Civil Justice Council

Reform of the Solicitors Act 1974, Part

A response by the Association of Personal Injury Lawyers

July 2026

APIL welcomes the opportunity to respond to the CJC's consultation on Part III of the Solicitors Act 1974. Overall, we agree that the current legislation is out of step with modern times, and in principle, we welcome the CJC's recommendations to simplify and modernise Part III of the 1974 Act. We are cautious about the suggestions around the Legal Ombudsman taking on more of a role in the resolution of disputes around solicitor own client costs, and we set out our concerns below. In relation to the suggestions about establishing a new process, we would highlight that there has been no data put forward to suggest that a large number of clients are dissatisfied with the current process. We query whether a complete overhaul of how these disputes are handled is required, over and above the need to modernise and simplify the legislation.

Q1) Do you agree that any revised code for the regulation of solicitor and own client costs should have the objectives of:

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

We agree with the objective of creating a readily understood and principles based statutory code that is fit for purpose, supplemented by professional conduct rules overseen by the regulator. We agree that the current legislation requires simplification and modernisation.

In relation to the second objective at 1(b), we have concerns about the capacity and resources of the Legal Ombudsman (LeO) scheme to take on the resolution of complaints involving bills below £50,000. We are also unclear on what basis LeO would deal with disputes, and from where the power to do so would be derived. Members also report from experience of LeO that they do not often make 'robust' decisions at present, which indicates that the proposals in the CJC's paper are quite far removed from LeO's current role. LeO's focus, rightly, is on consumer protection, and its scheme is set up for this specific standalone purpose. This purpose of addressing concerns in relation to the quality of service is an entirely different question from whether a solicitor has charged a reasonable amount for their work. If LeO is to deal with challenges relating to solicitors' costs, this may also waver into the area of regulatory complaints, which is rightly the purview of the Solicitors Regulation Authority and firmly outside of the remit of LeO. There are questions as to whether LeO can and properly should take on this broader role, and whether LeO has the vires to act in this way.

If these issues relating to resources, ability and vires in relation to extended scope are addressed, we would recommend in any event that any roll out of a broader LeO scheme should be limited, at least initially, to cases for up to £10,000.

A further concern we have is the process to appeal any decision made by LeO. Presumably, the appeal route would be via a judicial review and the administrative division of the High Court. The administrative court has an important function in dealing with public law issues and should not be the destination for routine appeals in LeO costs cases. The basis on which LeO would deal with disputes, along with the detail of the appeal process needs to be fully understood.

There is also the potential for an 'opening of floodgates' – currently, there is a cost disincentive at section 70(9) of Part III of the Solicitors Act, whereby if the costs are reduced by less than 20 per cent, the client will be responsible for the assessment costs. This helps to prevent frivolous challenges about costs, and clients requesting assessments on every bill. If there is no equivalent provision in relation to the LeO scheme, there is a danger that the LeO will become inundated with costs challenges. The advent of AI being more readily available, and consumers generally becoming more litigious, should also be considered.

It is important that there is further consultation on the proposals relating to LeO, once the detail on the new suggested process, along with the powers that LeO will have and any appeal routes, have been considered further.

Q2) 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?

We agree that there should be an overarching principle and that the test should be objective, but there needs to be careful consideration and guidance as to what is 'fair and reasonable'. There are many conflicting definitions of what 'fairness' is, and this is context dependant.

We recognise that the concept of 'fair and reasonable' already features in the assessment of non-contentious costs. However, there has been little scrutiny or consideration of the test, compared to the 'reasonableness' test used for contentious matters. If the idea is to broaden 'fair and reasonable' out to the assessment of all solicitor own client costs (with the distinction between non-contentious and contentious being removed), there are potential issues with imposing a higher Consumer Rights Act notion of fairness, i.e. that the term is unfair if contrary to the requirements of good faith, it causes a significant imbalance in the party's rights and obligations under the contract to the detriment of the consumer, in legal costs disputes. For example, a lay client being charged a high sum of money by a firm of solicitors could be seen as unfair under the Consumer Rights Act definition – there is a significant imbalance between the client and solicitor. This broader application could therefore leave firms vulnerable to more challenges related to costs. Similarly, in relation to 'reasonableness' there would also inevitably be satellite litigation and tension between whether or not it is the Consumer Rights Act approach to assessing what is reasonable that is applicable, or whether it is the one that exists in relation to the assessment of legal costs.

We would suggest that the interpretation of 'reasonableness' which is used in relation to contentious matters at present, should remain. There is a rebuttable presumption that costs are reasonably incurred if they were incurred with the express or implied approval of the client. Unlike the ‘fair and reasonable’ test currently in place for non-contentious matters, this test of ‘reasonableness’ has been scrutinized by the courts and there is now a solid body of case law which sits behind it and provides clarity in its meaning. It would be worthwhile maintaining this clarity going forward, and incorporating it into any new test of ‘fair and reasonable’.

We also think that the manner in which an agreement was reached will usually be relevant as part of an objective test as to whether any such agreement is fair and reasonable. For example, if the client is not given information about their obligations under any agreement from the outset, we do not see how this could be judged as a fair and reasonable agreement.

Q3 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 <u>not</u> presently contained in reg. 3 of the 2009 Order that should be included.**

We agree that there should be guidance on what ‘fair and reasonable’ means, and that the list in reg. 3 of the 2009 Order is a good basis for that guidance. The factors in reg. 3 should be reviewed and amended to ensure that they reflect modern legal practice and digitisation, and to reflect any changes made as a result of this consultation, i.e. to remove references to non-contentious/contentious work.

Q4) Do consultees agree that the distinction between contentious and non-contentious business should be removed? Do consultees perceive any disadvantage in doing so?

We agree with the CJC that the litigation landscape has changed and we think that the distinction between contentious and non-contentious business is no longer justified. From a personal injury claims perspective, due to the nature of the PI claims landscape, with pre-action protocols and fixed recoverable costs, most claims now are settled before the issue of proceedings, demonstrating the outmoded nature of the distinction between contentious and non-contentious business. That most PI claims settle before proceedings are issued is supported through a comparison of compensation recovery unit (CRU) figures with the number of claims issued in court per year. In 2025, 369,657 personal injury claims were registered with the CRU, but only 48,500 personal injury claims were issued in court – 13 per cent of the claims registered with CRU were issued. This suggests that the vast majority of PI claims are resolved without court proceedings being issued[1]. In an era where there is going to be more focus on the pre-court or pre-action space, rationalising and bringing together the two methods of costs assessment makes sense.

[1] It is important to note that the claims issued in court are not necessarily of the same group of claims registered with the CRU, a claim issued in court in 2025 could have been registered with CRU in a previous year.

There needs to be an alertness to any unintended consequences of removing the distinction, however, and there needs to be careful thought as to how any new rules/processes ensure that both consumers and solicitors can question bills. It is also likely that any consolidation of the rules around contentious and non-contentious business costs may generate short-term satellite litigation if there is a lack of clarity within any new regime.

Q5) 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?

Please see our answer to question 1.

Q6) 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?

APIL is supportive of alternative methods of resolving disputes, but there are concerns that any mandatory ADR may simply be an expensive 'tick box' exercise, with one or both parties simply going through the motions, with no intention of working towards a settlement of the dispute.

There is also no power for the CPRC to mandate pre-court ADR, so we query how this proposal would be implemented in practice.

Q7) Do consultees agree with our recommendation that the jurisdiction of LeO in relation to costs be clarified or expanded, in the manner suggested?

As mentioned above, we would appreciate further detail on how the process involving LeO would work in practice, and the scope and basis of LeO's powers, as well as any appeal process. When LeO was initially established, it was not envisaged that they would be carrying out this proposed role. Costs disputes between solicitors and clients differ to those in relation to level of service, and as mentioned at Q2 and 3, there are different test for 'fairness' in different contexts.

There are jurisdictional concerns around the involvement of LeO. At the end of a solicitor client assessment, there is an order for payment, which converts a solicitor's charge from an unliquidated sum into a liquidated debt, which can then be sued upon, and enforced. LeO's current decision-making powers do not provide for this. There would need to be new rules and new powers for the LeO to be able to enforce the decision against the solicitor, and as above, we do not believe the LeO currently has the vires to do this.

It is also worth highlighting that solicitors' costs challenges are not only brought by consumers. Sometimes, a solicitor will seek an assessment of their fees where there is a dispute in relation to them – this is rare but it does happen, and would need to be provided for in any new process. `

Q8) Do consultees consider the proposed cap of £50,000 to be appropriate? If consultees disagree, would they suggest a higher or lower figure?

As set out at Q1, we do not think that initially, the cap should be as high as £50,000.

Q9) 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?

We do not think that the concept of the 'statute' or 'statutory' bill should be abolished. We believe that the case law is settled on what a statutory bill is. Rather, we would welcome a template example of a statutory bill, and detail about what should be included in a bill, consolidating the established case law in this area.

We would agree, however, that the content and format of bills could be set by conduct rules and rules of court. The key point is to ensure that clients are fully informed, understand the work undertaken, on what basis they are being charged and the amount being claimed; and that they are aware when payment of the bill is due and what their rights are to challenge the bill. This can be achieved through requirements in conduct rules/rules of court. We accept that there are issues that arise in relation to interim statutory bills, but the basis for these is within whatever terms the client and solicitor have agreed under their retainer – this is not something that can be prescribed or dealt with by statute, as parties are entitled to contract to do anything that they wish. The Solicitors Act should codify the case law in this area, which states that in order to deliver statutory bills during a case, this needs to be agreed in the retainer between the solicitor and client.

Q10 Do consultees agree that requirements as the signature and delivery of bills should likewise be addressed by conduct rules, reflecting up-to-date practice?

We agree that the requirements in relation to the signature and delivery of bills should be brought up to date to reflect current practice. We agree with the general principle that there should be a bill before anybody is charged, but payments on account do need to be considered.

In relation to whether the requirements should be contained in statute or conduct rules, we suggest as above, that if the requirements are in conduct rules, the statute should direct to the conduct rules to provide details, and if the requirements are set out in the statute, corresponding conduct rules should direct to the statute for detail.

Q11) 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 and 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.

We would not oppose a single time limit, and this fits in with the goal of simplifying the requirements, but we question whether one year is the correct time limit. One year is a longtime for a solicitor to have to wait with the uncertainty as to whether they will be paid or how much they will be paid. We suggest that six months may be more appropriate.

Q12) 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?

We agree that the matters outlined in paragraphs 4.29 - 4.34 can be addressed through existing mechanisms such as conduct rules and rules of court. Given the current framework for CFAs and DBAs under the Courts and Legal Services Act 1990, removing section 59(2) would align with modern regulatory practices, allowing the regulator to address such matters through conduct rules. We believe the provisions in section 60(2) and (3) are unnecessary as the indemnity principle already governs cost recovery. There is also overlap between s 60(5) and (6) and the Consumer Rights Act, particularly s 57, which suggests that these provisions are not required.

Q13) 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?

There is an issue at present about the extent to which parties can contract out of the provisions of the Solicitors Act – it would make sense for this to be considered.

Q14) 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?

It is difficult to see how any of the proposals could be introduced without primary legislation to amend/repeal/replace the provisions of the Solicitors Act.

Q15) 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.

We would suggest that the issues raised throughout our response should be addressed before there are any moves towards extended the principles to other legal services professionals.

Any queries in relation to this response should be directed, in the first instance, to Alice Taylor, alice.taylor@apil.org.uk.