

Belsner and Karatysz

And their impact on large solicitor-client disputes

GEORGE MCDONALD | 22 MARCH 2023 | WHITE PAPER COSTS CONFERENCE



Key topics - Belsner



Key takeaways - Karatysz

What is the “amount of the bill”?

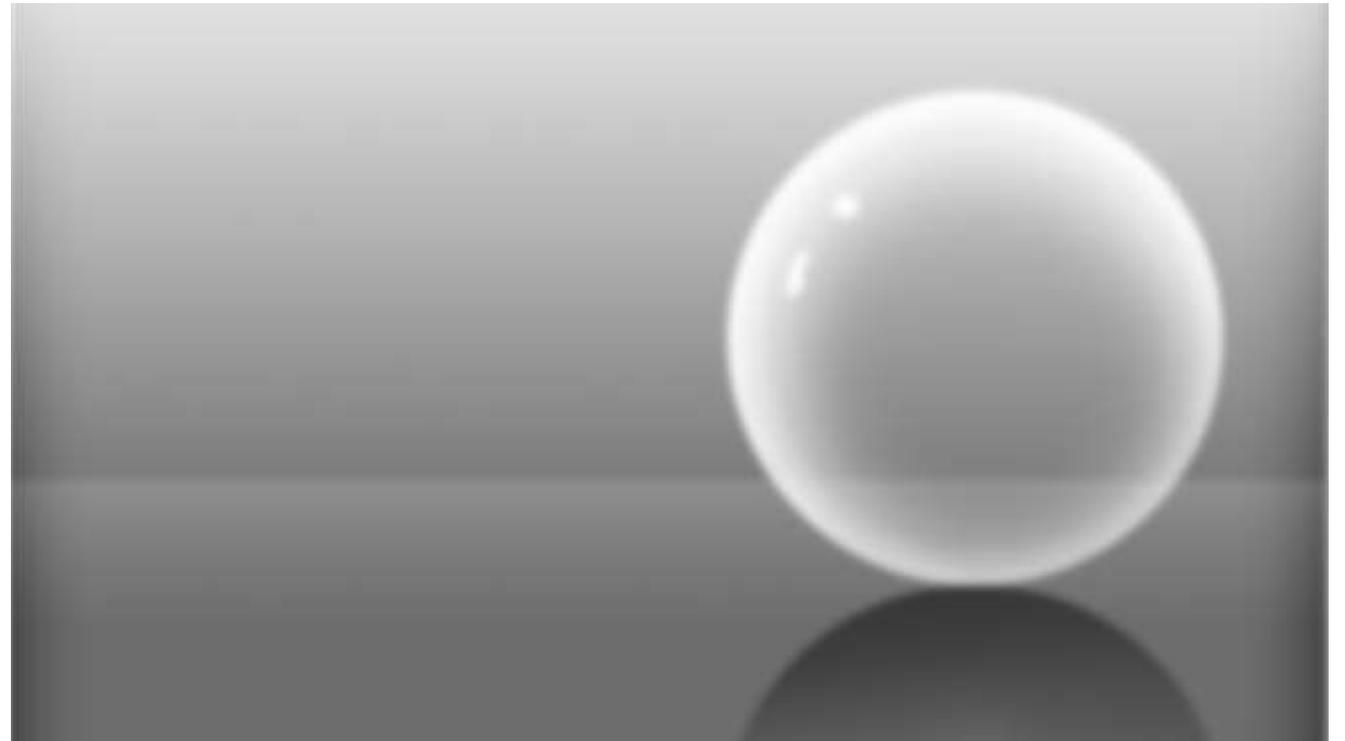


Non-contentious business

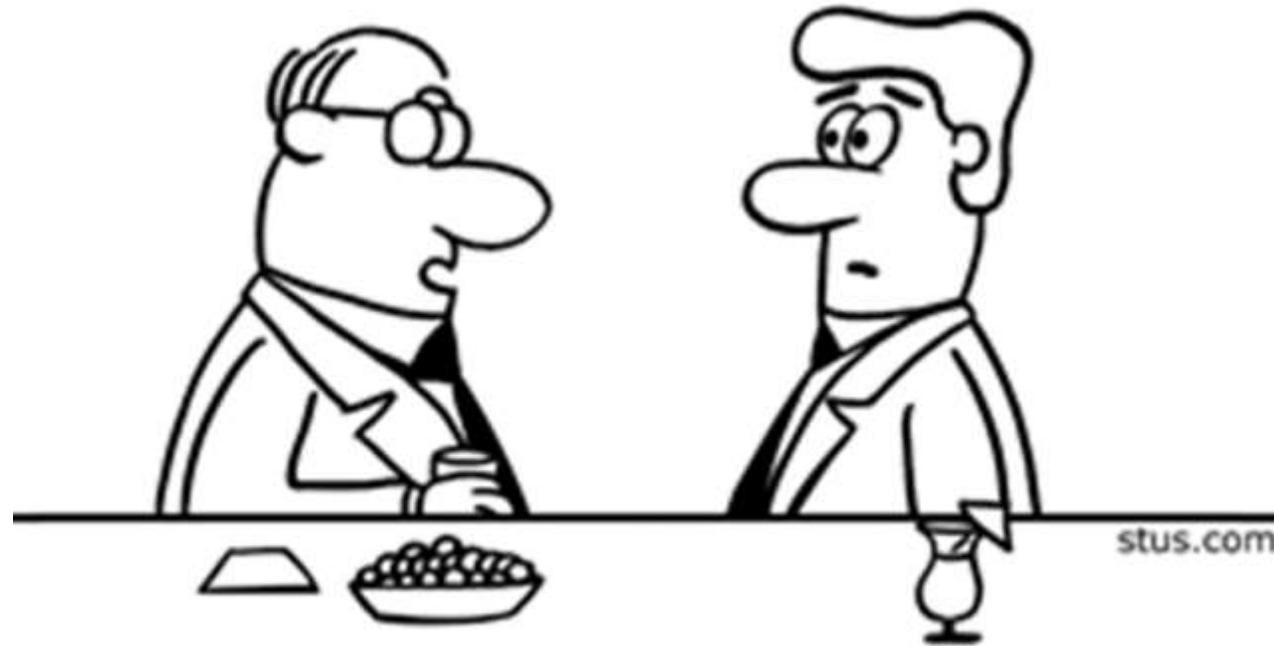
“Whatever may have been said by way of criticism of the statutory definitions, it seems to me that it is now too late to hold, in advance of reforming legislation, that business is contentious if court proceedings are not actually issued. That is after all what the definition of “contentious business” contemplates, and it is how successive generations of textbooks have understood the position.” [55]

Future reform?

"...the distinction between contentious and non-contentious costs is outdated and illogical. It is in urgent need of legislative attention....there is no logical reason why section 74(3) and Part 46.9(2) should now apply to cases where proceedings are issued in the County Court and not to cases pursued through the pre-action portals" [15]



Fiduciary duties



This "fiduciary" thingy really complicates pillaging a corporation.

Fiduciary duties

“In the particular context of solicitors negotiating a CFA, the client cannot reasonably be entitled to expect the solicitors to act in the client’s sole interest to the exclusion of their own interests. This principle applies even if the solicitor does owe the very same fiduciary duty in acting for that client in the RTA portal claim.” [75]

Consumer Rights Act 2015

- The Client had only challenged the CFA on the narrow basis that it was unfair to contract out of s. 74(3) of the Solicitors Act 1974
- Given the court had held that s.74(3) did not apply, this argument led nowhere and so was dismissed

Solicitor's retainers



What should retainers say?

“In this case, the Client was given most of the information she needed to make those decisions, with the exception of one vital matter, namely the fixed recoverable costs that the defendant’s insurers would pay within the RTA portal...

In my judgment, it is wholly unsatisfactory for solicitors generally, and these Solicitors in particular, routinely to suggest that their clients agree to a costs regime that allows them to charge significantly more than the claim is known in advance to be likely to be worth. Solicitors do not resolve this unsatisfactory state of affairs by allowing a discretionary reduction of their charges after the case is settled.” [84] - [85]

Karatysz v SGI Legal LLP

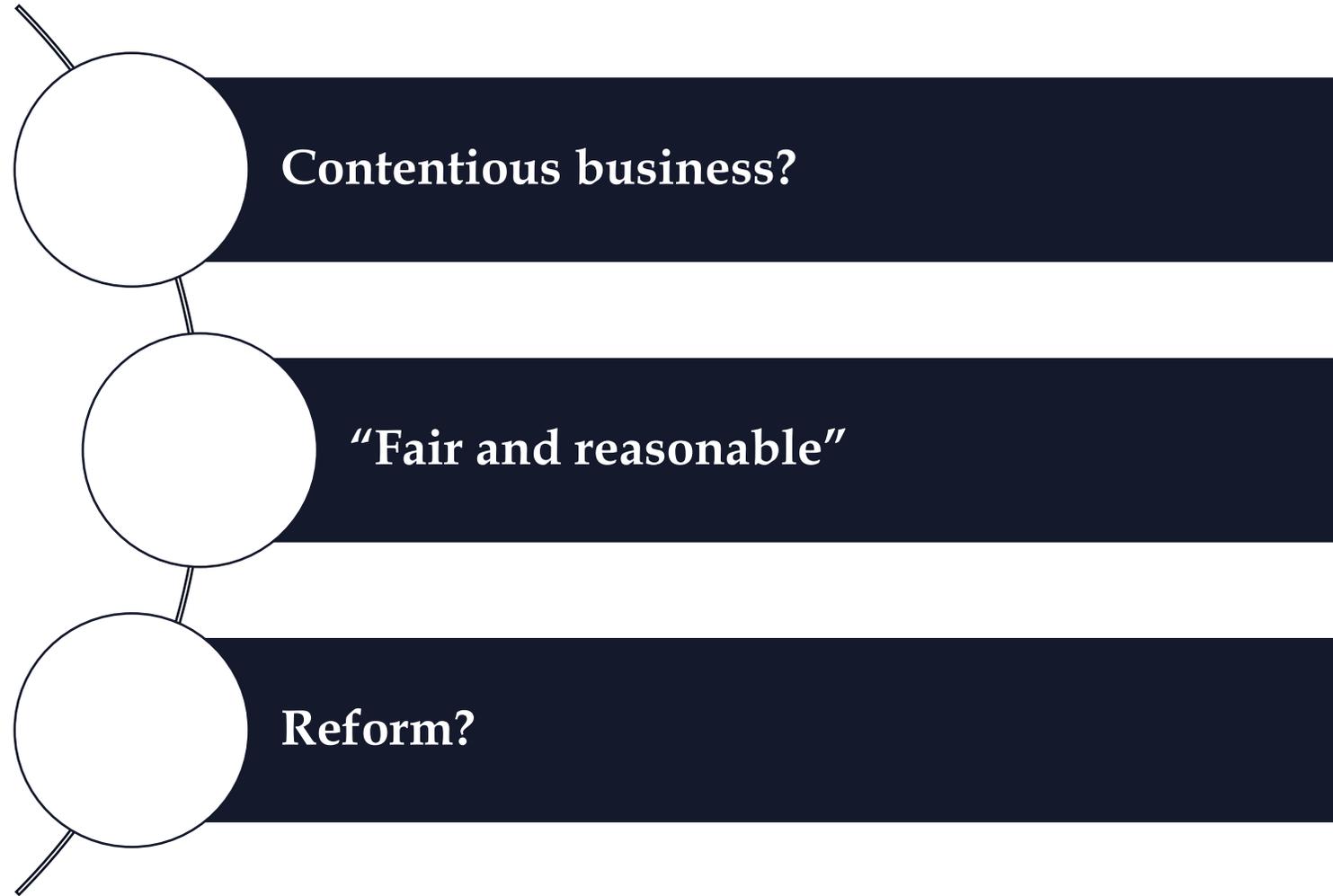


The 1/5th rule and “special circumstances”

“the proper question might be more clearly phrased...as “what is the total sum that the bill is demanding be paid to the Solicitors, whether or not all or part of that total sum has actually been paid?”.

“Properly drawn bills ought in future to state the agreed charges and/or the amounts that the solicitors are intending by the bill to charge, together with their disbursements. They should make clear what parts of those charges are claimed by way of base costs, success fee (if any), and disbursements....”

Outstanding issues and routes open to clients?



Thank you

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