



JUDICIARY OF
ENGLAND AND WALES

THE HONOURABLE MR JUSTICE FOSKETT

The Rt. Hon. Lord Dyson,
Master of the Rolls,
Royal Courts of Justice,
Strand,
LONDON WC2A 2LL

29 May 2014

I have pleasure in enclosing the Report of the Costs Committee of the Civil Justice Council on the review of Guideline Hourly Rates that the Committee has been conducting over the last 12 months or so. I am sorry that it is arriving with you a little later than the deadline to which we had been working, but one or two issues arose in the latter stages of our discussions that needed a further meeting of the Committee before the Report could be finalised. We were unable to hold that meeting until 16 May.

As I am sure you appreciate, the Committee's task has not been easy and it would be wrong for me to pretend otherwise. My Foreword to the Report will give you a flavour of the difficulties. We knew that from the outset, but a growing realisation developed as the exercise proceeded that it was even more complex than initially anticipated. In short, obtaining a sufficiently reliable and robust evidence-base to enable a "comprehensive, evidence-based review" of the GHR has proved difficult. We have had no resources with which to launch a comprehensive and statistically reliable evidence-gathering exercise and, even if we had, there would have been the issue of obtaining sufficient responses to any survey to yield a satisfactory evidence-base. We have had no means of compelling responses to our own survey. I should, perhaps, emphasise that I did warn the profession in some well-publicised observations before our own survey went "live" that criticisms of the outcome of our work would be hollow if the critics had not responded to the survey.

At all events, there are two consequences arising from the difficulties that became apparent: first, a majority of the Committee has only felt comfortable in putting forward the new GHR generated by the analysis of the objective data at our disposal by inviting you to consider a phased implementation of those GHR. Some members of the Committee would have preferred to invite you to consider capping the changes from the existing GHR and phasing their introduction because of those concerns and concerns arising from what I am sure you will be able to identify if I describe them as "post-Mitchell issues". Indeed the consequences of taking such a course have been included in the Report for your consideration. Those on the Committee from the

"paying community" (and one or two others) do not feel that there should be any postponement (or significant postponement) in the changes. (The various, competing views are reflected in section 7 of the Report.)

Second, there is a strong feeling on the Committee that, despite the inestimable benefit of the *pro bono* assistance we have received from Paul Fenn and Neil Rickman in the analysis of the evidence we have been able to consider, a different approach to evidence-gathering will be needed when the next exercise is undertaken. Those who have reservations about the current evidence-base would wish that exercise to be undertaken before long. Equally, the representatives of the "paying community" feel that the next exercise should not be delayed unduly because their belief is that the effect of the "Jackson reforms" will drive down the GHR further. However, I believe both sides of that divide recognise that we need a re-think of the way we proceed before we embark on a further exercise.

It seems to me that there will be a need for a "conversation" about any future review and I will, of course, be happy to be part of that conversation if you wish. That conversation may need to embrace the issue of the capacity of the Committee to undertake additional tasks on costs-related issues. For the moment, however, I commend the Report to you and will be interested in your response to it when you have had an opportunity to consider it.

Obviously, the Committee (and/or its experts) will gladly respond to any queries you may have. However, I think that our collective consideration of the issues arising from the current exercise has now run its course.

I should say finally that the Committee understands that our Report is for you to consider. Consequently, we do not intend to publish it and I have requested members not to make any comment about it until you have decided how to proceed. I imagine that you will wish to publish the Report when you have made your decision. Because there has been some comment in some quarters about the delay in presenting the Report to you, I should like to be able to publicise the fact that it has now been presented to you for your consideration. Doubtless, a suitable statement can be agreed.