



**CJC COSTS COMMITTEE**

**REPORT TO  
THE MASTER OF THE ROLLS**

**RECOMMENDATIONS ON  
GUIDELINE HOURLY RATES  
FOR 2014**

**May 2014**



## Foreword

*By Mr Justice Foskett, Chairman of the CJC Costs Committee*

During the oral evidence sessions held by the Committee in February, witnesses from very different parts of the litigation spectrum said variously that our task was “impossible” and “unenviable” and that we were “on a hiding to nothing because no matter what decision is made, it will receive criticism from some quarter”.

I am sure I speak for everyone on the Committee by acknowledging that we knew that we could not produce a report that would please everyone. That, of course, was not our task. It was to conduct a “comprehensive evidence-based review” of the GHR and to make recommendations to the Master of the Rolls accordingly. He kindly extended the initial deadline for completing our work, but everyone has been mindful of the fact that the current GHR have been in place without modification for several years and that questions as to their validity have been raised. Plainly, we could not delay what we had to do.



Inevitably, our recommendations can only be as good or as valid as the quality of the evidence at our disposal and the collective expertise of the Committee in assessing it. We have not had the resources to conduct a nationwide randomised survey of a large number of solicitors’ practices (to which the respondents were obliged to respond) in order to obtain, for example, a statistically robust assessment of the average cost of running a litigation practice and to identify regional variations. The wherewithal to engage professionals to conduct such a survey has not been available in the current exercise. Even if it had been, the litigation market-place is currently undergoing such significant changes that determining generally applicable guideline hourly charging rates appropriate for recovery from the losing party in civil litigation would not have been easy in any event.

I have to record that, despite an immense effort on the part of the Committee (particularly its solicitor members) to make its own survey relatively easy to complete and despite what we are quite satisfied was widespread knowledge within the profession of its existence when it was available for completion, the response rate was poor. However, we were given to understand that this is not untypical of similar surveys conducted by the Law Society. I said in a number of well-publicised comments before and after the survey went “live” that complaint about the outcome would be somewhat hollow if it emanated from those who had not taken part in the survey.

Nonetheless, the survey did provide some useful material and with the quite outstanding *pro bono* contributions to our work of Professors Paul Fenn and Neil Rickman (without which our task would have been impossible and to which, on behalf of the whole Committee, I should like to pay tribute), we have done our best on all the available evidence to arrive at new levels of GHR that are broadly consistent with that evidence. The results of the expert statistical analysis of the evidence appear in paragraphs 7.1 and 7.2 and the process by which the figures came into being is described elsewhere in the report, particularly in Section 5. Some increases in the existing rates are revealed, but more reductions are evident.



Since the Committee includes individuals with direct and regular every-day experience of costs issues, it is inevitable (and indeed appropriate) that it should stand back from the results generated by the analytical work and endeavour to form a collective judgment about those results. Furthermore, part of the evidence at the Committee's disposal was the written evidence generated by the "call for evidence" issued in November 2013 and the evidence given in the oral evidence sessions in February. That evidence cannot be ignored when evaluating the rest of the evidence.

As will be apparent from paragraphs 7.4 and 7.12, reservations are entertained by Committee members about the robustness of the current evidence-base and concerns have been expressed arising from the evidence heard in February in relation to the existing and threatened closures of solicitors' practices and its effect upon access to justice. Those matters prompted a majority of the Committee to wish to offer the Master of the Rolls for his consideration a method by which the effect (in most cases) of the downward trajectory of the GHR from their existing levels could be ameliorated. Paragraphs 7.13-7.19 deal with those matters. It is, of course, recognised that whether this approach is adopted is a matter for the Master of the Rolls, not for the Committee.

It will be clear from the report where judgments have been made by the Committee (sometimes by a majority) which depart from or enlarge upon the results of the expert analysis of the data at the Committee's disposal. It is only right that I should make it clear that in all such cases those judgments are the responsibility of Committee and not of the experts.

It will be also clear from what I have said that, whilst there has been much upon which the Committee has agreed over the last year, there have been some areas of disagreement that it has not been possible to resolve. However, as Chairman, I would like to place on record my appreciation to all members of the Committee for the courteous, civilised and good-humoured way in which all the discussions have taken place even when there have been strong areas of disagreement. What lies in store for the Committee in the future remains a matter for discussion, but the current exercise has been well served by those who have given their time to support it. No-one should under-estimate the commitment that has been required.

We are grateful to those who did reply to the Committee's survey and who contributed either written or oral evidence or both. We are grateful also to the Law Society for its support at a number of important stages in our work.

I end by repeating the gratitude of all the Committee to Professors Fenn and Rickman for their hard work and objectivity and by recording also our gratitude to the Civil Justice Council Secretariat (particularly Peter Farr and Andrea Dowsett) for their invaluable contributions to our work thus far. I should like also to pay tribute to the support that Peter Hurst, the Senior Costs Judge, has given to me personally in the role of Vice Chairman of the Committee and for the wisdom that his unrivalled experience has enabled him to bring to the Committee's deliberations. All will wish him well on his forthcoming retirement.

David Foskett  
May 2014

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## **Section 1. Background & Historical Context**

1.1 Charging the client by the hour has long been an established practice for payment for legal services. When the question of what the losing party in civil litigation pays to the winning party arises, the hourly rate charged to that client becomes a significant factor. However, a broader view of what should be paid by the losing party has developed over the years and the overall combination of the hours taken and the hourly rate charged has been the focus of attention. That view is likely to broaden further with the increasing emphasis placed on the proportionality of the costs bill of the winning party. Nonetheless, hourly rates are still likely to be of importance. The architect of the proportionality reforms, Lord Justice Jackson, has said that “[it] must now be accepted that the level of GHR [Guideline Hourly Rates] is a critical element in the civil justice system, because solicitors’ profit costs account for a high percentage of total litigation costs ....”

1.2 Lord Justice Jackson said “the aim of the GHR should be to reflect market rates for the level of work being undertaken” and that “[these] would be the rates which an intelligent purchaser with time to shop around for the best deal would negotiate.”

1.3 The historic method for calculating an hourly rate was based on an ‘A + B’ formula, whereby ‘A’ comprised the actual costs to a practice of a solicitor doing the work and ‘B’ represented an additional sum designed to cover a profit element and some other overheads and expenses, often referred to as a sum paid for “care and conduct”.

1.4 Prior to the Woolf reforms and the implementation of the CPR in 1999, GHR were set by local judges and solicitors after negotiation of what reasonable ‘going rates’ would be for a particular area and level of fee earner.

1.5 The CPR placed responsibility on judges at all levels to assess costs summarily at the end of a trial on the fast track or on the conclusion of any other hearing that had not lasted more than a day. This development led to the need for guidance on how judges unfamiliar with detailed costs issues should conduct a summary assessment of costs. The then Lord Chancellor, Lord Irvine of Lairg, stipulated that there should be a composite rate of GHR (not one based on A + B rates). This in turn resulted in the Supreme Courts Costs Office (SCCO) publishing in 2002 a comprehensive guide, Appendix 2 of which set out guideline figures for various areas.

1.6 Until 2005, the figures for each locality were arrived at through a framework of local co-ordinators, judicial and from the professions. Rates were uplifted linked to inflation in 2003, 2005 and 2007. From 2008-12 responsibility for collating evidence and recommending GHR was undertaken by the Advisory Committee on Civil Costs (ACCC). In 2013 the ACCC was abolished with responsibility passing to the Civil Justice Council (CJC) and this Committee. The history of the formation of the Costs Committee, its terms of reference and membership are detailed in Appendix 1.

## Section 2. The current GHR

### *(i) Divisions by Grades of Fee Earner*

2.1 Originally two Grades of fee earner's rates were assessed, but in 1999 a third Grade was added and in 2001 a fourth, to reflect highest grade work. The current Grades are as follows:

<b>Grade A</b>	Solicitors, over 8 years' qualified experience
<b>Grade B</b>	Solicitors or Legal Executives (FILEX) over 4 years' qualified experience
<b>Grade C</b>	Other qualified Solicitors or Legal Executives
<b>Grade D</b>	Trainee solicitors, paralegals or equivalent

### *(ii) Geographical Divisions*

2.2 To avoid a multiplicity of figures the GHR were divided into three separate London and national Grades for the rest of England and Wales. The over-complexity of this approach is illustrated in Appendix 2 which sets out the full current GHR, set in 2010. In practice, in any event, the second and third national regions are now paid the same GHR, on the basis that there are few costs differences in running practices in (say) small cities as compared to large towns. However, a differential has been retained for the first national region as reflecting higher salary/property costs in major regional centres and relatively affluent parts, principally in the South East. The current divisions are:

<b>National 1</b>	Major cities and legal centres (e.g. Birmingham, Manchester, Cardiff); South East (e.g. Cambridge, Guildford) and other wealthy areas (e.g. Chester)
<b>National 2</b>	Other cities (e.g. Coventry, Nottingham, Sheffield) Outer city areas (e.g. Outer Leeds, Outer Newcastle)
<b>National 3</b>	Smaller cities (e.g. Leicester, Stoke, Preston) Larger towns and rural areas (e.g. Grimsby, Blackburn, Hereford, Shrewsbury)
<b>London 1</b>	Postcodes EC1-4
<b>London 2</b>	Postcodes W1, WC1-2, SW1
<b>London 3</b>	Remainder of W & SW, NW, N, E, SE and Bromley, Croydon, Dartford, Gravesend & Uxbridge

### *(iii) The ACCC's Recommendations on GHR 2007-09*

2.3 The ACCC assumed responsibility for assessing and recommending GHR in 2007, and while it conducted a detailed study proposed an inflationary uplift of the 2007 rates by 4%, linked to the salary index for the private sector (the ONS Average Earnings Index (AEI) for Private Sector Services). The Master of the Rolls accepted this recommendation for the GHR for 2008.

2.4 The ACCC's study included surveying law firms and taking written and oral evidence from a range of interested parties. In a letter to the Master of the Rolls<sup>1</sup>, the

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<sup>1</sup> [http://www.rcostings.co.uk/Downloads/SirAnthony\\_Dec09.pdf](http://www.rcostings.co.uk/Downloads/SirAnthony_Dec09.pdf)



Chairman, Professor Stephen Nickell, said that there were some unresolved issues to be addressed, including “the extent of work done by solicitors outside the region in which they are located and the extent to which referral fees can account for the gap between the hourly rates charged by claimants’, as opposed to defendants’ solicitors.” The recommendation for 2009 was an up-rating by 1.7%, linked to the AEI and other inflationary factors.

***(iv) The ACCC’S Recommendations on GHR 2010-12***

2.5 In recommending the GHR for 2010 the ACCC provided a conclusions paper<sup>2</sup>, setting out the rationale for the recommendation to again uplift the rates index-linked to private sector salary inflation. The paper provided an analysis of the unresolved issues, and concluded that on the basis of the arguments made and evidence available there was no reason to change the rate to reflect differences between claimant and defendant solicitor, or for the geographic charging rate differences. The point was made that the process inevitably involved looking back on the previous year’s figures, and thus “the GHR can never exactly reflect market conditions”. The Master of the Rolls accepted the recommendation for the rates to be increased on the basis of the 1.7% increase on the 2009 GHR. These rates, set out in Appendix 2, have remained in place ever since for reasons set out below.

2.6 For the 2011 GHR the ACCC did not conduct a major inquiry, but continued the policy it had adopted to recommend an uplift linked to an inflationary index-linked economic indicator. As the AEI index had been discontinued the reference used was the Average Weekly Earnings Index for private sector industries, and as a result the recommendation for 2011 was to increase the GHR by 2.1%.

2.7 On this occasion Lord Neuberger MR declined to accept the recommendation on the basis of the evidence provided, and he wrote to the ACCC asking them to provide more detailed evidence to support the recommendation. The GHR were frozen in the event, with the Master of the Rolls remaining dissatisfied with the further work undertaken by the ACCC. This remained the position until a Written Ministerial Statement in October 2012<sup>3</sup> in which the Government disbanded the ACCC and announced that responsibility for recommending GHR would be transferred to the Civil Justice Council (CJC) and more particularly a sub-committee of the CJC.

2.8 The current rates of the GHR are set out in Appendix 2.

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<sup>2</sup> <http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guideline-hourly-rates-conclusions-march-2010.pdf>

<sup>3</sup> [http://www.parliament.uk/documents/commons-vote-office/October\\_2012/30-10-12/7.Justice-AdvisoryCommitteeCivilCosts.pdf](http://www.parliament.uk/documents/commons-vote-office/October_2012/30-10-12/7.Justice-AdvisoryCommitteeCivilCosts.pdf)

### **Section 3. The approach of the CJC Costs Committee**

#### ***(i) Methodology (summary, detail below in Section 5)***

3.1 Although Lord Justice Jackson's recommendation of the formation of a Costs Council was not accepted (see Appendix 1), he had envisaged that it would be the vehicle by which the GHR would be formulated with a view to recommendations being made to the Master of the Rolls. The process he had in mind was reflected in the following paragraph in his report:

“This will be an important ongoing task for the staff who serve the Costs Council. The Costs Council will have to gather information, with the assistance of the Law Society, the Solicitors Regulation Authority and the Bar Council, as to what it costs lawyers to run their practices.”

3.2 The Committee has indeed focused on “what it costs lawyers to run their practices” although the need for “evidence-based” recommendations has demanded, within the limits of the resources available, a more structured and rigorous examination of the situation than might appear from the approach foreshadowed in that passage in Lord Justice Jackson's report.

3.3 Following discussions the Committee agreed that the approach used should be the one recommended by the economic advisers – **the ‘expense of time’ (‘EOT’) approach**. This is a well-established formula and requires in the first instance estimating the cost to law firms of an hour of fee-earner time, taking into account the full salary cost paid to fee-earners for those hours and the expenses of the firm that need to be recovered from hours billed for the firm to break even (including a wide range of costs and overheads). Once this figure is arrived at, a percentage mark-up is added to it to represent a reasonable profit element.

3.4 Having reviewed all available data sources for the provision of material – salaries, billable hours, realisation rates, expenses, overheads and so on – on which an expense of time estimate could be made for each of the GHR grades and regional bands, the Committee's advisers reported a shortfall of relevant data in some areas. As a result, the Committee conducted its own survey a) to produce new data to make good this shortfall of relevant data and b) to provide a more comprehensive set of data material to allow cross-checks and validation of the information from the other sources.

3.5 The Committee took a conscious majority decision – after some discussion – not to try to reflect the impact of the Jackson reforms for the 2014 GHR exercise. It felt that there was insufficient evidence in terms of throughput of cases under the new costs regime for the effects of the reforms to be taken into account. Since that decision was taken, the evidence has confirmed that this was an entirely justified position to take. Nonetheless, the Committee made provision for submissions to be made on that topic in its survey and call for written evidence, and sought views at the oral evidence sessions. The Committee has recognised that these matters will fall for more direct consideration in any future GHR exercise.

## **Section 4. Sources of Data and Evidence**

### ***(i) The Practising Certificate Holders' Survey (PCHS) and the Trainee Solicitors' Survey***

4.1 This survey is conducted annually by the Law Society's Research Unit. In 2013 this was conducted as a survey of around 1500 randomly selected individuals from private practice, commerce and industry and government, and conducted over the telephone. The Committee's economic advisers were able to analyse the survey results for 2012 and 2013, and pool or cross-check data.

4.2 The PCHS provided data for the Committee's advisers on billable hours and gross salaries, post-qualification experience (relevant in the GHR context) and earnings. There is also some more limited data on types of work undertaken and region worked in. Another Law Society survey on trainee solicitor salaries was particularly helpful in generating data on the trainee grades, which is not so fully covered in other surveys.

### ***(ii) The Firms' Finance Survey (FFS)***

4.3 This survey was undertaken in 2011, with the results provided to the Committee's advisers. It is a national random sample of 300 firms from sole practitioners to 25 partner practices. The 2011 survey covered data for the financial year 2009/10.

4.4 The FFS provided data for the Committee's advisers on turnover, costs (salaries and overheads) and chargeable hours, with some distinctions between different types of work, but not types of fee earner.

### ***(iii) The Law Management Section Survey (LMS)***

4.5 This survey is conducted annually by the Law Society's Research Unit to assess the health of medium sized law firms. The Committee's economic advisers were provided with the survey results for 2011, 2012 and 2013. In the event the 2012 survey proved the most valuable for the present exercise (see Section 5 below). Each such survey is a self-selecting and voluntary exercise, with most participants having 5-25 partners.

4.6 The LMS is a benchmarking survey designed to provide a financial 'health check' for medium sized firms, and covers fee income, income receivable, ratio of fee earners to equity partners and profitability. The LMS also provides commentary on short and longer term future issues for the legal services market to assist firms with planning and business strategy. It is not fully representative of the professions, but provides strong data for medium sized practices in terms of fee earner expenses, support staff expenses, overheads and profits (the overall average profit figure being 21.28% as a percentage of income).

### ***(iv) PriceWaterhouseCooper Survey of the Top 100 law firms (PwC)***

4.7 This survey is compiled annually by PwC's Law Firms Advisory Group, and is a survey of the 100 top law firms as classified by annual global fee income. These are further segmented into the top 10, 11-25 etc, and results and trends in net profit margins are measured along with fee income. The headline message from the 2013 survey was the widening of the gap between the top 10 firms, who were pulling

further ahead in terms of profit margins in a challenging economic climate with ever more sophisticated purchasers of legal services.

4.8 The Committee's economic advisers had access to the full 2013 survey report, but not the underlying financial data due to commercial sensitivity and confidentiality protocols. The PwC survey provided evidence for the Committee's advisers on expenses and overheads. While not representative of all law firms, the survey provided very good data for the largest firms, complementing other material which had covered small to medium-sized practices.

**(v) Jaggards data**

4.9 Jaggards is a legal costs consultancy which maintains a comprehensive database of personal injury claims and has been used by (amongst others) the Government and the Association of British Insurers.

4.10 The data was of particular use to the Committee's economic advisers as it captures data on hours claimed by solicitors, including by Grade of fee earner and region. The data does not extend to hours actually billed by firms, as not all hours worked are accepted as payable by the defendant. It provides a starting point for estimating time to be 'written off' as not recoverable in terms of setting GHR.

**(vi) CILEX Survey**

4.11 The Chartered Institute of Legal Executives (CILEX) undertook a survey of members on salaries and with some questions regarding their employer and length of experience. 831 members (13% of those who had been e-mailed) responded with anonymised details of salary earnings.

**(vii) The Committee's own survey**

4.12 The Committee undertook its own broad-based survey to provide a broad range of data to cross-check and also seek to validate the reliability of the data in the other sources analysed. There were also some gaps in the material from other sources that required to be filled for the Committee's economic advisers to be able to offer fully formed advice. These included -

- More detailed geographic breakdown of salaries and expenses, below a broad regional level;
- More information on the full cost of salaries paid to fee earners – in addition to salaries, national insurance contributions, employee benefits (including pensions) etc;
- Further information on the average realisation rate on billable hours worked by fee earners – the average reduction on hours was required, whereas the Jaggards' data provided an estimate of the maximum rate of reduction.

4.13 Assurances were given that nothing would be published which disclosed the identities of respondents (only the Committee Secretariat had access to individual survey forms, for the purposes of recording data). Responses were submitted electronically via e-mail to a specially created secure account only accessible by the Secretariat. Very significant efforts were made, in particular by the solicitor members of the Committee, to simplify the questions asked and the materials it would be necessary for a firm to consult in order to respond appropriately.

4.14 The survey was launched online on 1<sup>st</sup> November 2013 and originally set a deadline of four weeks for completion, subsequently extended to 12<sup>th</sup> December 2013. The full survey is attached as Appendix 3 to this report.

4.15 Strenuous efforts were made to publicise the survey and to encourage a good response rate – three news releases were issued in October and November 2013 (all tweeted), and letters or e-mails were sent to a wide range of legal professional bodies, all local Law Societies, 2633 senior and managing practices and approximately 7000 COLPs (Compliance Officers for Legal Practice). Alerts were sent out to tens of thousands of practitioners via Law Society weekly bulletins and e-mails to subscribers to the Practical Law Company and Clerksroom. Articles appeared in a range of legal and civil litigation magazines and online publications. Members of the Committee included details in speeches, newsletter articles and circulars of their bodies. The launch of the survey was foreshadowed in a speech by the Chairman to the Motor Accidents Solicitors Society (MASS) on 25<sup>th</sup> October 2013<sup>4</sup> which was placed on the Judiciary website that day and widely disseminated. The Committee is extremely grateful to all the organisations and individuals who assisted in the efforts to raise awareness of and the need for completion of the survey. The Committee is quite satisfied that anyone or any firm interested in the issue of the GHR would have been aware of the existence of the survey and how to respond to it.

4.16 Despite the efforts and extensions to the deadline the response rate was limited. In total 148 completed responses were received. While this was in line with other surveys undertaken in the past by the Law Society and others it was clearly not going to provide the breadth of material the Committee had been hoping to see in order to build a comprehensive evidence-base.

4.17 Nonetheless, the Committee's economic experts advised that the survey's responses produced some useful data in terms of the consistency of the average figures derived from existing data sources (e.g. salaries of different levels of fee earners) and for areas where data was needed (e.g. proportion to be built in for employer contributions). Other information was helpful although it was not possible to achieve the "granularity" necessary for certain purposes. This will be apparent from Section 5.

4.18 Question 17 of the survey provided respondents with an opportunity to comment on any anticipated effects of the Jackson costs reforms for firm finances and the legal services market. While the Committee had taken a decision (see paragraph 3.5) not to take direct account of the impact of the April 2013 (and subsequent) reforms, in view of the lack of hard evidence available for the present exercise, the material submitted was informative, relevant and will help towards future GHR exercises.

***(viii) Call for written evidence and written submissions received***

4.19 On 6<sup>th</sup> November 2013 the Committee issued a call for written evidence to supplement existing data, but also to provide practitioners and others engaged in civil litigation with an opportunity to submit qualitative material, as well as quantitative data. The Committee was clear on the importance of context being set out for its analysis of costs and earnings for legal practices – the macro-economic environment

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<sup>4</sup> [http://www.judiciary.gov.uk/media/speeches/2013/justice-foskett-keynote-address-mass-25102013.htm?wbc\\_purpose=Basic&WBCMODE=PresentationUn](http://www.judiciary.gov.uk/media/speeches/2013/justice-foskett-keynote-address-mass-25102013.htm?wbc_purpose=Basic&WBCMODE=PresentationUn)

(such as inflation, property costs and so on), but also legal market trends, legislative changes (such as the introduction of ABS (Alternative Business Structures) and any other relevant factors.

4.20 In all, some 42 responses (and some supplementary papers provided for or following the oral evidence sessions) were received. The Committee is immensely grateful to all of the organisations, firms and individuals who took the time and trouble to prepare submissions. The quality of material was extremely high, and has informed the Committee's thinking and decision-making. Inevitably, contradictory material was produced, with conflicting evidence on (for example) what constitutes a reasonable profit level for a modern legal practice. The submissions highlighted the diverse views on the issues and underlined the impossibility of arriving at recommendations for the GHR that would be perceived as acceptable by all sections of the civil litigation community.

4.21 A list of the respondents appears at Appendix 4. The submissions are not being published by the Committee and this report does not seek to summarise them except insofar as they inform some of the Committee's decisions. In any event, all the material constituted important and helpful evidence to the Committee. The written submissions also helped the decision on which organisations, firms and local Law Societies should be invited to the oral evidence sessions.

#### ***(ix) Oral evidence sessions***

4.22 The Committee held two days (on 6<sup>th</sup> and 12<sup>th</sup> February 2014) of oral evidence sessions in which a total of 37 witnesses from 19 organisations or firms attended to present evidence and answer questions put to them for the Committee. Transcripts were produced to ensure that the Committee had full access to the points made in the sessions.

4.23 The Committee felt the sessions to have been extremely helpful in terms of clarifying important points made in the written submissions. They contributed to obtaining a very good general feel for market conditions, the complexities of running a practice in the modern civil litigation world, the varying pressures on firms working primarily for claimants or defendants and/or the special features of running either major London city practices or regional firms. The sessions also provided an opportunity for the Committee to obtain reactions to emerging views on certain issues (for example, whether it was appropriate for Fellows of the Chartered Institute of Legal Executives with 8 years' post-qualification experience to be treated as in Grade A) and to challenge and compare contrasting views on the evidence submitted.

## **Section 5. Methodology – detailed commentary**

5.1 The broad methodology of the Committee’s work is outlined in Section 3 and the sources of evidence at its disposal are summarised in Section 4. This section sets out to demonstrate (a) how the “hard” data from the various surveys was analysed by the experts and reported to the Committee and (b) how the Committee, after taking into account the other evidence it received and applying its collective judgment to the results of the expert analysis, has formulated its recommendations. In relation to the way in which the new GHR, if adopted, should be used and implemented, the Committee’s views are set out in Section 7.

5.2 It should be noted at the outset that the overall evidence base upon which the Committee focused in terms of collecting and evaluating the “hard” data was an evidence-base derived from what had been occurring in the competitive legal market place in the broad period from 2010 – 2013. The various surveys considered (see Section 4) provided evidence from this broad period. It is recognised that, to some extent, the costs sought by receiving parties during this period may have been influenced by the existing GHR. However, making a claim based upon these rates does not mean that what was paid by the paying party, whether by agreement or order of the court, was necessarily dictated by those rates and the period in question (marked by a difficult national economic situation generally) was one in which close attention will have been paid by the paying party to any such claims. At all events, the Committee did not have the resources to undertake a fundamental, root and branch analysis of litigation costs without having regard to evidence of what was being claimed and paid in the existing market place. Indeed this would appear to be what Lord Justice Jackson had in mind in his report (see paragraphs 1.2 and 3.1 above). Overall, the Committee was of the view that, given the resources at its disposal, the recent market place would yield valuable evidence of what current reasonable charging rates per hour were subject, of course, to considering it in the context of evidence about the actual costs of running a litigation practice. Because two respondents to the call for evidence raised issues concerning possible anti-competitive practices, the Committee took legal advice and was assured that nothing in its approach to evidence-gathering or to its recommendations would breach any aspects of competition law.

5.3 In relation to the data available through surveys other than the Committee’s own survey, the two most helpful surveys on the detailed matters to which the Committee needed to give consideration were the PC Holders Surveys 2012 and 2013 and the LMS Survey 2012<sup>5</sup>. The former provided information on billable hours and gross salaries, as well as post-qualification experience (in years), region of workplace (using the Law Society’s own regional classification) and the type of work undertaken. The latter provided information on the costs of running the business of a solicitors’ practice over and above the payments (real and notional) made to fee-earners, including the expenses of paying for (non-fee-earning) support staff and overheads such as the costs associated with premises, marketing, training, IT and professional indemnity insurance. In terms of the information utilised by the Committee’s experts from the PC Holders Surveys 2012 and 2013 only solicitors employed full time in private practice were included and those working 100% in either criminal or family law work were excluded. In terms of reported billable hours, weekly values of over 50 hours, monthly values of over 200 hours and annual values of over

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<sup>5</sup> Although the Committee’s experts were provided by the Law Society with a copy of the 2013 LMS Survey, the questionnaire had been changed from that used in the previous year which, the experts advised, introduced some potential gaps and ambiguities and, accordingly, the material used by the Committee was drawn only from the 2012 survey.

2,200 hours were excluded. The net effect of applying these exclusions resulted in the billable hours of 886 individuals being considered in the analysis. In relation to average salaries, a total of 745 individuals were considered. So far as the LMS Survey is concerned, no material was excluded from the analysis by the experts (other than where there was missing data in the survey). It provided a useful evidence base although it has been understood by the Committee throughout that the conclusions to be drawn from this survey would inevitably be less statistically robust because the responses were drawn solely from the members of the Law Society's Law Management Section (and those other practices who chose to answer it) and not from some randomised survey. This is a matter to which attention is drawn again later in Section 7. Nonetheless, the survey affords evidence from 180 firms containing a total of 5413 fee-earners.

5.4 In relation to the material derived from the PC Holders Surveys<sup>6</sup>, the experts approached it on the following bases:

- (i) the billable hours were converted in each case to annual totals (based on 46 working weeks per year);
- (ii) for all solicitors other than equity partners and sole practitioners (for whom was assumed a notional salary equal to the mean salary paid to solicitors in the same Grade and same geographical region<sup>7</sup>) salaries were taken as gross (including London Weighting and performance-related payments).

5.5 These two surveys enabled two breakdowns to be produced each of which (in order to address sample size issues) represented a simple breakdown into "London" and the rest of the country ("National"). The breakdowns identified solicitors with differing levels of experience in the following way: Grade A - more than 8 years of PQE<sup>8</sup>; Grade B - more than 4 years of PQE, but less than or equal to 8 years of PQE; and Grade C - less than or equal to 4 years of PQE. The work type groups were characterised as "commercial" (if 100% of fee-earning time was reported as in the "business and commercial" category) and "other" for all others. The breakdowns are set out in the following two tables.

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<sup>6</sup> To increase sample sizes and thus confidence in the estimates to be derived, the relevant material from the 2012 and 2013 Surveys was pooled. The experts advised that they had tested to see if mean salary levels differed significantly across the two survey years and found that there was no significant difference. Accordingly, it was felt that pooling was legitimate.

<sup>7</sup> The purpose of this assumption is to make an estimate of the cost to the firm of replacing the hours worked by the equity partners through employing similarly qualified solicitors.

<sup>8</sup> Post-qualification experience.



### Mean salary by grade, region and work type (including sample sizes)<sup>9</sup>

Band	Mean Salary (£)								
	Commercial			Other			Total		
	National	London	Total	National	London	Total	National	London	Total
A	84734.38	130020	110952.4	54418.47	98730	65608.25	57376.12	108290.8	72909.42
	16	22	38	148	50	198	164	72	236
B	51071.43	91152.78	84627.91	42849.79	62536.84	46915.6	43569.19	81267.27	58927.67
	7	36	43	73	19	92	80	55	135
C	43979.17	69953.97	65798	32443.78	55030.24	41357.5	33161	60224.68	46258.67
	12	63	75	181	118	299	193	181	374
D							19829	32275	26052
							2114	2597	4711

### Mean billable hours by grade, region and work type (including sample sizes)

Band	Mean Billable Hours								
	Commercial			Other			Total		
	National	London	Total	National	London	Total	National	London	Total
A	1267.391	1447.167	1397.349	1138.706	1256.802	1169.39	1149.75	1335.034	1215.092
	23	60	83	245	86	331	268	146	414
B	1287.143	1521.371	1482.333	1253.85	1463.75	1295.83	1256.529	1500.418	1350.993
	7	35	42	80	20	100	87	55	142
C	1409.4	1636.857	1588.803	1179.299	1452.75	1297.548	1200.605	1514.119	1360.212
	15	56	71	147	112	259	162	168	330
D							1200	1500	1350
							n/a	n/a	n/a

5.6 It should be noted that these surveys do not include information on the remuneration of trainees. The position of trainees is referred to further at paragraph 5.14 below.

<sup>9</sup> The results of the Committee's own survey on salary levels are shown in Appendix 3. Focusing on the National figures (where sample sizes are adequate for statistical purposes) most are broadly consistent with the salary data from the PC Holders Survey which have been used to formulate the GHRs.

5.7 These two surveys sought from respondents gross salary figures only. The information in relation to additional employers' NIC and pension contribution costs was provided by virtue of the Committee's own survey (see Section 4 and Appendix 3).

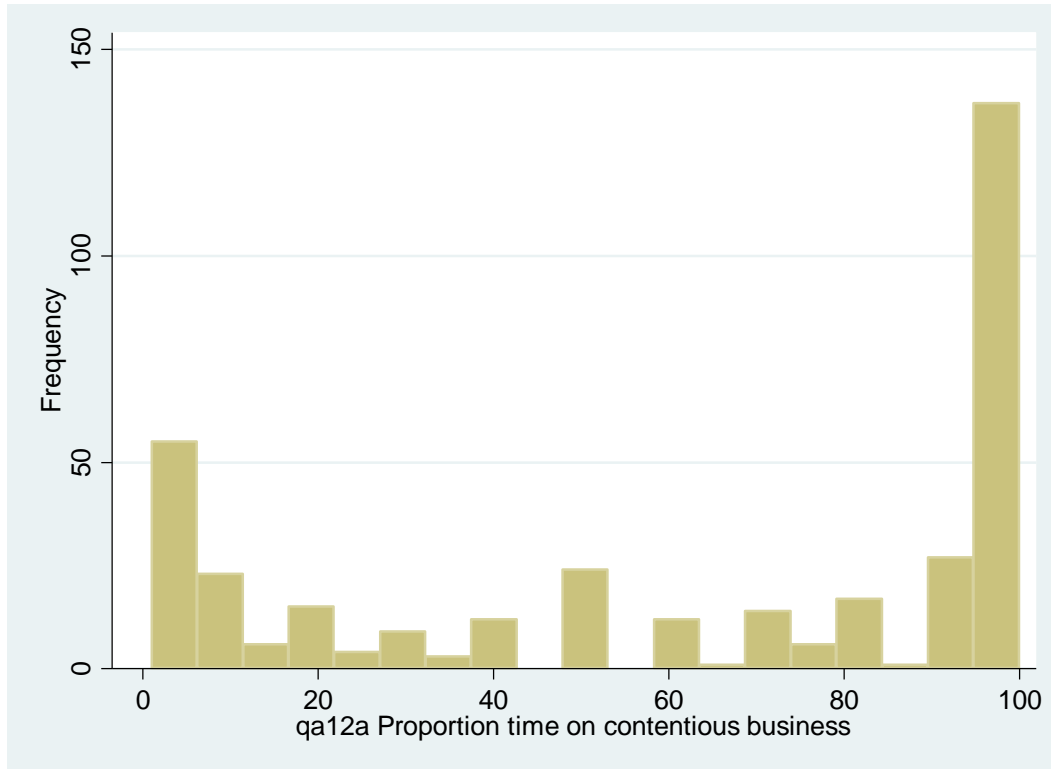
5.8 The mean billable hours can be seen from the Tables referred to in paragraph 5.5 above. For example, for Grade A work that was non-commercial, the means were 1138 (National) and 1256 (London). The means for Grades B and C were higher. Concerns were expressed within the Committee that those figures may represent an overestimate of billable hours (such that any GHR based upon them would be less than otherwise warranted). These concerns arose from the results of the Committee's own survey which, by utilising a combination of the answers given to Questions 10(a) and 11(a) (see Appendix 3), produced the results shown in the following table:

<b>Billable hours of fee-earners working in litigation</b>									
	National		London 1		London 2		London 3		
	Mean	N	Mean	N	Mean	N	Mean	N	
<b>Equity partners</b>	841.9571	52	998.1531	5	910.5077	7	894.7993	7	
<b>Salaried partners</b>	982.6104	31	1079.41	5	979.1017	4	665.6667	3	
<b>Other solicitors</b>	913.1231	47	1140.464	5	917.885	7	1096.594	6	
<b>Legal executives</b>	941.9316	25	650	1	.	0	1298.667	3	
<b>Costs lawyers</b>	790.0711	8	809	2	.	0	.	0	
<b>Paralegals</b>	774.621	36	619.6844	4	491.8504	4	750.8076	5	
<b>Trainees</b>	708.6519	31	883.9714	4	846.2262	4	884.2708	4	

5.9 A glance at the mean figures nationally for qualified litigators (other than paralegals) would suggest that the figures for billable hours (in the region of 900 – 1000) are less than those found in the PC Holders Surveys.

5.10 The suspicion of the experts was that the results of the Committee's survey may have been biased downwards because not all fee-earners working in civil litigation spend all of their time on contentious matters. Since the figures in the table above were obtained by dividing all hours billable for civil litigation by the numbers of fee-earners working in civil litigation, the billable hours for litigation would inevitably be diluted or reduced if many of the latter were paid for carrying out work in other areas in addition to civil litigation. The suspicion for this was generated by the evidence revealed in the PC Holders Survey 2013 when the question was addressed of what proportion of their time was spent on contentious business by solicitors who do some work on contentious matters. The results are depicted in the following Table:

**For those solicitors who do some work on contentious matters, what proportion of their time is on contentious business?  
Source: PC Holders Survey 2013**



5.11 As a result of the concerns raised, the experts re-visited the results of the Committee’s survey. The sample sizes for London were not considered by the experts to be sufficient to enable satisfactory comparisons to be made, but the sample sizes for outside London were worthy of further analysis to see if they could be further refined in respect of those working exclusively or substantially in litigation. By comparing the numbers of fee-earners reported for the firm as a whole in the answers to question 2 with the numbers of total fee-earners working in civil litigation as reported in answer to question 10, it was possible to identify those firms that could be considered to be “litigation specialists”. Only those firms outside London with 75% or more fee-earners working in civil litigation were included in this re-visitation exercise. The mean billable hours for qualified solicitors, trainee solicitors and paralegals derived from this exercise are shown in the following Table:

**Billable hours of fee-earners working in litigation (Q11a/10a)  
[Firms outside London with over 75% of fee-earners working in litigation]**

	N	Mean	Std. error	95% confidence interval	
<b>Qualified solicitors</b>	15	1120.64	80.99	946.93	1294.35
<b>Trainees</b>	8	884.26	128.60	580.17	1188.35
<b>Paralegals</b>	10	1191.68	96.12	974.23	1409.12

5.12 Whilst the available sample size for this exercise is considerably less than the sample size in the PC Holders Surveys (517 solicitors), this analysis does lend credence to the suspicion of a downward bias in average billable hours because the means for the “specialist” litigation firms are substantially higher than the means for all firms incorporated in the Table in paragraph 5.8 above. The comparable figure for qualified solicitors outside London in the PC Holders survey is 1183 billable hours<sup>10</sup> which is well within the 95% confidence interval for the figures in the Table in paragraph 5.11 above. The experts’ advice to the Committee was, therefore, not to make any changes to the PC Holders Surveys estimates of billable hours for the purposes of its GHR calculations. Subject to the general reservation referred to in paragraph 7.4 below, the Committee accepted that advice.

5.13 The PC Holders Surveys did not give any data on the billable hours for trainees. It is, of course, well known that they will work fewer billable hours than other fee-earners. The Costs Committee survey did, however, reveal some evidence in relation to this matter (see the Table referred to in paragraph 5.11 above). In order to obtain the relevant information for the purposes of those trainees engaged in specialist litigation practices, the same “sift” as that carried out for the purposes of the re-visitation exercise referred to in paragraph 5.11 above was carried out. The numbers involved (derived from only 8 firms) are small, but the evidence from this database is the only evidence to emerge from the material at the Committee’s disposal. The advice of the experts was that it was more appropriate to utilise these figures than to proceed on the basis of an assumption that had been used at an earlier stage in the Committee’s deliberations (namely, that trainees work the same hours as Grade C solicitors) with no data to support it. The Committee accepted that advice.

5.14 The billable hours for trainees generated by this analysis represented the billable hours for those working outside London. Since there was insufficient data to enable a valid conclusion to be drawn for the billable hours worked by trainees in London, the experts advised that the only way in which a sustainable conclusion could be drawn on this issue was to adopt the assumption that is to be derived from the PC Holders Surveys, namely, that billable hours generally are on average 21.8% higher in London than outside London. Whilst the Committee feels that this is one of a number of areas where greater information would assist, overall it felt that this advice was sound and, accordingly, has proceeded on this basis. It follows that, underpinning the calculations of the GHRs for trainees, the billable hours for those outside London have been taken as 884 and for those within London 1 and London 2 as 1077<sup>11</sup>.

5.15 The “billable” hours reported by individual respondents to the PC Holders Surveys, and indeed to the Committee’s own survey, will not be the same as hours actually billed, in part at least because not all hours worked can be laid at the door of a paying party. Consequently, firms “write off” a proportion of the hours for which fee-earners are paid. This can be illustrated in the personal injuries context by the data provided to the Committee by Jaggards. The data provided showed preparation hours claimed on behalf of claimants and the preparation hours offered during the negotiation process for various types of personal injury claims during 2012 and 2013 in which the issue of costs was resolved. It follows that the ratios of offered hours to claimed hours in the Jaggards database reflect maximum reductions in claimed billable hours and the average maximum rates by which hours were reduced in the

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<sup>10</sup> The weighted average of Grades A, B and C outside London from the PC Holders Survey.

<sup>11</sup> The hours for paralegals were assumed to be 1192 (National) and 1452 (London).

various types for personal injury claim settled in 2012 and 2013 (with sample sizes below each mean) are shown in the following Table:

**Offered hours as % of claimed hours by claim type**

Claim type	Offered hours as % claimed hours	N
Employer's Liability	73.12%	2,542
Motor	71.50%	7,256
Public Liability	74.12%	2,273
Total	72.33%	12,071

5.16 The foregoing information was helpful, but rather than seeking the maximum rate of reduction in billable hours from those claimed, what was required was an estimate of the average reduction in the hours claimed. The Committee's own survey asked a series of questions about the relationship between the total number of billable hours recorded and the total number of hours that were actually billed (either to the paying party or to the client) and in relation to the "realisation" or "recovery" rate: see Questions 11 and 13-16. The results of the responses received to those questions is summarised in the following two Tables:

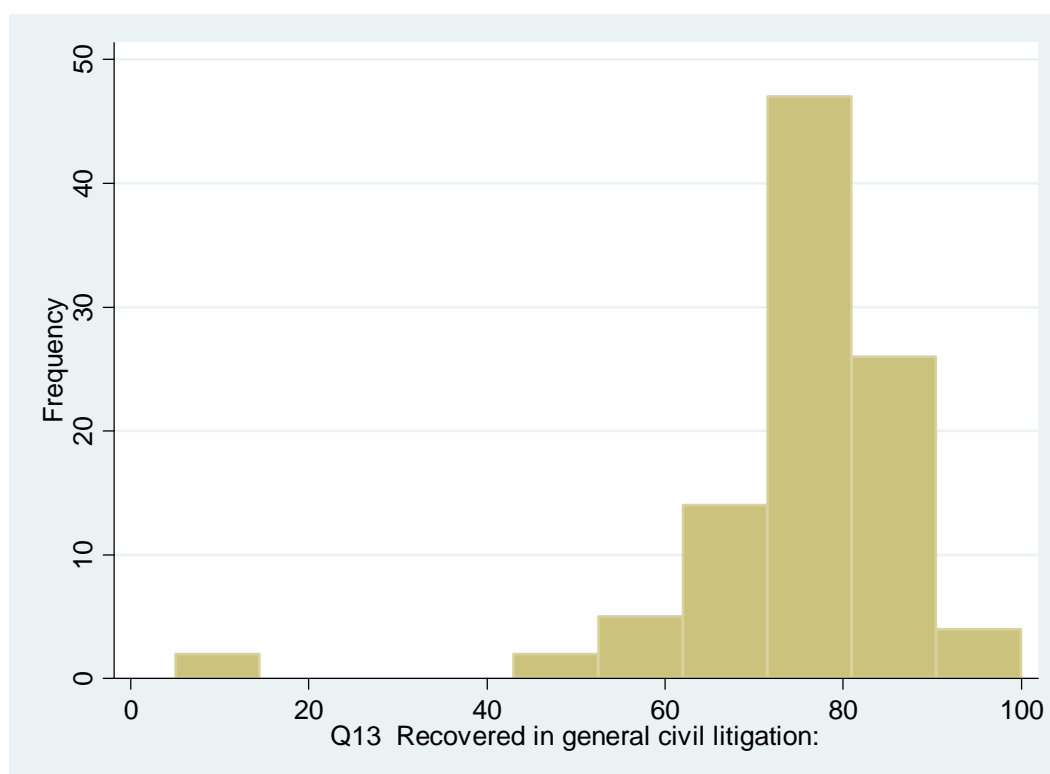
**Billed hours as % of billable hours (mean)**

Fee-earner	Mean % realised	Obs
Equity partners	80.98%	77
Salaried partners	80.74%	45
All other solicitors	81.93%	68
Legal executives	74.29%	35
Qualified costs lawyers	72.29%	12
Paralegals etc	71.98%	53
Trainee solicitors	70.98%	43

**Realisation rates on general and commercial litigation**

	Successful		Unsuccessful	
	Mean % realised	Obs	Mean % realised	Obs
General litigation	75.98%	100	74.75%	53
Commercial litigation	75.11%	75	72.31%	50

5.17 The realisation or recovery rate in general litigation revealed by the Committee's own survey is illustrated as follows:



5.18 The advice given to the Committee was that to arrive at the appropriate figure for billed hours, the billable hours should be reduced by 25%, a reduction consistent with the results on realisation rates from the Committee's own survey and indeed within the range reflected in the data from Jaggards. It accorded with the experience of those members of the Committee with regular experience of costs negotiation and recovery through the Court's assessment process and the Committee accepted it.

5.19 As indicated in paragraph 5.7 above, neither the PC Holders Surveys nor the other surveys provided information about the full cost of meeting the salaries paid to fee-earners – in other words, taking into account, in addition to the salary itself, the need to pay employers' NIC contributions and other employee benefits, including pension contributions. Question 5 of the Committee's own survey addressed this issue and there was a sufficient response to enable a clear conclusion on this matter which is reflected in the following Table:

**NICs and employer benefits as % total salary bill (mean)**

	Mean (%)	N
NICs as % salary bill	10.35	130
Employer benefits as % salary bill	3.73	129

5.20 The total cost of providing for these matters is approximately 14% of the total salary bill and in order to arrive at the appropriate figure for salary costs to the firm,

the fee-earners' gross salary figures shown in the Tables in paragraph 5.5 must, therefore, be increased by 14%.

5.21 The two sets of calculations thus described yield (a) the full salary cost and (b) hours billed (or the true billable hours). Dividing the former by the latter would generate a starting point for the expense of time for each class of fee-earner. It is, however, self-evident that achieving this basic hourly rate by way of recovery of costs would recover only sufficient resources to pay the salaries of fee-earners and to acquire notionally the services of solicitors equivalent to those provided by the equity partners. Consequently, the additional expenses of running a firm must be raised from the hours billed before any profits can be earned. Examples of additional expenses of this kind were identified in paragraph 5.3 above.

5.22 The Committee's own survey sought to address this issue in Question 6 by asking firms to state the percentage of their gross income represented by various different types of overheads (including support staff costs). The nature of the responses can be seen from the following Table:

**Question 6: Overheads as percentage of gross income**

Variable cost	Obs	Mean (%)	Std. Dev.	Min	Max
Property	135	7.72	3.80	0.00	30.00
IT revenue	136	3.49	3.08	0.20	24.00
Referral fees	123	3.36	6.67	0.00	46.00
Marketing	119	4.03	6.80	0.00	47.00
Finance	131	3.69	4.88	0.00	48.00
Insurance	135	4.67	9.22	0.00	95.00
Write-offs	132	2.18	4.56	0.00	50.00
Support staff	131	12.15	9.18	0.00	56.00
Other	130	17.66	14.59	0.00	73.60

5.23 The addition of all of the percentages for each firm that responded to Question 6 gives the total overheads as a percentage of fee income for each firm. The charts below show the distribution of overheads as a percentage of gross income as reported by respondents to the Committee's survey. The first shows the distribution for all respondents and the second shows the distribution for all firms except for single fee-earner firms. The vertical line is drawn at 49% which represents the proportion of gross income referable to overheads as derived from the analysis described in paragraph 5.27 below concerning the weighted average mark ups for overheads and profits. What that analysis demonstrated was that there was an overhead mark up of approximately 140% on salary costs with an approximate 20% profit mark up. That translates into the conclusion that salary costs amount to 35% and overhead costs amount to 49%<sup>12</sup> of total fee income. A 20% profit mark up gives a 16% profit margin<sup>13</sup>.

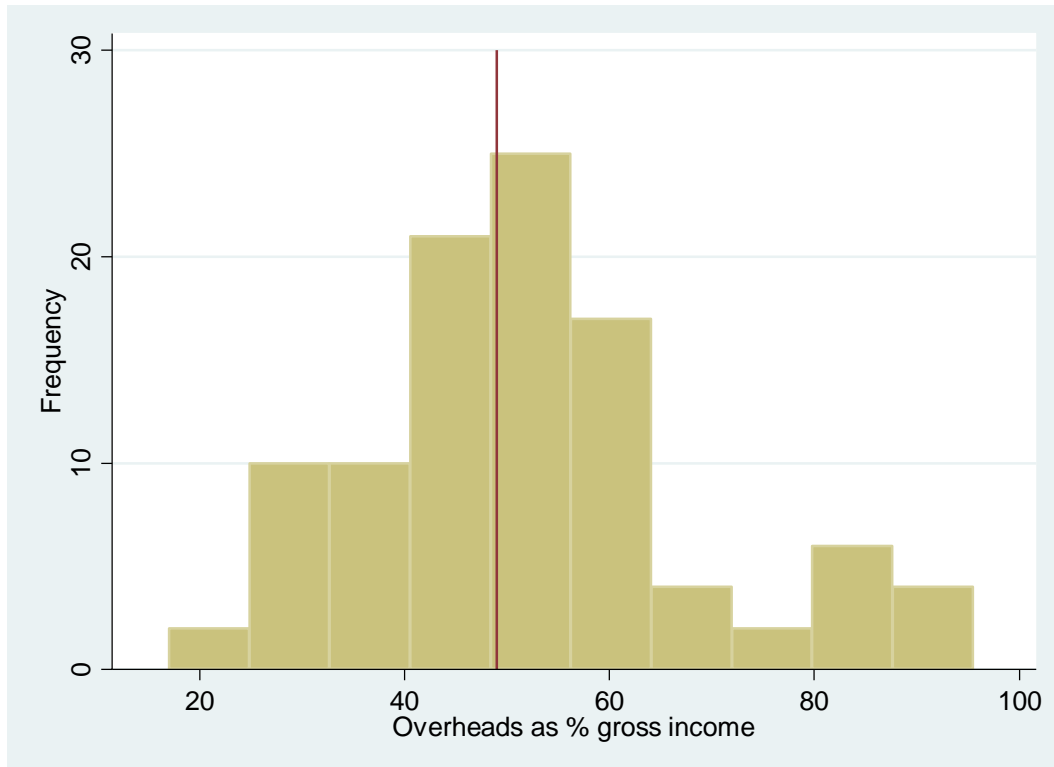
5.24 The advice of the Committee's experts is that the conclusion to be drawn from the responses given to the survey is that 49% of the gross income does reflect the modal value (i.e. the most frequent value) of the distribution of overheads, particularly when sole proprietor firms (which represent only 8% of fee-earners: see paragraph

<sup>12</sup>  $49/35 \times 100 = 140.$

<sup>13</sup>  $16/(35 + 49) = 4/21 = 20%.$

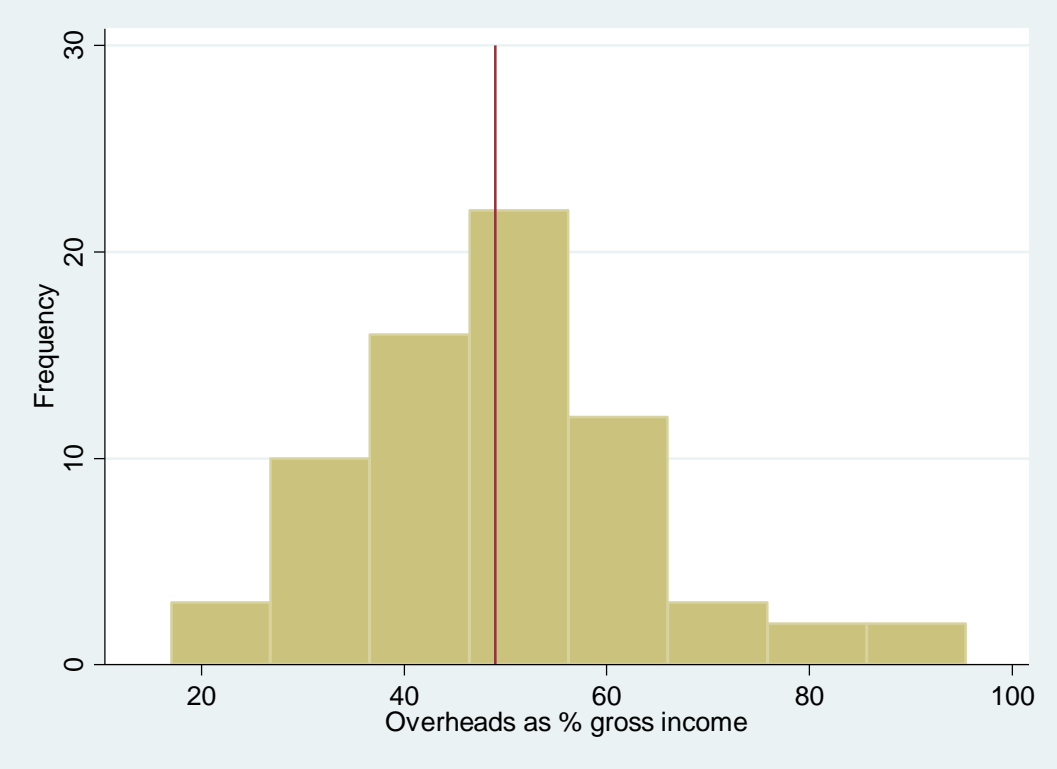
5.25 below) are excluded. Inclusion of sole proprietor firms indicates that a number of these firms appear to operate with very little residual income available for salaries and/or profits. The assumptions the experts recommend that are made for the purposes of calculating the GHR is an average “mark up for overheads” on total (real and notional) fee income (of approximately 140%) and an average profit mark up on costs (of approximately 20%). Whilst the two are obviously inter-related, the question of mark up for profit is dealt with separately below (see paragraphs 5.27 and 5.28), but for the purposes of the appropriate percentage of gross income to be taken as referable to overheads, the Committee accepted the advice referred to.

**Overheads as % of gross income: all respondents**





**Overheads as % of gross income: all respondents apart from single fee-earner firms**



5.25 The analysis to this point enabled EOT figures to be produced as follows:

**Means and confidence intervals for expense of time (EOT) estimates<sup>14</sup>**

<b>Grade and Region<sup>15</sup></b>	<b>EOT mean (£)</b>	<b>Std error<sup>16</sup></b>	<b>95% confidence interval</b>	
			<b>EOT Min</b>	<b>EOT Max</b>
<b>Grade A</b>				
<b>National, all</b>	190.74	5.22	180.50	200.97
<b>Inner London</b>	302.17	8.77	285.00	319.35
<b>Outer London</b>	210.15	5.75	198.87	221.43
<b>Grade B</b>				
<b>National, all</b>	126.57	5.63	115.53	137.60
<b>Inner London</b>	213.65	9.89	194.26	233.04
<b>Outer London</b>	139.45	6.20	127.29	151.61
<b>Grade C</b>				
<b>National, all</b>	102.01	5.12	91.97	112.04
<b>Inner London</b>	155.92	3.89	148.29	163.55
<b>Outer London</b>	112.39	5.64	101.33	123.44
<b>Grade D (trainees)</b>				
<b>National, all</b>	81.83			
<b>Inner London</b>	118.39			
<b>Outer London</b>	90.16			
<b>Grade E<sup>17</sup></b>				
<b>National, all</b>	60.68			
<b>Inner London</b>	87.80			
<b>Outer London</b>	66.86			

<sup>14</sup> Estimates for Grade A, B and C based on mean salaries and hours from Law Society's PC Holders' survey 2012 and 2013; salary estimates for Grade D (trainees) based on Law Society's Trainee salary survey (with hours estimated from the committee's own survey); salary estimates for Grade E (paralegals) based on Grade D salaries (with hours estimated from the committee's own survey) assumptions on employers' contributions and realisation rates from CJC Costs Committee Survey 2013; assumptions on overhead mark ups from Law Society's Law Management Section Financial Benchmarking Survey, 2012 [see Table in paragraph 5.27 below].

<sup>15</sup> "Inner London" for this purpose comprises the following postal districts: E1, E14, EC1, EC2, EC3, EC4, SE1, SW1, W1, WC1 and WC2; "Outer London" comprises all remaining London postal districts (W, NW, N, E, SE and SW) and areas within the 32 London Boroughs. London rate differentials are based on the Law Society survey of trainee salaries. See further at Section 6.5 below.

<sup>16</sup> These are "bootstrapped" standard errors, based on 200 replications.

<sup>17</sup> Grade E has been added in accordance with the Committee's recommendation in Section 6.4 below.

5.26 Those figures will be used as the baseline figures for building up the GHR by reference to a mark up for profit and an additional mark up for compensation for unpaid end-of-year WIP (see paragraphs 5.27- 5.38 below).

5.27 The foregoing analysis in relation to the overheads as a percentage of gross income slightly overtakes and anticipates the further analysis undertaken of the appropriate mark up for profit. As already foreshadowed, the focal point for the analysis conducted by the experts into this aspect on the basis of the survey evidence available was the LMS Survey 2012. Some preliminary work had been done in which the overheads and net profits<sup>18</sup> for firms responding to the various surveys had been aggregated. The effect of doing so gave greater weight to those responding firms with more expenditure on fee-earners. In the context of the GHRs that is not inappropriate, but the distribution of the size of firms responding to those surveys did not reflect the size distribution of the market as a whole. In consequence information was sought from the Law Society on the distribution of fee-earners across different firm sizes with a view to using this information to weight the overheads and net profits (net of notional salaries) reported in the LMS Survey. The Table below reveals highlighted percentages which show the weighted mark ups for overheads and profits which reflect the way that fee-earners are distributed across these different size groups:

**Weighted average mark ups for overheads and profits (highlighted)**

Firm size	Fee earners <sup>20</sup>	%	Mark ups <sup>19</sup>	
			Overhead mark up on fee-earner expenses	Profit mark up on total costs
<b>1</b>	9785.2	8.0%	158.87%	7.39%
<b>2-5</b>	16595.89	13.5%	148.62%	18.30%
<b>6-12</b>	16119.71	13.2%	147.66%	21.45%
<b>13-40</b>	24100.06	19.7%	138.50%	17.50%
<b>41-170</b>	20354.39	16.6%	139.65%	17.98%
<b>171+</b>	35542.6	29.0%	131.69%	24.81%
<b>Total</b>	122497.85	100.0%	140.92%	19.52% <sup>21</sup>

<sup>18</sup> Net profits defined here as gross profits with a reduction to reflect the amounts payable to equity partners for the billable hours they provide.

<sup>19</sup> Source: Law Society's LMS Survey, 2012.

<sup>20</sup> Source: Law Society MI data, October 2012.

<sup>21</sup> This mark up on costs is equivalent to a profit margin on total income of approximately 16%. This profit margin does not include the notional salaries attributable to equity partners. The 95% confidence interval around this mark up estimate is [16.2%, 22.3%] based on bootstrapped standard errors.

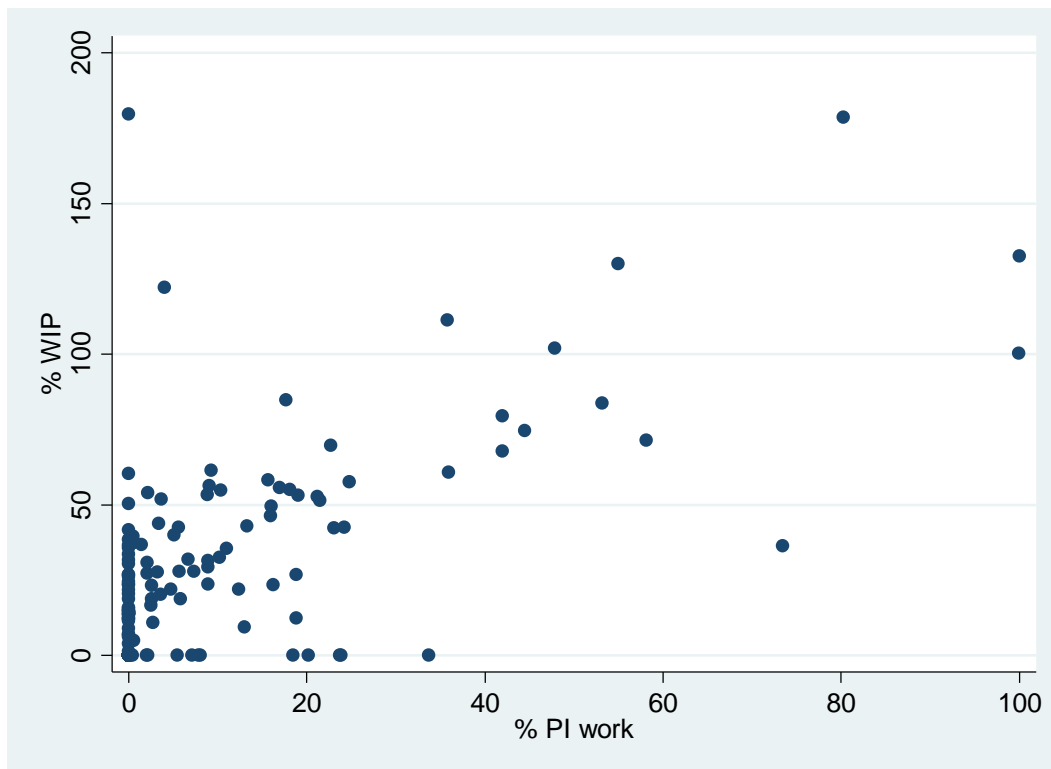
5.28 The advice of the Committee’s experts was that, on the evidence available, these were the most reliable estimates of overheads to use in calculating expense of time and the mark up for profit to be applied to reach the GHR (subject to an additional element for ‘work in progress’ (‘WIP’): see paragraphs 5.31-5.38 below). They recommended rounding up the 19.52% to 20%. As already indicated in paragraph 5.24, the Committee saw no reason to reject this advice in respect of the mark up for overheads.

5.29 Some concerns arose as to whether a mark up for profit of 20% was adequate given some features of the written and oral evidence received.

5.30 However, whilst some concerns remain, the objective evidence available to the Committee is that a mark up for profit of 20% is what the market-place it has been able to investigate and analyse suggests is the norm for all areas of practice. For the purposes of assessing the GHR, the Committee cannot go further than that on the evidence.

5.31 The issue of whether the mark up for profits applying to litigation work (particularly personal injury litigation work) should be enhanced to take account of higher than average levels of year end WIP was raised during the Committee’s deliberations, in the written submissions received and during the oral evidence sessions. The objective evidence, derived from the LMS Survey 2012, is demonstrated in the following diagram which shows the relationship between the annual income from personal injury work and the year end WIP as a percentage of the total fee income:

**5.32 Relationship between annual PI fee income and year-end WIP as % of total fee income**



5.33 Furthermore, the following Table, again based upon the information generated by the LMS Survey 2012, shows the year end WIP as a percentage of total fee income for firms with differing levels of personal injury work:

**WIP as % of total fee income for firms with differing levels of PI work**

<b>Percentage of fee income from PI work</b>	<b>WIP as % total fee income</b>		<b>No. of Firms</b>
	<b>Mean</b>	<b>Std. Dev.</b>	
<b>Less than 10%</b>	20.98%	25.91%	95
<b>10-25%</b>	37.59%	23.35%	26
<b>25% and over</b>	87.78%	43.81%	14
<b>Total</b>	31.11%	34.28%	135

5.34 The expert advice to the Committee was that these analyses of the evidence generated by the LMS Survey demonstrate that there is a significant relationship between the reported year-end WIP as a percentage of fee income and the proportion of personal injury litigation carried out by the firms in question. Such firms do appear to carry more WIP than the average firm that does not engage in any, or any significant, personal injury work.

5.35 The issues for the Committee to address were whether, when formulating a GHR for use henceforth, some additional mark up should be incorporated to compensate for the “lock up” of the unpaid WIP and, if so, what the level of that mark up should be.

5.36 On the first of those issues, the consensus was that some additional mark up should be incorporated. It was acknowledged that, since a single GHR was proposed across all types of litigation (not exclusively personal injury litigation), the relevance of WIP would be less in some types of litigation than others and consequently a mark up for it might not, therefore, be appropriate. However, a large proportion of litigation is personal injury litigation and it was felt that a modest mark up should be included. It will be apparent from this report what that mark up will be. Whilst lengthy debates (and the submission of detailed evidence) about its relevance in an individual case is not to be encouraged (certainly in the case of summary assessments), this is an area where the court may wish to vary the rates adopted in any case to the individual circumstances.

5.37 The next issue was how the mark up was to be calculated. Based upon the LMS Survey 2012 the “lock up” of unpaid WIP has been assessed by the experts to be equivalent to an extra 57% of annual fee income<sup>22</sup>. On that basis the following Table indicates the additional mark up to accommodate the opportunity cost of lock up depending on the rate of return that would have been available to the firm if it had

<sup>22</sup> This is based on the difference between the WIP for a firm doing a significant amount of personal injury work (25%+) and the WIP for an average firm, the figures utilised for this purpose being derived from the LMS Survey 2012 data referred to in the Table in paragraph 5.32 above. The WIP for the former type of firm is, in a rounded figure, 88% and for the latter 31%. Hence the figure of 57% assumed for the purposes of the calculation.

been paid the amount owed to it at the year end. That issue is addressed in paragraph 5.36 below.

**Additional % mark up for WIP with varying assumptions about the opportunity cost of lock up**

<b>Opportunity cost of lock up</b>	<b>% mark up for WIP</b>
<b>0.00%</b>	0.00%
<b>1.00%</b>	0.57%
<b>2.00%</b>	1.15%
<b>3.00%</b>	1.74%
<b>4.00%</b>	2.33%
<b>5.00%</b>	2.93%
<b>6.00%</b>	3.54%
<b>7.00%</b>	4.16%
<b>8.00%</b>	4.78%
<b>9.00%</b>	5.41%
<b>10.00%</b>	6.04%
<b>11.00%</b>	6.69%
<b>12.00%</b>	7.34%

5.38 The Committee received no clear evidence on the rate of return that would have been available to a firm if it had been paid the amount owed to it at the year end. The LMS Survey makes an assumption that equity partners should have a notional return on capital of 3% and the Law Society had suggested to the Committee’s experts that the true figure should be 7% although this was not supported by any objective evidence. Irwin Mitchell, in its evidence to the Committee, suggested that the opportunity cost would be 12%, as this was said to be the rate of return required by investors in unlisted companies, but again this figure was also not supported generally by other evidence.

5.39 Because the Committee felt in principle that there should be a modest mark up to reflect this matter, it has done its best, with the help of its experts, to arrive at an appropriate mark up. The percentage opportunity cost of lock up has been assessed at roughly 6% with a consequent 3½% uplift. The way in which this has been calculated is set out in Appendix 6. It follows that a 3½% uplift will be added to the results of the process derived from the addition of the 20% mark up on the expense of time figures (see paragraph 5.25 above).

5.40 The Committee’s approach to the available objective evidence concerning the constituent elements that go to make up a GHR has been set out in the foregoing paragraphs. Before turning to what that evidence leads to in terms of “evidence-based” recommendations for the GHRs (subject to the reservations reflected in paragraphs 7.4-7.9 below), it is necessary to indicate the Committee’s position on certain other issues raised.

























**TABLE 1**  
**Current and new GHRs by band/grade**

Current GHR bands:	Grade of fee-earner									
	A		B		C		D		E	
	Current GHR	New GHR	Current GHR	New GHR	Current GHR	New GHR	Current GHR	New GHR	Current GHR	New GHR
London 1	409	375	296	265	226	194	138	147	138	109
London 2	317	375	242	265	196	194	126	147	126	109
London 3 <sup>29</sup>	248	261	200	173	165	140	121	112	121	83
National 1	217	237	192	157	161	127	118	102	118	75
National 2	201	237	177	157	146	127	111	102	111	75

**TABLE 2**  
**Percentage change in GHRs by current GHR band**

Current GHR bands:	Grade of fee-earner				
	A	B	C	D	E
	+/-	+/-	+/-	+/-	+/-
London 1	- 8.24%	- 10.35%	- 14.31%	+ 6.55%	- 20.98%
London 2	+ 18.39%	+ 9.65%	- 1.20%	+ 16.70%	- 13.45%
London 3	+ 5.25%	- 13.40%	- 15.40%	- 7.46%	- 31.38%
National 1	+ 9.17%	- 18.13%	- 21.31%	- 13.87%	- 36.13%
National 2	+ 17.86%	- 11.19%	- 13.22%	- 8.44%	- 32.10%

7.5 Whilst there are some obvious areas where significant increases occur (for example, in the rates that current London 2 Band firms might charge for Grade A and Grade D fee-earners and for those currently in the National 1 and 2 Bands in relation to Grade A fee-earners), there are some significant reductions in other areas.

7.6 It is, of course, clear that the impact that the changes in the GHR would have on an individual firm would depend upon the fee-earning structure within that firm: for any given firm this will depend on how many fee-earners are employed in each grade. In order to provide the Committee with an appreciation of the overall impact of the effect that acceptance of the new GHR would have, the experts have provided the Committee with certain further analyses. Since both increases and decreases in the GHR would occur on acceptance of the new rates, what can be demonstrated is the net overall effect of the changes in relation to a representative distribution of fee-

<sup>29</sup> Average figures used for current GHRs in London 3.

earners on the assumption that there are no changes in staffing levels. This can be explained further as follows:

7.7 In order to arrive at a representative distribution of fee-earners in each current band the experts have gone to the PC Holders Survey as well as the Committee's own survey and, as a result, have assumed the following average breakdown of fee-earners across current grades:

	A	B	C	D	E
London	29.53%	9.08%	28.39%	20.00%	13.00%
National	35.26%	11.08%	20.65%	20.00%	13.00%

7.8 They have also assumed that 50% of all paralegals will receive Band D GHRs. This is an assumption for illustrative purposes only (the national average percentage of solicitors with over 4 years of experience is 52.6%<sup>30</sup>).

7.9 Based upon the PC Holders Survey and Law Society Annual Reports, they have assumed the following breakdown of fee-earners across current bands:

London 1	25%
London 2	5%
London 3	15%
National 1	30%
National 2	25%

7.10 The purpose of this is to enable (a) an estimation, in relation to the average distribution of fee-earners in each current band of what would be the mean GHR received (i.e. the average GHR for those fee-earners across all grades of fee-earner) for both the current set of GHRs and the proposed new set of GHRs and (b) a demonstration of the percentage change in mean GHR received for work billed by (i) all qualified fee-earners and (ii) all fee-earners. These percentages are therefore equivalent to the expected effect of the proposed changes on fee income from work provided (assuming no change in staffing levels). The Table below shows the result based upon the assumption of the breakdown of fee-earners across current geographic bands set out in the Table in paragraph 7.9 above. Before commenting on the results it may help to illustrate the derivation of the Table below by reference to an example:

If interest is focused on the impact of the proposed GHRs on total GHR receipts for a firm with a representative distribution of fee-earners in central London (in other words, a firm within the current London 1 Band), the current average GHR per fee-earner received by that firm would be £257, assuming the firm's fee-earners are broken down according to the assumptions set out in the Table in paragraph 7.7 above. The figure of £257 is arrived at as follows: 29.73% of £409 + 9.08% of £296 + 28.39% of £226 + 20% of £138 + 13% of £138. That figure is, therefore, the current average GHR received by a central London firm with the assumed breakdown of staff. The same calculation can then be made using the proposed new GHRs - in other words 29.73% of £375 + 9.08% of £265 + 28.39% of £194 + 20% of £147 + 13% of £109. This yields the figure of £233. These two figures (£257 and £233) can be found in columns 5 and 6 of Table 1 below for the London 1 Band. It follows that for the same amount of work paid for by

<sup>30</sup> Based on PC Holders survey data

reference to the new GHR, the total GHR receipts (i.e. total fee income from GHRs) would be reduced by 9.28% on average for such a firm.<sup>31</sup>

### Impact of new GHRs on fee income by current GHR band

Current GHR bands:	Qualified (grades A-C)			Total (grades A-E)		
	Current mean GHR	New mean GHR	% change	Current mean GHR	New mean GHR	% change
London 1	316	283	-10.35%	257	233	-9.28%
London 2	256	283	+10.90%	213	233	+9.71%
London 3	206	198	-4.20%	178	166	-7.04%
National 1	196	190	-2.99%	170	157	-7.49%
National 2	180	190	+5.37%	157	157	-0.02%
Total			<b>-2.23%</b>			<b>-5.14%</b>

7.11 In general, the results show that there would be a reduction in fee income for current London 1 firms, counter-balanced by an increase in fee income for current London 2 firms (a consequence of widening the definition of central London to cover both London 1 and London 2). Firms currently in the National 2 Band achieve greater income because of the move to combine them with firms in the National 1 band.

7.12 Whilst thus presented and thus analysed, the overall net effect of the changes could be seen as relatively small, the Committee's reservations need to be expressed. As with any exercise of the nature undertaken by the Committee (particularly for a Committee comprised substantially of those with direct and regular experience of the day-to-day operation of the impact and assessment of litigation costs) it was felt appropriate that its members should stand back from the precise results achieved by the methodology described above to enable a broader view to be taken of where those results lead. That has led to the following concerns being expressed: first, as the experts have advised from the outset, the LMS Survey and the Committee's own survey each suffers from the "self selection" nature of the respondents who replied. That can never be as reliable statistically as a randomised selection approach. However, the resources for such a survey have not been available. All members of the Committee have recognised this from the outset and it underpins concerns that will be expressed about how future reviews are conducted. Second, it has to be recognised that whichever existing survey is considered, the responses reflect a very small part of the community of civil litigation solicitors throughout England and Wales. On 31 October 2013 (incidentally, the day before the Committee's survey went online) the Law Society Gazette published an article showing that, according to the Solicitors Regulation Authority, "there were 10,726 practising firms in England and Wales in September". Plainly not all such firms are engaged in civil litigation, but that number serves to highlight how difficult it is under prevailing arrangements to obtain a large number of responses to a request for financial information concerning practice costs. Third, some (but not all) members of the Committee have expressed concerns that the firms that responded to the LMS

<sup>31</sup> The remainder of Table 1 simply replicates this calculation for firms with a representative distribution of fee-earners depending on the banding. The first part of the Table (headed "Qualified (grades A-C)") estimates the average changes for qualified fee-earners only whereas the second part (headed "Total (grades A-E)") estimates the average changes for all fee-earners.

Survey will not have been engaged in a significant amount of multi-track litigation (in the context of which the GHRs may play a part) and, to that extent, the information relied upon for the purposes of the Committee's recommendations is not as well-targeted as it might be. The contrary argument is that the Committee's own survey will have received responses from those engaged significantly in multi-track litigation and, whilst its database is limited, the analysis of those responses does afford broad support for the conclusions to be drawn from the LMS Survey. Fourth, leaving aside issues concerning the depth and breadth of the available evidence-base, a number of members of the Committee were concerned at what was revealed during the oral evidence sessions about the closures of many practices conducting personal injury work and the impact of that on access to justice generally. It was felt that the universally predicted increases in professional indemnity insurance premiums following the *Mitchell* case could accelerate this process. Whilst it was recognised that these factors could not operate to prevent the Committee making evidence-based recommendations for the new GHR, it was felt by the majority that since there were reservations about the strength of the database and some of the underlying assumptions, consideration ought to be given to measures designed to lessen the immediate impact of any changes in the GHR proposed. Other members of the Committee expressed the view that individual practices and the profession in general would adjust to the new GHR and that concerns leading to the suggestion of such measures were misplaced. The majority, however, felt that, whilst adjustment would be likely, (a) the way it might take place is not yet evidence-based and (b) because of some fairly significant reductions in the GHRs in some areas, it would make commercial sense to moderate the immediate impact whilst adjustments are made to ensure that no immediately dramatic change in working practices was required.

7.13 The Committee recognises that its task is to put forward evidence-based recommendations for the GHR to the Master of the Rolls and it is for him to decide (a) whether to accept or reject them and (b) if he accepts them, to decide how and in what circumstances they are implemented. However, as already indicated, a substantial majority of the Committee felt that it should offer the Master of the Rolls a suggested way forward for the implementation of the GHR which is designed (a) to address the matters identified in paragraph 7.12 above, (b) to smooth the impact of the suggested changes and (c) to enable the litigation community to adapt its various business models to accommodate those changes. Possible features of an "implementation package" are referred to in paragraphs 7.14 to 7.18 below.

#### Implementation package

##### Applicability of the GHR

7.14 The first suggested part of the package relates to the cases to which the new GHR are to apply. With only one clear dissident, the Committee was of the view that they should be applied only to new retainers entered into after they are promulgated. Another option was to take the date for applicability as the date when the first instructions from a client were received, but overall it was considered that the date of entering into the retainer was the most satisfactory solution. The rationale for this majority view is that it would be wrong for the new GHR to have what would otherwise be retrospective effect bearing in mind that clients may well have entered into existing retainers in the belief that recoverability of litigation costs will or may be influenced by the existing (generally higher) GHRs. The minority view was that the evidence largely demonstrates that the current GHRs are too high and that they ought to be made to apply with immediate effect to all cases, existing as well as future.

## Phased introduction

7.15 At one stage in its deliberations, for the reasons set out in paragraph 7.12 above, a majority of the Committee had been in favour of recommending the imposition of a cap of 10% on any increase or decrease in the GHR from the current GHR (and a 20% cap on the changes to the new Grade E<sup>32</sup>) and a phased introduction of the new GHR. On further reflection, whilst a majority of the Committee remain in favour of recommending to the Master of the Rolls some means of smoothing the introduction of the new GHR and whilst some members of that majority would advocate both a cap (to reflect reservations about the evidence base) and a phased implementation, the majority recommendation now is that the new GHR should be phased and that there should be no cap on the changes. What such phasing would involve would be that one-half of the change from the existing GHR (either upwards or downwards) would represent the new GHR upon their promulgation for new retainers entered into after that date and that the balance would become the effective GHR for new retainers entered into one year later. This does represent the effective recommendation of the majority of the Committee. If accepted, the effect on implementation would be as follows:

### **Current and new (phased, year 1) GHRs by band/grade<sup>33</sup>**

Current GHR bands:	Grade of fee-earner									
	A		B		C		D		E	
	Current GHR	New GHR	Current GHR	New GHR	Current GHR	New GHR	Current GHR	New GHR	Current GHR	New GHR
London 1	409	392	296	281	226	210	138	143	138	124
London 2	317	346	242	254	196	195	126	137	126	118
London 3 <sup>34</sup>	248	255	200	187	165	152	121	116	121	102
National 1	217	227	192	175	161	144	118	110	118	97
National 2	201	219	177	167	146	136	111	106	111	93

7.16 The reason why the majority on this occasion rejected the capping of the changes was that do so would be to tie any change in the GHR to the existing rates when those rates are referable to regional divisions that can no longer be justified by the evidence received during this exercise. Whilst a minority of the Committee felt

<sup>32</sup> In respect of Grade E, it was generally recognised that the evidence-base for paralegal salaries was not extensive and there were divided views of some strength about any recommendation for a cap when that was a significant issue: some members of the Committee were of the view that paralegals were not paid significant amounts at present, that applying Grade D rates to their work resulted in an overpayment by the paying party and that, accordingly, the rates generated by the Committee's analysis of the evidence should be adopted without modification. The countervailing view was that the evidence did not suggest that paralegals were overall underpaid and that the reductions as against the existing GHR applicable to paralegals if the rates generated by the Committee's analysis of the evidence were adopted would be far too dramatic and required a cap of 20% to smooth the immediate impact. That became the majority recommendation when the imposition of a cap was thought to be appropriate, though with a less significant majority in favour than in relation to the 10% cap in relation to the other grades – again when that represented the approach of the majority.

<sup>33</sup> Phasing means that GHRs will continue to differ across current Bands in year 1.

<sup>34</sup> Average figures used for current GHRs in London 3

that capping should be retained because of reservations about the strength of the evidence-base, it seemed illogical to the majority in those circumstances to put forward an implementation package that would perpetuate regional divisions across the country that could not be sustained by reference to the evidence available to the Committee.

7.17 The following two tables demonstrate the impact on fee income in relation to the average distribution of fee-earners within bands (Table 1) and nationally (Table 2):

**TABLE 1**

**Impact of new GHRs (phased) on year 1 fee income by current GHR band**

Current GHR bands:	Qualified (grades A-C)			Total (grades A-E)		
	Current mean GHR	New mean GHR	% change	Current mean GHR	New mean GHR	% change
London 1	316	300	-5.17%	257	245	-4.64%
London 2	256	269	+5.45%	213	223	+4.86%
London 3	206	202	-2.10%	178	172	-3.52%
National 1	196	193	-1.50%	170	164	-3.75%
National 2	180	185	+2.68%	157	157	-0.01%

**TABLE 2**

**Overall national impact of new GHRs (phased) on year 1 fee income**

Current GHR bands:	Qualified (A-C)	Total (A-E)
London 1	-5.17%	-4.64%
London 2	+5.45%	+4.86%
London 3	-2.10%	-3.52%
National 1	-1.50%	-3.75%
National 2	+2.68%	-0.01%
<b>Total</b>	<b>-1.11%</b>	<b>-2.57%</b>

7.18 As indicated, it is impossible to put forward a unanimous recommendation on any implementation package. There was strong support for the recommendation in paragraph 7.14 and significant support for recommending some means of further smoothing the implementation of the new GHR, but there was a division of view about whether that should involve capping and phasing or whether it should simply involve phasing. Of those who favoured recommending some means of further smoothing the implementation of the new GHR, there was a clear, but not overwhelming, majority in favour of phasing only.

7.19 So that the Master of the Rolls has the fullest information, set out in Appendix 9 are the impact assessments for capping of the changes in the GHR as originally contemplated by a majority of the Committee and their phased implementation.

## Narrative accompanying the GHR

7.20 The Committee has been of the view throughout its deliberations that the narrative accompanying the GHR would be important. The purpose would be to indicate to those looking at the guidelines for guidance at any stage (whether in the context of an assessment of costs by the court or in any other circumstances) how the figures have been arrived at and how the Committee would envisage them being applied. Whilst it will be clear that the Committee was not unanimous in relation to suggestions concerning the “implementation package”, it was unanimous in the formulation of the substance of the narrative. The proposed narrative with the full acceptance of the suggestions for the “implementation package” (namely, the applicability of the new GHR only to cases in which the retainer of the solicitor by the client is entered into after they come into effect and their phased introduction) is set out in Appendix 8. If either of those suggestions were not accepted, then appropriate adjustments to the Tables and/or the narrative accompanying the Tables could be made as indeed would be the case if none of the suggestions were accepted. It is, therefore, envisaged that paragraphs 1, 2, 4, 5 (with appropriate modifications, but retaining the information concerning the three essential constituents of each GHR) and 6-10, together with the definitions of the various Grades, would remain irrespective of the acceptance or otherwise of features of the “implementation package”.

## **8. Impact of the Jackson reforms**

### **8.1 Introduction**

**8.1.1** The Committee decided (by a majority) at an early stage that there was insufficient evidence of the impact of the Jackson reforms (introduced via Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2013, rule changes and judgments from the Court of Appeal (Civil Division)). That view was reinforced by evidence put before the Committee and witnesses at the oral evidence sessions.

**8.1.2** That is not to say that the reforms are not already having an impact on the running of legal practices, and the Committee is clear that this will need to be fully taken into account in any future review of the GHR. Some features of the reforms are likely to have an earlier impact than others in terms of factors affecting the GHR.

**8.1.3** As the Committee sought views on the impact of the reforms, and as so many written and oral submissions provided useful and relevant points for future GHR exercises, this section seeks to summarise the main and recurring points made. Some have in fact been referred to in the relevant context in other parts of this report.

### **8.2 Issues raised during the present exercise**

**8.2.1** There was broad agreement that the effects of the reforms have not been fully felt as yet, with the spike in cases ahead of the legislative and rule changes in April 2013 meaning that many cases still in the system are operating under the old costs regime. Some respondents felt that for this reason, with a volatile civil litigation landscape, the Committee should have deferred the present GHR exercise. The Committee did consider this point, but decided to proceed. This was principally as the rates had last been set in 2010 based on information that was now five years old, and also as there was no guarantee that the post-Jackson litigation world would be crystal clear in 12 months' time. Further, the terms of reference required the making of recommendations within 12 months.

**8.2.2** Many respondents commented on the abolition of referral fees and the acquisition costs for claimant firms in marketing for replacement business. Views were to a large extent polarised, with claimants and defendants respectively playing up or down the impact of this development. This issue does play directly into the GHR process as marketing costs are a constituent part of the overheads of running a business and thus taken into account. The Committee will therefore have a sense on the impact of this aspect of the reforms in assessing evidence for each exercise.

**8.2.3** A number of respondents raised the issue of the setting of fixed fees for fast track cases in road traffic accident and some other areas of litigation<sup>35</sup>. Claimants argued that the fees had been set too low and distorted the market rate with access to justice consequences; defendants argued that the fixed recoverable costs regime made costs more proportionate.

**8.2.4** Claimant and defendant respondents and witnesses also commented extensively on the profit margins and business models of claimant and defendant law firms. Evidence was submitted on the financial effects of the reforms on the

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<sup>35</sup> <https://consult.justice.gov.uk/digital-communications/extension-rta-scheme>



profitability and very survival of some practices. Defendant interests argued that such firms were being subjected to operating efficiencies in place in defendant firms which tended to have a lower costs and overhead base. Claimants argued in turn that the nature of the business of the two models was quite different. Compelling evidence was submitted from both sides of the divide.

8.2.5 A feature that caused the Committee concern and will be considered carefully in future exercises is the impact of the reforms on professional indemnity insurance. The impact of a much tougher court regime on relief from sanctions (as underlined by the Court of Appeal judgment in Mitchell<sup>36</sup>) has led to concerns that insurance premiums will be increased as the risk of cases being struck out has risen, with consequent increases in overheads.

8.2.6 Some witnesses submitted views on the impact of costs budgeting and the new proportionality rule in terms of increasing legal costs, especially in the early stages of cases. The Committee considered costs budgeting and GHR briefly in paragraph 6.7.6, and will consider evidence in future exercises on the impact of one on the other.

8.2.7 The Committee received views on the prospects of ATE (after-the-event) insurance, with some respondents feeling that it retained viability for helping to fund cases, and others feeling that the legislation abolishing its recoverability had made it no longer attractive. Respondents commented on BTE (before-the-event) insurance in rather negative terms in respect of its ability to fund the sorts of cases brought under the old Conditional Fee Agreement regime.

8.2.8 Some claimants submitted evidence on the effect of the reforms on market rates, such as fixed fees operating below them. Defendant respondents tended to argue that the reforms were bringing areas of litigation back into line with wider market rates.

8.2.9 Submissions were received on the consequences of the reforms on claimants' ability to bring cases with 'long tails', carrying the costs of counsel and expert disbursements with delayed payments. Concerns were expressed in relation to the access to justice implications.

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<sup>36</sup> <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/andrew-mitchell-mp-news-group-newspapers-ltd-27112013.pdf>.

## **9. Reflections on the current exercise and thoughts ahead of future exercises**

The Committee has sought to undertake as fundamental a review of GHR as its resources have permitted to produce an evidence-based set of recommendations.

Inevitably as it has proceeded with its task the Committee has encountered challenges and some of these have greatly hindered its ability to meet its objectives, or at least to meet them to the extent which members have wanted to and thought necessary.

This section of the report draws attention to some of these issues, with a view to suggesting ways in which the Committee itself feels its work can be improved or needs to be supported for it to discharge its responsibilities. The preceding section of this report has highlighted the impact of the Jackson reforms, and consequently this section will concentrate on other aspects – the two should be read together, however, in terms of factors to be addressed for future exercises.

### **9.1 Improving the data gathering process**

9.1.1 The Committee is extremely grateful to the Law Society for the support and co-operation it showed in allowing the Committee access to its surveys, these were a critical element in pulling together evidence to draw on for GHR setting. Of course none of the data sources had been designed directly for the GHR process, and so the Committee undertook its own survey to fill in gaps and seek to validate the conclusions to be drawn from other surveys.

9.1.2 As has been remarked (see section 4.16 above) the response to the Committee's survey was disappointing. The Committee understands and acknowledges that for busy practices the task of filling out difficult and confidential financial data was a complex and time-consuming task, despite efforts made to ask questions that would allow many answers to be sourced from published annual reports and accounts. Nonetheless, for an exercise of this kind the Committee had to seek access to a level of detail of financial data. While some meaningful data could be secured or cross-checked from the Committee's survey, a higher response rate would have provided much greater confidence in the evidence base, particularly in areas such as regional costs.

9.1.3 There was no budget for the Committee's survey – it was constructed and placed online using in-house (Judicial Office) resources. No publicity budget was provided, and so advertisements in the legal press were not commissioned. The Law Society's research unit has suggested an ample five figure sum is required for conducting such a broad based survey. As things stand – with the entire CJC budget being £40,000 – there is no prospect of the Committee alone being able to undertake a survey on such a scale. In Scotland, the Law Society undertakes a survey of this nature<sup>37</sup>, which may provide a template for England and Wales. The Committee will ask the Master of the Rolls to consider this issue, and discuss with the Government and professional bodies whether the Committee can function effectively without such financial support. This question is of even greater importance if the Committee is to be asked to undertake work going beyond issues relating purely to the GHR.

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<sup>37</sup><http://www.lawscoth.org.uk/media/605329/law%20society%20cost%20of%20time%20survey%202012.pdf>

**9.1.4** Another issue highlighted in this year's survey was the need to gather wider data from other, non-legal services sources. Two examples of this were firstly the suggestion that the Committee should establish salary increases in comparable professional fields, such as accountancy or architecture. While each market will have differences, it would provide some form of cross-professional check. The second was to assist with both grade but particularly geographic banding – using the services of a professional Chartered Surveyor to report upon property rental and running costs in various parts of England and Wales.

## **9.2 Resources required by the Committee**

9.2.1 As has been mentioned, the CJC itself has a relatively small annual budget (of £40,000), and expenditure specifically on the Committee for this 2013/14 exercise was around £6,500. As the Chairman acknowledges in the Foreword to this report, and as all members would vouch, the Committee has leaned very heavily on the voluntary expertise of Professors Paul Fenn and Neil Rickman of Nottingham and Surrey Universities (respectively). Indeed, the general consensus of members is that without their assistance the Committee's task would have been rendered almost impossible. In the absence of leading experts acting pro bono, the Committee would have to find a significant sum, particularly as the experts have been willing to give time and expertise over a sustained period and at frequent intervals as issues have arisen.

9.2.2 The Committee has at various times said that it would benefit from the services of professionals (see paragraph 9.1.4 above) to provide expert input onto issues such as regional property rates, professional salaries and research analysts could advise on the optimal methods of collecting data, questionnaire design etc.

9.2.3 Other options would be a budget for publicity for the Committee's work and survey and regional meetings, although these would be a lower priority than professional services, and coverage in the legal media was good without having expenditure having been incurred.

## **9.3 Annual reviews or more periodic reviews?**

9.3.1 The Committee does not feel able to say clearly whether the GHR should be reviewed annually or less frequently. Much depends on the resources made available for conducting a review the results of which will gain widespread acceptance. Equally, a balance must be struck between frequent reviews with the possibility of regular change or a measure of certainty for a period. All that the Committee can observe is that the present exercise has been a time-consuming process for all its members, Professors Fenn and Rickman and the CJC Secretariat, all of whom have many other regular commitments. If competent professional expertise were available, it might reduce the amount of time that Committee members need to be involved.

## APPENDIX 1

### The Jackson Report

In January 2010 Lord Justice Jackson's final report in his Review of Civil Litigation Costs was published. This had provided a fundamental review of all aspects of the costs of civil litigation, as requested by Lord Clarke when he was Master of the Rolls in 2008.

In Chapter 6 of the Final Report Jackson LJ recommended that the ACCC be abolished and a Costs Council established. Such a Council would take on the role of setting (not recommending) GHR for summary assessment and additionally for detailed assessment of costs. Jackson LJ also envisaged a Costs Council having a much broader role in advising on costs matters and overseeing the reforms, including; keeping under review the matrices of fixed costs in the fast track and reviewing the overall upper limit for fast track costs.

However, the Government did not accept the full recommendation and the Written Ministerial Statement in October 2012 said:

*The new sub-committee's standing role will be limited to a review of the GHR; other fixed costs will remain for the Lord Chancellor to consider in the first instance.*

*However, there may be other costs issues on which the Lord Chancellor and Judiciary would welcome advice from the new sub-committee from time to time. I will liaise with the Master of the Rolls, who chairs the CJC, concerning the membership, terms of reference and work to be undertaken by the CJC within the scope of its statutory role of keeping the civil justice system under review."*

### The Civil Justice Council

The CJC is a statutory Arm's Length Body of the Ministry of Justice, and was established by the Civil Procedure Act 1997. The CJC's broad statutory remit is to have an oversight of the civil justice system, and to advise the Lord Chancellor and the judiciary on making the system more effective. It is chaired by the Master of the Rolls and has members drawn from the judiciary, legal professions, business, consumers and other court users.

### Terms of Reference of the Costs Committee

The Committee's terms of reference are as follows:

- To conduct a comprehensive, evidence-based review of the nature of the Guideline Hourly Rates (GHR) and to make recommendations accordingly to the Master of the Rolls by January 2014;
- On an annual basis to review the GHR and make recommendations to the Master of the Rolls regarding how they need to be updated; and
- To monitor the operation of the costs rules, in consultation with the Ministry of Justice, and where appropriate, to make recommendations.

[The deadline for making the recommendations was extended to 31 March 2014 with the agreement of the Master of the Rolls<sup>38</sup> and extended slightly further thereafter.]

## Membership

As the Committee would be making direct recommendations to the Master of the Rolls (as Head of Civil Justice) for an executive decision, he asked Mr Justice Foskett, the High Court Judge representative on the CJC, to be Chairman of the Committee. Lord Dyson also asked Peter Hurst, the Senior Costs Judge, to be Vice-Chairman. The Master of the Rolls has no direct role in the work of the Committee.

The Committee's membership was drawn up by contacting the major legal professional bodies and judicial organisations and asking them to nominate members with significant experience and expertise in litigation costs. Nominations were also sought from representative bodies for business, trade union and consumer representatives. The Ministry of Justice is also represented.

The current membership of the Committee (with their nominating organisation where relevant) is:

- Mr Justice Foskett, Chairman
- Peter Hurst, Senior Costs Judge, Deputy Chairman
- Simon Browne QC (Bar Council)
- Helen Buczynsky (Trade Union Council)
- Peter Causton (Law Society, defendant solicitor representative)
- David Greene (Law Society, commercial solicitor representative)
- Murray Heining (Association of Costs Lawyers)
- HH Judge David Hodge QC (Council of HM Circuit Judges)
- Adrian Jaggard (Association of British Insurers)
- David Marshall (Law Society, claimant solicitor representative)
- DJ Marshall Phillips (Association of HM District Judges)
- Philip Sherwood (Chartered Institute of Legal Executives)
- Chris Warner (Which?)
- John Windsor (Confederation of British Industry)
  
- Robert Wright (Ministry of Justice) – observer.

The Committee is supported by two professional economists: Professor Paul Fenn of Nottingham University Business School, and Professor Neil Rickman of the University of Surrey. They have acted as advisers and analysts of the data and evidence considered by the Committee.

The CJC Secretariat provides administrative support to the Committee.

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<http://www.judiciary.gov.uk/Resources/JCO/Documents/CJC/Publications/Other%20papers/Master%20of%20Rolls%20letter%20to%20Foskett%20J.pdf>

## APPENDIX 2

### The current Guideline Hourly Rates (GHR)

The current GHR are as follows:

Area	Band A	Band B	Band C	Band D
London 1	£409	£296	£226	£138
London 2	£317	£242	£196	£126
London 3	£229-267	£172-229	£165	£121
National 1	£217	£192	£161	£118
National 2	£201	£177	£146	£111
National 3				

#### *Key to costing grades:*

- A Solicitors, over 8 years qualified experience.
- B Solicitors or Legal Executives (FILEX) over 4 years qualified experience.
- C Other qualified Solicitors or Legal Executives.
- D Trainee solicitors, paralegals or equivalent

National 1 covers the following areas:

- Aldershot, Farnham, Bournemouth (including Poole)
- Birmingham Inner
- Bristol
- Cambridge City, Harlow
- Canterbury, Maidstone, Medway & Tunbridge Wells
- Cardiff (Inner)
- Chelmsford South, Essex & East Suffolk
- Chester
- Fareham, Winchester
- Hampshire, Dorset, Wiltshire & Isle of Wight
- Kingston, Guildford, Reigate & Epsom
- Leeds Inner (within 2 kilometres radius of City Art Gallery)
- Lewes
- Liverpool, Birkenhead
- Manchester Central
- Newcastle City Centre (within 2 mile radius of St Nicholas Cathedral)
- Norwich City
- Nottingham City
- Oxford, Thames Valley
- Southampton, Portsmouth
- Swindon, Basingstoke
- Watford

National 2 covers the following areas:

- Bath, Cheltenham & Gloucester, Taunton, Yeovil
- Bury
- Chelmsford North, Cambridge County, Peterborough,
- Bury St Edmunds, Norfolk & Lowestoft

- Cheshire & North Wales
- Coventry, Rugby, Nuneaton, Stratford & Warwick
- Exeter, Plymouth
- Hull (City)
- Leeds Outer, Wakefield & Pontefract
- Leigh
- Lincoln
- Luton, Bedford, St Albans, Hitchin & Hertford
- Manchester Outer, Oldham, Bolton, Tameside
- Newcastle (other than City Centre)
- Nottingham & Derbyshire
- Sheffield, Doncaster & South Yorkshire
- Southport
- St Helens & Wigan
- Stockport, Altrincham, Salford
- Swansea, Newport, Cardiff (Outer)
- Wolverhampton, Walsall, Dudley & Stourbridge
- York, Harrogate

National 3 covers the following areas:

- Birmingham Outer
- Bradford (Dewsbury, Halifax, Huddersfield, Keighley, Skipton)
- Cumbria
- Devon, Cornwall
- Hull Outer, Grimsby, Skegness
- Kidderminster
- Northampton & Leicester
- Preston, Lancaster, Blackpool, Chorley, Accrington, Burnley,
- Blackburn, Rawenstall & Nelson
- Scarborough & Ripon
- Stafford, Stoke on Trent & Tamworth
- Teesside
- Worcester, Hereford, Evesham & Redditch
- Shrewsbury, Telford, Ludlow, Oswestry
- South & West Wales

London 1 equates to the following postcodes: EC1, EC2, EC3, EC4.

London 2 equates to the following postcodes: W1, WC1, WC2, SW1.

London 3 equates to the following postcodes: W, NW, N, E, SE, SW and Bromley, Croydon, Dartford, Gravesend & Uxbridge.

### APPENDIX 3

#### COST COMMITTEE SURVEY 2013

1. What is the geographical postcode of your principal office?
2. By reference to the most recent accounting period of your firm please complete the following table indicating the numbers and salary costs of fee earners ordinarily engaged in the work of the firm at any one time:

	Total number (FTE*)	Total salary bill
Equity partners <sup>39</sup>		
Salaried partners <sup>40</sup>		
All other solicitors		
Legal executives ( <i>Fellows of CILEX</i> )		
Fully-qualified costs lawyers		
Paralegals, trainee legal executives and costs clerks		
Trainee solicitors		
<b>Total fee earners</b>		

\* *Full time equivalents – this should include part-time employees and those on maternity leave.*

3. Based on the most recently completed accounting period for your firm, what was the gross fee income<sup>41</sup> of the firm from all professional activities?
4. On what date did your firm's most recent accounting period end?
5. Approximately what percentage of your firm's total salary bill was attributable to:
  - (a) NICs
  - (b) employers' pension contributions and other benefits received by employees?
6. Approximately what percentage of your firm's gross income was spent on the following?
  - (a) property costs<sup>42</sup>
  - ...
  - (b) IT revenue costs<sup>43</sup> ...
  - (c) external marketing and Business Development costs<sup>44</sup>
  - ...

<sup>39</sup> Includes sole practitioners and firm owners

<sup>40</sup> Includes salaried and fixed share equity partners

<sup>41</sup> For this purpose 'gross income' is fees billed plus or minus any change in the value of taxable, non-contingent work in progress (WIP)

<sup>42</sup> Rent (net of any sub-lease income), premiums, rates service charges, light and heating, insurance, maintenance costs, repairs, office cleaning etc. Do not include amortisation or depreciation of property, furniture and equipment.

<sup>43</sup> All items of IT costs charged through the profit and loss account: IT department salary costs, outsource costs, software and hardware support and maintenance. Include lease costs of IT hardware and software. Exclude depreciation.

<sup>44</sup> Include salaries, outsource costs, all practice development activities, corporate entertaining, market research advertising, seminars, public relations and brochure costs.



- (i) referral fees
- (ii) other
- (d) finance function costs<sup>45</sup>
- ...
- (e) insurance costs<sup>46</sup> ...
- (f) bad debts and disbursement write offs <sup>47</sup>
- (g) support staff<sup>48</sup> ...
- (h) other overheads<sup>49</sup> ...

7. If your firm has other offices in addition to that given under question 1, please indicate (please use a continuation sheet if necessary):

Geographical postcode	Approximate percentage of the firm's civil litigation work carried out at that office	Current GHR Band

8. Based upon the accounts of your firm for the last accounting period, approximately what percentage of the total gross income received in respect of litigation was attributable to any or all of the following areas of work –

- (a) personal injury
  - (i) fixed costs under Part 45 CPR
  - (ii) other ...
- (b) clinical negligence ...
- (c) other professional negligence ...
- (d) property litigation (including landlord and tenant, but excluding possession claims by mortgagees)
- (e) commercial (including Chancery/TCC/IP)
- (f) basic debt collection and possession claims by mortgagees
- (g) defamation and privacy

<sup>45</sup> All items of finance department costs charged through the profit and loss account: finance department salaries, outsource costs and tax compliance and audit costs.

<sup>46</sup> Include professional indemnity insurance, general insurance and any costs associated with claims, but not costs of settling claims.

<sup>47</sup> Total of debts and disbursements written off to the profit and loss account.

<sup>48</sup> Secretaries and support staff working directly for fee-earners.

<sup>49</sup> This head includes all other overheads, such as training, HR and procurement costs.

(h) other. Please specify [....]

9. If the work carried out by your firm was substantially personal injury, clinical negligence or other professional negligence, what percentage of the income was derived from work carried out for claimants and what percentage was derived from work carried out for defendants?

- (a) claimants ...
- (b) defendants ...

10. Please complete the following table for those working in civil litigation in your firm during its last accounting period:

Fee earner	Number of fee earners working in civil litigation	Average salary
Equity partners <sup>50</sup>		*
Salaried partners <sup>51</sup>		
All other solicitors		
Legal executives ( <i>Fellows of CILEX</i> )		
Fully-qualified costs lawyers		
Paralegals, trainee legal executives and costs clerks		
Trainee solicitors		

\* Insert the cost of employing a similarly qualified fee earner.

11. Please give as much information as you can in relation to the hours (i) recorded as billable and (ii) billed to the client (after any negotiation) or paying party (as agreed or assessed)<sup>52</sup> for civil litigation during your firm's last accounting period:

<sup>50</sup> See footnote 1, above

<sup>51</sup> See footnote 2, above

<sup>52</sup> For each fee earner this will be the total of hours that are ultimately billed to the client which should include the hours payable by a paying party as agreed or assessed. Further guidance on this and other questions may be found at [www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/cjc/costsquestionnairefaqs](http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/cjc/costsquestionnairefaqs)

<b>Fee earner</b>	<b>Hours recorded as billable</b>	<b>Hours billed to the client (after any negotiation) or paying party (as agreed or assessed).</b>
Equity partners		
Salaried partners		
All other solicitors		
Legal executives ( <i>Fellows of CILEX</i> )		
Fully-qualified costs lawyers		
Paralegals, trainee legal executives and costs clerks		
Trainee solicitors		

12. What was the gross income over the last accounting period of the highest-paid fee-earner in litigation?

13. Where your firm has acted for a successful (or receiving) party in general civil litigation (including personal injury, clinical negligence and other professional negligence litigation) during the last accounting period and the claim for recoverable costs was resolved by negotiation or following assessment by the court, approximately what proportion of the amount claimed (excluding success fees) was recovered from the paying party?

14. Please answer question 13 in respect of commercial litigation.

15. Where your firm has acted for an unsuccessful (or paying) party in general civil litigation (including personal injury, clinical negligence and other professional negligence litigation) during the last accounting period and has resolved the other side's claim for recoverable costs, approximately what proportion of the amount claimed (excluding success fees) was paid to the successful (or receiving) party?

16. Please answer question 15 in respect of commercial litigation.

17. If you have any further comments, whether in relation to the questions answered above or more generally, that you consider would be of assistance to the Committee, please make them here.

## APPENDIX 4

### List of organisations who submitted written evidence to the Committee

Association of British Insurers (ABI)  
Association of Costs lawyers (ACL)  
Association of Personal Injury Lawyers (APIL)  
Chartered Institute of Legal Executives (CILEX)  
City of London Law Society  
Federation of Insurance Lawyers (FOIL)  
The Forum of Complex Injury Solicitors (FOCIS)  
Institute of Credit Management (ICM)  
The Law Society  
London Solicitors Litigation Association (LSLA)  
Liverpool Law Society  
Medical Defence Union (MDU)  
Motor Accident Solicitors Society (MASS)  
NHS Litigation Authority (NHSLA)  
Nottinghamshire Law Society  
Trade Union Congress (TUC)

Acumension  
Allied Services Trust  
AXA Insurance UK plc  
BC Legal LLP  
Berrymans  
Burgess Salmon  
Carpenters  
Clarke Willmott LLP  
Cowells  
DAC Beachcroft  
DWF Beckman  
Esure Group plc  
Freemans  
Horwich Farrelly Solicitors  
Irwin Mitchell  
JUSTS Costs Solicitors  
Kennedys  
Keoghs  
Leigh Day  
Macfarlanes LLP  
NFU Mutual Insurance Society  
Plexus Law  
QBE  
Royal & Sun Alliance Insurance plc  
Shaw & Co. Solicitors  
Shoosmiths  
Taylor Hampton  
Thompsons

Keith Freeman  
Simon Green  
Colin Jacque  
John Usher

## APPENDIX 5

### Timetable of oral evidence sessions

#### Day one

Thursday, 6 February 2014

Time	Evidence session	Invitees representatives
09.30-11.00	Personal Injury & Clinical Negligence (claimant representative bodies)	APIL - John Spencer and Stuart Kightley MASS - Craig Budsworth and Sue Brown FOCIS - Julian Chamberlayne and Trevor Ward TUC - John Usher
11.15-12.45	Personal Injury & Clinical Negligence (defendant representative bodies)	ABI - Matthew Hoe and Howard Grand FOIL –David Johnson and Howard Dean NHSLA - John Brown and John Mead MDU - Jill Harding and David Franklin
14.00-15.00	Local Law Societies	Liverpool Law Society - Kirsty McKno and Stewart McCulloch Nottingham Law Society – Alan Radford
15.00-16.00	Commercial litigators	LSLA – Francesca Kaye and Graham Huntley City of London Law Society - Simon James* Burgess Salmon – Peter Morris and Ian Tucker <i>*not able to attend</i>

#### Day two

Wednesday, 12 February 2014

Time	Evidence session	Invitees
09.30-10.30	Major litigators (claimant)	Irwin Mitchell - Steven Green and Grahame Codd Leigh Day -Daniel Easton and Anne Winyard Thompsons - Doug Christie and Julian Caddick
10.45-11.45	Major litigators (defendant)	DAC Beachcroft - Andrew Parker and Pete Allchorne Kennedys - Martin Cox and Philip West Keoghs - Howard Dean, Director of Costs
11.45-12.45	Professional Bodies	Law Society - Fraser Whitehead, Martin Heskins and Keith Blakemore CILEX –Stephen Gowland and Nick Hanning Association of Costs Lawyers – Murray Heining, Steven Green and Matthew Harman

## APPENDIX 6

### COMPENSATION FOR WIP (Work-in-progress)

(Professors Paul Fenn and Neil Rickman)

The following formula for calculating the 'cost' of WIP ( $C_W$ ) has been suggested:

$$C_W = r_D \frac{D}{V} + r_E \frac{E}{V}$$

- where

$r_D$  : interest paid on debt to fund WIP

$r_E$  : return on equity (an alternative use of the capital invested in WIP)

$D$  : level of debt associated with WIP

$E$  : level of equity finance associated with WIP

$V$  : value of WIP

This is very similar to the Net Weighted Average Cost of Capital ('NWACC') that is often used in corporate finance literature to measure a similar concept. (This usually recognises the tax deductibility of interest payments by treating  $r_D$  as a net amount: see more generally Brealey, Myers & Allen, 2006, Corporate Finance, 8th Ed, McGraw Hill).

There are sophisticated methods for calculating  $r_E$  (to allow for risk) but no suitable data exists for this in the present exercise – or indeed for any of the variables set out above. In an attempt, however, to utilise the formula the following figures have been used as proxies for those variables:

Proxying  $r_D$ :

Base rates over our period have been extremely low. Given that firms might be borrowing at 1-2 percentage points above base rate and given that the precise tax details of each firm are unknown, we use  $r_D = 3\%$  as an estimate of the interest rate on debt paid by the average firm.

Proxying  $r_E$ :

Looking at returns on the London Stock Exchange for the period around 2011-2012, there is a fair amount of variation, both with the time frame and the market used. For example, 'Yahoo! Finance' reports that rises in the FTSE100, FTSE250 and AIM from January 1 2012 to December 31 2012 were 3.47%, 19.43% and -0.13% respectively. Given this variation, we use the figure originally quoted by the Law Society for the cost of equity finance (7%).

Proxying  $\frac{D}{V}$  and  $\frac{E}{V}$ :

No such firm-level data is available to us, but members of the Committee with knowledge of these matters have suggested that the average firm would service one-third of its WIP using debt and two-thirds using equity.

## Conclusion

Using these figures, the  $C_{WF}$  would be -

$$0.33 \times 0.03 + 0.67 \times 0.07 = 0.0568 \quad 0.33 \times 0.03 \mid 0.66 \times 0.07 = 0.462$$

- in other words, 5.68%.

Rounding this to 6% and using it in Table set out in paragraph 5.36 of the main report, this represents an opportunity cost on the 57% 'extra' WIP held by PI firms of approximately 3½%.

## APPENDIX 7

### Breakdown on responses to the Committee's Survey

<b>Firm size (fee earners)</b>	
1	9
2-5	10
6-12	15
13-40	37
41-170	37
171+	18
Unknown	22
<b>Total</b>	<b>148</b>
<b>Geographical breakdown</b>	
Central London	22
Outer London	11
National 1	45
National 2	62
Unknown	8
<b>Total</b>	<b>148</b>

<b>Area of practice</b>		
<b>% of gross income</b>	<b>Commercial</b>	<b>Clinical negligence</b>
50% or more	14	4
25-50%	15	11
11-25%	18	18
1-10%	29	29
	Of those firms whose work was 'substantially PI, clinical negligence or other professional negligence':	
	<b>Claimant work</b>	<b>Defendant work</b>
90% or more	71	4
40-85%	4	2
15-20%	0	2
1-5%	4	19

(The other respondents to the survey either did not answer, or put in 0%.)



## APPENDIX 8

### Narrative to accompany the GHR

#### GUIDELINE HOURLY RATES ('GHR')

1. The accompanying Tables of GHR are based upon the recommendations contained in the report to the Master of the Rolls of the Costs Committee of the Civil Justice Council ('the Costs Committee') dated May 2014.
2. The intention is that, so far as otherwise applicable, they will apply to all cases in which the retainer of the solicitor by the client is entered into after the date upon which these guidelines come into effect.
3. The changes to be made to the existing GHR as recommended by the Costs Committee are to be the subject of a phased implementation such that the rates set out in Table A will be applicable to new retainers from the date these guidelines are implemented in year one and those in Table B to new retainers after commencement in year two. As such the first year will reflect existing regional bands, but in the second, full year the new regional bands will apply.
4. The guidelines are intended primarily for use and consideration in relation to summary assessments of costs. However, the practice has developed over the years for the existing GHR to be considered on detailed assessments. It is recognised that this practice may continue. Whilst the new GHR are available to be taken into account on both summary and detailed assessments, it is envisaged that they are (albeit only as guidelines) more readily applicable without significant modification to summary assessments rather than to detailed assessments and, accordingly, a greater degree of flexibility in their use (again, merely as guidelines) may be necessary at a detailed assessment. At whichever form of assessment the GHR are considered, the eight "pillars of wisdom" set out in CPR 44.4(3) (which include the "particular complexity of the matter" and the "skill, effort, specialised knowledge and responsibility involved") will be at the forefront of any such consideration. Where a guideline rate is departed from in any case the court may award a higher or a lower rate.
5. For the reasons set out in Section 7 in the report to the Master of the Rolls the Costs Committee recommended that the changes to the existing GHR suggested by the research it had conducted should be implemented via a phased implementation of the new GHR as indicated above. That research provided three essential constituents to each GHR: (i) an 'expense of time' figure (reflecting the cost to a law firm of an hour of fee-earner time, taking into account the full salary cost paid to fee-earners for those hours and the expenses of the firm that need to be recovered from hours billed for the firm to break even); (ii) a mark up for profit upon that figure of 20% (which is equivalent to a profit margin on total income of approximately 16%, but is profit margin that does not include the notional salaries attributable to equity partners); and (iii) an additional mark up of 3½% to compensate for the extra "lock up" of the unpaid year-end work-in-progress ('WIP') incurred by firms doing civil litigation work.
6. The information given in paragraph 5 will enable consideration to be given at any assessment hearing to arguments or evidence that a different rate or different rates from those in the GHR are applicable to the particular case.

7. The rates do not distinguish between any particular forms of civil litigation, but it is recognised that the GHR may have a lesser role in high value, complex commercial litigation, wherever it is conducted.

8. Whilst the grades of fee-earner and the specified regions are set out in the GHR Tables, it is emphasised that the guiding factors in the application of these categories are (a) the nature of the work being undertaken by the fee-earner, not the status of fee-earner as such, and (b) whether the carrying out of the work in the particular locality or region is or was appropriate. That will not, of course, prevent different rates being considered at the assessment stage in a case if good grounds are shown for a local variation including, for example, the work being carried out in a city centre practice in a major city (or in some other location with a higher cost base).

9. The 'Inner London' rates are intended to apply to work conducted within Inner London (including the City of London) and which is of a complex or substantial nature of a kind typically carried on by an Inner London practice. 'Inner London' for this purpose comprises the following postal districts: E1, E14, EC1, EC2, EC3, EC4, SE1, SW1, W1, WC1 and WC2.

10. The 'Outer London' rates are intended to apply to work conducted within all remaining parts of Greater London. In this context Greater London covers all of the Boroughs and as established by the London Government Act 1963 (as amended by various statutory instruments). Dartford and Gravesend were formerly in the 'London 3' band, but will transfer to the National band.

**TABLE A**

	<b>Grade A</b>	<b>Grade B</b>	<b>Grade C</b>	<b>Grade D</b>	<b>Grade E</b>
<b>National 1</b>	<b>227</b>	<b>175</b>	<b>144</b>	<b>110</b>	<b>97</b>
<b>National 2</b>	<b>219</b>	<b>167</b>	<b>136</b>	<b>106</b>	<b>93</b>
<b>London 1</b>	<b>392</b>	<b>281</b>	<b>210</b>	<b>143</b>	<b>124</b>
<b>London 2</b>	<b>346</b>	<b>254</b>	<b>195</b>	<b>137</b>	<b>118</b>
<b>London 3</b>	<b>255</b>	<b>187</b>	<b>152</b>	<b>116</b>	<b>102</b>

**TABLE B**

	<b>Grade A</b>	<b>Grade B</b>	<b>Grade C</b>	<b>Grade D</b>	<b>Grade E</b>
<b>National</b>	<b>237</b>	<b>157</b>	<b>127</b>	<b>102</b>	<b>75</b>
<b>Inner London</b>	<b>375</b>	<b>265</b>	<b>194</b>	<b>147</b>	<b>109</b>
<b>Outer London</b>	<b>261</b>	<b>173</b>	<b>140</b>	<b>112</b>	<b>83</b>

**GRADES OF FEE EARNER**

<b>Grade A</b>	Solicitors and Chartered Legal Executives with 8 years' or more PQE*
<b>Grade B</b>	Solicitors and Chartered Legal Executives with 4 years' or more PQE. costs lawyers** undertaking advocacy or litigation.
<b>Grade C</b>	Solicitors and Chartered Legal Executives with less than 4 years' PQE. Costs lawyers* with more than 1 years' experience. Paralegals and other fee earners with at least eight years' civil litigation experience.
<b>Grade D</b>	Trainee solicitors and legal executives. Paralegals with at least four years' civil litigation experience but less than eight, and costs lawyers* with less than one year's experience.
<b>Grade E</b>	Paralegals or non-legally qualified fee-earners with less than 4 years' civil litigation experience.

\*Post-qualification civil litigation experience

\*\*The term costs lawyers here is restricted to those who are qualified and authorised under the Legal Services Act 2007 to undertake reserved legal activities.

## APPENDIX 9

### Capping

1. If the new GHRs were capped to ensure that, for any band/grade combination, increases are no more than +10% and decreases no less than -10% (and -20% in respect of the new band E), then the following Table shows the effect of what would be implemented in terms of new GHRs:

**Current and new (capped) GHRs by band/grade**

Current GHR bands:	Grade of fee-earner									
	A		B		C		D		E	
	Current GHR	New GHR	Current GHR	New GHR	Current GHR	New GHR	Current GHR	New GHR	Current GHR	New GHR
London 1	409	375	296	266	226	203	138	147	138	110
London 2	317	349	242	265	196	194	126	139	126	109
London 3 <sup>53</sup>	248	261	200	180	165	149	121	112	121	97
National 1	217	237	192	173	161	145	118	106	118	94
National 2	201	221	177	159	146	131	111	102	111	89

2. The following Table summarises the impact of these capped GHRs on average firm fee income, within bands, and nationally.

**Impact of new GHRs (capped) on fee income by current GHR band**

Current GHR bands:	Qualified (grades A-C)			Total (grades A-E)		
	Current mean GHR	New mean GHR	% change	Current mean GHR	New mean GHR	% change
London 1	316	288	-9.00%	257	237	-8.10%
London 2	256	272	+6.32%	213	224	+5.23%
London 3	206	202	-1.92%	178	171	-4.27%
National 1	196	198	+1.19%	170	166	-2.27%
National 2	180	183	+1.75%	157	155	-1.68%
			<b>-1.43%</b>			<b>-3.51%</b>

### Capping and phasing

3. If the new capped GHRs were phased in over two years in equal instalments, then the impacts reflected in the above Table would simply be spread over a 2-year period rather than over a 1-year period.

<sup>53</sup> Average figures used for current GHRs in London 3

## APPENDIX 10

**Map showing Greater London local authority areas**  
*(equating to Inner and Outer London for purposes of GHR)*



- |                        |                         |                       |
|------------------------|-------------------------|-----------------------|
| 1 City of London       | 15 Richmond             | 25 Barking & Dagenham |
| 2 City of Westminster  | 16 Kingston upon Thames | 26 Redbridge          |
| 3 Kensington & Chelsea | 17 Merton               | 27 Newham             |
| 4 Hammersmith & Fulham | 18 Sutton               | 28 Waltham Forest     |
| 5 Wandsworth           | 19 Croydon              |                       |
| 6 Lambeth              | 20 Bromley              | 29 Haringey           |
| 7 Southwark            | 21 Lewisham             | 30 Enfield            |
|                        |                         | 31 Barnet             |
| 8 Tower Hamlets        | 22 Greenwich            | 32 Harrow             |
| 9 Hackney              | 23 Bexley               | 33 Hillingdon         |
| 10 Islington           | 24 Havering             |                       |
| 11 Camden              |                         |                       |
| 12 Brent               |                         |                       |
| 13 Ealing              |                         |                       |
| 14 Hounslow            |                         |                       |