



Reform of the Solicitors Act 1974, Part III

Consultation Paper



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1. Foreword

1.1 In *Belsner v CAM Legal Services Ltd* [2022] EWCA Civ 1387 (*Belsner*), the Master of the Rolls suggested that the distinction between contentious and non-contentious business in the context of solicitors' costs was 'outdated' and in need of 'urgent ... legislative attention'.¹ The **Civil Justice Council's (CJC)** May 2023 Costs Report reiterated these concerns, taking the view that:

*'The Solicitors Act 1974 is (in parts) clearly out of step with the reality of present-day litigation practice. The outmoded definitions of contentious and non-contentious business will become more pronounced as we move to a digitised dispute resolution system where parties will engage within the system well before "issuing" proceedings.'*²

1.2 In the aforementioned Costs Report, the CJC concluded that:

- It should be considered if a general order made under section 56 of the Solicitors Act 1974 might usefully provide an improved, helpful and workable scheme to deal with non-contentious costs
- An appropriate body should be invited to report on the need to revise the Solicitors Act 1974, given the intended digitisation of dispute resolution.³

1.3 In early 2024, the CJC approved the establishment of a **Working Group (WG)** to review the current regime for the regulation of solicitor and own-client costs, including the division in the treatment of contentious and non-contentious costs.

1.4 The WG was tasked with identifying the background to the legislation, current regulatory regime, and potential options for reform. The terms of reference are set out at [Appendix B](#). The membership of the WG is set out at [Appendix C](#). The consultation paper has been prepared by the WG, and its contents should not be seen as representative of the views of individual members of the WG, members of the CJC or their associated organisations.

¹ [2022] EWCA Civ 1387 [15] [61].

² Civil Justice Council, *Costs Review – Final Report*, (2023), at [26].

³ *Ibid.* at [28-9].

- 1.5 In light of the above, this paper proposes amendments to the entire regime for the regulation of solicitor and own-client costs, presently contained in **Part III of the Solicitors Act 1974 (Part III)**. By solicitor and own-client costs, we mean the costs a client is charged by his own solicitor.⁴ Part III provides a mechanism which enables clients to challenge the fees they are charged, which in appropriate cases are referred to a Costs Judge for a process known as assessment.
- 1.6 The basic idea is obviously a good one in policy terms, but Part III is seriously out of date. Parts of the structure can be traced back to the Attorneys and Solicitors Act 1729. The regime as a whole reflects the concerns of a time when there was no developed system of regulation for solicitors. It is complex, formalistic and outmoded. Moreover, its complexities provide perverse incentives for costly litigation about costs, which have been criticised in a number of modern authorities (most notably *Belsner*). The resultant inefficiencies are wasteful of Court time and resources and damaging to consumers and businesses alike. We suggest that the time has come for introduction of a new, clear and simplified system reflecting modern regulatory and business practices.
- 1.7 The WG will conduct its work in three phases. The first step is the preparation of this consultation paper, which outlines the background to the issues and sets out the questions on which the CJC wishes to consult, presented in Appendix A.
- 1.8 The second phase is the consultation phase. Responses are invited to the questions raised in this paper. Please send them to CJC.SolicitorsAct.Consultation@judiciary.uk by **Thursday 16 July 2026**.⁵
- 1.9 The third phase will begin once the consultation phase has concluded. The WG will prepare its Final Report, with Recommendations, and submit it to the CJC during this phase. Once approved, its Final Report will be published. It is intended that this will be done by early 2027.
- 1.10 The remaining five parts of this paper will address the following topics:

⁴ In contrast to what are often called party-and-party costs, namely the costs which a successful party to litigation is entitled to recover from the opposing party.

⁵ Please note that the CJC aims to be transparent and to explain the basis on which conclusions have been reached. The CJC may therefore publish or disclose information provided in consultation responses, including personal information. For example, the CJC may publish an extract of a consultation response or publish the response itself. Additionally, the CJC may be required to disclose this information, such as in accordance with the Freedom of Information Act 2000.

- **Section II:** The current regime relating to solicitor and own-client costs.
- **Section III:** The rationale for reform.
- **Section IV:** Reform proposals.
- **Section V:** Implementation.
- **Section VI:** Final matters.

Mr Justice Adam Johnson (Chair of WG)

2. The current regime relating to solicitor and own-client costs

2.1 Two areas are relevant. First, there is the regime under Part III itself. Second, there is the wider regulatory framework of which Part III forms a part, including the provisions of **the Legal Services Act 2007 (LSA)**.

(A) The current Part III

2.2 The present Part III recognises a basic distinction between non-contentious business and contentious business; contentious business referring to work done on litigation matters and non-contentious business pertaining to work done on non-litigation matters. In fact, although it has not always been the case, the scheme as regards both types of business is now very similar; but with some differences which we note below.

Non-contentious business

- 2.3 For services which are *non-contentious*, solicitors and their clients may enter into non-contentious business agreement for the payment of remuneration (s.57(1) and (2)). The agreement must be in writing (s.57(3)). There is also a threshold test: the agreement must be '*fair and reasonable*' (s.57(5)).
- 2.4 If the agreement is not fair and reasonable, or, even if it is but it provides for remuneration at an hourly rate and the client challenges the time spent (s.57(6) and (7)), then (subject to the points made below), the costs can be assessed.
- 2.5 In practice, disputes in relation to non-contentious business agreements appear to be comparatively uncommon. Where an assessment is sought, it will generally take a similar form to the assessment of a solicitor and own-client bill in contentious matters under CPR 46.9/10, focusing on the particular items of work and expenditure which the client challenges, and applying the same broad 'fair and reasonable' evaluative factors.
- 2.6 There is a special provision under Section 56 for a committee, including the Lord Chief Justice, the Master of the Rolls and the President of the Law Society, to make Orders in respect of non-contentious business. A number have been made over the years. The

present Order is **The Solicitors' (Non-Contentious Business) Remuneration Order 2009 (the 2009 Order)**. There is no provision parallel to Section 56 in respect of contentious business, the costs of which are assessed under the **Civil Procedure Rules (CPR)**.

- 2.7 Business is non-contentious unless and until proceedings are begun (s.87), which leads to the odd consequence that work done in anticipation of proceedings – including pre-action correspondence and engagement through the pre-action Portals such as the **Road Traffic Accident Small Claims Portal (RTA Portal)** – is non-contentious. But if proceedings are begun, then the entirety of the retainer is thought to become contentious (see *Belsner* at [51]-[52] and [70]).

Contentious business

- 2.8 Clients and solicitors may also enter into a *contentious* business arrangement as long as they make an agreement in writing (s.59(1)), but some important express limitations are also imposed – for example, on the ability to enter into an agreement giving the solicitor an interest in any claim (s.59(2)(a)); or on the ability to provide for payment only in the event of success (s.59(2)(b)); or on the ability to exclude liability for negligence (s.60(5)); or on the ability of the solicitor to relieve him/herself of '*any responsibility to which he would otherwise be subject as a solicitor*' (s.60(6)).
- 2.9 Sections 60 and 61 contain some elaborately worded provisions, but as with non-contentious business, the effect is that costs incurred under a *contentious* business agreement will not be subject to assessment unless the Court determines that the agreement itself is not fair and reasonable, or it is but the agreement is for payment at an hourly rate and there is a dispute about the time spent by the solicitor (ss. 61(4A) and (4B)).
- 2.10 A particular feature of contentious business is that often the client will be able to recover costs from an opponent. Two particular provisions reflect this. Section 60(3) deals expressly with the so-called indemnity principle, and states that a client involved in contentious business may not recover more from an opponent than he is in fact liable to pay his solicitor. Section 74(3) imposes a similar restriction but in reverse. It provides that, in County Court litigation, a solicitor may not charge his client more than the client would be able to recover from an opponent. This latter restriction though is '*subject to rules of court*' and, under CPR 46.9(2), a solicitor and client can contract out of the requirement so long as they do so in writing.

Common provisions

- 2.11 Central to the overall scheme of Part III is the idea that the client's liability is established by the formal delivery of a bill by the solicitor. The bill is far more significant under the Part III regime than, say, an invoice delivered for fees due under a contract for professional services. The client's remedy and protection against overcharging is the ability to have the solicitor's bill assessed. The scheme of the common provisions in Part III is built around this central concept. A number of points follow from this.
- 2.12 To begin with, Section 68 recognises the Court's power to order a solicitor to deliver a bill.
- 2.13 Certain formalities are then specified in Section 69. But these statutory formalities are relatively limited. Essentially the bill must be '*signed*' (s.69(2)(A)) and must be '*delivered*' (s.69(2)(C)) in one of the ways permitted. As we will note below, the convention is also that the bill must qualify as a '*statute*' or '*statutory*' bill in other ways, but the contents of a '*statute*' or '*statutory*' bill are not in fact prescribed by the **Solicitors Act 1974 (the 1974 Act)**.
- 2.14 A solicitor may not sue on a bill until one month after it has been delivered (s.69(1)). This is to give the client time to decide whether to seek assessment.
- 2.15 As to the position of the client, this is as follows, under Section 70:
- 1) there is an automatic right to assessment if sought within one month of delivery of the bill (s.70(1));
 - 2) the court has a discretion to permit assessment if requested within 12 months (s.70(2));
 - 3) after 12 months there can be no assessment absent '*special circumstances*' (s.70(3)(a));
 - 4) the right to assessment is also usually lost (absent '*special circumstances*') if the client pays the bill, or if the solicitor sues and obtains judgment on the bill. Further, if the client pays the bill and then does nothing for 12 months, then there is no power to order an assessment and the ability to seek one is irretrievably lost (s.70(4)). Different considerations apply if the bill remains unpaid.
- 2.16 If there is an assessment, then the principles applied by the Court are now essentially the same, whether the bill is in respect of contentious or non-contentious business. That has been so since 1994, when the predecessor to the 2009 Order came into effect. The 2009

Order sets out the factors relevant to assessments in respect of non-contentious business. The core requirement under that 2009 Order (para. 2) is that a solicitor's costs must be *'fair and reasonable having regard to all the circumstances of the case.'* The circumstances include matters such as the complexity of the assignment, the skill involved, and the time spent dealing with it. These are essentially the same factors applied under CPR 46.9/10 in assessing bills in respect of contentious business.

(B) The wider environment

Regulation under the LSA: information and complaints

- 2.17 The overall landscape for the provision of legal services has changed considerably since 1974. One aspect of this has been the introduction in 2007 of an overarching system of regulation for many legal services professionals, under the LSA. The purpose of the LSA is to provide for the regulation of all branches of the legal profession when carrying on reserved legal activities; to establish the **Legal Services Board (LSB)** as the over-arching regulator of the legal profession; and to establish the Office for Legal Complaints and its **Legal Ombudsman scheme (LeO)** to handle service complaints and provide redress. This regulatory framework applies not only to solicitors, via their approved regulator of the Law Society (which has delegated its functions in this regard to **the Solicitors Regulatory Authority (SRA)**), but also to other legal professionals, including barristers, legal executives, licensed conveyancers, patent and trade mark attorneys, costs lawyers and accountants: see the LSA, Sections 2 and 7 and Schedule 1. The provisions of the Solicitors Act 1974 only relate to solicitors' practices.
- 2.18 Many aspects of this modern regulatory system are common among the approved regulators and thus among those who are regulated by them. These include the idea of outcomes-based regulation, adopted by the SRA and others. Such outcomes typically involve the provision of the best available information about costs. For example, Rule 8.6 of the SRA Code of Conduct provides that solicitors should give clients information in a way they can understand and ensure they are in a position to make informed decisions about the services they need, how their matter will be handled and the options. Rule 8.7 of the Code provides

that solicitors should ensure that clients receive the best possible information about pricing and the likely overall cost of the matter.⁶

- 2.19 A further relevant point is that approved persons are required to operate a complaints system as part of their internal regulatory arrangements (s.112). By way of example, the SRA Code of Conduct contains requirements as to complaints handling at Rules 8.2-8.5, which, among other things, oblige solicitors to inform their clients about their right to make a complaint, to deal with complaints within 8 weeks, to notify clients of their right to refer relevant matters to LeO, and to provide information about **alternative dispute resolution (ADR)**.

The Legal Ombudsman (LeO)

- 2.20 LeO was created under s.115 of the LSA, which stipulated the production of a set of Scheme Rules to guide how LeO operates.⁷ The Rules provide a thorough framework, outlining who is eligible to complain to LeO, the types of complaints LeO can consider, the circumstances under which a complaint may be dismissed, and the various methods LeO use to resolve them. The jurisdiction under the Rules is limited in the sense that complainants must be individuals, small businesses or other bodies with limited turnover or assets (Rule 2.1). LeO's powers under the Rules however are widely drawn and include the power to determine complaints '*by reference to what is, in [LeO's] opinion, fair and reasonable in all the circumstances of the case*' (Rule 5.36), as to which LeO has a wide discretion and is not bound to follow the decision a court might make (Rule 5.37). A relatively simple set of time limits applies. A complainant must first use the authorised person's complaints procedure and then, if not satisfied with the outcome, has six months from receipt of a written response to refer the matter to LeO (Rule 4.4). As to remedies, LeO can give directions requiring the payment of compensation for loss suffered (Rule 5.38(b)) but can also give directions limiting fees to a specified amount (Rule 5.38(h)). Although there is a cap on compensation of £50,000 (Rule 5.43), that expressly does not apply to any direction limiting fees to a specified amount or requiring the payment of interest on fees to be refunded (Rule

⁶ <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>

⁷ <https://www.legalombudsman.org.uk/media/oughytel/scheme-rules-april-23-final.pdf>

5.45). LeO has published guidance on what information should be provided to clients about costs.⁸

Other changes

- 2.21 Other changes in the legal services environment impact on the ongoing effectiveness of Part III, and lead us to conclude that Part III is out of step with modern law and practice. We will mention three points by way of example.
- 2.22 First, the historic prohibition on agreements involving champerty and maintenance has been eroded by the provisions now in the Courts and Legal Services Act 1990 which, subject to certain limitations, permit **conditional fee agreements (CFAs), damages-based agreements (DBAs)** and litigation funding agreements (ss. 58, 58A, 58AA and 58B and the Regulations made thereunder). Part III does not presently reflect this liberalisation. Indeed, as noted, s.59(2)(a) and s.59(2)(b) continue to outlaw agreements giving the solicitor an interest in any claim, or providing for payment only in the event of success.
- 2.23 Second, we note that solicitors' charging structures are often much more complex than they were historically. Solicitors are now more likely than in 1974 to render interim bills (which may or may not be 'statute bills') during the course of a case, rather than a single bill for payment at the end. In cases involving more elaborate funding arrangements, including CFAs, the solicitor's fees and disbursements may be covered at varying times and include payments by third parties such as insurers or funders and quantification may only be possible once recoveries are known. The historic practice of a single or 'whole' retainer with a traditional bill listing chargeable items delivered only at the end of the case is largely irrelevant and accordingly mechanisms which assume this are likely to be inappropriate.
- 2.24 Third, in terms of litigation procedure, there is also more of an emphasis on the settlement of potential claims before the issue of a claim form. The pre-action protocols and claims portals such as the RTA Portal are good examples of procedural changes designed to encourage this trend, which in practice has had the effect of eroding the distinction between contentious and non-contentious business. It is also now recognised that the Courts have power to stay proceedings and to require parties to engage in ADR before resorting to a

⁸ <https://www.legalombudsman.org.uk/media/3jof4uwm/an-ombudsman-s-view-of-good-costs-service-v3.pdf>

Civil Justice Council

Court-based dispute resolution process: *Churchill v. Merthyr Tydfil County Borough Council*
[2023] EWCA Civ. 1416.

3. The rationale for reform

3.1 Many inter-related concerns provide the rationale for reform which we discuss in this next section of our paper. We will deal with them in turn below. These concerns broadly fall into two categories. The first is that Part III is outmoded not only in terms of its language and structure but also in terms of its compatibility with the modern legal and regulatory environment. The second is that these features lead to inefficiencies which have an impact not only on Court time and resources, but also on the lives of consumers and on businesses. We think these inefficiencies are material but can easily be addressed, thereby producing positive impacts with limited effort, and without in any way compromising the regulatory protections afforded to consumers and other users of legal services.

(A) Areas of legal uncertainty and unnecessary complexity

Part III focus on the ‘bill’

3.2 Starting with a general point, the architecture of Part III is constructed around the idea of delivery of a ‘*statute*’ or ‘*statutory*’ bill and payment, rather than on the underlying contractual rights and obligations of the solicitor and client. This means that the assessment process is esoteric and important requirements and steps are fixed and can only be changed at a cost and with the use of court time. The provisions set out in paragraphs 2.11 to 2.15 above illustrate the point. Nothing comparable exists elsewhere in the resolution of disputes over the payment for services, however large the amount at stake. Its mechanical and inflexible approach is not well constructed to protect clients whether they be consumers or large corporations, and we suggest is prone to encourage disputes and to create inefficiencies.

What is ‘fair and reasonable’?

3.3 The question of whether a business agreement with a solicitor is *fair and reasonable* is central to the operation of Part III, but there is ambiguity as to what this critical phrase means and limited associated authority. The resultant uncertainty is often exploited. A

frequent argument is that a business agreement is not *fair* because the solicitor failed to provide adequate information at the outset, in a manner which involved a failure to comply with the SRA Rules. This approach is seriously problematic, however, because it mixes up the question of regulatory compliance with the question of whether an agreement should be treated as binding, which is a different matter.

3.4 The issue may have had its origin on an old case under the Attorneys and Solicitors Act 1870, *In Re Stuart, ex parte Cathcart* [1893] 2 QB 201, Lord Esher MR thought that the concept of fairness, at that stage reflected in s.9 of the 1870 Act, referred to ‘... *the mode of obtaining the agreement*’ with the client. In a decision in 2001, *Macdougall v Boote Edgar Esterkin* [2001] 1 Costs LR, 188, Holland J adopted a similar logic, maintaining that before a solicitor could rely on the presumption that costs are reasonable if incurred with the agreement of the client (see now CPR 46.9(3)(a) and (b)), the solicitor had to show ‘*informed approval*’ for the agreement. He went on to find that there was no sufficiently informed approval of an increased hourly rate of £300, because (amongst other matters) the solicitor had not properly explained the relationship between solicitor and own-client costs and what might be recovered by way of party and party costs. The effect was to override what, on the face of it, was a valid agreement to pay the increased fee of £300 per hour.⁹

3.5 It is now routine for fee agreements to be challenged on the basis of a lack of ‘*informed consent*’ or ‘*informed approval*’, the deficiency being said to arise from a failure by the solicitor to comply with the SRA Rules on the provision of information about costs. The fact that there may be a failure in regulatory compliance, however, does not mean that any agreement entered into is invalid, or even that it produces results which are unfair or unreasonable. The well-known decision in *Belsner* illustrates the point. The client was told that the solicitors estimated their costs at £2,500 but was not told that only a small proportion of that would be recoverable if the claim settled at an early stage via the RTA Portal (see at [84]). The solicitors had not complied with SRA Rules 8.6 and 8.7 (see again at [84]), but all the same, the arrangements with the client were not invalidated and the charges ultimately rendered were held to be fair and reasonable (see at [97]).

3.6 This is a serious area of legal uncertainty. It has important practical effects given that fee arrangements are becoming more elaborate. In personal injury cases conducted under a

⁹ The same point was made in *Bolt Burdon solicitors v Tariq* [2016] EWHC 811, where it was indicated that the issues of fairness and reasonableness had to be considered separately. Fairness related primarily to the manner in which the agreement came to be made whereas reasonableness related to its terms.

CFA, for example, where the success fee is calculated as a percentage of the solicitors' base (profit) costs and there is a cap of 25% on the amount that can be claimed of general damages and past losses, the Senior Courts Costs Office reports that the explanation to clients is regularly condensed to a simple guarantee that no more than 25% of the damages will be deducted by the solicitor. Such compressed explanations, although accurate in one sense, will often disguise points of detail which then lead to disputes later on. Similar problems can arise in cases involving Fixed Recoverable Costs under CPR Part 45, because the tables used to calculate recoverable costs, in the Practice Direction to Part 45, are relatively elaborate and difficult to explain to lay clients, which can lead to compressed or shortened explanations being given.

Contentious and non-contentious business

- 3.7 Another unsatisfactory feature of Part III is the continuing distinction between contentious and non-contentious business arrangements. As we see it, this has no modern relevance, and its continued presence leads to unnecessary complication and uncertainty.
- 3.8 We have examined the origins of the distinction, but nothing in the history persuades us that it has any continuing significance.
- 3.9 Section 37 of the Solicitors Act 1843 contained elaborate provisions reflecting the fact that a retainer might involve proceedings in different Courts, each of which at the time had their own taxing officers and procedures, including different charging structures/rates. This procedural fragmentation seems later to have cohered into the general divide between contentious and non-contentious business.
- 3.10 This first began to emerge in about 1870. It became possible under the Attorneys and Solicitors Act 1870 for clients and solicitors and other lawyers to agree fees by written agreement for any part of past or future services, fees charges, disbursements etc., and the charging method (gross sum, commission, percentage, salary or otherwise). Where, however, the business was done in an action in law or a suit in equity, the lawyer could not receive payment until the agreement and the amount payable had been allowed by a taxing officer. The officer had the power to enforce the agreement, or the court could cancel it if it were not fair and reasonable. This appears to be the origin of the current provision in s.60.
- 3.11 About 10 years later, the Solicitors Remuneration Act 1881 made provision for '*General Orders*' to be made respecting remuneration for solicitors in conveyancing, and in respect of

'other business not being business in any action, or transacted in any court, or in the chambers of any judge or matter and not being otherwise contentious business.' This would appear to be the precursor to the present s.56, and the *'General Order 1883'* was the predecessor of the present 2009 Order. As already noted, number of later Orders followed, reflecting various forms of protection for clients against overcharging. These included the right to require the solicitor to obtain a certificate from the Law Society confirming that the charges were fair and reasonable (introduced in 1953 but then removed in 2009 by means of the present 2009 Order).

3.12 In our view, this background provides no justification for maintaining the distinction between contentious and non-contentious business. The historic rationale for it, which seems to have depended on the different charging structures in different Courts, has been superseded. Nowadays the basic approach in respect of contentious and non-contentious business is more or less the same: wide discretion is given to contract on the terms the parties want, subject to the general requirement that the agreement must be fair and reasonable, and to the right to an assessment. If there is an assessment, then essentially the same factors are taken into account in determining what is fair and reasonable.

3.13 The basic division therefore seems meaningless. Moreover, the distinction between what is contentious and what is non-contentious can be difficult to draw and can itself lead to disputes. That again is shown by *Belsner*, which well illustrates how the complexities of the present structure can give rise to perverse incentives and result in significant litigation. Ms Belsner was motivated to argue that her retainer was contentious business in order to seek to rely on the limitation in s.74(3), which would have limited her solicitor to charging her no more than the fixed fee recoverable from the defendant. But that was a very elaborate and expensive way of seeking to avoid payment of relatively modest fees which the Court ultimately held to be fair and reasonable. While uncertainties remain, the incentive to seek to exploit them will continue as well, leading to ongoing inefficiencies.

What should be in a bill?

3.14 Another problematic area concerns what information solicitors' bills should contain. A conforming bill is often referred to as a *'statute'* or *'statutory'* bill, which is intended to represent the final charge for a piece of work. The terminology is misleading, however, because the 1974 Act contains no specific requirements as to what a *'statute'* or *'statutory'*

bill should comprise or contain. This is significant because it is the delivery of such a bill that starts the clock ticking on the time limits for assessment, etc. (as set out at paragraph 2.15 above). There is therefore a premium in establishing that the bill delivered amounted to a statute or statutory bill. Challenges to the amount of information provided on the work done and whether the bill represents the full picture of what has been recovered and is being charged¹⁰ are just two examples of arguments regularly advanced. They have no direct relevance to the reasonableness of the fees claimed. Their purpose is simply to reset the clock in terms of time limits and thus represent a very fertile area for disputes and disagreement.

- 3.15 The question of what should be in a bill has been the subject of case law rather than legislative development. Early decisions such as *Keene v Ward* (1849) 13 QB 515 and *Cook v Gillard* (1852) 1 E & B 26, said that an important policy objective was to provide the client with sufficient information in the bill to enable him/her to make a decision as to whether to press for taxation/assessment or not. This inevitably led to disputes about what should be contained in a bill of costs, and whether the bill needed to be comprehensive.
- 3.16 The trend was to say not – the client needed only sufficient information to form a view about whether to pay or to press for assessment. In *Cook v Gillard*, Earle J said, ‘*The bill should give reasonable information: if the client wants more he may demand it.*’ In *Ralph Hume Garry v Gwillim* [2002] EWCA Civ 1500, Ward LJ effectively endorsed that approach. He argued that the test is not whether the bill is objectively sufficient on its face, but whether the information in it, supplemented by what the client subjectively knows, enables the client, with advice, to take an informed decision as to whether or not to exercise the only right then open to him, i.e., to seek assessment, reasonably free from the risk of having to pay the costs of that assessment.
- 3.17 The result is a lack of uniformity and clarity. Recently, in *Karatysz v SGI Legal LLP* [2022] EWCA Civ 1388 (decided at the same time as *Belsner*), the Court of Appeal said that the bill should set out the full picture (see at [46]), but solicitors regularly debate what this means, relying on the argument that the client has had all the information they need to decide whether to challenge the bill (see *Ralph Hume Garry v Gwillim*, above).
- 3.18 Lack of clarity about what should be in a bill often prompts application for delivery of a bill under Section 68 of the 1974 Act. The Senior Courts Costs Office indicates there are many

¹⁰ *Karatysz v. SGI Legal LLP* [2022] EWCA Civ. 1388, referenced at paragraph 3.17.

such applications pending at any one time, initiated by means of a Part 8 Claim Form. Such applications occupy disproportionate Court time and resources.

- 3.19 Again, these are all disputes generated wholly by the machinery of Part III itself, and more specifically by the artificial and outdated focus on delivery of a ‘*statute*’ or ‘*statutory*’ bill as the key event triggering the entitlement to seek assessment.

Other formalities: signature, delivery and time limits

- 3.20 The purely formal requirements for *signature* and *delivery* of a bill prescribed by Section 69 are also outmoded – in particular, the provisions concerning delivery in Sections 69(2C) and (2D). Again, these formal requirements have practical significance because of their possible effects: if a bill has not been delivered, then the time limits for assessment in Section 70 will not have started to run. Under Section 69(2C) the client must have indicated a willingness to accept delivery by electronic means, and the indication, even if given, can be withdrawn at any time by giving notice under Section 69(2D). Such limitations are unrealistic, given that clients will almost invariably communicate with their solicitors by electronic means. They provide the potential for disagreement, and challenges are regularly brought concerning a lack of formal consent to delivery of the bill by, for example, email.
- 3.21 The time limits imposed by Section 70 are rarely set out in any detail on a solicitor’s bill. Reference is generally made to Sections 70 to 72 of the 1974 Act but not to the periods in which claims have to be made. This has been held to be sufficient (*Richard Slade & Co v Erlam* [2022] EWHC 325 (QB), a decision of HHJ Gosnell), but the time limits regularly catch people out and they have to rely on ‘*special circumstances*’ to be entitled to challenge a bill.
- 3.22 Particular issues have arisen as to when payment of a bill is made in the relevant sense, triggering the start of the 12-month period under Section 70(4), after which the right to assessment is lost. In *Menzies v Oakwood Solicitors* [2024] UKSC 34, the Supreme Court disagreed with the Court of Appeal ([2023] EWCA Civ. 844) and held that payment required a settlement of the account between the solicitor and client and thus did not occur where the solicitor made a deduction from funds held by them even though previously authorised. The case well illustrates the fact that aspects of the 1974 Act are prone to promote legal uncertainty, and that fine points of legal distinction can have serious practical consequences.

Part III is generally outmoded and archaic

- 3.23 The world has moved on since 1974. A critical general point is that the basic concepts underlying Part III, including the requirement that a business agreement with a solicitor must be fair and reasonable, reflect an age and an environment in which there was no coordinated regulation of legal services professionals, including solicitors. As one can see from *dicta* like those of Lord Esher MR in the *Cathcart* case, the Court effectively stepped in to fill the gap and was able to exercise a sort of prototype regulatory function – including as regards legal costs – by virtue of solicitors having a special status as officers of the Court.
- 3.24 The world has moved on very considerably from the environment which made this early model of supervision necessary, and the framework for the regulation of modern legal services professionals is now dramatically different. The regulations by which they are all bound include regulations about the provision of adequate and transparent costs information. Those regulations thus cover just the same terrain as Lord Esher MR was concerned with in his analysis of fairness – i.e., the mode of entering into a business agreement with a client.
- 3.25 Moving on to more specific points: there is an obvious need to update the provisions in Section 59(2)(a) and Section 59(2)(b), so as to conform to the liberalised regime for DBAs and CFAs under the Courts and Legal Services Act 1990. Likewise, a modern framework for challenging solicitors' costs would recognise the complexities of modern (and more complex) charging structures. Recent experience under Part III suggests it is inadequate in this regard. The issue in *Signature Litigation LLP v Bidzina Ivanishvili* [2024] EWCA Civ 901, for example, was whether interim bills served by a firm of solicitors could qualify as statutory bills under the 1974 Act, when there was a CFA in place and the interim bills were for the base fees only, and so might be subject to an uplift in due course if 'success' – as defined in the CFA – was achieved. The answer, in line with the existing orthodoxy, was no, because the bills were not final and complete with respect to the work they covered; the possibility of an uplift meant they could not be. The effect in practice was to open up for assessment bills which had been paid and were many years old.
- 3.26 Taken overall, Part III bears all the hallmarks of a statutory structure which has been in existence for a long time: the general drafting style is from a former era of Parliamentary drafting; some of the language is outmoded and unclear to the user (e.g. the idea of the 'gross sum' bill in Section 64); the presentation is fragmented and has no clear structure

making it digestible for the layman; and this is exacerbated by the grafting on of newer provisions to the original structure in order to accommodate modern practice, but in a manner which has no natural flow.

- 3.27 Some provisions appear entirely archaic – they are little (if ever) used and are thus unnecessary surplusage in the language of the 1974 Act. Examples include Section 58 headed ‘*Remuneration of solicitor who is a mortgagee*’ (we are not aware of any cases or commentary regarding this provision), and Section 73 headed ‘*Charging Orders*’ (this provision is little used, and the language in any event apt to confuse: when orders have been made they have typically been for equitable liens rather than charging orders). *Harrods Ltd v Harrods (Buenos Aires) Ltd* [2014] 6 Costs L.R. 975 illustrates the difficulty posed by the wording of section 73 at [22]-[24].

Role of LeO

- 3.28 As a discrete but important point, we note that, although LeO has an important role to play in the process of challenging solicitors’ bills, there appears to be a lack of understanding as to when a matter should properly be one for LeO and when it should be for the Courts. There is no clear delineation between their domains, and indeed we understand there is some uncertainty at present about the scope of LeO’s jurisdiction.
- 3.29 We understand LeO takes the view that its scope extends only to complaints about service and does not include cases where the only objection is as to the amount charged without any complaint about service as such.¹¹ We understand LeO takes a pragmatic approach though, especially in smaller value cases, and in any event would regard as within its jurisdiction a complaint that the solicitor had provided inadequate information on costs, which is a very common theme.

¹¹ The distinction drawn by LeO is in our view a fine one and hard to reconcile with *Layard Horsfall Ltd v Legal Ombudsman* [2013] EWHC 4137 (QB) in which Lindsay J decided that the relevant rule did not provide that complaints had to be about services provided, let alone about the standards of service. It would be an artificial and unworkable distinction if LeO could consider the quality and levels of services but not issues of wrongful charging or overcharging. The LSA s.137(2) provides that LeO can direct that the fees to which a respondent is entitled be limited to a specified amount. That would be a difficult provision to apply if LeO could not consider what was the correct contractual starting point before making such a determination. Nonetheless, to the extent there is doubt about the position we suggest it can easily be addressed by amendment to the Scheme Rules (see below).

(B) The economic case for reform

- 3.30 The scale of the issue is clear. The civil justice sector is the part of the justice system which has the most contact with the public. Nearly half of all adults (44%) experience a civil law problem over the course of any eighteen month period.¹² There were 1.7 million County Court claims in 2023 and over 11,000 in the High Court.¹³ Behind many of these claims and many more which do not reach the Courts, is a solicitor who will ultimately provide a bill of costs to their client.
- 3.31 Wherever a client is unhappy, the matter has potential to develop into a dispute under the Part III regime. If the processes under Part III are outmoded and inefficient (as we think they are), there is huge potential for wasteful litigation about litigation. By way of example only, we note recent figures indicate that the inability to resolve disputes represents a cost to the small business sector of £11.6bn per year.¹⁴ We have little doubt that the outdated regime contained in Part III of the Solicitors Act both contributes to and exacerbates this problem.¹⁵
- 3.32 At the CJC National Forum in 2024, the then Minister for Courts and Legal Services Heidi Alexander MP commented that civil justice has the potential to be a very powerful engine for economic growth and social progress.¹⁶ We of course agree, but achieving those objectives requires systems which are modern and efficient. We consider the regime under the present Part III to be neither. But by streamlining and updating it, we think there is an opportunity to free up capacity, reduce current case durations and enable the legal sector to flourish in a manner which is fair both to legal professionals and their clients.

¹² <https://assets.publishing.service.gov.uk/media/67613fff26a2d1ff18253404/legal-problem-resolution-survey-2023-summary-report.pdf>

¹³ <https://data.justice.gov.uk/courts/civil-courts/>

¹⁴ <https://www.treasurers.org/hub/treasurer-magazine/%C2%A312bn-uk-sme-funds-tied-disputes-says-fsb>

¹⁵ Without accurate data on the number of cases per year where claimants are disputing the fees they paid, or owe to, their former solicitors, it is difficult to articulate the full scale of the issue precisely. The absence of publicly available and reliable court data is a running theme in the CJC's work: in the CJC's Final Report as part of its Review of Litigation Funding, this was the motivation behind the CJC's recommendation that the Government should establish a Standing Committee responsible for collecting data on the operation of litigation funding, CFAs and DBAs. The CJC advocated that, at minimum, *'the data collected should include: the nature of the cause of action; type of proceeding; party details; remedy sought; how the claim concluded; the nature and type of the funding for each party; the success fee/return to the funder; the legal costs incurred'* (Review of Litigation Funding – Final Report at pp. 12-13).

¹⁶ <https://www.judiciary.uk/wp-content/uploads/2024/12/Heidi-Alexander-speech-to-CJC-National-Forum-2024.pdf>

4. Provisional recommendations for reform

4.1 In this section we will set out our provisional recommendations and ensuing questions for consultees to consider.

(A) Overview

4.2 Our basic recommendation is that Part III of the Solicitors Act 1974 should be entirely overhauled with the objectives of achieving:

- a readily understood and principles-based statutory code that is fit for purpose, supplemented by professional conduct rules overseen by the regulator; and
- a process for consumers, small businesses and others within the scope of the Legal Ombudsman scheme to use that scheme, rather than court proceedings, for fee-related complaints related to more modest bills.

Consultation Question 1

Do consultees agree that any revised code for the regulation of solicitor and own-client costs should have the objectives identified in paragraph 4.2 above?

- a. Should the revised code contain any other objectives that aren't identified above?**
- b. If consultees disagree, why? What alternate objectives should be relied on?**

(B) Solicitors’ charges should be ‘fair and reasonable’

- 4.3 Our provisional recommendation is that solicitors’ charges should be subject to an overarching principle that they be ‘*fair and reasonable*’ by reference to the matter in question, judged on an objective basis but taking account of the characteristics of the parties and nature of the matter. This should apply both to the amounts actually charged and to contractual terms related to remuneration, including terms as to (a) the amounts chargeable or hourly rates applicable; (b) the timing of payments; and (c) commitments to hours-based charging where the time spent is excessive.
- 4.4 To expand a little on this reasoning, the concept of what is ‘*fair and reasonable*’, while embodied in the existing Part III in various ways for both contentious and non-contentious remuneration agreements (see ss. 57(5)&(7), 61(2)&(4), 62(2) and 63(2)), is not expressed as a clear overarching principle, and it is not restated in the provisions dealing with assessment. We consider this to be unsatisfactory and suggest that a clear statement of a basic guiding principle would produce obvious benefits.
- 4.5 We consider that the concept of ‘*informed consent*’ (see above at paragraph 3.5) is not appropriate and introduces unacceptable uncertainty.¹⁷ To address this, we propose clarifying that the test of ‘*fair and reasonable*’ is an objective one, applicable to the terms of the engagement and the quantum of the charges, rather than the manner of achieving the agreement. Our motivation here is to avoid the complications that arise under the current Part III, where agreements can be disputed – and effectively set aside – on the basis of perceived unfairness as to how they were entered into. Problems of this kind, concerning the manner in which agreements are entered into, are captured in other parts of the law, including parts concerning consumer protection.¹⁸

¹⁷ Other parts of the law provide adequate protection if in fact there has been no consent, or if it has been procured through misrepresentation or can be vitiated. The concept of ‘*informed consent*’ adds unnecessary complexity.

¹⁸ The WG gave some consideration to whether consumers dealing with solicitors are already protected by general consumer rights legislation. This is relevant in light of the increasingly unified regulatory environment for legal services under the Legal Services Act 2007, and the fact that practitioners other than solicitors falling outside Part III are not subject to a comparable court-based scheme of costs regulation. We note that consumer rights legislation has recently been relied on to challenge the enforcement of an allegedly unfair term in the context of advocacy services: in *Glaser v Atay* [2024] EWCA Civ 111, a contract term entitling

4.6 There will need to be guidance on what *'fair and reasonable'* means. We suggest the clearest current exposition is in reg. 3 of the 2009 Order (referenced above at paragraph 2.6), made under Section 56. Reg. 3 provides as follows:

'A solicitor's costs must be fair and reasonable having regard to all the circumstances of the case and in particular to –

- (a) The complexity of the matter or the difficulty or novelty of the questions raised;*
- (b) The skill, labour, specialised knowledge and responsibility involved;*
- (c) The time spent on the business;*
- (d) The number and importance of the documents prepared or considered, without regard to length;*
- (e) The place where and circumstances in which the business or any part of the business is transacted;*
- (f) The amount or value of any money or property involved;*
- (g) Whether any land involved is registered land within the meaning of the Land Registration Act 2002;*
- (h) The importance of the matter to the client; and*
- (i) The approval (express or implied) of the entitled person or the express approval of the testator to – (i) the solicitor undertaking all or any part of the work giving rise to the costs; or (ii) the amount of the costs.'*

4.7 Subject to some updating – such as removing an outdated reference to registered land and the requirement to ignore the length of documents – the approach in reg. 3 could be adopted more generally, including for contentious business. It should be noted that LeO currently use the test of *'fair and reasonable'* in dealing with complaints, including those in which, in practice, LeO directs a reduction in fees. It seems to us advantageous to introduce symmetry across the system through the form of a common test.¹⁹

counsel to payment for a trial even where the trial was adjourned was held to be 'unfair' (and therefore unenforceable) under the Consumer Rights Act 2015.

¹⁹ Rule 137 of the LeO Scheme Rules provides that a complaint is to be determined under the Ombudsman Scheme by reference to *'what is, in the opinion of the ombudsman making the determination, fair and reasonable in all the circumstances of the case.'* This indicates a degree of subjectivity in the assessment. We do not though consider this leads to any conflict with the objective test we propose (see paragraph 4.5 above), because if the case before the Ombudsman involves a challenge to a solicitor's costs, *'all the*

- 4.8 We favour the idea of replicating the regime under the present Section 56 of the 1974 Act, to allow the relevant Order to be amended from time to time by a committee comprising the Lady Chief Justice, the Master of the Rolls and others.
- 4.9 The consequence of an agreement, or charge, not being fair and reasonable should be that charges are capped at such amount as would be fair and reasonable.
- 4.10 Beyond that, conduct rules, backed by professional sanctions, should govern what must be done to ensure that fee arrangements are properly explained to and understood by clients. Likewise, to the extent that restrictions are required on the terms of business that may be agreed, or the way in which agreement may be reached, those matters should so far as possible be addressed by the regulator as aspects of professional conduct.

Consultation Question 2

We propose that solicitors' charges should be subject to an overarching principle that they be 'fair and reasonable', judged on an objective basis, which should apply both to the amounts actually charged and to contractual terms, but not to the manner in which the agreement was reached.

Do consultees agree with this recommendation?

circumstances of the case' will include any new guidance applicable to solicitors on what '*fair and reasonable*' means in relation to such costs. Even if there are differences around the margins, given the more flexible approach of the Ombudsman, we suggest there should be a high degree of uniformity overall.

Consultation Question 3

We propose that the approach taken in reg. 3 of the 2009 Order – subject to some updating – would be a sensible approach to producing guidance on the meaning of ‘fair and reasonable’. Do consultees agree?

Consultees should consider whether:

- a. there is anything presently contained in reg. 3 of the 2009 Order which should be excluded when producing guidance on the meaning of ‘fair and reasonable.’**
- b. there is anything not presently contained in reg. 3 of the 2009 Order that should be included.**

(C) Contentious/non-contentious Business

- 4.11 We provisionally recommend that the existing distinction in Part III between contentious and non-contentious business should be removed. This serves no useful purpose and on the contrary promotes uncertainty and inefficiency (see above at paragraphs 3.7-3.13).

Consultation Question 4

Do consultees agree that the distinction between contentious and non-contentious business should be removed? Do consultees perceive any disadvantage in doing so?

(D) Graduated system of dispute resolution

- 4.12 The Ombudsman process would be a more appropriate method than a Court process for modest bills: that point was made both in *Belsner* and *Karatysz*. We therefore recommend that, for smaller matters, the primary form of redress in respect of charges said not to be fair and reasonable should be a complaint to LeO. Recourse to the Courts should only be available with good reason. For larger matters falling outside the Ombudsman scheme, we

propose that recourse to the Courts should be preceded by mandatory ADR. The logic in both cases is that informal methods of dispute resolution should be sufficient to resolve most disputes if the core issue is whether the solicitor's charges are '*fair and reasonable*', and if there is clear guidance about what this means.

4.13 This approach, if adopted, will result in two dispute resolution routes, depending on the size of the matter. We describe these in outline below. In Section (E) (see paragraph 4.20) we suggest certain necessary amendments to the LeO Scheme Rules. We note that in some (perhaps many) cases it will be the solicitor who sues on a bill, rather than a client who (independently) raises a complaint. We deal with that issue in Section (G) (see paragraph 4.33 and recommend removal of the prohibitions on legal actions by solicitors and the provision for actions to be stayed.

Route 1 – Smaller bills

4.14 **Route 1** draws on the existing LeO structure. Thus, clients with complaints about the amount of their legal costs would first be required to refer the matter to their solicitor under the solicitor's internal complaints procedure. If the matter is not resolved at that stage, then the client would be obliged to refer their complaint to LeO.

4.15 Thereafter, the client would be entitled to petition the Court for relief (i.e., for a declaration of unreasonableness and for an order capping the proposed charges accordingly), but only upon showing good reason why a further level of review was justified. We thus envisage a filtering or permission stage, to be carried out primarily on the papers or online, before Court proceedings are allowed to proceed.²⁰

4.16 Route 1 would apply where:

- The complainant is within LeO's existing statutory jurisdiction (e.g. individuals, small businesses, and charities) **and**

²⁰ Rules of Court may need to allow for permission applications which are refused to be renewed at an oral hearing, in order to promote compliance with Article 6 ECHR. There is a parallel with the permission stage in applications for Judicial Review.

- The costs incurred during the engagement²¹ are under a specified limit designed to filter lower value matters into Route 1 – we suggest £50,000 as a starting point, at least during the initial period of implementation, but this should be kept under review.

Consultation Question 5

As part of our wider provisional recommendation for a graduated dispute escalation procedure, we propose a route for smaller bills, as set out above. In summary, clients must exhaust internal complaints processes and LeO's complaints procedure before petitioning the Court, initially with an application for permission to proceed which would need to show good reason why further recourse was justified.

Do consultees agree with this proposal?

The WG are particularly seeking views on the proposal that clients must show good reason before being given permission to proceed by way of Court proceedings.

Route 2 – Larger bills

- 4.17 **Route 2** would apply to where the complainant falls outside LeO's existing statutory jurisdiction or where the bill exceeds the proposed £50,000 threshold.
- 4.18 As with Route 1, we envisage that clients would first be required to exhaust any available internal complaints procedure. If that failed to bring about a resolution, then we propose there should be a mandated effort at ADR before seeking recourse to the Courts. As we have said above, it seems to us that disputes about costs are well-suited to informal methods of dispute resolution, in particular if clear guidance is available on the basic test of '*fair and reasonable*'. Mandated ADR would be in-step with modern dispute resolution practices. We

²¹ See fn. 23 below.

suggest that this model of graduated dispute escalation should help reduce the current burden on the Courts, whilst providing clients with varied avenues to resolve their disputes.

4.19 For those cases which do result in Court proceedings, we envisage that in many of them the fact that there are agreed terms explaining the basis of charging will be enough to justify concluding that the charges are reasonable. Exceptions may be where the client is a consumer and is able to challenge the fee agreement as unfair under the Consumer Rights Act 2015,²² or where the terms involve payment at an hourly rate and there is evidence of inefficiency in the management of the work undertaken.

Consultation Question 6

Do consultees agree with our recommendation for a graduated dispute escalation procedure, including ADR, for those cases falling outside LeO’s jurisdiction, as a precondition to accessing the courts in disputes about solicitors’ costs?

(E) Role of LeO

4.20 As noted at paragraph 3.28 above, there is some uncertainty about the jurisdiction of LeO. In order to facilitate the above model of graduated dispute resolution, we therefore recommend taking steps to clarify the position. There is already consistency with our main proposal, in that the Ombudsman presently determines complaints about costs on the basis of what is *‘fair and reasonable’*. We would recommend two matters by way of amendment to the LeO Scheme Rules:

- clarifying LeO’s powers to make it clear it is able to deal with complaints about costs *per se*, whether or not linked to any complaint about the level of service provided;

²² See fn. 18 above.

- in cases falling within the scope of the Ombudsman scheme, setting a specified fee limit per engagement as regards costs related disputes.²³ As already noted above, we would suggest £50,000 as an initial limit.

Consultation Question 7

Do consultees agree with our recommendation that the jurisdiction of LeO in relation to costs be clarified and expanded, in the manner suggested?

Consultation Question 8

Do consultees consider the proposed cap of £50,000 to be appropriate?

If consultees disagree, would they suggest a higher or a lower figure? Why?

4.21 We appreciate that the model of graduated dispute escalation would increase the workload of LeO, an organisation that currently struggles to meet its targets for complaint handling, leading to delays and a backlog of complaints. Nevertheless, our proposed model seems to us to be the most proportionate structure to ensure that clients are provided with varied avenues to resolve their disputes, whilst simultaneously reducing the burden on the Courts. However, this model simply will not function unless adequate funding is made available to LeO to facilitate its involvement.

(F) Content of bills and other formalities

4.22 The overarching point is that the formalities of the present Part III, which do much to generate disputes and incentivise unnecessary litigation, should be removed and/or simplified as much as possible. We therefore provisionally make the following specific recommendations.

²³ Per engagement, not per bill: this may most easily operate on a rolling basis, adding up all bills to date, unless it is apparent that the cap will be exceeded in the future.

Content of Bills

- 4.23 The concept of a ‘*statute*’ or ‘*statutory*’ bill is outmoded: we recommend that it be abolished.
- 4.24 In the interest of ensuring transparency and informed decision-making, we recommend that the content and format of bills should be governed by conduct rules, alongside rules of court to the extent necessary.²⁴ As discussed in Section 2(B), conduct rules already require solicitors to ensure that clients receive the best possible information about costs at the outset.²⁵ Those rules should also require bills to specify avenues for complaint.²⁶

Consultation Question 9

Do consultees agree that the concept of the ‘*statute*’ or ‘*statutory*’ bill should be abolished, and that the content and format of bills should be set by conduct rules and rules of court?

Signature and delivery of bills

- 4.25 We recommend that the other matters presently addressed in ss. 68 and 69 – as to signature and delivery of bills²⁷ – should also be addressed by conduct rules in updated form. Such matters fall naturally within the scope of rules designed to ensure the client is fairly informed as to their ongoing liabilities, and that the charges are properly authorised.

Consultation Question 10

Do consultees agree that requirements as the signature and delivery of bills should likewise be addressed by conduct rules, reflecting up-to-date practice?

²⁴ There is a potential limit to the extent to which the SRA can prescribe the content of bills, in a manner consistent with its approach of outcomes-based regulation. If this is an issue, the solution may be for the matter to be addressed by rules of Court. In other contexts – for example costs budgeting – such rules already include template forms. That model could be replicated here.

²⁵ See *Karatysz* at [46] and [47] for comments on how bills should properly be drawn. If our recommendations are accepted, the SRA may wish to consult separately with the profession and other stakeholders as to the content of bills.

²⁶ See *Menzies v Oakwood Solicitors Ltd* [2023] EWCA Civ 844 at [25].

²⁷ This should include an obligation to deliver a bill, as a precondition to charging a client.

Time limits

- 4.26 We provisionally favour a single time limit for the initiation of Court proceedings about bills, of one year from the date of receipt of the relevant (interim or final) bill, regardless of whether the bill is paid.²⁸ By this, we mean that a client would have one year from the date of receipt of the bill to pursue their complaint via the graduated system of dispute resolution proposed above at Section 4(D), through to either seeking permission to proceed (under Route 1) or petitioning the Court following ADR (under Route 2).
- 4.27 We believe that a time limit of one year should provide adequate time to raise a complaint and to advance it, if required, to the stage of petitioning the Court under either of our proposed Routes. Both Routes contemplate review via an internal complaints procedure as the first step, but the SRA Code of Conduct requires internal complaints to be dealt with in 8 weeks (Rule 8.4). Under either Route, that should still allow time for a conscientious complainant either to pursue the matter via LeO (Route 1), or engage in ADR (Route 2), and be able to initiate Court proceedings within a one-year timescale. In any event, late complaints could be entertained at the discretion of the Court where it is fair and reasonable to do so.²⁹
- 4.28 We suggest it is highly desirable to promote simplicity within the system, and to move away from the present unnecessary complexities in relation to time limits (some aspects of which are described above at paragraph 2.15).

Consultation Question 11

Do consultees agree that there should be a single time limit for initiating proceedings of one year from receipt, regardless of whether the bill is paid, subject to a power to extend the time limit where it is fair a reasonable to do so?

Consultees in particular are asked to consider whether the proposal of a single time limit regardless of payment of the bill raises any concerns.

²⁸ We suggest that no distinction should be drawn as regards time limits for interim or final bills, so keeping the system as clear and certain as possible. Obviously, though, determination of the reasonableness of a final bill would take account of prior bills.

²⁹ This is the standard already applied by LeO Scheme Rule 4.7. One might expect relaxation of the one-year limit where there has been unavoidable delay in any prior complaints process or ADR.

(G) Miscellaneous matters

- 4.29 Certain other matters in the current regulation need to be tidied up. We make the following provisional recommendations.
- 4.30 The provisions in Section 59(2) dealing with success fees or similar for dispute work should be removed and should instead be a matter for consideration by the regulator for conduct rules, particularly given the existing and any future frameworks for CFA and DBA regimes.
- 4.31 Among the oddities in the existing legislation are specific provisions in Section 60(2) and (3) about the effect of contentious business agreements on the amount payable by or to others. We recommend that these are removed, as they either are or should be dealt with elsewhere; in particular, via the indemnity principle that applies to costs recovery (and which in any event is not limited to solicitors' fees). They do not need to be covered by primary legislation.
- 4.32 Likewise, there are specific provisions dealing with exclusions of liability, including for negligence, that apply to contentious business only (s.60(5) and (6)). We recommend that these provisions should be removed, or at any rate reviewed for compatibility with the provisions of the Consumer Rights Act 2015 which seem to us to cover the same territory (see in particular s.57).
- 4.33 We recommend removal of the prohibitions on legal action by solicitors and the provisions for actions to be stayed, dealt with presently in Sections 69(1) and 70(1) and (2). Courts can be expected to stay actions to recover fees by solicitors (and not permit them to be used as a basis for an insolvency process) if a complaint process is ongoing, without any need for a statutory mechanism. Any practical concerns about precipitous claims being brought should in any event be addressed by conduct rules or rules of court.
- 4.34 Part III also includes miscellaneous provisions dealing with matters such as the taking security for payment (s.56(6) and s.65(1)), the making of charging orders (s.73, for contentious business only), a provision for the High Court to order a solicitor to provide a bill and deliver up documents (s.68), and remuneration for solicitors who are mortgagees (s.58).

Again, to the extent that any of this is actually required, we suggest that a better approach is to address the detail via conduct rules or rules of court rather than in primary legislation.

Consultation Question 12

Do consultees agree that the matters described above at paragraphs 4.29-4.34 above do not require legislative provision, and where necessary can be addressed via conduct rules and/or rules of court?

Consultation Question 13

Aside from the provisions in the existing legislation outlined above in paragraphs 4.29-4.34, are there any other provisions in the current Part III that consultees feel should be reviewed or removed?

5. Implementation

- 5.1 We envisage a relatively simple process of implementation. It should be sufficient if the overarching principle that solicitors' costs should be *'fair and reasonable'* is reflected in primary legislation, together with an enabling instrument akin to that presently in Section 56, under which a committee comprising the Lady Chief Justice, the Master of the Rolls and others is empowered to make Orders specifying the factors relevant to the *'fair and reasonable'* analysis.
- 5.2 Otherwise, the amendments we have suggested to the jurisdiction of the Ombudsman should be capable of being introduced by amendment to the Scheme Rules. The relevant regulator – the SRA – already has power to introduce and/or amend relevant conduct rules, following consultation and approval by the LSB. Changes to rules of Court will be necessary, but these do not require primary legislation.

Consultation Question 14

Our recommendation is that the proposed changes can be introduced via limited primary legislation containing an appropriate enabling power. Other matters can be addressed by changes to the LeO Scheme Rules, changes to conduct rules, and changes to rules of Court. Do consultees agree?

6. Final matters

- 6.1 The above comments and recommendations have been made specifically in the context of considering the regime for solicitor and own-client costs. That reflects the Terms of Reference of the present WG, which are focused on the position of solicitors under Part III of the Solicitors Act 1974. Nevertheless, the WG has considered that it may be thought anomalous that solicitors alone, among the overall population of legal services professionals now under the general regulatory umbrella of the LSA, are subject to a special regime of costs supervision by the Courts. This invites the question whether a similar regime based on a concept of *'fair and reasonable'* charging should be extended to others, including barristers, legal executives, trademark attorneys, costs lawyers and so on. We would invite views from consultees on whether in principle they would support that idea or would reject it. Those views will be helpful in planning future workstreams.

Consultation Question 15

In principle, would consultees support the concept of *'fair and reasonable'* charging being extended to other legal services professionals? Please explain your answer, giving examples if possible.

- 6.2 Finally, we should note that many of the reservations we have expressed in relation to Part III – in particular as to its archaic nature and complexity – might equally well be made in relation to other Parts of the Solicitors Act 1974. These deal with a variety of matters, as follows: Part I deals with entry to the profession and qualification to practice; Part II sets out a framework for practice, making provision for the conduct, regulation, investigation and discipline of solicitors (including rule making powers at sections 31 and 32); and Part IV concerns miscellaneous matters, including provision for the discharge and delegation of the Law Society's functions and powers, and, at rule 81A, supplementary rule making powers. Like Part III, these other Parts have been amended extensively over the years, and their structure and expression therefore lack the coherence of freshly drafted, modern legislation. In places, their provisions overlap with those of the LSA, adding to the unnecessary complexity of the regulatory landscape. All of this suggests that the other Parts of the 1974

Act are similarly ripe for review, but that exercise is beyond the scope of work of our current Terms of Reference. It is, nonetheless, an exercise we would encourage.

Table of abbreviations and acronyms

Abbreviation or acronym	Meaning
<i>Belsner</i>	<i>Belsner v CAM Legal Services Ltd</i> [2022] EWCA Civ 1387
CJC	Civil Justice Council
WG	Working Group
Part III	Part III of the Solicitors Act 1974
LSA	Legal Services Act 2007
LeO	The Legal Ombudsman
CPR	Civil Procedure Rules
LSB	Legal Services Board
SRA	Solicitors Regulation Authority
ADR	Alternative dispute resolution
CFA	Conditional fee agreement
DBA	Damages-based agreement
ATE	After-the-event (insurance)
RTA Portal	Road Traffic Accident Small Claims Portal
2009 Order	Solicitors' (Non-Contentious Business) Remuneration Order 2009

Appendices:

Appendix A – Reform of the Solicitors Act 1974 Consultation Questions

The consultation closes on **Thursday 16 July 2026**.

Consultees do not need to answer all questions if only some are of interest or relevance.

Answers should be submitted by PDF or word document to CJC.SolicitorsAct.Consultation@judiciary.uk.

If you have any questions about the consultation or submission process, please contact

CJC@judiciary.uk.

Please name your submission as follows: ‘name/organisation - CJC Reform of the Solicitors Act 1974’

You must fill in the following and submit this sheet with your response:

Your response is (public/anonymous/confidential):	
First name:	
Last name:	
Location:	
Role:	
Job title:	
Organisation:	
Are you responding on behalf of your organisation?	
Your email address:	

Information provided to the Civil Justice Council

We aim to be transparent and to explain the basis on which conclusions have been reached. We may publish or disclose information you provide in response to Civil Justice Council papers, including personal information. For example, we may publish an extract of your response in Civil Justice Council publications or publish the response itself. Additionally, we may be required to disclose the information, such as in accordance with the Freedom of Information Act 2000. We will process your personal data in accordance with the General Data Protection Regulation and the Data Protection Act 2018.

Consultation responses are most effective where we are able to report which consultees responded to us, and what they said. If you consider that it is necessary for all or some of the information that you provide to be treated as confidential and so neither published nor disclosed, please contact us before sending it. Please limit the confidential material to the minimum, clearly identify it and explain why you want it to be confidential. We cannot guarantee that confidentiality can be maintained in all circumstances and an automatic disclaimer generated by your IT system will not be regarded as binding on the Civil Justice Council.

Alternatively, you may want your response to be anonymous. That means that we may refer to what you say in your response but will not reveal that the information came from you. You might want your response to be anonymous because it contains sensitive information about you or your organisation, or because you are worried about other people knowing what you have said to us.

We list who responded to our consultations in our reports. If you provide a confidential response your name will appear in that list. If your response is anonymous, we will not include your name in the list unless you have given us permission to do so. Please let us know if you wish your response to be anonymous or confidential.

Consultation questions

Please give reasons for your answers. Please do so by reference, where applicable, to the guidance given in the footnotes.

All answers should be supported by evidence where possible to enable evidence-based conclusions to be drawn.

It is not necessary to answer all the questions.

1. Do consultees agree that any revised code for the regulation of solicitor and own-client costs should have the objectives identified in paragraph 4.2 above?
 - a. Should the revised code contain any other objectives that aren't identified above?
 - b. If consultees disagree, why? What alternate objectives should be relied on?

2. We propose that solicitors' charges should be subject to an overarching principle that they be 'fair and reasonable', judged on an objective basis, which should apply both to the amounts actually charged and to contractual terms, but not to the manner in which the agreement was reached.

Do consultees agree with this recommendation?

3. We propose that the approach taken in reg. 3 of the 2009 Order – subject to some updating – would be a sensible approach to producing guidance on the meaning of 'fair and reasonable'. Do consultees agree?

Consultees should consider whether:

- a. there is anything presently contained in reg. 3 of the 2009 Order which should be excluded when producing guidance on the meaning of 'fair and reasonable.'
- b. there is anything not presently contained in reg. 3 of the 2009 Order that should be included.

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4. Do consultees agree that the distinction between contentious and non-contentious business should be removed? Do consultees perceive any disadvantage in doing so?

5. As part of our wider provisional recommendation for a graduated dispute escalation procedure, we propose a route for smaller bills, as set out above. In summary, clients must exhaust internal complaints processes and LeO's complaints procedure before petitioning the Court, initially with an application for permission to proceed which would need to show good reason why further recourse was justified.

Do consultees agree with this proposal?

The WG are particularly seeking views on the proposal that clients must show good reason before being given permission to proceed by way of Court proceedings.

6. Do consultees agree with our recommendation for a graduated dispute escalation procedure, including ADR, for those cases falling outside LeO's jurisdiction, as a precondition to accessing the courts in disputes about solicitors' costs?

7. Do consultees agree with our recommendation that the jurisdiction of LeO in relation to costs be clarified and expanded, in the manner suggested?

8. Do consultees consider the proposed cap of £50,000 to be appropriate?

If consultees disagree, would they suggest a higher or a lower figure? Why?

9. Do consultees agree that the concept of the 'statute' or 'statutory' bill should be abolished, and that the content and format of bills should be set by conduct rules and rules of court?

10. Do consultees agree that requirements as the signature and delivery of bills should likewise be addressed by conduct rules, reflecting up-to-date practice?
11. Do consultees agree that there should be a single time limit for initiating proceedings of one year from receipt, regardless of whether the bill is paid, subject to a power to extend the time limit where it is fair a reasonable to do so?

Consultees in particular are asked to consider whether the proposal of a single time limit regardless of payment of the bill raises any concerns.

12. Do consultees agree that the matters described above at paragraphs 4.29-4.34 above do not require legislative provision, and where necessary can be addressed via conduct rules and/or rules of court?
13. Aside from the provisions in the existing legislation outlined above in paragraphs 4.29-4.34, are there any other provisions in the current Part III that consultees feel should be reviewed or removed?
14. Our recommendation is that the proposed changes can be introduced via limited primary legislation containing an appropriate enabling power. Other matters can be addressed by changes to the LeO Scheme Rules, changes to conduct rules, and changes to rules of Court. Do consultees agree?
15. In principle, would consultees support the concept of ‘fair and reasonable’ charging being extended to other legal services professionals? Please explain your answer, giving examples if possible.

Appendix B – Working Group Terms of Reference

The Working Group will consider the current contentious/non-contentious costs regime and produce a final report making recommendations for reform.

The group's terms of reference are to:

Consider recommendations for primary legislative reform to the Solicitors Act 1974.

Consider a Solicitors Act 1974 section 56 general order, to help develop a better scheme for non-contentious costs.

Consider a possible costs regime for online digital portals.

Consider the scope of future reform in relation to contentious / non-contentious costs.

Appendix C – Working Group Membership

Working Group

Mr Justice Adam Johnson (Chair)

Senior Costs Judge Jason Rowley (Senior Court Costs Office)

Natalie Turner (Law Society)

Rachel Thomas (Solicitors Regulation Authority)

Jennifer Monu (Legal Services Board)

John Cuss (CJC Solicitor Member)

Liz Smart (CJC Legal Advice Member)

Alice Stevens (Law Society) – observer.

With thanks also to Kisha Punchihewa (Solicitors Regulation Authority), Toakase Tonga (Legal Services Board) and Kate Fox (Law Society) for their contributions to the Working Group.

CJC Secretariat

Freya Prentice