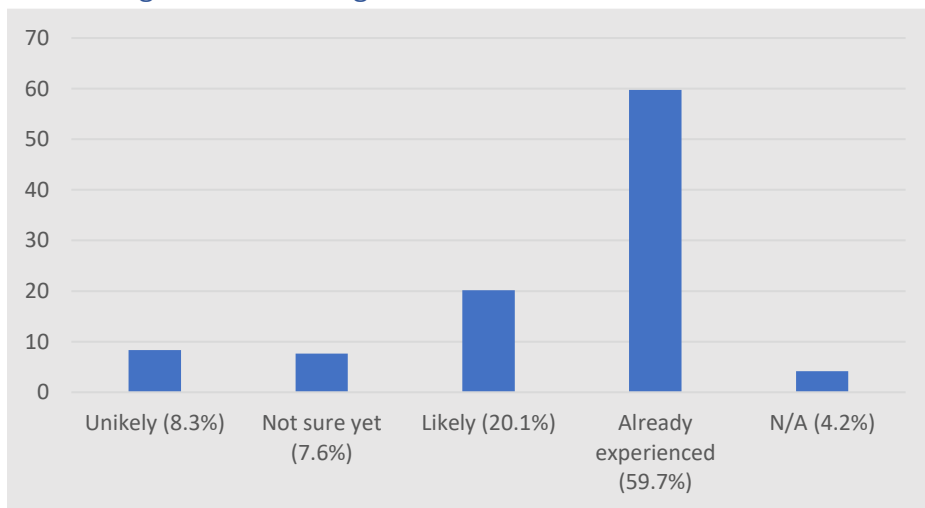
74% of Costs Lawyers have begun working from home due to coronavirus. The profession has shown considerable resilience in its ability to provide services remotely. Home working also comes with risks that need to be considered, like data security issues and supervision of junior team members.

Working from home when they weren't before



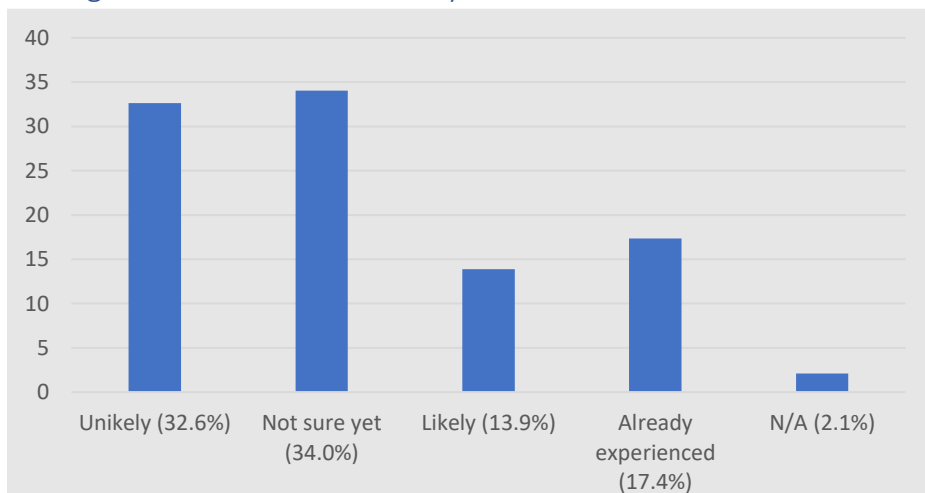
100% of Costs Lawyers working in-house have either already embraced new technologies due to coronavirus or are likely to do so in 2020. 83% of Costs Lawyers working in costs law firms, and 84% of those in solicitors' firms, can say the same. Only 34.8% of sole practitioners have embraced new technology, but this might be because uptake was already high.

Embracing new technologies or innovations

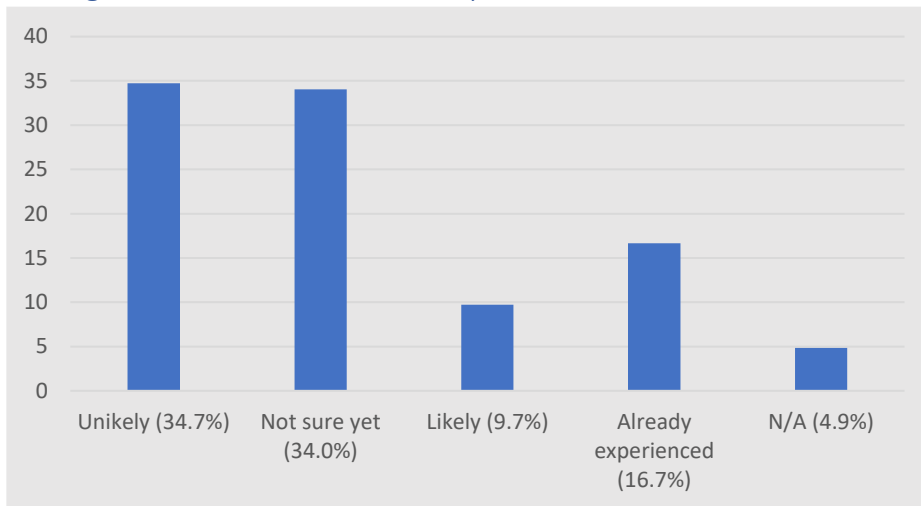


34% of Costs Lawyers are not yet sure whether their workload will rise or fall due to coronavirus. This statistic increases to 36% for those working in legal aid costs and 44% for those who specialise in commercial litigation costs.

Having less work to do than they had before



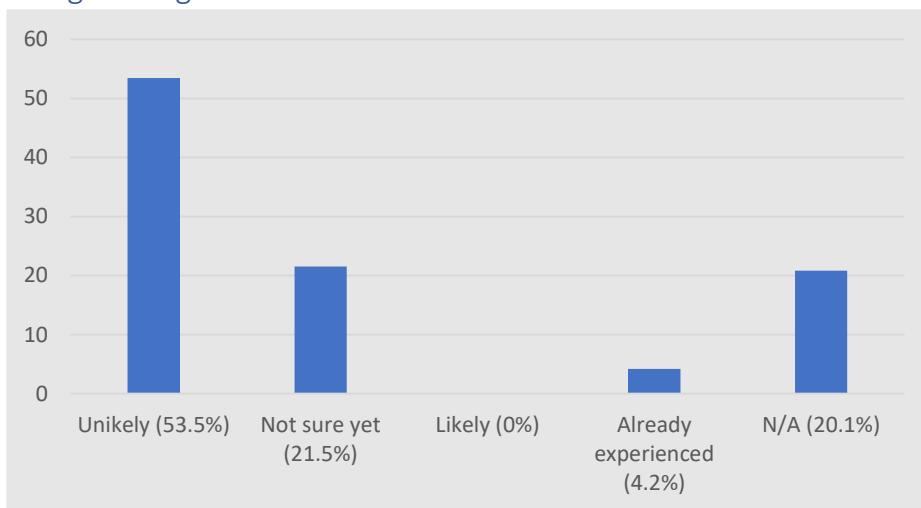
Having more work to do than they had before



35% of sole practitioners have already experienced a decrease in workload and a further 13% believe that a decrease is likely in 2020.

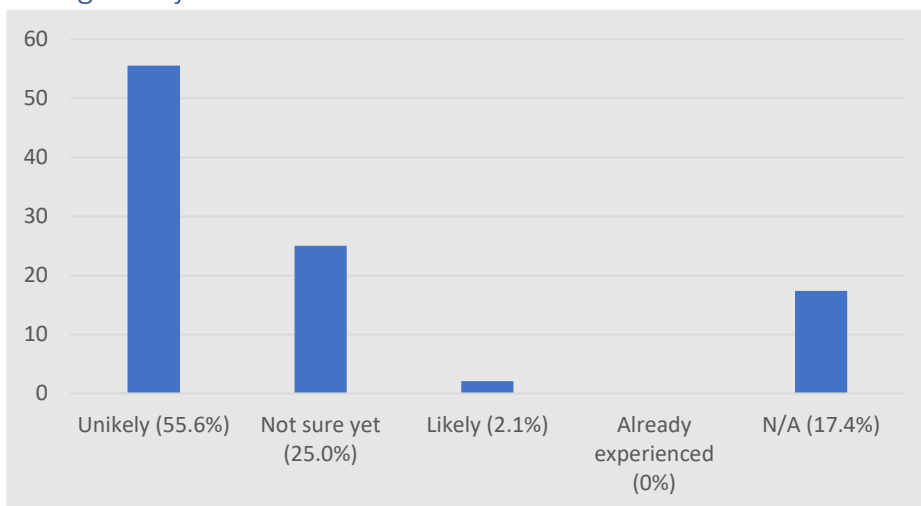
39% of Costs Lawyers working in solicitors' firms think a decrease in workload this year is unlikely, while only 26% of Costs Lawyers who work as sole practitioners or in costs law firms feel the same.

Being furloughed



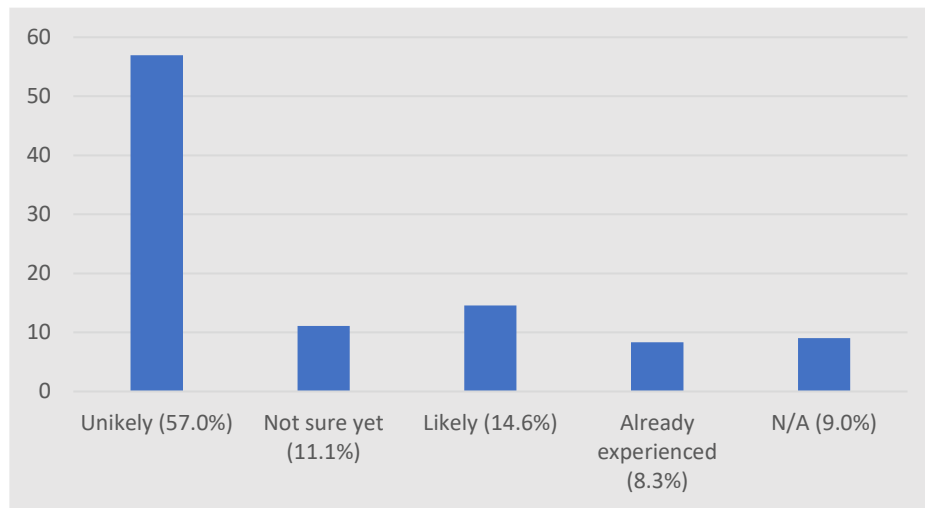
62% of Costs Lawyers working in solicitors' firms are confident that they are unlikely to be furloughed this year, while only 53% of Costs Lawyers working in costs law firms are equally confident. The prevalence of furlough in costs law firms is slightly higher than in other practice types, at 6% (compared to 4% in solicitors' firms).

Losing their job



5% of Costs Lawyers who specialise in commercial litigation costs believe it is likely they will lose their job in 2020, compared to 2% of Costs Lawyers working in personal injury or clinical negligence (PI/CN) costs.

Experiencing difficulties in providing a full or timely service to their clients



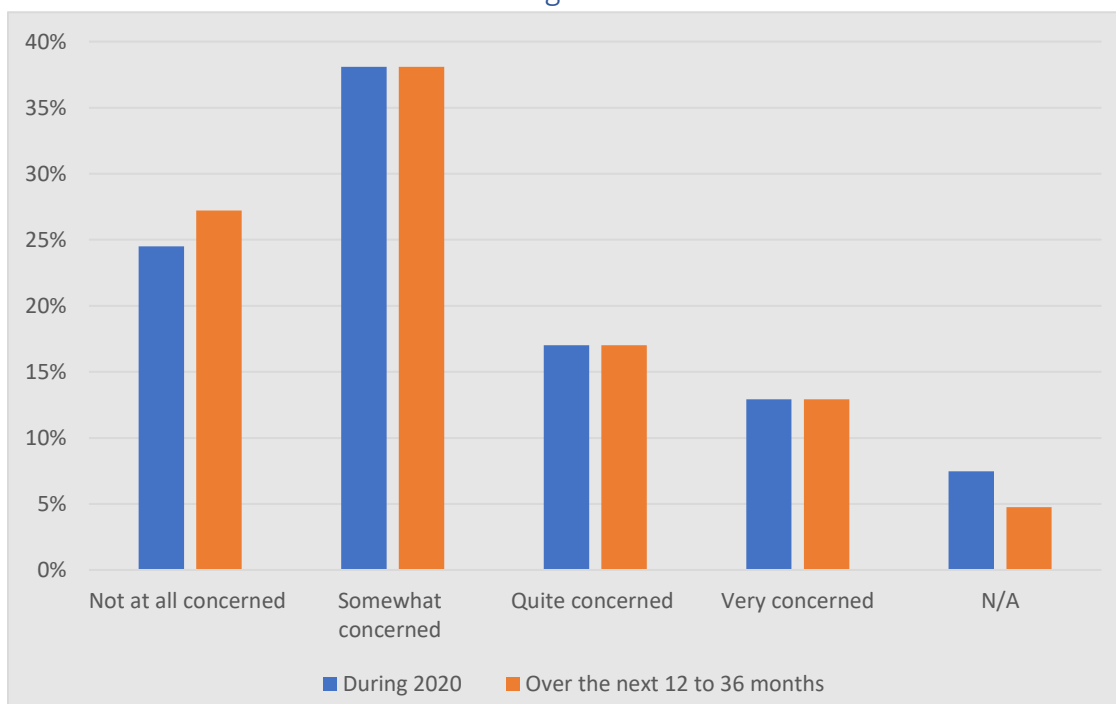
13% of sole practitioners have already experienced difficulties providing their usual level of service to their clients. This statistic falls to 9% for those working in solicitors' firms and 4% for those in costs law firms.

52% of Costs Lawyers working in solicitors' firms find it unlikely they will experience difficulties in providing services to clients in 2020. This means that just under half have at least some doubt about their ability to ensure service continuity.

Practice area impacts in the short and medium-term

We asked Costs Lawyers how concerned they were about the following impacts of coronavirus – during 2020 and over the next 12 to 36 months – on their own area of practice.

The number of client instructions falling



43%

of legal aid Costs Lawyers were not at all concerned about falling client instructions, either in 2020 or in the medium-term.

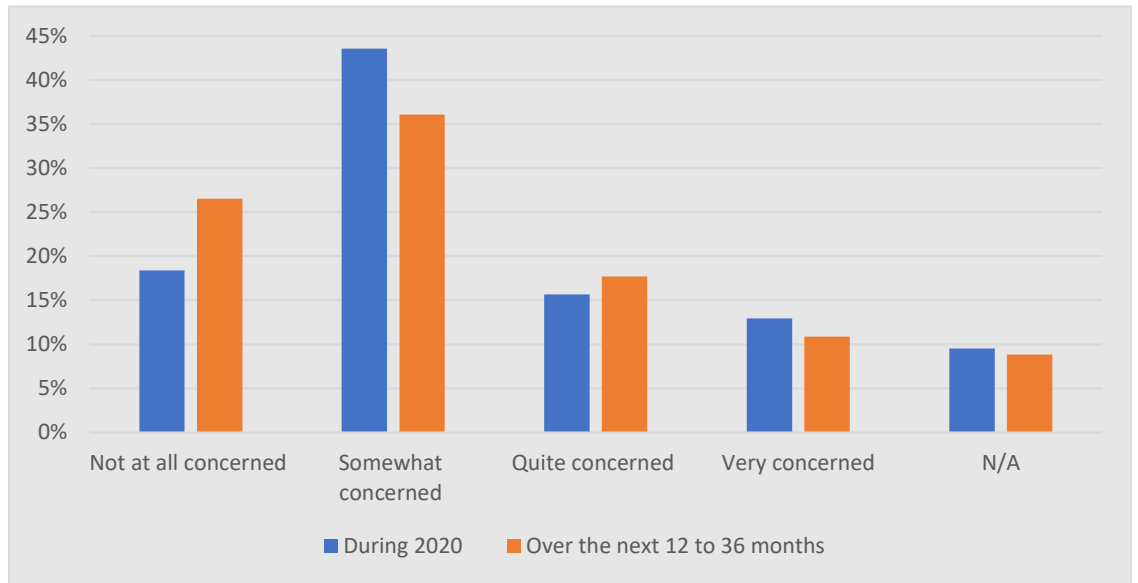
35%

of Costs Lawyers specialising in PI/CN costs were quite concerned or very concerned about falling client instructions in 2020, rising to 39% in the medium-term.

33%

of Costs Lawyers specialising in commercial litigation costs were not at all concerned about disputes taking longer than usual to conclude in 2020, rising to 43% in the mid-term. This compares to just 13% of Costs Lawyers specialising in PI/CN costs being not at all concerned about litigation delays in 2020 (and 18% in the medium-term).

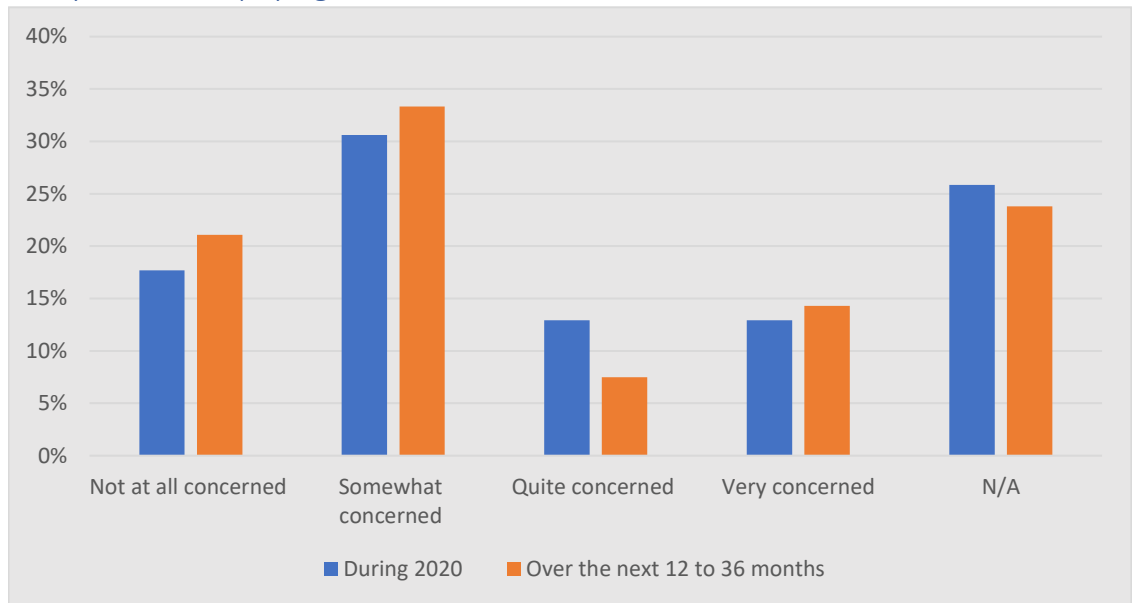
Disputes taking longer than usual to conclude



42%

of Costs Lawyers working in costs law firms are quite concerned or very concerned about delays in receiving their fees during 2020, dropping to 36% in the medium-term. This compares to just 28% of sole practitioners and 15% of those in solicitors' firms having the same concerns about being paid (dropping to 24% and 13% respectively in the medium-term).

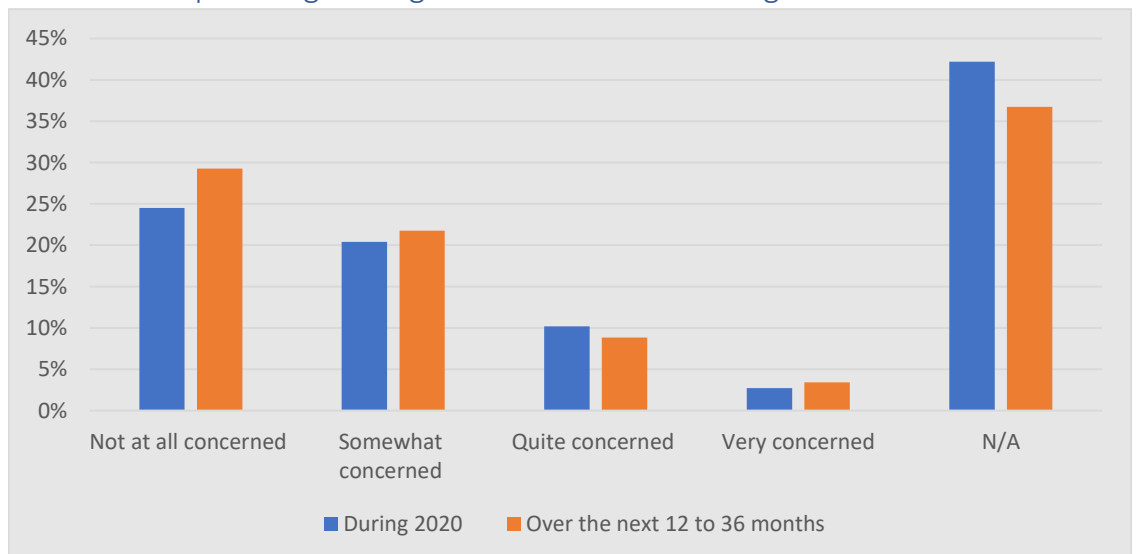
Delays in clients paying fees



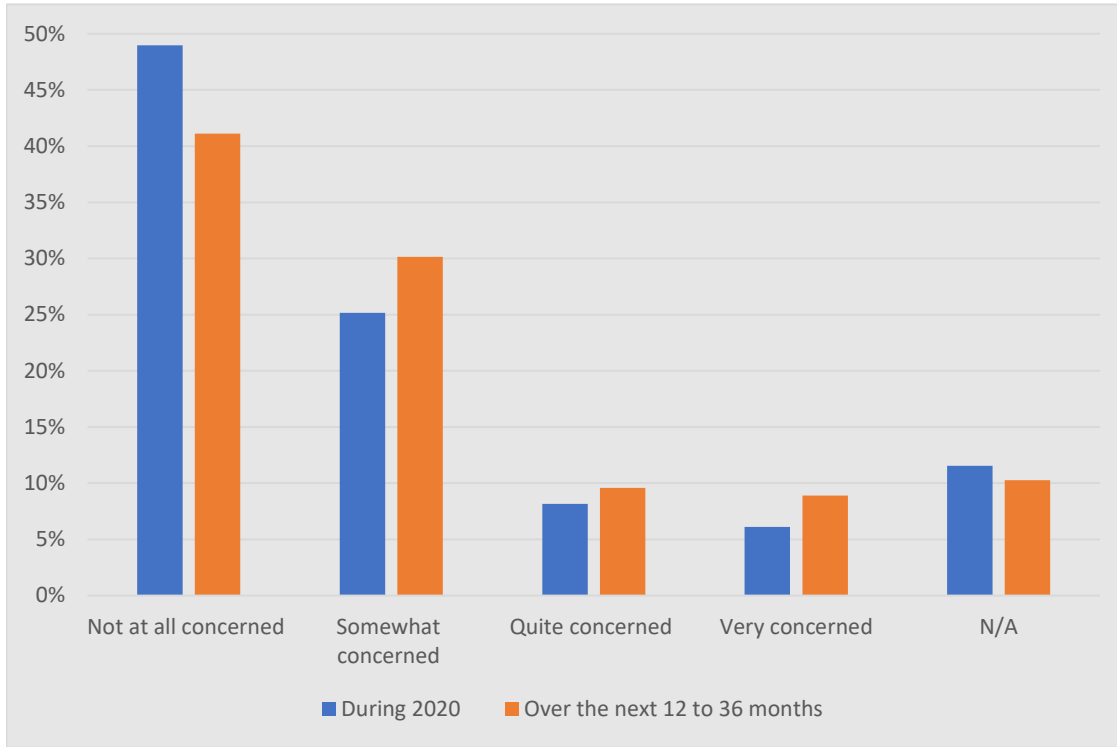
19%

of Costs Lawyers working in costs law firms are quite concerned or very concerned about supervising colleagues during home working in the medium-term, compared to just 9% in solicitors' firms.

Difficulties supervising colleagues due to home working



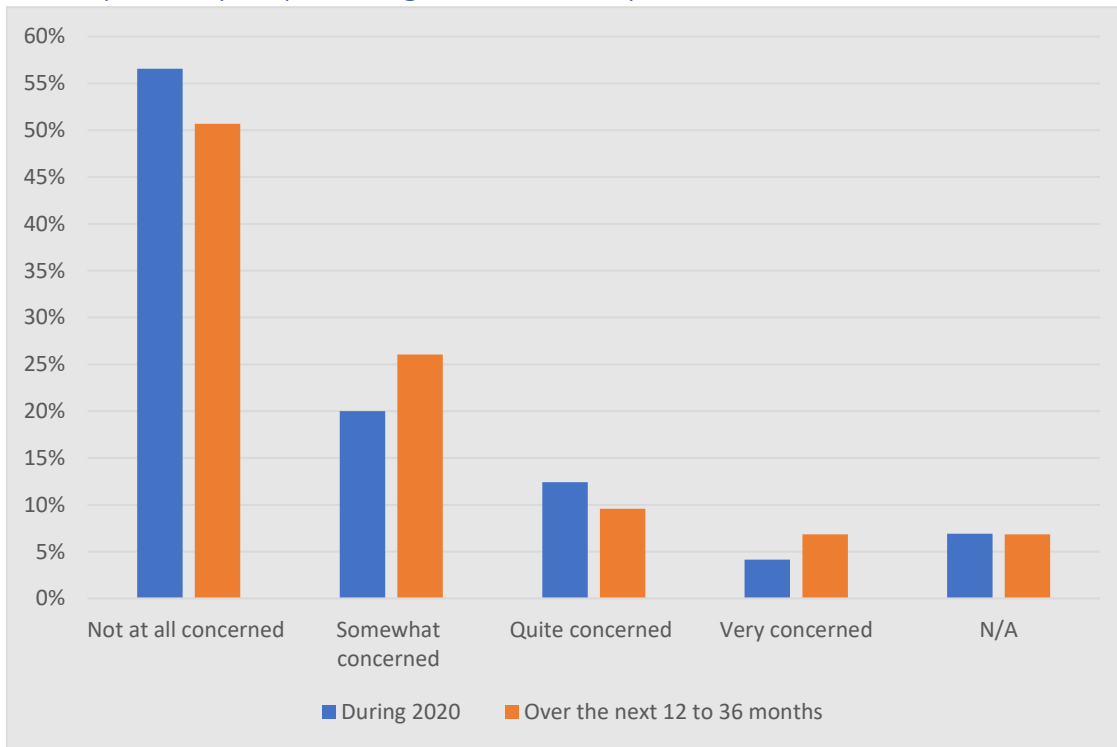
My firm or business ceasing to trade



10%

of Costs Lawyers working in costs law firms are very concerned about their firm’s viability in 2020, compared to just 4% of sole practitioners and 4% of those working in solicitors’ firms. This rises to 15% in the medium-term (compared to 8% for sole practitioners and 6% for those in solicitors’ firms).

Inability to carry on practising as a Costs Lawyer



4%

of legal aid Costs Lawyers are quite concerned or very concerned about being able to carry on practising due to coronavirus. This statistic is significantly higher for those practising in the PI/CN area (10% in 2020 and 19% in the medium-term) and even higher for those specialising in commercial litigation costs (24% in 2020 dropping to 20% in the medium term).

General impacts of coronavirus on Costs Lawyers

We asked Costs Lawyers to tell us about any other impacts of coronavirus (positive or negative) on their practice, their clients or their ways of working. Five themes can be drawn out from the responses. Below is a sample of comments in relation to each theme.

Theme 1: The profession has embraced technological change more quickly than it would have done in the absence of coronavirus.

"The embracing of technology is a positive step forward and perhaps many of us needed it forced upon us to really engage with it."

"Creates new ways of adapting and learning for the better."

"The legal world has not been ready for the technological shift required to operate properly remotely."

"Forced practice to embrace remote working technology."

"More electronic files being received in place of papers files, which is a positive step in my opinion."

"Working from home has the plus of no commuting but there is the minus of social isolation."

"Working from home has many disadvantages, not least the fact that there is no collaborative working which adds to administration."

"Video hearings are good - saves travel and early starts. Isolation is bad. Face to face meetings are better. I prefer an office environment."

"I have found working from home to be a positive change - less stress around commute."

"Not experienced any real difficulties in working from home full time. Most opponents have been willing to provide extensions for deadlines and accept service by email."

"Communications are very difficult as many firms were not set up to deal with everybody working from home."

"Data security of people working from home and potential breaches of GDPR."

"Physical movement of documents and lack of admin support causes difficulties."

"Difficulty in managing team anxiety and performance."

Theme 2: There are advantages to working from home, but there are challenges too. Generally, balance and flexibility are preferable.

"The impact on working patterns has been instant and has caused many to rethink the way they work and, in particular, whether office working is necessary ... There are some difficult questions to tackle moving forward because we have been able to demonstrate full time office working is not required, but flexibility will be impacted by restrictions on hot-desking and the need to maintain social distancing at work."

"The swift changeability of Covid-19 affecting personal and work responsibilities and practices impacts upon physical and mental health."

Theme 3: Sole practitioners are insulated from some of the practical impacts of coronavirus given their existing ways of working.

"I am 74 years of age and have worked from home since 1979 so other than receipt and delivery of paper files there has been little impact or change on my day to day practice."
[sole practitioner]

"Nothing has changed for me at all." [sole practitioner]

"I have been a sole trader for about 18 years. Working mainly from my office at home is 'the norm' for me." [sole practitioner]

Theme 4: There is some concern about decreasing instructions and job security, but not across the board.

"Salaries have been cut across the board in my firm."
[solicitors' firm]

"There has been at least a 50% reduction in instructions which is very worrying, so how we work going forward is the least of our worries." [costs law firm]

"My working days have been reduced from 5 to 2 days a week." [solicitors' firm]

"At the moment I have been furloughed so cannot answer all questions." [costs law firm]

"Apart from budgeting instructions falling there has been no huge impact as I work for a full service law firm."
[solicitors' firm]

"I would imagine it is pure coincidence but I have found my workload significantly increase since lockdown began."
[sole practitioner]

"I am fortunate in working for a good well-resourced employer." [solicitors' firm]

"Hard to predict the future as it is more dependent upon my clients ceasing to trade ... I really do not know what the future holds. Also need to look at increased fixed costs (Intermediate Track etc) and what happens with that."
[sole practitioner]

"Solicitor clients haven't yet realised that cash flow is key. When they do the floodgates of work will open."
[sole practitioner]

Related theme:

Pressures facing clients in the current environment are having knock-on effects for Costs Lawyers.

"Clients take longer to respond/give instructions and more importantly pay for work done."

"The impact of Coronavirus on my clients' businesses has focussed their minds on billing and making that a priority."

“Hearings are 'clunky' and amateurish with (particularly Claimant) solicitors losing connection with their mobile phones.”

“The Court has made a good effort to embrace technology, at least in the Senior Courts Costs Office and Queen's Bench Division. However it is apparent that some Masters in the SCCO won't do full detailed assessment via video unless absolutely necessary.”

“Concern over delays in court hearings and conducting a detailed assessment hearing over telephone or video call.”

“It is surprising how paper reliant we remain. For example, whilst some Courts may wish to try and continue to do shorter costs hearings remotely, the practicalities of getting either paper files or complete electronic bundles to the Court are very challenging.”

“Remote paperless working is becoming the norm. I wonder how this will work at Detailed Assessments.”

“Bills being sent to the Court are experiencing a delay in getting assessed.”

“Lack of guidance from courts and courts struggling in the long run with capacity.”

Theme 5: Courts are trying to keep up with technological change, but there is still uncertainty, delay and practical challenges (particularly in relation to detailed assessment hearings).

“Remote hearings are more tricky than in person. Great to not spend time travelling but one needs a decent broadband signal for video conferencing and communications between client, judge and representatives at the hearing [and this] can be quite difficult. Also harder to gauge the judge's reaction to submissions if we can't see his or her face! The different modes of video conference are confusing. Zoom? Teams? Skype? These are taking some getting used to, but will probably work very well once we are all used to them.”

Key messages for the CLSB

We asked Costs Lawyers what else the CLSB could do to support them in meeting their professional obligations in the current circumstances. We were encouraged by respondents' positive feedback about the measures we have already taken to provide assistance and guidance.

Otherwise, one clear message emerged from responses to this question.

18% of respondents expressed concern about achieving 12 CPD points (as required under the CLSB's Continuing Professional Development Rules) in 2020.

What we have done about CPD in 2020 so far.

In March 2020, we issued a [Policy Statement](#) about how we would supervise and enforce CPD requirements in 2020. It says that in 2020 we will not enforce:

- the 6-point cap on e-learning activities; or
- the restriction on the type of e-learning activities that qualify for CPD points.

This means that a Costs Lawyer can obtain all 12 of their required CPD points through online learning activities in 2020 if they need to.

Survey respondents welcomed the changes made.

“Allowing all CPD to be obtained remotely is a very helpful step - thank you for that.”

“The expansion of online seminars for CPD was a good idea.”

“All good so far.”

But some Costs Lawyers are still finding it difficult to access CPD resources this year.

There appear to be two main reasons why Costs Lawyers are still having difficulties meeting their CPD requirements in 2020.

Lack of budget for learning and development in the current climate.

“Obviously money is tight with myself and my firm, which is a small / medium sized firm. As such currently there is limited funds available for training. I am looking into free forms of training but this is proving difficult.”

“I am not sure my Company will pay for webinars in order for me to obtain sufficient CPD points when attendance at one ACL Conference would have gained 5-6 CPD points for significantly less than we would have to pay for 5-6 hours on webinars.”

“CPD points and training [are difficult to obtain] when there is no budget at present in the firm and no courses face to face where more than 2 points can be gained. Most online are 1 point.”

Difficulties accessing relevant, cost effective e-learning activities.

“[You should] reduce the number of CPD points required to reflect the reduced availability of seminars and training sessions that are costs law specific.”

“I haven't found any online courses that aren't really expensive. It would help if the CPD requirement was either reduced for this year or if some free / inexpensive online courses were arranged.”

“We are finding it hard to gather useful CPD. There are plenty of online offerings but they are dear and many are not on topics which we find useful.”

“Webinars are being cancelled. CPD may become a struggle as I'm usually well ahead of where I currently am this year.”

“[T]he opportunities for CPD are limited to online offerings that have decreased substantially since March.”

How we will respond.

We will act on this feedback by:

- Approaching service providers to identify relevant CPD that is available for free (or at low cost) and inform Costs Lawyers about the resources available.
- Encouraging ACL to add to their online CPD resources.
- Considering whether, when and how it might be appropriate to further adjust our CPD requirements for 2020.

Other messages for the CLSB

One survey respondent suggested we should **reduce practising fees** for the next 12 to 36 months. We can assure the profession that we will take account of the financial impact of coronavirus on Costs Lawyers and firms when setting our budget (and thus the practising fee) for 2021. Ultimately, our ability to adjust the practising fee is constrained by the Practising Fee Rules set by the Legal Services Board (LSB). Each year's fee is subject to [LSB approval](#).

Individual respondents made several other suggestions that fall within the representative role of the Association of Costs Lawyers (ACL) rather than the regulatory role of the CLSB. We will ensure that ACL is aware of Costs Lawyers' views, so ACL can respond accordingly.

- Asking **employers to pay for practising certificates** for employees.
- Making representations to government in relation to the **financial assistance available to workers**, particularly to extend cover to sole practitioners who work within a limited company structure (taking their remuneration as salary and dividend payments).
- Enabling Costs Lawyers to gain **CPD that is relevant to the profession** and providing additional guidance for practitioners on how to manage detailed assessments during this time.
- Advocating the **use of qualified Costs Lawyers** over the use of unregulated costs draftsmen to the public at large.

Endnote: Limitations of the survey data

Readers of this report should be aware of limitations in the survey data. The sample size for certain types of practitioners – particularly those working in-house and those specialising in own-client costs – were inevitably small, due to the small population of Costs Lawyers to draw from in these areas.

While all Costs Lawyers were invited to complete the survey, it is possible that the Costs Lawyers who responded were particularly interested in the survey because they felt personally impacted by coronavirus. This may lead to an overstatement of impact in some areas.

While we have tried to ensure that all Costs Lawyers received the survey – including through alternative channels where we received an “out of office” response via email – it is possible that some Costs Lawyers who have been furloughed did not receive the survey. This may lead to an understatement of impact in some areas.

Despite these limitations, the composition of respondents broadly reflected the demographics of the profession as a whole, in terms of both practice areas and working arrangements. The survey therefore provides a helpful indication of where challenges and opportunities might lie for Costs Lawyers over the coming months and years, as we all respond to these unprecedented times.