Neutral Citation Number: [2024] EWHC 1473 (KB)

Case No: KA-2023-LDS-000025

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

On appeal from the Sheffield District Registry
District Judge Batchelor

Leeds Combined Court
1 Oxford Row
Leeds LS1 3BG

Date: 17/06/2024

Before :

MR JUSTICE EYRE

- -

Between :

Ashley Holcroft	**Appellant**
- and -	
Thorneycroft Solicitors Limited	**Respondent**

- -
- -

Imran Benson (instructed by **JG Solicitors Ltd**) for the **Appellant**
Kevin Latham (instructed by **Elite Law Costs Drafting Limited**) for the **Respondent**

Hearing date: 23rd May 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.00am on 17th June 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE EYRE

Mr. Justice Eyre:

Introduction.

1. The Respondent acted for the Appellant in the latter's personal injury claim. On 4th August 2020 the Appellant authorised the Respondent to accept a settlement offer on the terms set out in the Respondent's letter of the same date. That letter provided for identified amounts in respect of the Respondent's profit costs and disbursements to be deducted from the settlement sum which was being offered to the Appellant. On 22nd February 2021 the Respondent delivered its bill in the identified amounts (less two reductions totalling £5).

2. The Appellant responded to that bill by commencing proceedings seeking assessment of the bill pursuant to section 70(1) of the Solicitors Act 1974 ("the Act"). On 19th September 2023 District Judge Batchelor determined as a preliminary issue the question of whether the Appellant was entitled to invoke the section 70 procedure in these circumstances. The judge held that the exchanges of 4th August 2020 amounted to an agreement which precluded assessment under section 70 and as a consequence she struck out the claim.

3. The Appellant's appeal against that decision is before me for a rolled up hearing pursuant to the order of Foster J. The appeal turns on the question of the nature and effect of the agreement reached on 4th August 2020. The Respondent says that the District Judge was right to find that there was a compromise agreement as to its fees and that the Appellant was not able to go behind that agreement. The Appellant says that the agreement is not to be seen as having been a compromise of fees but rather as a non-contentious business agreement with the consequence that assessment is not precluded (although the assessment is to be conducted in the light of the agreement).

The Parties' Dealings.

4. The Appellant was injured in a road traffic accident on 11th May 2018. On 15th May 2018 he engaged the Respondent to act for him on the terms of the latter's letter of the same date. That letter included the following under the heading "funding your claim":

> "...We will run a bill of costs and in the event the claim is successful seek payment from the Defendants for these costs. In the event the case is unsuccessful then your legal insurers will meet these costs. For this reason, we are obliged to keep them updated and they can if they wish, elect not to keep funding your case. This is unlikely provided you accept our Advice and comply with the terms and conditions of the policy.
>
> Basic charges
>
> These are for work done from the date we first started work on your claim, even if that was before the date of this agreement, until this agreement ends. These are the ordinary costs that would have been charged had we not acted under any form of CFA. We run a bill of costs in order that we can present the same to your Opponents at conclusion. We will provide you with costs estimates at intervals.
> Where your claim is subject to fixed costs which are recoverable from your Opponent, then you remain liable to pay us our basic charges being the sum which you recover by way of costs from your Opponent, even if it exceeds what would otherwise be chargeable as basic charges under this agreement. You must be liable to enable us to recover these costs from your Opponent and in practice we will claim these costs from your Opponent.
> Our hourly rates are as follows:

> Directors, Senior Solicitors and Legal Executives with over 8 years' experience or other staff of equivalent experience £240.00
> Solicitors and Legal Executives and other staff with over 4 years' experience or other staff of equivalent experience £185.00
> Other Solicitors, Legal Executives, Litigation Executives and other staff of equivalent experience £155.00
> Trainee Solicitors, Paralegal Assistants, Paralegals and other Fee Earners £120.00
> If your case requires a degree of specialism by virtue of the complexity of your case or the value of your damages is likely to exceed £25,000 then we will apply an uplift to these fees and you will be notified of this fact.
> We review our hourly rates on 3rd January each year and we will notify you of any change to the rate in writing. Routine telephone calls, i.e. short updates and letters are charged at 1/10 of an hour. Longer letters or longer telephone calls may be charged on a time basis. If your case is unduly complicated, these rates may be reviewed upwardly. If this is the case we will advise you. Our professional fees are subject to VAT which is set at the national rate.
>
> We estimate costs and time scales as follows:
> If settles: 12-18 months £4000.00 - £6000.00
> If proceeds to Trial: 2-4 years £8000.00 - £9000.00
> If we anticipate the current estimate will be exceeded, we will update you accordingly.
> In the unlikely event you are presented with a bill of costs you can ask for the same to be assessed by the Court within 30 days of receipt.
> You agree to pay into a designated account any cheque made payable to you, received by you or by us from your Opponent. Out of the money, you agree for us to deduct the balance of our costs, any insurance premium and any other disbursements as mentioned below. We will pay you the remainder..."

5. The retainer letter then gave indicative figures for various categories of disbursement. The penultimate section of the letter was headed "complaints". As well as referring to the Respondent's internal complaints procedure and to the services of the Legal Ombudsman this said:

> "If your complaint is in respect of our fees, you also have the right to challenge the fees by applying to the Court for an assessment of the bill under Part III of the Solicitors Act 1974."

6. On 28th July 2020 the insurers for the other driver offered to settle the Appellant's claim for a costs inclusive sum of £24,200 together with direct settlement of the relevant state benefits figure. The Respondent informed the Appellant of this offer by the letter of 4th August 2020 signed by Ruth Tunningley. The operative part of the letter began as follows:

> "The Defendant has now put forward an offer of £24,200.00 in full and final settlement of your claim:
>
> <u>The Offer</u>
>
> The offer inclusive of our costs made up of:
>
> £9000.00 profit costs
> £1800.00 VAT thereon
> £2910.00 disbursements - medico legal expert reports and medical records.

> The offer is subject to a deduction of £575 for the physiotherapy you have received and £55 for a failure to attend an appointment fee.
>
> Therefore, if you choose to accept the offer, you would receive in your hand £9,865.00 in full and final settlement of your claim.
>
> If you choose to accept the same you would not be able to re-open your claim or seek an increased sum at a later date..."

7. Under the heading "advice" Miss Tunningley said that in her view the offer was "very much a good one". After explaining her reasons for saying this Miss Tunningley added:

> "...As a result of this I do feel this is a good offer and strongly advise that it should be accepted. Accepting the offer will bring the matter to a conclusion and the funds would be transferred to you promptly.
>
> However, should you choose to reject the offer, against my advice, then there may be cost consequences against yourself for our costs, reducing your damages further. Furthermore, should you reject the offer and wish to proceed, you would be required to issue Court proceedings and be required to attend further medical appointments by experts appointed by the third party insurers and under the current circumstances this could take a significant amount of time as medical appointments cannot currently take place in any event..."

8. The letter was accompanied by an "acceptance form" which provided spaces for the Appellant to sign and to provide his bank details under the following:

> "Further to the road traffic accident I hereby authorise Thorneycroft Solicitors to accept the third party's offer in the sum of £24,200 and am aware it may be subject to deductions. I understand that this is in full and final settlement of any future symptoms, loss of earnings or any other future losses I may suffer as a result of the accident"

9. The Respondent's letter was sent to the Appellant attached to an email of 4.51pm on 4th August 2020. The Appellant replied at 5.24pm the same day attaching the completed acceptance form to his email and saying:

> "Thank you Ruth. I have signed and accepted it on the attachment can you please let me know you have got this and 1 have done it correctly"

10. It is on the correct interpretation of those exchanges that this appeal turns.

11. As of 20th August 2020 the amount recorded on the Respondent's system as due in respect of profit costs exclusive of VAT was £10,143. However, it is to be noted that the Appellant was not told of that figure.

12. The Appellant's bill was drawn up with the date 21st August 2020 in the sum of £13,705 made up of £8,995.83 profit costs, £1,799.17 as VAT thereon, and £2,910 for disbursements. The profit costs figure had been reduced from £9,000 and the VAT figure from £1,800 to ensure that the sum received by the Appellant remained £9,865. The bill contained the following note:

> "If you have a complaint about this bill or wish to challenge it you may do so by following our complaints procedure which is available on request. There may also be a right to object to the bill by making a complaint to the Legal Ombudsman, and/or by applying to the court for an assessment of the bill under Part 111 of the Solicitors Act 1974, and if all or part of this bill remains unpaid we may be entitled to charge interest"

13. The Respondent sent the bill to the Appellant on 22nd February 2021. The settlement monies from the other party's insurers had been paid to the Respondent and the amount stated in the bill had remained in its hands throughout. However, the sending of the bill was necessary to enable the Respondent to transfer the sum said to be due to it from its client account to its office account.

14. The Appellant responded to receipt of the bill by commencing the section 70 proceedings which led to the decision of DJ Batchelor.

The Proceedings before the District Judge.

15. In responding to the Appellant's claim the Respondent had contended that the parties had entered a binding agreement. It said that as a consequence the Appellant was not able to challenge the breakdown of the settlement figure between the Respondent's costs and the damages payable to the Appellant.

16. The District Judge directed that the question of the appropriateness of the Appellant's use of the section 70 procedure be determined as a preliminary issue.

17. The proceedings were adjourned to await the Court of Appeal's decision in the case of *Belsner v CAM Legal Services Ltd* [2022] EWCA Civ 1387, [2023] 1 WLR 2043 and the hearing took place on 13th June 2023. The judge delivered her judgment on 19th September 2023.

18. The Appellant was not represented by Mr Benson below and the arguments before the District Judge were rather more wide-ranging than those before me. It suffices to say that the issues addressed the effect of the agreement of 4th August 2020.

19. At [70] and [71] of her judgment the judge noted that it was common ground that there had been an agreement. She noted that in *Jones v Richard Slade & Co* [2023] EWHC 1968 (KB), [2023] 1 WLR 383 it had been "expressly recognised… [that] any binding agreement would preclude an assessment and must be set aside before any assessment could proceed".

20. The District Judge analysed the arguments before her and characterized the criticisms being advanced of the Respondent's actions as being "wholesale" and of a kind which fell outside the scope of the section 70 procedure. She then said at [102]:

> "Having considered all the facts of this case, and the authorities referred to, in my mind *Belsner* and *Jones* provide clear authority as to how I should proceed. The claimant entered into a binding agreement with the defendant. For the reasons set out above, the claimant should not be permitted to renege on that agreement."

The Grounds of Appeal.

21. The grounds of appeal were not drafted by Mr Benson and were somewhat more diffuse than the case advanced in Mr Benson's substituted skeleton argument and in his oral submissions. The matter proceeded before me on the sole issue of the nature and effect of the August 2020 agreement. As I have already noted the Respondent contends that was a binding agreement precluding use of the section 70 procedure

while the Appellant says that it was a non-contentious business agreement and that it remained open to him to use the section 70 procedure.

The Law.

22. The Appellant's claim in the road traffic accident was settled before proceedings had been commenced and the effect of the decision in *Belsner* is that it was, therefore, non-contentious business for the purposes of the Act and the various secondary legislation.

23. The starting point is section 69 of the Act subsections (1) and (2) of which provide that:

> "(1) Subject to the provisions of this Act, no action shall be brought to recover any costs due to a solicitor before the expiration of one month from the date on which a bill of those costs is delivered in accordance with the requirements mentioned in subsection (2);but if there is probable cause for believing that the party chargeable with the costs—
>
> (a) is about to quit England and Wales, to become bankrupt or to compound with his creditors, or
>
> (b) is about to do any other act which would tend to prevent or delay the solicitor obtaining payment, the High Court may, notwithstanding that one month has not expired from the delivery of the bill, order that the solicitor be at liberty to commence an action to recover his costs and may order that those costs be [assessed].
>
> (2) The requirements referred to in subsection (1) are that the bill must be—
>
> (a) signed in accordance with subsection (2A), and
>
> (b) delivered in accordance with subsection (2C)."

24. Section 70(1) provides as follows for the recipient of a solicitor's bill to seek assessment:

> "Where before the expiration of one month from the delivery of a solicitor's bill an application is made by the party chargeable with the bill, the High Court shall, without requiring any sum to be paid into court, order that the bill be [assessed] and that no action be commenced on the bill until the [assessment] is completed."

25. Johnson J summarised the operation of the section 70 procedure thus in *Jones v Richard Slade* at [22] –[23]:

> "This is a wholly statutory jurisdiction. The inherent jurisdiction of the court to deal with solicitors' costs was ousted when Parliament introduced statutory regulation: *Harrison*. The ambit of the jurisdiction to assess costs is determined by the terms of the statute. The jurisdiction is triggered by the delivery of a solicitor's bill. At that point, the court is required to order that the bill be assessed. There will be cases where there is an issue as to whether a solicitors' bill has been delivered, or whether the applicant is the party who is chargeable with the bill. In such cases, it will be for the court to determine these (and other such) issues before ordering that the bill be assessed. That is inherent in its duty to ensure that the threshold condition in section 70(1) is met before the costs are assessed.
>
> Once the court has made an order in accordance with section 70(1) that the bill be assessed, the duty of the costs judge, in accordance with that order, is to assess the bill of

costs and also (in accordance with section 70(7)) the costs of the assessment, and to certify what is due..."

26. Here the costs related to non-contentious business and DJ Batchelor summarised the approach to be taken to assessment of such costs thus at [59]:

> "Solicitor/ own client costs arising out of non-contentious business can only be assessed by reference to the Solicitors(Non contentious Business) Remuneration Order 2009. That is to say, the court is limited to considering whether the charges raised are" fair and reasonable", having regard to the factors set out in clause 3 of the 2009 Statutory Instrument"

27. Section 57 of the Act provides for the effect of non-contentious business agreements in these terms:

> "(1) Whether or not any order is in force under section 56, a solicitor and his client may, before or after or in the course of the transaction of any non–contentious business by the solicitor, make an agreement as to his remuneration in respect of that business.
>
> (2) The agreement may provide for the remuneration of the solicitor by a gross sum or by reference to an hourly rate, or by a commission or percentage, or by a salary, or otherwise, and it may be made on the terms that the amount of the remuneration stipulated for shall or shall not include all or any disbursements made by the solicitor in respect of searches, plans, travelling, taxes, fees or other matters.
>
> (3) The agreement shall be in writing and signed by the person to be bound by it or his agent in that behalf.
>
> (4) Subject to subsections (5) and (7), the agreement may be sued and recovered on or set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of a solicitor.
>
> (5) If on any assessment of costs the agreement is relied on by the solicitor and objected to by the client as unfair or unreasonable, the [costs officer] may enquire into the facts and certify them to the court, and if from that certificate it appears just to the court that the agreement should be set aside, or the amount payable under it reduced, the court may so order and may give such consequential directions as it thinks fit.
>
> (6) Subsection (7) applies where the agreement provides for the remuneration of the solicitor to be by reference to an hourly rate.
>
> (7) If, on the assessment of any costs, the agreement is relied on by the solicitor and the client objects to the amount of the costs (but is not alleging that the agreement is unfair or unreasonable), the costs officer may enquire into—
>
> (a) the number of hours worked by the solicitor; and
>
> (b) whether the number of hours worked by him was excessive."

28. In *Whitaker v Richard Slade & Co* (2018 unreported) Master Brown described the effect of a business agreement thus:

> "Business agreements ('contentious' and 'non contentious', see 57 of the 1974 Act) are different from other retainers in that if they are not set aside, they are enforceable without the client having a right to an assessment (Friston Civil Costs: Law and Practice 2nd edition, para. 8.115). In respect of costs which are subject to assessment under section 70, the source of the right to enforce is the service of a bill (see section 69 of the 1874 Act; also *Walton v Egan* [1982] 1 QB 1231 at pages 1237G - 1238 A); and an assessment, under section 70 of the 1974 Act, is an assessment of the reasonableness of costs applying the presumptions set out in CPR 46.9 (3). A

> characteristic of a business agreement is that it deprives the client of the right to an assessment under section 70 of the Act and permits the solicitors to recover the sums due as an ordinary debt; the client is not without protection because the Court is empowered to set aside any agreement if found not to be fair and reasonable."

29. That is correct as a description of the situation where a solicitor is bringing proceedings to recover costs from a client. The position here is different in that the Respondent already held the relevant sums (which had been paid to it by the other driver's insurers) and had rendered its bill so as to move the relevant sum to its office account. Subject to the effect of the August 2020 agreement the existence of a non-contentious business agreement would not prevent the Appellant from seeking an assessment but the Respondent would be able to rely on such a business agreement and to invoke section 57(5) or (7).

30. A solicitor and client can reach an agreement which precludes the operation of either section 57 or 70.

31. In *Walton v Egan* [1982] 1 QB 1232 the solicitor plaintiff had delivered his bill in respect of non-contentious business. The defendant had failed to pay the bill but the parties had reached an agreement for payment of the bill by instalments with interest. The issue before Mustill J (as he then was) was whether the plaintiff could recover the agreed interest either by virtue of the agreement standing alone or under section 57 on the footing that the agreement was a non-contentious business agreement. At 1238 G Mustill J said that if it had been necessary to do so he would have held that section 57 embraced agreements as to interest. However, he then said:

> "There is, however, another and more direct way of arriving at the same conclusion. This arises from the order of events. What happened here was that since there was no *prior* special agreement, the plaintiff's original cause of action stemmed from his bill of costs, in the ordinary way. Because he had not given the right notice, this was not a cause of action which for the time being he could enforce by a suit. Nevertheless, there was a valid indebtedness, which was subject to adjustment only if the clients exercised their right to taxation; an event which never occurred. I see nothing in the Act of 1974 or the Order of 1972 to prevent a solicitor and his client from coming to an agreement about the way in which a bill shall be settled— B and indeed it would be very inconvenient if they could not. Nor do I see any reason why the accommodation should not be made at a time when, because the period of one month has not expired, or because the solicitor has not yet given a notice, the debt cannot presently be sued upon.
>
> If this view is right, there is no need to force the agreement in the present case into the mould of either section 57 or the Order of 1972. It stands on its own feet, as a compromise of existing rights. As such, there is no reason why it should not be enforced according to its terms..."

32. In *Jones v Richard Slade* Johnson J's decision ultimately turned on the question of whether a client seeking to oppose a solicitor's claim for fees could assert in section 70 proceedings that the agreement on which the solicitor was relying had been obtained by undue influence or duress. Johnson J found that it was not open to a court to consider that question in section 70 proceedings. However, the section 70 jurisdiction does extend to assessing the legal status and effect of an agreement. At [35] Johnson J identified the following three potential interpretations of the agreement with which he was concerned saying:

> "This captures the essence of the issue which had been canvassed in email correspondence. That was whether the agreement amounted to a binding compromise of the costs dispute (so as to preclude assessment proceedings), or whether it mandated the outcome of the assessment proceedings (in that costs would fall to be assessed in the agreed sum), or whether it was subject to Ms Jones's right to seek assessment of the costs (with a view to reducing the sum below the level of the agreement)"

33. Johnson J explained further at [44] that the court conducting a section 70 assessment had jurisdiction "to determine whether the agreement precludes a section 70 assessment". It would be necessary to resolve that question before proceeding to the assessment.

Analysis of the Agreement.

34. The position, therefore, is that there are a number of ways in which an agreement between a solicitor and client in circumstances such as these could take effect. One is as a binding compromise of the costs dispute and as such precluding assessment under section 70 (which the District Judge and the Respondent say is the position here). Another is as mandating the outcome of the assessment proceedings. Another is as setting an upper limit on the costs but with the client retaining the right to seek assessment of the costs. Yet another, for which the Appellant contends here, is as a non-contentious business agreement. It is necessary to consider the terms of the agreement to see which is the correct analysis.

35. The following factors favour the Appellant's interpretation of the agreement:

i) There is a strong public interest in a solicitor's client being able to seek assessment of the solicitor's bill by the court. The jurisdiction originally arose as an aspect of the court's supervision of solicitors. It is now entirely statutory but the public interest remains. The public interest is shown by the fact that even where there is a non-contentious business agreement between the solicitor and the client section 57 of the Act retains scope for a limited degree of control by the court. This public interest means that an agreement which is said to preclude the court's intervention is to be scrutinized with care.

ii) The exchanges on 4th August 2020 made no reference to the Appellant foregoing his entitlement to an assessment of the Respondent's costs. At one point Mr Benson submitted that clear words were needed before a client could be held to have foregone his or her right to assessment. I do not accept that proposition. It is contrary to the modern approach to the interpretation of contracts in which the court is to determine the parties' intention objectively having regard to the language used read in context and without requiring express words for any particular outcome. It is moreover inconsistent with the approach taken in both *Walton v Egan* and *Jones v Richard Slade* which made it clear that it is open to a solicitor's client to enter an agreement which prevents exercise of the rights which would otherwise flow from sections 57 or 70. The point does, however, have force to this extent namely that such agreements are to be scrutinized with care and that it is of note that here there was no express reference to the Appellant's potential right to assessment and still less to its removal.

iii) The Respondent's letter of 20th August 2020 did not contain any breakdown of the profit costs figure. In fact the profit costs figure on the Respondent's system at the relevant time was £1,143 higher than the figure of £9,000. However, the Appellant was not told of this and was not told that the £9,000 figure was a discounted amount.

iv) A related point is that at the time of the exchanges the Appellant had not received a bill let alone sought to dispute the bill. In that regard the case differed from the circumstances of *Walton v Egan* (where there had been an agreement that the client would be given time to pay by instalments in return for paying interest) or *Jones v Richard Slade* (where the relevant agreement was reached after a dispute about the level of fees and was an express agreement by the solicitors to accept a reduced amount). Mr Benson submitted that it was not appropriate to talk of a compromise in the absence of a dispute. There is some force in this point. The Appellant is right to say that the situation is different from that which would have been the position if the Respondent's letter had said "our profit costs are currently £10,143 but we will accept £9,000". The position is still further from that which would have obtained if the Respondent had agreed to reduce the amount to £9,000 after criticism by the Appellant of the £10,143. However, the point is far from conclusive. There can be an effective and binding compromise of existing and potentially competing rights even before the parties are in active dispute as to those rights. The agreement for which the Respondent contends here is one in which the Appellant is to be taken to have agreed to forego his right to investigate the profit costs figure in return for certainty as to the amount he would receive and for the Respondent not seeking to argue for a higher figure.

36. The following factors operate in favour of the Respondent's analysis of the exchanges:

i) The Respondent's letter was clear in setting out the amount which the Appellant would receive if the settlement offer was accepted and clear as to the amount which would be retained by the Respondent. The circumstances here were that the settlement monies were to be paid to the Respondent and the amount to be received by the Appellant would be the balance after the deduction of the Respondent's costs. In those circumstances the important figure was the amount to be paid to the Appellant. In that regard it is of note that the Respondent's letter made the point that on acceptance "the funds would be transferred to [the Appellant] promptly". This was clearly a reference to the sum of £9,865.

ii) In agreeing to accept £9,865 the Appellant was to be seen as agreeing that he would not seek any further part of the settlement payment. If the possibility of a challenge to the figure for the Respondent's profit costs had been left open that would have meant that an increase in amount going to the Appellant over the £9,865 figure was being contemplated. Such a reading does not fit easily with the terms of the exchanges.

iii) The Appellant is an adult of full age and capacity. The retainer letter of 15th May 2018 made express reference in two places to the Appellant's right to seek assessment of the Respondent's costs. It was open to the Appellant to

have qualified his acceptance of the settlement offer by telling the Respondent to accept the £24,200 offer from the other driver's insurers but on terms that he was not, as against the Respondent, foregoing his right to an assessment of its bill. Alternatively, he could have asked for an explanation as to how the profit costs sum of £9,000 had been calculated. He could have instructed the Respondent to accept the offer but said that he and the Respondent would need to discuss the division of the sum of £24,200. He did not do any of those things. Instead he instructed the Respondent to proceed on a particular basis namely that set out in the latter's letter of 4th August 2020.

iv) For the Respondent Mr Latham pointed out that the profit costs figure on its system stood at £10,143 and that the agreement was, therefore, a compromise by the Respondent and a discounting of its entitlement. However, as noted above this cannot assist the Respondent in circumstances where the Appellant was not told that the sum of £9,000 was a discounted figure let alone the sum from which it was discounted.

v) The Respondent contended that the agreement formed by the acceptance of its retainer letter was a non-contentious business agreement and that this was inconsistent with the Appellant's case that the agreement in August 2020 was a non-contentious business agreement. There was some debate before me as to whether this argument was open to the Respondent. Mr Benson submitted that it had not formed part of DJ Batchelor's reasoning and that there had been no Respondent's Notice. Mr Latham had appeared below and I accept his explanation that it had been advanced in argument before the District Judge (though this is not an answer to the point that it did not form part of her reasoning). In any event the argument in this form does not advance matters. Even if the retainer agreement was a non-contentious business agreement the parties were at liberty to replace it with a further non-contentious business agreement just as they were able to agree a binding settlement of the amount of the Respondent's fees.

vi) There is, however, force in a related but different point. This is to consider whether the agreement reached in August 2020 can readily be read as a non-contentious business agreement. Section 57 defines such an agreement in wide terms and provides that it can be made after the relevant non-contentious business has concluded. In light of that, the August 2020 agreement could be seen as meeting the definition but that is not the most apt reading of it. It is significant that the agreement is concerned not just with the Respondent's fees. The consideration of the sum to be retained by the Respondent is set in the context of the consideration of the division of the settlement sum of £24,200 and of the amount which the Appellant was to receive from that sum.

37. The position would have been clear beyond peradventure if after the words "£9,000 profit costs" the Respondent's letter had said "which is a discounted sum from the amount of £10,143 currently recorded on our system" or if instead of "our costs made up of" the letter had said "our costs which we limit to". Those steps were not taken but I nonetheless agree with DJ Batchelor that there was a binding agreement as to the precise amount recoverable as the Respondent's costs and disbursements which prevented the Appellant from invoking the section 70 procedure. No one factor is conclusive but I am satisfied that on a proper analysis the August 2020 exchanges

amounted to an agreement not only that the offer of £24,200 would be accepted but also as to the division of that sum between the Appellant and the Respondent. The Appellant accepted that he would receive the sum of £9,865; that the balance would be used in paying the disbursements and in payment to the Respondent; and that the agreement would bring an end to the dealings not only between the Appellant and the other party to the road traffic accident but also between the Appellant and the Respondent. The Appellant cannot seek to use the section 70 procedure to reopen that agreement.

Conclusion

38. In those circumstances permission is to be given for the appeal but although arguable the point advanced by the Appellant does not succeed. The District Judge was entitled to reach the conclusion which she did and the appeal is dismissed.