

Introduction and General Points

In our initial response to the Civil Justice Council's Costs Working Group Consultation, CILEX provided evidence against the four groups of focus. Within our response we were keen to ensure that both practitioner and public focuses were provided.

CILEX's Response to the CJC Regarding Belsner v CAM Legal Services Ltd [2022] EWCA Civ 1387

In the case of Belsner v CAM Legal Services Ltd [2022] EWCA Civ 1387, CILEX will not look to discuss the intricacies and outcomes of the case but rather focus on the underpinning principles in relation to [CILEX Regulation's code of conduct](#) and how we would expect our members to respond in such a situation.

At the core of the above-mentioned case is the principal concerns of the solicitors' compliance with their regulatory body's code of conduct regarding information pertaining to all associated costs as well as information provided to their client to ensure they were capable of making an informed decision about their case. An additional wider issue is mentioned by Sir Geoffrey Vos, Master of the Rolls, regarding the lack of definition between contentious and non-contentious business, which we discuss further on.

As stated by CILEx Regulation, the code of conduct; "sets out the standards and requirements expected of members of our regulated community". Within the code, points 3.1¹ and 5.7² directly relate to matters involving a CILEx members honesty and integrity, both with financial and wider service matters. As such CILEX feels confident in our members' awareness to ensure clients are aware of costs as well as helped to make informed decisions due to honest and accurate information as stated in point 5.8³. In addition to the above, it is made clear to members that under point 5.9, clients should be fully informed about complaints processes of both the Legal Ombudsman or CILEx Regulation. The above points illustrate safeguards put in place; however, we appreciate that certain circumstances may for whatever reason prevent full disclosure from happening, which can have potentially damaging impacts for parties

¹ CILEx Regulation Code of Conduct: 3.1 be honest in all your dealings and in all financial matters;

² CILEx Code of Conduct: 5.7 adequately explain and agree with your client the terms upon which your services are to be provided, including the extent of the services, payment and the likely or anticipated cost, outcome and timescale for the advice and services to be provided;

³ CILEx Code of Conduct: 5.8 provide prompt, clear and accurate information and advice to your client, advise them openly and honestly and keep them up to date with information they need about the work you are performing for them within agreed timescales;

involved. Areas such as the requirement for consent as well as contentious v non-contentious within the Belsner case do raise further considerations towards current definitions.

Within the transcript, Sir Geoffrey Vos, Master of the Rolls, makes the distinct acknowledgement between what is considered as contentious and non-contentious business⁴, to which he later adds about the need for legislative change regarding their definitions⁵. Just over half of CILEX members responding to our call for evidence regarding the Costs Working Group, felt that the definitions required assessment and change. Within our feedback we acknowledged how a stronger definition of when something stops being considered as non-contentious and becomes contentious is required as well as how our members felt that pre-action protocols should be placed under the definition of contentious.

Lastly, CILEX is aware that our members currently have to ensure that the initial retainer letter sent to their client is 100% accurate, and that within the letter any potentially anticipated further various stages in the claim in which the client's possibly liable for a costs increase are included. As such we have demonstrated the existing regulatory and industry standards that should help mitigate issues such as that in the Belsner case.

Impacts and Conclusions

As noted above, CILEX feels confident regarding existing regulatory arrangements regarding the requirements for honest information exchanges as well as the offering of information for repercussive routes/resolution.

Indeed, one of the biggest impacts that the Belsner case brings to the professions is a potential loss of trust between legal professionals and clients. Professional relationships such as that of a legal practitioner and a client are akin to that of a healthcare professional and a patient regarding trust, transparency, and the option to make informed decision. As such CILEX has focused on the concept of holistic improvement above that of potential costs elements as they ultimately inform and underpin the consent and disclosure of costs.

CILEX believes that further active encouragement or guidance would be beneficial in providing practitioners with further understanding regarding considerations they make as well as wider impacts. These could utilise real or created scenarios to help further illustrate the principles of transparency as well as possible outcomes.

⁴ Belsner v CAM Legal Services Ltd [2022] EWCA Civ 1387, Sir Geoffrey Vos, Master of Rolls: "That issue turns broadly on whether the claims made within the pre-action portals are properly to be regarded as "non-contentious business" (as the Solicitors contend), or as "contentious business" (as the Client contends). That distinction has been entrenched in statute for many decades."

⁵ Belsner v CAM Legal Services Ltd [2022] EWCA Civ 1387, Sir Geoffrey Vos, Master of Rolls: "First, the distinction between contentious and non-contentious costs is outdated and illogical. It is in urgent need of legislative attention"

Active promotion to both legal professionals and public of ‘case scenario discussions’ is a further possibility as a promotional tool for best practice as well as encouraging possible clients to ask the right questions to acquire their ideal outcomes. CILEX appreciates that the creation of any guidance or public legal education can be a lengthy and complex process; however, we feel that if the Costs Working Group is undertaking improvements in other areas, this may be a worthwhile inclusion.

CILEX does however note possible concern for any mandatory changes to regulatory codes of conduct or other actions, which could create tick box or otherwise onerous exercises for our members to fulfil. As stated above there are possibilities of circumstances between legal professionals and clients falling outside of a full disclosure scenario, which any change should consider.

Regarding contentious v non-contentious we still support our view made in our initial response to the CJC Costs Working Group regarding further refinement of contentious and non-contentious definitions, which we believe will help to provide both practitioner and public with a more clear-cut understanding of where matters lay in terms of the law. An impact clearly seen within this case is the confusion caused by two definitions which are so similar, and whilst the case found that the deductions to the client’s damages were fair and reasonable in line with the Solicitors’ (Non-Contentious Business) Remuneration Order 2009, the overall need to improve the definitions of these two areas still stands, which will provide a defined legal expectancy instead of potential issues arising such as in the Belsner case.

One last possible impact CILEX considers is that around costs, the claiming of fixed costs as well as further transparency and discussions regarding such outcomes with clients and legal professionals. CILEX Regulation has continued to work closely with the Legal Services Board regarding the [Competition and Market Authorities](#) work around consumer empowerment and price transparency within the legal services market. CRL-regulated entities are required to show certain pricing structures on their websites as standard to help potential clients make informed decisions. Whilst we appreciate that costs such as these are not appropriate and complex to place within an outward facing pricing plan, it may be beneficial to consider how such scenarios around costing can be disclosed to clients. However, such work should be carefully considered due to a firm’s sensitivity around costs as well as the possibility of larger firms offering lower costs in comparison to solo-operated and small to medium enterprises, which could cause a market imbalance.

CILEX concludes that in order to futureproof against such issues raised in the Belsner case, the maximum possible transparency with clients is required; however, in order to facilitate such a change, considerations to current underpinning legal definitions must be considered to lead from the top down.