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TRANSCRIPT OF PROCEEDINGS

Civil Litigation Autumn Conference 2017

28 September 2017

MR COTTON: Good afternoon everybody and welcome to the civil litigation autumn conference 2017.

Thank you all for joining us today and we have today an exciting line up from the judiciary, practitioners, consultants and specialists on the impact of the fixed recoverable costs and business development in the second section.

We've split the day, the afternoon into two sections, the first being keynote speeches and the second section a symposium, so questions from the floor will be welcomed at that point.

I wish to say a quick thank you to our sponsors Auscript, got the pronunciation correct now!

They are a scripting company that have been founded in Australia, they will be demonstrating their services throughout the conference, you'll see the script being typed up as I speak.

Quickly to go through the mandatory procedures of the fire procedures, there are no fire alarms set for today, so if you hear an alarm please exit the building at the nearest fire exit of the. Staff will be on hand to guide you to the assembly point if need be.

And if the time requires, if we need to exit, once we are all clear we'll return to the building to pick up where we left off.

Questions can be asked using the roving microphones, the microphones, if they can show the people with the microphones can show themselves now? They are on stands at the side there. Thank you. They will be in the room, so please raise your hand if you've asked, you are waiting to ask a question and the chair of the section will acknowledge you at that point.

Please can I ask you to turn your mobile cell phones to silent, for the conference, as you're probably already aware the toilets are on the ground floor, and after the event we'll have a networking session, so please do join us for drinks at the rear of the room.

It gives me great pleasure to welcome our keynote speaker, the first up we have Lord Justice Rupert Jackson, Lord Justice Jackson will take a few questions at the end of his speech because he has to leave early today, a little bit of background on The Right Honourable Lord Justice Jackson.

You will note that he was the Lord Justice of appeals since 2008, appointed Queen's Council in 1987, a recorder in 1990, deputy High Court judge in 1993, Chairman of the Professional Negligence Bar Association between 1993 and 1995.

He is now president of that association. In more recent times you will be morally aware of in 2009 he was asked by master of the rolls to undertake a comprehensive review of the civil litigation costs. And the reforms with which Lord Justice Jackson recommended were implemented in 2013, he is now the author of The Reform of Civil Litigation published by Sweet Maxwell in September 2016.

Chair of this particular section will be Jonathan Haydn-Williams who is vice-chair of the Civil Litigation Section, who I will now handover to.
MR HAYDN-WILLIAMS: Thank you. Well after his huge distinctly legal career, Lord Justice Jackson needs no further introduction from me.

What does need some introduction is his 31st of July report on fixed and cap recovery costs, he has very kindly give us time in his busy schedule to do just so, so Sir Rupert welcome the floor is yours.
LORD JUSTICE JACKSON: Thank you very much Mr Chairman, it's a great pleasure to come to the Law Society as I do every autumn for my annual lynching, nice to see you all again, I'm not expecting any favours this autumn!

One of the proposals in my last report was that when the recommended reforms had bedded in, we should give serious consideration to developing a

regime of fixed recoverable costs for lower value cases.

I had in mind the lower regions of the multi-track because I was recommending that all cases in fast track should have fixed costs.

In the event, as you know, quite a lot of cases in the fast track have fixed costs in accordance with the recommendations made in my last report and the figures in the matrix appended to that report, but also a large chunk of fast track cases do not have fixed costs.

So they need to be swept up in, or they needed to be swept up in the next review. By the end of last year the reforms which I had recommended had been in place for the best part of four years and it was therefore time to move on to stage 2.

In the autumn of last year I was asked to review the civil litigation landscape and to make proposals for extending fixed recoverable costs. My terms of reference were fairly general, but they clearly contemplated recommendations to complete the fixing of fast track costs and to consider whether costs should be fixed in the lower region of the multi-track, and if so propose a grid or figures for such fixed costs.

Now I had the experience of my earlier review and indeed from working on

Lord Wolfe's review and I well know the benefit of having a panel of assess ores, I well know the benefit of holding public seminars, so that people can have their say. That is what I did in my previous costs review, following the approach of Lord Woolf and that is what I have done in the latest review.

This time I assembled a panel of 14 assessors all individuals of huge experience, drawn from across the legal sector, and also including two economists. I'm very please to see one of the assessors here today David Marshall, who is or paragraphs was Chairman of the civil litigation committee of the Law Society, so David was one of the assessors, and I thought you were Chairman of APA as well.

MR MARSHALL: In the dimmest past.

LORD JUSTICE JACKSON: There you have one assessor with great experience, all of the other assessors had similar experience of high level work in different aspects of litigation.

The assessors met every month, one meeting a month, usually on Wednesday morning, for at least two hours and those meetings grew longer as the review proceeded.

Now these assessors meetings were very valuable, I wasn't choosing assessors because I knew the individual supported fixed costs or indeed because I knew the individuals at all. The majority of the assessors were

people who I did not know, but who were recommended to me, as having a range of expertise. I had no idea for example whether David Marshall would support or oppose fixed costs or what his views would be on any of the issues.

But I had the benefit of a first rate panel who were able to bring to bear their collective expertise and experience on the issues under review.

I invited all interested parties and stakeholders to send in written submissions, giving their views on the issues raised by the terms of reference.

I also invited all stakeholders and court users to send in evidence of costs incurred and costs recovered in the post LASPO period, in addition to that I asked all courts over a five week period to send in the budgets which they approved or which were agreed at costs management hearings in the designated period, together with copies of pleadings, orders and so forth.

I had a team of five judicial assistants, my own judicial assistant in the Court of Appeal, another judicial assistant in the Court of Appeal who I succeeded in poaching, two young solicitors very kindly seconded to the review at no cost to us, and also a young actuary very kindly seconded by a firm of auditors and accountants.

This team of five ground through the budgets that were sent in and produced an excellent and detailed analysis which you can see in my report published on the 31st of July.

The full analysis is set out in an appendix to the report, a summary of the figures is set out in tables in chapter 2 of the report.

So the information which people sent in, the figures they sent in, the submissions and the budget exercise provided an empirical basis. That was, so to speak, the evidence gathering phase.

Then, we come to the seminars. Now we held five seminars, the first in Leeds, looking at chancery and property cases. The second in Manchester looking at personal injury and clinical negligence litigation. The third in London looking at primarily judicial review. The fourth in Birmingham looking at business litigation and business disputes. And the fifth one in Cardiff looking again at judicial review, because of course that is a devolved jurisdiction, and also looking at general issues.

These seminars were lively affairs, I didn't emerge from them unscathed, any more than I emerge from your conferences unscathed! But there were forceful points made, and there was real debate in those seminars.

I prepared a summary of what people said in each of the seminars and I set that out in one of the early chapters of my report. If you were at the events, I expect many of you were at at least one of them, I hope you will find my summaries accurate. I checked those summaries with the various people who spoke, and that gives you a picture of the arguments being deployed.

I've also set out in the report a fair number of the arguments which were advanced in the written submissions.

So there we have the argument and the evidence. The real intensive debate and analysis, the internal debate and analysis came at assessors meetings, when I had the benefit of the views of all the assessors as we ground through the evidence.

Now it was not their function to agree with one another, or to agree with my report. Their function was to express their views on the issues arising and to argue points out.

It was however as I say in my report, and as I am sure David will confirm, interesting to see how a consensus emerged amongst these people of diverse views as we moved through the project.

By the end of the project there was only one significant issue on which there was a real disagreement between the assessors and that was the question of Part 36 and how that should interrelate with fixed costs. Should a successful and effective Part 36 offered by a claimant override or trump the fixed costs regime? Or should it merely be rewarded by a percentage add on to the fixed costs?

And in view of the sharp disagreement between my panel of assessors I actually found it extremely difficult to make up my mind. What I have done in the end is to set out the competing arguments in a way which I hope found favour with the two camps.

So you can see them in my report and then I've given my own view, which after some hesitation comes down in favour of the percentage uplift.

Now the government has committed itself to consulting on any of my recommendations, which it is minded to take forward. So if there is a consultation exercise I have no doubt at all that the question of how to deal with Part 36 offers in a fixed costs regime will be flagged up as a separate question for consideration, and I hope that in your consideration and your responses you'll find the material in my report of assistance.

So much for the process. I was asked to carry out this review in a space of seven months, January to July of this year. I was released from sitting for one week in each month so I had a total of seven weeks out of court to do it. Obviously other work was needed as well. But that was the timeframe.

And deadlines and time limits are extremely good for focusing the mind, otherwise you could go on debating issues like this forever. And really be none the wiser.

So I duly produced my report on the 31st of July, and here it is, The Law Society very kindly hosted the launch event and my thanks to the Law Society for that.

Now let's look at the recommendations. First of all the fast track. I have proposed a grid of fixed recoverable costs for all fast track cases.

In relation to those cases which already have fixed costs all I have done is to add a percentage uplift for inflation.

In relation to the straightforward bent metal cases on the type of the statistical evidence I put forward on proposed recoverable costs, I have also introduced a new band for employer's liability, disease and for the more complex non-personal injury cases. Some of the less complex non-personal

injury cases can be aligned with the lower bands.

So I have come up with a grid of fixed recoverable costs for all fast track cases, except for employer's -- sorry, for noise induced hearing loss, because there what I have done after reflection is to adopt the figures being proposed by the noise induced hearing loss working group. Those figures fit very neatly with my own recommendations. So we have now a proposed grid with four bands of cases and a separate band for the noise induced hearing loss cases.

And that's all dealt within one chapter of the report. Now we come into the more controversial territory. I say more controversial, because I don't think anyone was expecting me, so to speak, to back down in respect of the fast track. It was always inevitable I would be putting forward figures for that.

But when you get above the fast track there is a real debate to be had and which has been had and which will no doubt be had again.

Some people were saying that no cases above the fast track should have fixed costs. The general argument went as follows, well cost -- we accept costs must be controlled, cost budgeting got off to a rocky start, we're sorry for making such a fuss about it, it's working much better now, let's have fixed -- you don't need fixed recoverable costs because cost budgeting is

doing the job.

Now I see a lot of faults in that. I no longer propose anything like the extensive regime of fixed costs which I canvassed a couple of years ago to some dismay in certain quarters.

But I do accept that costs management and cost budgeting are now working very much better and that diminishes the strength of case for an extensive fixed costs regime.

I do however believe that when you come to the lower value multi-track cases, cases up to about £100,000, if they are in the less complex category you can have a realistic grid of fixed recoverable costs for those cases, then you can dispense with costs budgeting and detailed assessment.

Indeed one of the benefits of the cost budgeting system, which we have had for the last four and a half years is that everyone has a much greater understanding of costs than they used to have, people understand the principles, they understand how costs work and they no longer say it's beneath their dignity to look at costs, which it must be said in the past some of my fellow judges were inclined to say, some of my fellow barristers at the Bar were inclined to say, dare I say it even certain rather grand solicitors said they didn't deal with costs, that was for other people.

Now there is a much greater understanding of costs in all quarters and that makes it easier to arrive at a grid of fixed recoverable costs, for the less complex, lower value multi-track cases.

The data which poured into my review in the early weeks after it started was sufficient to provide an empirical basis for such a grid.

In, I think something like chapter 7 of my report, I propose a grid of fixed recoverable costs for these less complex, lower value multi-track cases. And I also proposed a streamlined procedure. Now that is very important. Because The Law Society, the Bar Council, the Specialist Bar and solicitors associations were all saying you can't fix costs or control costs unless you limit the procedure. This was a common theme which ran through many of the submissions.

Now contrary to popular belief I do actually believe -- I do actually read the submissions which came in. I was always irritated when I came across sentences saying "I'm sure you won't read this you're far too idle but...", I did read all the stuff. This was one of the common themes. And I accept it.

So chapter 7 of my report proposes a streamlined procedure, again very carefully devised with the assistance of the assessors, it's gone through lots

of drafts, and what it involves is early identification of the issues, limiting disclosure to that which is strictly needed to resolve the issues, limiting the trial length, limiting the length of pleadings, the amount of evidence you can have, limiting the length of expert reports, excluding appendices such as photographs, plans and so forth.

I believe that a streamlined procedure of the kind set out in chapter 7 of my report is perfectly feasible to enable the court to do justice in the less complex cases, and if we adopt that procedure then we can have a grid of fixed costs which goes with it.

Now probably some of you have read chapter 7, you can see the proposed grid of fixed costs, if you think they're too high or too low you'll have your chance to make your points during any consultation exercise which may follow.

There was quite a debate during the review about the role of the Bar. Some people were saying you must make special provision for the young Bar in order to protect that part of the profession. Others were saying barristers have a valuable contribution to make to litigation, they bring an independent eye and an independent mind to bear and you must make special provision for their fees.

Now the first argument I simply cannot accept. I cannot recommend a package of reforms in order to protect one part of any profession, even my own or my own former profession. I have got to focus on the public interest.

The second argument seems to me to have great force, barristers do bring an independent mind. Their early advice and their drafting of pleadings and so forth can focus cases and often bring about early settlements.

So for the intermediate track cases, the ones up to £100,000 of lesser complexity, I have included special provision for counsel's fees. But, there are competition issues here.

Whilst I accept that barristers do bring these great benefits to litigation I can't shut out other professionals who bring similar benefits to bear. How do we define the people for whom fees should be ringfenced?

After much angst, discussion and debate I have come up with a phrase "Counsel or specialist lawyer", because there will be some specialist solicitors to whom the problem can be referred and who will bring equal value to bear.

So that's the formula which I've used in my report. It's intended to meet

the substantive point which is made, that the public interest is served by bringing in a fresh mind to look at the case early on, to conduct the advocacy and so forth.

Now, what about business litigation? The Federation of Small Businesses sent in a very powerful submission saying our members cannot afford to litigate, Jackson you must fix costs for all business cases up to £250,000 and to go with that you must have rigorous case management, improved court systems, control over evidence and so forth.

Now I don't accept all business cases need such a regime but there are many disputes between small, SMEs or individuals running their own businesses which really do need such a regime.

What I have proposed is that we should pilot a regime of that character and see what the take up is. So my report proposes a pilot in designated courts for business and property cases where the claim is up to a quarter of a million pounds. That will be a voluntary pilot, cases will only go into it if both parties, or all parties, agree to do so.

If they do go in then the recoverable costs for each stage of the litigation will be capped, there will be an overall cap of recoverable costs for the winning party set at £80,000. There will be a very streamlined procedure. More

streamlined than for the intermediate track. Expert evidence will be disallowed unless it can really be justified, and wherever possible any expert evidence is to be by means of a single joint expert.

There are strict limitations on factual evidence and the length of pleadings. Also, the trial is to be conducted in a maximum of two days with the court exercising control over length of cross-examination and length of submissions.

So this is offering a tightly controlled, streamlined service for those business litigants who wanted and agree to go into it.

The pilot courts are the business and property courts in Leeds, the business and property courts in Manchester and the London Mercantile court, whatever name that court now has in the brave new world, which I'm afraid momentarily escapes my memory.

So these are the pilot courts. And it will be very interesting to see what the uptake is. After my last report I piloted some reforms voluntarily and I learned a lot by seeing what the uptake was and also by seeing how those reforms worked out in practice.

I am arranging for a university to monitor the proposed pilot. At the

moment the pilot is in limbo, it's merely one of the recommendations in my report, it will be for the Ministry of Justice to decide whether or not to go ahead, but if they do decide hey presto here's a set of rules which happily the rule committee have approved and there's a university which happily has agreed to monitor it. So I hope that will go forward.

What about clinical negligence? This is a very troublesome area. Very few clinical negligence cases will qualify for the fast track or my proposed intermediate track, this is because of their particular complexity, even though the sums in issue are often modest.

I have proposed that under the aegis of the civil justice Council there should be a working party similar to that set up for noise induced hearing loss, with representatives from both sides, Ministry of Health and NHSLA on one side, claimant organisations on the other.

And this working group should devise a bespoke procedure for lower value clinical negligence claims to which fixed costs can be attached.

I have in mind clinical negligence claims up to £25,000. That does account actually for a very large body of all the clinical negligence litigation, you will see that if you look at the statistics in my report.

Now I understand from influential people on the claimant side in APIL and elsewhere that there is goodwill for joining in such a working group and devising a bespoke procedure with fixed costs attached.

I think that is a much more constructive way forward than certain other proposals which have been mooted in recent years.

I see that I have nearly used up my time allowance, I will just say a couple of words about judicial review.

What I'm proposing there is an extension of the Aarhus rules those rules have worked very well in environmental cases, as one of the speakers, very distinguished environmental law solicitor pointed out at the Cardiff conference, the environmental cases have been in effect a pilot of the Aarhus rules, they work well and should be rolled out for all judicial review cases in my view.

I can only take that point quite shortly because I'm meant to speak for half an hour, finishing at 3 o'clock, although that clock says it's five past ten ... it is now 3 o'clock and I'm required to submit to five minutes of cross-examination, to which I will cheerfully do.

[APPLAUSE]

CHAIR: Thank you for that, thank you for that useful overview, trying to speak for 30 minutes without notes. Tremendous.

Now I would like questions there's a roving microphone, I see one hand there. So the microphone to the front here please.
>> A very high percentage of the claims which fall into your fixed fee regime will be debt recovery or contractual money claims, in your report you pay regard to this and confirm where there is a contractual entitlement to cover your costs whatever the claim value your fixed fee regime will not apply, consequently how can you convince me today that because many businesses are likely to change their terms to avoid your fixed fee regime, your proposals will not lessen the judiciary's grip on the question of proportionality and your proposals will not unintentionally exacerbate the very problem you are trying to resolve?
LORD JUSTICE JACKSON: I'm not sure that I can convince you, because you sound as if you've made up a fairly firm view!

I can at least address the other 100 people here. First of all, there's nothing I can do, or the rule committee can do about cases where there is a contractual agreement determining the recoverable costs, for example a provision in a mortgage that, in the event of possession proceedings the mortgagor will pay the actual costs, they will be added onto the amount of

the mortgage.

There's nothing the rules committee can do about that, we would need primary legislation to address that problem. All of the recommendations in my report, except one long-term recommendation for the future, which I haven't discussed just now, can be done by means of rule changes.

Realistically, I do not think that in the near future Parliament is going to give parliamentary time to civil justice reform of this nature, because there are other preoccupations and concerns.

But, if the point which you make, if your fear materialises and if businesses start on any large scale writing in contractual provisions to override the fixed cost regime, then I think there would be a very strong case for legislation.

At the moment there is not a very strong case for legislation because this problem is not widespread.

If we were for example to change the rules about what costs mortgagees can recover, that may have an effect on interest rates. I've had a long discussion about this at seminars and with my assessors.

There are wide ranging implications from interfering with freedom of

contract in the kind of case to which you refer. It may be necessary to do so, there may in due course be a case for primary legislation, but it really is necessary to look at the wider implications and this may be a Law Commission job before we start legislating to say people cannot reach a contractual agreement about recoverable costs.

CHAIR: Thanks, I think it's also true that the statute provides recovery of commercial interest on commercial debts at 8% of base rate, that was amended a couple of years ago I think to provide that you can also recover your costs and recovery of the debt which arguably include the costs you incur to your solicitor, that might be another issue as well.

LORD JUSTICE JACKSON: Yes, but that is a matter for primary legislation. I'm not saying that it would necessarily be inappropriate, but it's not really part of my terms of reference.

CHAIR: Any other questions?

LORD JUSTICE JACKSON: Time for one more then I really must go.

CHAIR: I can see one there, the lady on this side. Final question.

>> Hello, the last time you proposed a scale of fixed costs for the portal, the government subsequently met with the insurers and effectively halved them to what they are now, so I've got two questions please. Were you disappointed that your evidence and researched based proposals were not followed? And is there anything you can do to prevent that happening again?

LORD JUSTICE JACKSON: I don't think the government halved my figures,

they certainly did reduce them, I think my figures were correct, and obviously I'm sorry that they were not followed.

But ultimately I've got no control over what anybody does. I don't actually have any official position apart from being one among 39 judges in the Court of Appeal. All I can do now, and all I have ever been able to do over the last 8 or 9 years that I have been stuck into this particular enterprise, all I can do is to gather the evidence, consider it, put forward recommendations and back them up by reasoned argument.

I hope that my reasoned argument will prevail, but I can't guarantee it. I've no control.

CHAIR: Thank you. Well Sir Rupert the phrase you were handing over the baton to those who are going to carry on, I just hope they don't drop it and that it carries onto the end of the race, thank you very much again, thank you.

[APPLAUSE]

Okay, right it's now my great pleasure to introduce our next speaker who is Kerry Underwood, he is a solicitor and senior partner of Underwood solicitors, he is a lecturer, a writer, broadcaster and former employment judge. He writes regular columns for The Law Society for our civil justice

section newsletter as you all know, he writes the Solicitor's Journal, practical law, he blogs and is author of many books.

He is a true expert on the subject of litigation costs and he is going to speak to us today following on from Lord Justice Jackson on what clients need to know and what we should be telling them. Kerry?

[APPLAUSE]

MR UNDERWOOD: Okay I know that for us as solicitors basically we've been kicked around by everyone for the last ten years or so and that obviously creates low morale, it's no secret that I thought the previous set of reforms.

These ones I do believe give firms, solicitors and lawyers generally, an opportunity to improve certainty and profitability as well as correcting some problems which have arisen in the system.

CHAIR: Can you hear at the back? Are you okay at the back can you hear okay?

MR UNDERWOOD: They can't even hear you asking if they can hear okay. Can you hear at the back?

Okay, I think sometimes we get the wrong argument here in the sense of to say it does cost £200,000 to bring a clinical negligence claim against the

NHSLA or resolution or whatever it's called now, and it's wrong to stop that, because people wouldn't be able to bring claims.

Well yes that's true. But there must be something wrong with the system if it requires, as I accept it does, expenditure of that sort of money to achieve relatively modest sums.

And the problem with the debate on personal injury is that it is not typical for several reasons.

Firstly the defendant always has money. That's good and bad, they can pay the judgement, it's bad because they can force firms and therefore lay clients, to spend money or take a risk, normally the lawyer's risk now in personal injury. And you have a system of qualified costs.

Of course all of this has arisen with abolition of legal aid, no shadow of a doubt about it. It was the State for the best part of 50 years saying that as a society we will direct some taxation to create an equality of arms, you didn't need civil procedure rules to tell you that when you had legal aid lawyers.

The original Legal Aid Act, it had in the Act, that the amount paid to a solicitor doing legal aid had to be the commercial rate that a private client

would pay. It was a Law Society rule and I'll be blunt here, when we were governed by The Law Society not the bunch of nutters at the SRA, they're mad, look at their proposals, they're mad!

But it was a Law Society review that every firm had to do legal aid, if people wanted them to. I'm not sure people were falling into each others arms asking for legal aid, but if they did they had to do.

These proposals, albeit that they have been driven by the need to control costs, why I support them particularly, apart from the fact that I think the system works, is that I think even without those we need to streamline the procedures.

If you look now at what's happening for example in the US with disclosure, you are getting rooms as big as this, factories of documents in single cases where people are just combing through them, looking at key words and so on.

Now you can all have a few but there respect that many cases where documents ever produce a change in the result. And the areas where there are, for example historical sexual abuse actions, we know there have been cover-ups, are specifically excluded from the fixed costs regime.

And Lord Justice Jackson didn't go into detail, but I have, I have been speaking on it for some time, a statement of case just 10 pages, an intermediate track case, witness statements for each side 30 pages, 60 pages in all.

You can argue about whether they are right, but that's a much better procedure and the problem with the high value cases, the enormous costs, they are the ones that get publicity from the Daily Mail and so on, I am sure beyond doubt from my own experience, that that infects the system, infects the public mind, businesses in particular, they have almost completely disengaged from lawyers unless they're defending an action and they feel they have to.

We can talk about works employment, an employer -- a well-off one, downloaded a free restrictive covenant from the internet, there's zero chance of you being able to get appropriate restrictive covenant from the internet. We said pay up, forget it, zero chance you are going to enforce this, but what we'll do is draft you some proper ones, we have two advantages. One you have some proper ones and secondly you can sue us if we screw up, you can't sue the internet.

This is a really issue, in Hemel Hempstead just to be -- we have an industrial set, 22,000 people working there, they are not big firms, every single lawyer

in this row -- why are we not getting this work -- not you sir, don't feel ... why aren't we getting this work, where is it going? And the short answer by and large, they are not instructing anyone.

So I think certainty of costs, we have this phrase that will come back to haunt me, I don't know. We can't guarantee the outcome of the case. But we can guarantee the price.

In terms of how, what should you do? I accept without reservation that for very large firms these proposals will cause problems. I say it's more to do with those firms than the proposals. Small, medium sized firms I think they give great opportunities.

What I'd like to reassure you is to look at claims which have settled, or, gone to court or whatever that would now be in the new scheme, any case broadly less than £100,000, there are exceptions.

Look at what you actually recovered, what you charged your client, and then simply doing quite easy -- I'm more than happy to do it free for you, send me the facts and we can send you the fixed costs. I think you will be pleasantly surprised.

You can then look and say, we were talking earlier about the mark up and

the extra element of recoverable costs. You can say okay to standstill in terms of income, what will I need to do -- what would I need to charge my client on any given case?

Now I think in the new world as with personal injury, I think you're going to be, it's a rare client wants the system sucked in a bit, just going to say I know we're only getting £62,000 or £40,000 but yeah I'll pay you on an hourly rate and pay the difference.

I think the charge you make to your client is going to end up being related to recoverable fee and/or damages. Obviously for defendants, because personal injury is not typical because defendant is insurance company, there are no defendants in terms of businesses and individuals, technically there are, but in effect they are not.

The great benefit of fixed costs is not, if you look at it all the time from a recovery point of view, of course fixed recovery means fixed exposure, in other words if you're acting for a claimant you can say if you lose this is the worst case scenario, which is going to a three-day trial on a band 4 £100,000, this is the worst case scenario. If the claim against the client, your client's case is £40,000 you can say well actually worse case scenario is this, because the figures have to all intents and purposes a recoverable contingency fee, a core fee plus a percentage of damages.

That I believe will bring far more people to litigation. Access to justice has been the most Orwellian phrase for 20 years, it's been cutting access to justice and even other things aren't access to justice, it's access to my wallet please.

When you actually look at these proposals, they're bound to increase litigation, or at least claims. And the way they're structured; Dave I don't know if you had this, but it's great, there's a big jump when you issue proceedings. In other words defendant who should be paying up are now very incentivised to settle the claim before proceedings.

And that happens in two ways, (A) there's a big jump in fees, and secondly, pre-issue costs outside the field of personal injury, for first time I am way certainly since I have been working, you've got a right to pre-issue costs even if you don't issue.

At the moment as you know you have to put in a phrase saying something like costs will be assessed and agree -- the way that works it sounds a bit complicated, but it isn't, is if you settle pre-issue then they are actual costs, they are capped and you have to justify the work.

But the moment you issue, the pre-issue costs are then fixed and sort of

subsumed in the technical stage to counsel's fee.

So there's a big jump when you issue proceedings. When I say a big jump, in a £100,000 claim I accept that's the top, even in a simple Band 1 the jump is £9,100 and Band 4 is £9,000 plus what what might have only been a couple of thousand actual pre-issue costs become figures.

So the real jump will depend on what you've done pre-issue obviously.

Counsel's fee for preparing a statement of case is ringfenced and fixed. And so that's a structure, most cases settle. But that structure, if you send a letter of claim where you have to say which track and which band it should go into. You get a letter of response, it has to fellow protocols, quite right too.

If you get nowhere you can instruct counsel that will be cost neutral to the solicitors, because even a copy case can claim £2,000 is not a bad fee.

You then move into completely new fee structure, significantly extra fee for issuing proceedings.

I say all that because the ideal scenario for us as lawyers, I would say for society as well, is that anyone who can't resolve a matter directly with the

other party can afford to go to a lawyer and if the other side want to fight it well that's everyone's right, but they will be increasing significantly their exposure to costs and not resolving the matter in protocol period.

Courts exist to resolve disputes, one of the worst things that's happened over the last 20 or 30 years is this idea that somehow courts are bad and going to litigation should be a last resort. The idea that people think I'm not too busy today, I need a new hobby I'll start litigating on everything, yeah there are one or two. But the average person enjoys going to see a lawyer in the court as much as going to see a dentist.

It's not that there's somehow a need to control this madly litigious society, the reality is when people have disputes courts are a far better place to resolve them than sending the boys in or thugs or corruption or whatever.

That's pretty obviously the alternative. If you have a system, I mean the contract point is interesting -- I would pass legislation immediately, because inevitably what's happening there is a powerful organisation, typically a Building Society or whatever, is imposing a one-way cost shift, they get costs if they bring a claim and defendants -- success fee defendants, if it doesn't, they just get a fixed cost. So I would stop that.

But you're absolutely right, e-mails things back to the office -- one of the

things we need to do is non-contentious work...

>> It's a general contractual principle.

MR UNDERWOOD: Yeah, tell the banks where to go ... anyway, what I did was -- to give us an opportunity for us to market to people to say look this is the cost.

I'm going to take questions, I want to move on to other things, anything on that -- I do understand anything new, especially when we're looking from a position where it's been rough on lawyers for quite sometime with SRA saying we want the lawyers so on -- I appreciate it's threatening, challenging, uncomfortable...

CHAIR: We've got a question down there.

>> It's sort of an observation. On the continent for instance, if you take the French or German system, where they have fixed costs, what they have also got is a system where the court is supportable for coming up with the right decision and the duty of the lawyers are much reduced in comparison to our system.

MR UNDERWOOD: I think the idea in this country is the courts come up with the right decision.

>> But they rely on the lawyers to produce the things.

MR UNDERWOOD: Yeah that's true. The fixed costs in Europe are a fraction of these ones, I couldn't say what you have to do three -- in Germany the costs are four fifths, I don't know. I'm satisfied with my own firm, obviously

we have been doing this since the report came out that in most cases we were earning more on fixed costs.

It's a fair point sir, they are different systems and it's very difficult to compare different legal systems for all sorts of reasons because of that...
>> You talk about with Lord Woolf, he is starting saying the German system is good, therefore we'll cherry pick the best bit of that and ignore the bits that cause us difficulty.
MR UNDERWOOD: It's like people praise the Singaporean system, it's the 7th worst legal system in the world in terms of corruption and so on. So I accept that, it's a very valid point.

Can I just ask a question, if you guys shout out, throw things at me, are you comfortable with the concept of charging your client something in addition to what you get back from the other side? Yeah, because again some of the questions today, this affects the sacred principle the client should recover 100% damages.

I'm an employment lawyer, we never had cost shifting, so they have to pay. Family there's no cost shifting, personal injury now it's normal for solicitors to take a shift.

I think clients are comfortable with that and therefore the issue is can we do

that by saying, for example, I will charge you rather than an hourly rate, I will charge you £10,000 for this stage. If we win the case we'll recover £7,000 and you'll be paying £3,000 or I will charge you that, but my overall costs to you will be 30% of what we recover, or 40 or whatever.

With defendants we do this in employment, it is harder, because if you've got damages for a client you got the money, possession is nine and a half tenths of the law, if you're acting for defendants and they win £100,000 claim against them, then that's, you've saved the money, so there with defendants, personal I prefer lower fee agreements, you get a fee as you go along and then the client will not end up with a pot of money to pay you, but pay you as they go along.

On that point, the third party funder sponsoring, insurers and third party funders, part of what they do is to offer insurance. They love the certainty of fixed costs. You can ameliorate the issue for most people, let's take a £100,000 claim, just because it's simple, not because it's the top end.

You can say to your client look I'll do this "no win no fee", let's say no win no fee and we can get the insurers. If you lose the claim you'll pay nothing. But if you win the insurers will want to be paid, and I will want extra because I was prepared to take the risk of not getting paid if we lost. And that may well be 40 or 50% in all. Or, you can pay as we go along, fixed

costs to us, but you pay that win or lose, and if you lose you have to pay the other side's costs. Maybe a combination of the two of course that you have the solicitor no on a no win no fee basis, you take out AP insurance.

And huge benefit to me of this system is it genuinely gives lawyers the opportunity to offer a real basket of funding options to clients and to sit down with clients, especially commercial clients, and say what's good for you? We're lawyers, we know the wrinkles in the system, if you can't -- Lord Justice Jackson is right, barristers have traditionally just regarded that as beneath them, beyond me how you can run a business and not know about costs and what costs money and when you make money and so on.

And the certainty, it's also an agenda for you and me to say okay these are the fixed recoverable costs, can I do it on that, how much more -- I'll give you a specific example.

Debt recovery, at the moment you get not a lot. Now if you have to issue you get quite a nice fee, £1,440 plus 3% of the debt. Even a low number is £2,200, top end is 3% of £100,000 so £3,000. Debt collection doesn't really come to that function, I've e-mailed the office and said look can we look and say how about we'll do it free?

Free we'll get the costs recovered from the other side. Now we might say 10%, say we'll do it for an introductory offer for you, debt collection for six months free. If you think it works after that we're 10% of what we recover, or whatever. So there are actually quite a lot of extra costs in this business of recoverability. There's a lot of work through which you will recover costs where you don't at the moment.

Anything on -- anything really?

CHAIR: Thank you for that. That's fantastic. Again another speaker who spoke for 30 minutes without notes. We have a quarter of an hour for questions, the roving microphones are around. I was going to kick off with one on proportionality.

We were talking about predictability, when I started many years afterwards, I would tell clients that if you win you don't recover all your costs, you recover somewhere between rule of thumb two thirds and three quarter of the costs, then 2010 we had proportionality of standard costs. Currently I now say to clients I can't say that any more, I can't even promise you'll get 50%, I don't know. So to me an attraction of fixed cap costs is the predictable proportionality. I don't know what you feel about that?

MR UNDERWOOD: I agree. I think as I said before if we this -- anybody doing clinical negligence for example know it's becoming increasingly (inaudible). I can't see the courts saying that's okay then. I think in cases

which are just over £100,000 the courts will already look at the figures and saying this is researched by people who know what they are doing, assessors like David and saying this is a good start for us as courts to look at.

But I agree with you, we all love certainty don't we? If you go have your car done it's £300 and it's 350 you don't like it. If they said before 400 and it turns out 350 that's okay. I totally agree with you -- and it may be that there are some types of work where you say actually I can't make that work, if that's the case I think the system will be adjusted to cope with it, because the prize here for the judiciary and the government and the Labour Party, I'll tell you why in a second, is enormous.

One is judges hate budgeting, just like you guys. From our point of view, can you imagine no need to have costing, you get paid in 14 days, provisional is about a year now. What's that about, if we are going to have any sort of publicly funded return to legal aid it's far, far easier to do that on a fixed costs basis where we can say these are the costs to -- it's an insurance thing of course, these will be the costs of the State financing any particular type of thing.

Therefore I'm saying I think there's a real will to make this work and there are issues, I think the government should be open to make it work.

CHAIR: Any other questions we have then? The lady in the front here.

>> I was just going to ask if you knew whether the DBAs, whether there was any likelihood of any reform of those, so that they would be perhaps more flexible, which certainly a lot of people...

MR UNDERWOOD: This is about damages based agreements, famously called don't bother agreements, which I endorse. The concept I love, contingency fees, but they are so bound up with -- "The answer is no Madam," there should be, there isn't in fairness, Lord Justice Jackson says we need to change this, I think everyone has, there's no plans to, no.

To a certain extent of course fixed costs do away with a need for that, indemnity principle goes -- sorry no indemnity principle in fixed costs, you can actually have a deal with your client that says the most I'm going to charge you is 2,000, 5,000, 10,000, I'll take my chance to get 40,000 from the other side, but the short answer, no.

CHAIR: Any other questions? I don't see any hands up. Anyone out there, have any of you lost work that you know of when you tell the clients what, you might say a 60% chance of success they ask what happens if I lose and you tell them the level of cost you could be liable for, do you lose work as a result of that? I have had, after the removal of recoverability of success fees and AT premiums; I had two cases where I know I could have done it beforehand, we've had to not pursue it, anyone with a similar experience? Yeah? No-one? Not a problem then? Yes.

>> I had the same as well happen where I said could I have 10 grand for issue fee and they go ... no.

CHAIR: Yeah a civil litigation tax we call it.

MR UNDERWOOD: That's another point, the court fees and also expert fees are untouched, I can understand why, one step at a time and whatever, but I'm getting older but experts ... parasites on the system by and large, but that's a real problem. Experts and court fees. I would fix experts fees they're fixed in personal injury at 25 grand.

CHAIR: Last year, when he was here, Lord Justice Briggs told us that the civil litigation system makes a profit of £75 million a year, it's said the government has to support the court system, well they had to support the criminal justice system and civil justice system pays for that, and since then the profit has gone up £100 million, so an extra £25 million resulted in wonderfully named enhanced court fees. I think the other enhanced thing is enhanced interrogation. Enhanced is a wonderful word.

MR UNDERWOOD: Can I finish with a little anecdote? When the reforms came in four years ago, the first batch of reforms, it comes from fixed costs, and Robert is my business partner sitting here, we had about three consultants, bit surprising not more. First came in, I was in Derby, got back 4 o'clock, Leah a solicitor said don't sit down, Robert was saying there's only 30 days in April it can't be too late, it was the 4th April, what was he talking about? 28 consultancies in one day!

What I am saying to you is please prepare for that. What I did is first of all just -- there is a party piece, I go into a firm and say right, can you give me, you choose, ten files and I will then tell you how you can fix costs. And the first four the sole practitioner was really worried should I give up here? First four she had more re-fixed costs, one was more or less identical, five the figure for fixed costs was less, but I said if you put in 25% you're getting more in all ten cases. She said are you telling me I'll get more on each of those cases? I said yes. I'll do a deal with you guys, I like to learn, if you want to send me, not reams of stuff, just pick out some cases you've settled and costs like I said earlier, say to me what fixed costs would I have got in the new scheme and I will do it for you, because it informs me. If it's about ten to one to what I would have got shoot me, but I think you will be surprised.

The important thing here is for change, you're prepared, comfortable, the staff are comfortable, they need to understand where the change comes. I think you'll be very reassured by this, and I think also as has happened with fixed costs in personal injury, it removes a lot of the arguments about, what I mean is that if you get that and you can make profits on a proportional system to use that, then the political pressure and pressure to look to allow ABS to do it, McKenzie friends are largely gone.

CHAIR: Okay, well let's thank Kerry for that wonderful presentation.

[APPLAUSE]

Before we break for tea, shall we try a straw poll or two?

Looking, it's difficult to take the whole Jackson proposal as one, because they are quite different, but taking the proposal to increase fixed recoverable costs up to £100,000 from £25,000 up to £100,000, broadly, who welcomes it? Who is in favour of it, show your hands? So about a fifth and who is against it? Quite a lot of -- I think a lot of people don't know, which is fair enough. I think maybe more in favour than not.

MR UNDERWOOD: A lot of don't know, but that's fair enough.

CHAIR: We'll wait and see. On, then the pilot, we'll have to see how the pilot works out on cap costs in the bracket up to £250,000. Again those in favour? We've got about half a dozen there. Those against? Again a small majority in favour, okay.

Good, well I think that brings this first part of the conference to an end. Again thank you to Kerry, thank you to Lord Justice Jackson, who has had to leave us already.

Time for tea! Thank you.

[APPLAUSE]

CHAIR: Just to give Kerry a little help with his books.

>> Plenty still for sale!

CHAIR: He has copies for sale if anybody is interested.

Right now to the second half of our conference, the business development symposium. Joined here with four practitioners and specialists, directors and specialists in their areas of work -- I'm noticing that Auscript are noticing every word I'm saying and it's putting me off somewhat!

We can hear from Chris Davidson director of Moore Legal Technology, if you please give a wave so we can know who we are. David Kerr client relationship director of Moore Legal Technology, then Mark Pursey CEO and founder of BTP Advisers and then Sue Bramall director of Berners Marketing.

I'm going to give each of the four a brief introduction time, just to give you an idea as to their role and how they can help you, but just to give you an idea, with Chris Davidson, he joined Moore Legal Technology as director in 2013 and following a specialist in-house law firm marketing and business development roles, manager roles. David Kerr is Moore Legal Technology's client relationship director and they are going to give you the initial talk and then we'll have some questions from the floor. So handing over to Chris and David.

MR DAVIDSON: Thank you very much, I just hope that Auscript can understand my broad Glaswegian accent, I'll try slow down a little bit.

So Dave and I are from Moore Legal Technology, we are essentially a digital agency but focused on helping lawyers use the internet more effectively to increase their turnover, enhance their brand, increase and improve efficiency and ultimately future proof their firm.

So we have these ten top tips to share with you initially before taking some questions. So we'll start off with number one, don't be all things to all people. Focus your resource on the type of work that you really want more of, work that's enjoyable, work that's profitable, work that makes you want to get out of bed in the morning. Where possible focus on trying to develop is a niche and work towards establishing yourself online as an authority in your particular area of practice.

Number two, develop your brand to differentiate. As more and more law firms around the country become increasingly sophisticated in their approach to internet marketing, how do you differentiate yourself from the myriad other firms offering similar services at similar price points? We're seeing an increased focus on firms really working and developing their brand as a way to help them stand apart from the competition.

Number three, offer sophisticated design and user experience. If your law firm has a website that was built in 2009 and hasn't been touched since, then it just isn't going to cut the mustard, your website, very often the first impression a potential instructing agent will have of your firm, if it's not offering, if it doesn't offer an experience akin to what the average internet user expects from a website in 2017 then you risk losing out to your competition who may be perceived as being more forward thinking, more dynamic, more contemporary, etcetera.

Number four, mobile matters, which should really go without saying, but as mobile usage becomes increasingly ubiquitous, not offering a positive mobile experience, will not only affect how Google views your website, but you also again risk losing out on potential work as people are finding it difficult to navigate through your website or indeed to get in touch with you via their mobile device.

Number five, content is king. Published in depth, authoritative, unique own brand content on your website is a great way to get Google to notice your website and indeed will help increase the conversion rate of your website. It should be said though that that content has to be presented to search and I know searching effectively and at this point I'll pass you on to my colleague Dave.

MR KERR: Thank you all, I have got a sore throat so you're probably going

to need to do a little bit more with translating as well!

So as Chris says content is king, it's very important to put out authoritative, in-depth, relevant content that will attract people to your law firm's website. Now essentially we are in the business, and you are as well, of attracting people to your firm through Google, which means you are playing their game.

What that means is that you have to make sure that your website can be found. The best website with the most expert content and best branding is not worth a lot if people can't actually find it.

Now what that means is not targeting people who are searching for your firm name or your own name, but finding people who are searching for information or helping people to find you when they have a legal issue, how do I accomplish X, I'm in Y situation, how do we do that?

There are a huge number of online platforms that enable you to build and set up a website, all of them do this to varying degrees, but you should certainly have a mind to making sure that the website is visible online.

The next part obviously is picking the low hanging fruit by marketing to your existing clients, when I'm out speaking to our clients or to perspective

clients very often the conversation goes something like this, so do you have a database of clients? Oh yeah we do, we have a safe full of wills or we have a database. So what do you do with that? And then the blank stare appears, very few firms proactively market themselves to existing clients, either in newsletters, in this day in age it's possible for text messages, phone calls and follow ups, you have already won the trust, you have already done the hard bit, maximise your return from that client.

We'll talk about Google's game, the other way to do that is through Google Ads or to play that rather, that involves setting up a campaign to advertise yourself in Google, I'm sure you have all seen it, when you do a search there's three results at the top, those are paid for Ads I'm sure if you go and look for your own firm's name or website, you will see a competitor is probably already has ads targeting your name, I'm sure you have all seen that.

Getting into that is a good way to set a fixed marketing budget and get quick wins, people who click those very often are much more in the transactional mindset, they have a problem, they need remedy and are looking to instruct a solicitor there and then. It can be very effective to get quick results while you work on the overall online picture.

The next part knowing is better than guessing. Again we see very few firms

who actually actively have a handle on their marketing data. It can vary from nothing at all in many cases to a book, the worth of which is questionable, to a spreadsheet to a dedicated piece of software. We encourage all our clients to set up some way of tracking where your business is coming from, whether that's referrals, walk-ins, recommendations, the ad you put in the local newspaper, or if it's online, and that way you can more effectively target more of the work that's coming in from those sources.

Number ten which is very much a cross over between ourselves and Sue, is handle calls better. When we speak to clients in the early stages they think they need website-only marketing, in many cases what they actually need is to sort out the internal marketing function and how they actually handle calls. If you set up a website, invest in ads and more leads start coming in, it can create a bigger problem as leads aren't handled and you suffer reputational damage.

So having a series of processes in place to handle calls, having a business development department or person tasked with that is very often the first step to be taken before even getting as far as setting up a website or paying for ads. Thank you.

[APPLAUSE]

CHAIR: Thank you Chris and David. We are going to talk about marketing your firm in the digital age. Now we'll hear from Mark Pursey on business development and marketing for litigators.

MR PURSEY: Thank you very much Matthew.

So despite my friends being from Scotland, I have a longer journey, today I flew in from Montenegro, I only live around the corner. But it gave me a lot of time to think, probably overthink some of the things I'm going to say!

And one of the things that crossed my mind is I'm trying to answer the question, who is the most famous lawyer in the world? And there is lots of candidates for that, Judge Judy, there's Amal Clooney, those two have a lot in common, they are both married to Americans. But actually what they really have in common, you can go on and talk about the various names that there are that you can add to that list, is that all them are known, yes to the public, but they're known because they are on the television, in newspapers, they are on digital platforms, their thoughts, not just about legal cases, or court cases, but legal actions or legal issues, or changes of the law, are reported and their words are reported in the media, both in this country and elsewhere.

And while they are very, very high profile people, there is no reason, on perhaps a slightly different scale, why everyone in this room could not be

doing something similar.

As lawyers you are all reputation managers, you manage the reputation of your clients, whether that's in court or whether that's out of court in arbitration or any other matters.

For a reputation manager to not want to manage their own reputation is unusual. And therefore it means that when you are approached by a potential client it is likely they will have looked on Google or looked at both your company website, but also perhaps about you or about the type of lawyers who work in the particular area that they have a need to acquire a lawyer for.

And therefore the more information, the more content as my friend here said that's available about you, commenting on legal issues, it doesn't necessarily have to be a court case, whether ongoing or past, it could be a legal issue for instance a civil litigation issue, a change in the law on marriage or a change in the law on contractual employment matters and things like that, all such subjects are perfectly legitimate for qualified lawyers in that field to be commenting on, to, and in, the media.

And I think again it would be unusual for lawyers not to want to do that. Now of course there are some who say I don't want to speak to anyone

externally, I only want to deal with matters in court, the court cases speak for themselves.

But again, that's dangerous, that's risky I would say, to take that approach, because people, if you're just letting somebody else write what they want about you, you have no control over it ultimately.

Now how do you go about putting your name out and your experience out in the media? Well there's no hard and fast rule about how it should be done, how you can create the content online, in the newspapers about you and your expertise.

Something that we do generally push in BTP Advisers is that we try to get people to put things on the record as comment articles. So often we start with people commenting on the opinion pages in newspapers or online magazines or even blogs, writing articles that cannot therefore be misquoted because they are in your own words.

So if you want to comment on an ongoing case, your client allowed you to do so, or you even wanted to comment on a case which is already in the news which you have great experience over, yet it might not be your case, but it's somebody else's case but something that you can legitimately make comment on, then to start by pushing your opinions out through comment

articles and opinion pages, we always think is a very good idea. It builds up a body of work, body of content on the internet through which is easily searchable for potential clients who might want to use you and your services.

There are other things that you can do. If you are a London based lawyer then there are literally endless journalists who write about all different aspects of the law. Pretty much every mainstream London based national newspaper has a law editor or a law correspondent, you can make contact with them and meet with them. When the time comes they will take a quote from you about a particular issue, whether it's about an ongoing case that yours or someone else's case or a change in the law.

If you haven't made face-to-face contact or even telephone contact with them, made them aware of your existence, why would they partake of your opinions?

If you are not based in London, then for example I grew up in Birmingham, Sky News was always, the regional version of Sky News, BBC West Midlands is always parked outside the courts in the centre of Birmingham watching low grade footballers come in and out for their trials.

And that's, that kind of news may not be covered by a legal editor or a legal

reporter per se, it might be a home news or news desk reporter, but again it's easy to identify these people, just look on the website, look on the news and see who is writing about the type of law cases or law issues in your area that is in your realm of expertise and make contact with them.

You've got to show a little bit of leg, because otherwise they're not going to know that you're there.

There are some other issues that are important to consider. Lawyers are excellent writers, you have to make a very succinct and clear case if you are in court or if you're helping a barrister make the case in court, this is all got to be crystal clear, very, very simple stuff. But I'm afraid to say when it comes to writing newspaper articles, lawyers are some of the worst people I have ever come across in my life.

You do write legalese and I couldn't write the way you would do in presenting a case, but then very few lawyers I feel often are so great at translating that into common speak you might say, that's needed to put into the realms of the mainstream newspaper or website.

So there are people like my firm and others who are able to assist you with more chewable content for the average person to understand legal issues.

So look up who may be available in your area to assist you in that regard.

One thing I will leave you with is just a little story about Thomas Cook, Thomas Cook some years back had an issue whereby there was a fire in one of their properties. Now the lawyers -- people were injured and the lawyers told them don't say anything, don't do anything, keep it quiet, we'll deal with this in the legal way.

But of course this matter came out and it was all over the papers, it seriously damaged their reputation. And the lawyers were probably correct legally, in the advice they gave them and the approach that they gave them. But we don't live in times any more where news, or bad news particularly can be kept away from the general public.

We don't have five national newspapers and three television stations and two radio stations and when the paper is thrown away at the end of the day the news is gone, the bad news about you or anybody else is gone and it's in the bin and forgotten. It's not. It's there forever.

So how lawyers approach representing their clients must, and already is, but I think increasingly has to include how would you represent them in public? And that can be done just by the lawyers, or in the case of what we do, I'm not a lawyer, we have no lawyers in our firm, but we work every day with

lawyers, whether solicitors, barristers, on civil cases, on criminal cases, representing their clients.

Often by putting the lawyer into a TV studio or writing an Op Ed comment piece for the lawyer or putting the lawyer before various print and digital journalists to speak on behalf of their client or our joint client. Often it's not me or people in my firm doing the actual speaking as such up front, though sometimes it can be.

But the days are gone when a lid can be kept on contentious issues by lawyers I'm afraid, and this doesn't leak into the public domain.

I appreciate there are some clients who don't want you to speak on their behalf, and if that's their wish then obviously you must respect that wish. But I think the cases when that will -- high profile cases when that will be acceptable are very few and far between these days.

So I think if you are in the business of reputation management, which is what all lawyers are, then and you are not either managing your own reputation or you are not managing or being prepared to manage the reputation of your clients in public, you are only doing partial service to them. Thank you.

[APPLAUSE]

CHAIR: And finally from Sue Bramall, director of Berners Marketing on converting inquiries into business and winning new work from existing clients.

MS BRAMALL: Thank you, would you mind if I make a very short phone call, I know it's a little bit ... if you just -- excuse me just a moment.

(phone rings)

>> (heavy sigh)

>> Good morning, how may I help you?

>> Yes, I'm looking for a lawyer who can advise on professional negligence, we have a problem with an architect, I did send an inquiry via your website, but I didn't get a response.

>> You would need Mr Jones, he is in court right now. Could you call back tomorrow please?

(phone rings)

>> Good afternoon Mr Baker's office

>> Hello, I need some advice about some problems we're having with one of our sales agents

>> Mr Baker's rate is £275 per hour and he needs two hours on account. Would you like to make an appointment?

>> Is it possible to speak to him? To see how he might be able to help.

>> Mr Baker's rate is £275 per hour. And he needs two hours on account. Would you like to make an appointment?

>> Mm ... I think I'll leave it for now.

(phone rings)

>> Hello Aspen and Veil, can I take your number?

>> I don't have a number, I need some advice on a settlement agreement.

>> Okay, just a moment I'm not sure who is in. Let me see if I can find someone. Dave? Dave? I'll just put you through now, okay.

>> Thanks.

>> Mm ... (disconnection)

MS BRAMALL: Thank you very much. So that was a lighthearted montage of just a few of the calls that I've listened to over the past decade or so when I deal with law firms on client service.

I thought it might provide a little light relief at the end of the day when I saw that I was going to be the last speaker, but also what I wanted to identify was the fact that you may have leaky sales pipelines, and if there are any historians amongst you, these are water pipes used to be made out of Elm, in fact they may well have been in the Law Society building when it was built, you can imagine Elm is a pretty leaky product for piping water, so

there was a great deal of water loss.

You've heard now from my fellow panelists about all the ways in which you can generate new inquiries for your business, whether you're paying for Google Adwords, not that long ago I received an e-mail from somebody saying that the average for clinical negligence claims was in the order of £23 per click and going as high as £50 in August this year, I don't know how those figures compare to what you know, or if anyone in the audience is paying that sort of number. But if you are paying for leads like that, you really can't afford to be letting them go to waste.

But also, we just heard about how useful it is to get your name in the media and perhaps you've been courting a journalist to build a relationship with a journalist and there's finally been something hit the headlines, they call your firm to get a quote from you and they're told you're in court can they phone back the next day? Well the journalist will be up against a deadline and will simply move onto the next number in their mobile phone.

So in the first scenario on our little montage we had a very professional receptionist I think you will agree, who just, she was professional, but she didn't take any contact details and simply asked the person to call back the next day. So that inquiry is entirely lost to the firm, if only she had taken contact details, then the solicitor could have called back at the end of the

day, there should have been a much better process in place.

Our second scenario and I did change the fee rate, but that really is a call that we definitely recorded, a very officious secretary who I imagine thought she was doing a fantastic job protecting the partner that she worked with, from time wasters and I often come across this attitude, that inquiries can be time wasters, and sometimes that can be pervasive amongst the whole department, where really nobody wants to handle inquiries, and that can be down to time target pressure, but also perhaps people haven't had any training in inquiry handling and feel it's outside their comfort zone. But really you are throwing your marketing budget away if there's nobody in the firm prepared to answer inquiries enthusiastically and willingly.

And our third scenario, well what a sweet young man, it sounded like it was his first day on the job. Clearly he'd not been trained in either the telephone system or who did what in his firm. And I think one of the things that we saw in the recession was that soft skills training budgets were really slashed, they were one of the first things to go and actually we've not necessarily seen that emerge back onto the management agenda, and it's something that does need to be considered.

As a professional I think the word sales is slightly, not a dirty word but a word that people are uncomfortable with, and yet if we think about it simply

as client care, then I think it puts in a completely different light. We wouldn't think our clients are having the phone answered in that way, if we think about potential clients in exactly the same way.

I'm not just talking about spending hard cash though, many of you will know that sometimes it can take years of networking to build a rapport with a potential new client, particularly in the business to business arena, where you're really looking for those high value litigation cases to come through, all of you are waiting for an accident to happen, you need to have that profile, that reputation and contacts, so that when that need arises, that accident, that debt, that massive dispute, when that happens you're the first name that they think of.

Now what the audio file didn't demonstrate is the many ways in which you can also lose a client by the things that your team doesn't do, and most inquiries should be passing through about five stages.

So they will be coming in via the website, e-mail or telephone to your firm. And you need to test that all of those are working, make sure your test your website from time to time, sometimes blips do happen and inquiries don't make it through.

They may be going through reception, secretary, perhaps a paralegal and

we've seen what can happen there if those people aren't properly trained. Hopefully they are going to arrive in your office where an experienced and appropriate solicitor can listen to the client's needs and advise on the service that is required.

But what happens after that? I'd ask you all, how thorough are you about always sending an e-mail confirming the details after the telephone call? I think Kerry was talking earlier about costs, I think it's something like 11 and a half percent of complaints to the legal ombudsman relating to litigation relate to costs information deficiencies, so those are about one in eight complaints arising because people weren't given the right information about costs.

And I don't know if any of you saw the Sunday Times, this was a no win no fee battle that cost them £300,000 because they didn't understand the consequence of settling via mediation. They thought no win no fee meant there would be no costs under any circumstances.

But what's most worrying about this article is that right at the end The Times puts out an appeal, have you had a problem with a no win no fee solicitor? E-mail money@SundayTimes.co.uk and I think the legal profession has really -- media has been fairly benign in some ways, but since the conveyancing fraud a number of the national papers have really

been picking up the pace and covering these sort of stories and something like this, if The Times is putting out an appeal you can be sure that somebody has responded to that.

So confirming your costs, I think clearly is important how that's done, but just sending an e-mail afterwards ensures that that potential client had some contact details. They may not decide to instruct you straight away, they might be busy, life happens, you have to get kids to university, moving house, they've got re-branding to do at work, and the dispute can be put off for a bit longer, it doesn't mean that they've rejected you, it just means they're not instructing you today and you want to leave a favourable impression with them. Hopefully they'll come back and instruct you, but even if they don't instruct, who knows who they might meet tomorrow at the squash club or at the school gate who needs recommending a lawyer, and you want to make sure that your name is first in their mind. And you need to make sure when they phone your firm they get a warm and enthusiastic welcome. Thank you.

[APPLAUSE]

CHAIR: And this is where we invite questions from the floor with regards to marketing your firm, anybody got any questions to start us off. One at the front.

>> The first or second speaker mentioned follow-up, and I thought that was quite interesting, I was wondering what examples you can give of that? The follow-up after a case?

MR KERR: In terms of following up once the case is concluded?

>> That's what I guess you and your colleague were talking about, the question of how do you do that follow-up? A lot of non-legal services you quite often get a little e-mail saying how did you find your time in our hotel, how did you find the service? I don't think lawyers particularly do that, I just wondered if that's what you are talking about?

MR KERR: That's exactly what we're talking about. The most important thing is to establish it as part of the workflow to establish the habit of doing it, to make it part of the process.

There's no point in doing it ad hoc. What we see very often is that firms take up the cudgels and take up the follow process, one partner does it, not in a very constructive way.

We suggest clients build it into the workflow as a matter of course, and two, to develop a short template e-mail that thanks the client, that importantly asks them for a testimonial, a short blurb on how we performed and ask them to leave a review on Google, Trust Pilot or one of these platforms,

increasingly Google reviews that are most important, and simply ask them for it. Very often that's the case. There may be occasions where for whatever reason you can't get it, but by establishing the process it's more important.

CHAIR: On the same lines would you send out a questionnaire to clients or previous clients, or would you be more interactive and phone them for example, it could lead to repeat custom then? Being careful not to be too salesy as Sue was saying, in our profession, but to come across as client care?

MS BRAMALL: I think when you're concluding your telephone call perhaps you could just agree what your next steps would be. So you might ask do you have a timeframe in which you need to solve this? In which case, if they say well it can't go on beyond the end of the financial year you can ask when that is and say well if I haven't heard from you by end of March do you mind if I give you a ring? In that way you have their permission. You'll immediately get a sense if they say no, no, no, I don't want to be bothered.

The other thing in terms of follow up is to think of whether -- and this links into the time wasting issue, if there are regular questions that you get asked, in something like family law where there is a particular concern about people ringing around for free advice, is that again you might have a

template e-mail which says "it's lovely to speak to you, very sorry to hear you're getting separated and here are our fees but also here's a link to some frequently asked questions on our website" -- so if you look at the trends in inquiries that you get you should be able to put some material together that you can reuse quite easily.

And the third thing I would just say is, I'm not such a fan of the template e-mail, the automated call back. If you, particularly in the business to business, if you spend some time getting to know the circumstances of the client and understand the issues that relate to them then you might drop them a slightly more personal e-mail, so having seen this article in the paper, it's the sort of thing I could easily have sent a link to anyone I met today saying have you seen this and it shows that I've understood what people are interested in.

CHAIR: Yes. Halfway up the floor.

>> Hello, my name's Morgan I'm a trainee solicitor at Goodman Derrick, my question is for the first two speakers, I feel it seems to me anyway that a lot of law firms do very similar work and it seems to me a very significant challenge to draw out what the unique selling points are of a particular law firm, so I was hoping you might be able to talk us through, maybe just a little bit about how you approach that and work with law firms to help them

bring that out and present it in their marketing, thank you.

MR DAVIDSON: That's a good question. At the beginning of any new project we undertake with a client we have what we call a vision meeting with key stakeholders within the firm.

During that meeting we look to identify things like how the firm views itself in terms of brand, what the value proposition is, what the tone of voice is, who the target audience is, what kind of work they want, etcetera, etcetera, etcetera.

And very often we touched on the importance of brands during our bit, but very often the notion of a firm as a brand may exist in the minds of one or two senior individuals without ever really having been cascaded down through the rank and file or committed to paper.

So if you get a dozen people around the table and ask them to give you the elevator pitch for the firm, everybody is slightly different. So you're absolutely right, it's really important to work on those elements at the beginning, before committing anything to paper or to design.

Because what comes out of the initial fact finding consultancy will impact every aspect of the process thereafter, the content has to be brand aligned

and written with the target audience and tone of voice in mind, aesthetic and visual identity of the website has to be correct, etcetera, etcetera.

Very often that actual piece around value proposition and branding session will require some deeper reflection on the part of the firm, but in our experience it's very worthwhile, not only for helping us do our job properly, but for the overall.

MR KERR: I can give an example, we do a lot of these and the first three words that jump out when we ask someone give us your brand, everyone says friendly, approachable and down to Earth. To the extent of banned it, can't say it, don't even type it!

So what we have to do is peel back the layers and unpick what it is that really makes the firm tick. So the best example is I met a client yesterday, we took them on, they specialise in maternity and pregnancy discrimination and related employment law issues, the brand process the vision meeting, yeah we're friendly, approachable, down to Earth, now the previous brand was very much softly, softly, sympathetic tone of voice, sympathetic branding, soft messaging.

As we went through the process we took much more of almost an aggressive US attorney style branding line with content, because yes the potential client base wanted them to be friendly, approachable and down to Earth with

them. But what the client base needed, mothers who suffered a setback in the career as a result of having a child, what they needed was someone tenacious, bulldog, fight your corner, go after the big guys, and all that really US style aggression, these guys who call themself Frank the Hammer and shout about getting, sue anyone, have you seen the Better Call Saul lad? Sue anyone. But that's where we took their brand.

We met them yesterday and they're looking to invest more to get more, because it really helped them attract not just inquiries per se and it's about making sure what you put out resonates with your exact target market.

MR DAVIDSON: What Dave was saying about pulling back layers when we have the discussions we always ask who do you view as being your competitors? As we do peel back the layers we always find something, don't we, that makes you different from the other firms, there's always something and that then becomes the hook which drives the project.

CHAIR: So we've heard from Chris and David regarding the sales pitch and we've heard from Sue about especially where a newspaper is picked up where there's a concern with the client. Mark maybe you can help us, how can we use perhaps social media to mitigate any unsuccessful cases?

MR PURSEY: I wouldn't necessarily say unsuccessful cases are necessarily bad news.

CHAIR: Or ones that raise concern for example?

MR PURSEY: Let me explain, once not so long ago I was talking to a QC

who had done loads, he was in criminal cases, international criminal cases, so not the same branch of the law, but going through the cases and lists all his cases on his chamber's website, all these excellent cases at the Hague and everything else, if you ask he barely won a single one of them, but he keeps on getting the cases and the work.

One of the reasons he keeps on getting the work is because he gets a lot of news coverage about commenting on that specialism in the law certainly, of which despite his scorecard he's most definitely still very qualified to comment on.

And so first things first, I wouldn't necessarily take lost cases to be immediately a negative thing. What I would say is that any experience of a case, a win or loss gives you therefore the right to comment on that matter, or, not the case itself, but on that particular matter in law, and these guys that you talked about in this article here, whether you as a lawyer lost a case or not.

And I think that using social media is one, just one of the many tools that you can use to build a network of commentary for yourself to get a message out, making just like we all from time to time on our personal Facebook feeds might put up some comment about the food's awful here on my holiday or whatever it happens to be, using a corporate profile or corporate

Twitter feed you can make or Linked-In which I think is a great service personally, you can build up a body of work that's searchable and available on those services and on the internet about your views on that subject.

It could be that you've lost every single case you fought in that area, but I think that still doesn't mean you're not a specialist.

CHAIR: Here's a probing question, do you think that clients are seeking newspaper articles, for example, because they don't feel they have had enough recourse through the firm directly, so if they had the option of the feedback form or saying directly what the comment was on how the case was handled they'd choose that rather than going through the press?

MR PURSEY: I think that probably would help, it may not stop everybody, but may mitigate some people from going and calling a newspaper, sure.

One thing I would say on that, I don't know what my colleagues think, but we do a lot of work in the political field, we work for, we don't just do legal PR with lawyers, but we work for politicians and we work for corporates as well, we do that around the world. So we often, don't offer it as a service ourselves, we do a lot of polling, opinion polling and research, consumer research for clients.

And there is no right or wrong way to do this, but often I err on the side that people are more likely to be honest in their reply to a question whether they

will reply positively about yourself, or negatively about your service, if they -- if it's slightly impersonal, the manner by which they are delivering that information.

So for example unless you are very angry about the way you've been treated and the service you've got you are less likely to say I was really not very happy about that service, if you have someone on the end of the phone, than you are if it's an online form to fill in, which is slightly more impersonal manner of delivering your opinion, and I think everyone in this room must know a situation where they've gone up to somebody I'm really angry with this person, just on any matter in life, you go up and say hi I just want to talk to you about something and you turn out not to be as aggressive as you pretended you were going to be. That's the same human nature in giving feedback about a service you have received, even unless you are extremely annoyed about it.

So anything that isn't extremely angry I think you get a more genuine response, just my opinion, through a slightly more impersonal manner of sourcing that information.

CHAIR: Just as a quick straw poll, who phones up clients or sends out feedback forms to their clients to find out how they felt? And does that make you, those of you who put up your hands, does it make you adapt the way you deal with future cases or does it mean you carry on regardless?

And thanks for the feedback, it helps with the stats or that's it, anybody give a practical example?

>> One of my clients indicated that whenever we wrote to him saying here's a self addressed envelope included and there wasn't, and basically so he had to go up a hill, he was in a wheelchair, to the post office, it was really inconvenient, every time we say sending out with envelope I double check it.

CHAIR: The greatest letters we send are our mistakes that's where we learn from. So where's the line between good customer service and responding to an inquiry and converting that inquiry into business? Where's the good business etiquette that doesn't waste time?

MS BRAMALL: That doesn't waste time? I think you know your ideal client and the technical expression is qualifying your ideal client, so there will be certain features that you will know, so whether they've got money to pay, whether it's a type of claim that is likely to be fruitful or profitable for you, you know, there may be restrictions on geographic areas that you can work in.

If you put your mind to it you will be able to put together a check-list of what we call qualification criteria. I think when you're qualifying an inquiry that comes in it's really remembering as well that that client may have a future role for you and as well they may know people who also need you. So don't ever be the arrogant receptionist who was simply trying to make sure that people had enough money, that was her sole qualification criteria.

That really would have sent people away with quite a bad taste in their mouth.

It's very hard to generalise, particularly when you have absolutely got such a broad spectrum of work types that you really need to do this exercise for each particular area, what I would say, certainly in personal injury for example, those of you that work with any claims management companies, is their qualification process is very process driven, that technique is perhaps tainted because of something that most businesses do, but actually the principle is making sure that the right inquiries get passed to the right people through a triage process.

And in terms of business methodology there are ways, lessons that can be learned from that.

MR DAVIDSON: Can I just jump in, I think Sue mentioned earlier about publishing fact sheets or FAQs on websites, one of the things we mentioned earlier on was helping our clients improve efficiency through the website, sometimes the conversation we have with our clients isn't making the phone go more, it's make it go less but with better quality inquiries.

We've, for ourselves we work quite hard on developing content and Dave can give you more detail later if you're interested, we have a content funnel

on the client's website to allow them to pre-qualify themselves to take them down a certain journey that will then get to the point where yeah this is worth a phone call or it isn't, and that should help reduce the amount of time wasters that they end up on the phone to.

CHAIR: Thank you, any other questions from the floor?

MS BRAMALL: Can I just add a small point on that, that one thing that generates tyre kickers is your personal profile on the website is that many profiles are really very, very brief, they might say something like has extensive experience in all courts and you list the courts.

But somebody isn't actually looking to end up in court, they're looking for -- somebody contacted me the other day and they were looking for an assistant to advise them on a drainage dispute, I recently worked with the firm and I remember somebody mentioned drainage. I went to their website and put it in the search box and no lawyers came up. Even though I knew somebody knew about drainage I couldn't remember who it was, but I couldn't find them either. So that was another piece of lost work. So making sure that your profile really details the matter types that you want is really quite a quick win, it doesn't cost you anything, just update your profile and think what matter types do I really want, what are the most profitable matter types and is that explicit on my profile?

>> My question is this, it's really interesting to see you people, the panelists, to increase the business, the last speaker Sue, you kindly pointed

out the deficiency the system, the way the law is run, lastly you hit the nail on the head by putting this article in The Times about no win no fees where The Times was asking public to really, the public to put it on the public.

So what I want to ask from The Law Society is on this particular article and when it appeared, what was The Law Society's response to this particular article and how they defended this thing and how they took this particular solicitor who has marred the case for the rest of the solicitors.

CHAIR: I would expect the Society responded with an article in the Gazette on this particular issue, if there are issues raised regarding funding it can be detailed in a generic way, so as not to name a firm, but guidance that's what we're here for, support and guidance and to give guidance to practitioners as to how to avoid that type of scenario, that's what our policy department is for.

>> Was it quoted in the Sunday Times, the response?

MR HAYDN-WILLIAMS: If I could say, I wasn't speaking about The Law Society, but if you turn the page over you will see on the bottom the box where I'm quoted.

>> Is it at the bottom?

MR HAYDN-WILLIAMS: Yes, so hopefully that's a little positive, I didn't know about the article before it was written, but the journalist contacted me and we had a chat about certain issues and that's what she wrote, which I hope is a bit more positive, but it wasn't on behalf of the Law Society, but I'm

sure The Law Society will be on to it.

CHAIR: Thank you, any other questions? Okay. Looking at the time I think we're running out of time anyway. So can you join me in thanking our four panelists.

[APPLAUSE]

I'm sure if you have any other questions they will be around afterwards for the drinks reception. Just give me an opportunity to thank all of our speakers today, The Right Honourable Lord Justice Jackson, Kerry Underwood and our four panelists, Chris, David, Mark and Sue.

Just briefly as a bite size take away we heard from Lord Justice Jackson with regards to the foundation debate and summary sections of his report, he outlined there will be a fast track grid of four bands for cases for fixed recoverable costs. He entered into the debate of the role of the Bar and added barristers do bring an independent mind and specialist provision for counsel's fees have been added into the fixed recoverable costs. We can see that from Kerry Underwood's talk he noted that he had considered the new reforms and believes that they bring certainty and profitability to firms, the proposals have been driven by need to control costs, but even without them there was a need to streamline the procedure in any case, and gave the

example of disproportionate disclosure, especially from the US.

Also Kerry outlined as well that there was the enormous cost to the public image being -- resulting in the public disengaging with the legal profession and that's something that we need to be aware of, alongside our client care skills.

He outlined that there's a scenario where there was net income of a particular firm that was the same or better under the fixed costs regime.

Then we heard from the four panelists during the symposium, David and Chris giving us ten top tips including that content is king, understanding your marketing data and increase your online visibility, very poignant in regards to the section programme and hopefully our content is king, we understand our marketing data and we are there to increase our online visibility.

In respect of marketing data there will be questionnaires that will be released a bit like the client care questionnaires feedback forms we'd ask you to respond to please. Once you have responded and returned them, the downloadable content will be available to you online.

Mark posed a question about the most famous lawyer in the world, gave us

some ideas of mainstream lawyers, but said that the best way of dealing with -- to ensure the body of content and portfolio of your work gets out to the wide public is do opinion articles and blogs.

Then we heard from Sue with a montage of phone recordings when, considering the client care, in essence don't forget the fundamentals even when you're being professional. Deal with inquiries enthusiastically and don't forget the soft skills training in your firm.

Can I say thank you to you all for attending today, please do join us at the Spring conference 2018. And when considering the content that you've heard today and our programme for next year, please do make suggestions, it's through your feedback that our content changes, so it's really important.

Just leaves me to say two more things. The section is always looking for new members and member benefits are two half day conferences, one of which is today that you attended, four inclusive webinars, discount on Society publications and additional webinars, inclusive of events and training courses, newsletters with technical news updates and feature stories and access to premium content on the website. If you have any questions there are members of the Law Society in attendance today that will be happy to help you with membership benefits.

And finally, the section is looking for new committee members and so if you're interested in shaping the way that we put forward our content and delivery, please do speak to any of the committee members who are here today or members of the Law Society and forward your details.

Once again thank you all.

[APPLAUSE]

Conference concluded

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