**Further Response of the Association of HM District Judges to the Civil Justice Council Costs Working Group Consultation Paper – Implications of the Belsner decision**

1. In our response to the original consultation paper, the ADJ made the following points:

   (1) The current distinction between contentious and non-contentions business, and the specific provisions applying to the county court, are anachronisms.

   (2) If this area is to be the subject of fundamental review, there is no reasons to retain such distinctions.

   (3) The client care letter and other documents should make it clear whether the costs potentially recoverable from the client might exceed the costs recoverable from the other side.

   (4) There needs to be certainty for solicitors (and their clients).

   (5) The many changes to costs with CFAs and QOCS have resulted in much unnecessary satellite litigation.

2. The ADJ therefore respectfully agrees with the criticisms of the current unsatisfactory position as set out in particular at paragraphs [15] and [61] of the judgment of the Master of the Rolls in Belsner.

3. In addition to highlighting the current unsatisfactory position, the most significant implications of the decision by the Court of Appeal that cases that settle without exiting the portal are not "contentious business" within the definition in s. 87 of the Solicitors Act 1974 appear to the ADJ to be as follows:

   (1) In relation to the assessment of costs between solicitor and client, in addition to considering whether the costs are reasonable (with the assistance of the presumptions in CPR 46.9 (3)), it is also now necessary to consider whether the costs are "fair", having particular

regard to the factors set out at paragraph 3 of the Non-Contentious Business Order 2009. This is likely to result in an increase in disputes and a reduction in predictability.

(2) Since section 69(3) of the Solicitors Act 1970 is not applicable, all applications for assessment of solicitor/own client bills must now be issued in the High Court rather than the County Court, even where the bill does not exceed £5,000. While the ADJ notes the views of the Court of Appeal in Karatysz v SGI Legal that using the Legal Ombudsman scheme is likely to be a cheaper and more effective method of querying solicitors' bills than making an application in the High Court, it is unclear what evidence or argument was put before the Court of Appeal on this point, or what the likely reaction from practitioners will be.

(3) The ruling is also likely to have significant implications on "whiplash" claims made under the RTA Small Claims Protocol. Under the CPR PD27B procedure, such claims can leave the portal in order for court proceedings to resolve one particular issue, then re-enter the portal, leave subsequently to resolve another issue, and so on. According to the latest data published by OIC, in the 3 months to 30 September 2022 91% of all claims presented through the whiplash portal in that period involved represented claimants. On the basis of the Belsner ruling, costs in such claims may be a mixture of non-contentious and contentious business.

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