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KEYNOTE ADDRESS

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(1) Introduction[1]

1. I am very pleased and honoured to be giving the keynote address to your annual conference, this morning.

2. This is the first talk that I have given since the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) received Royal Assent and since Sir Rupert Jackson temporarily stopped work. It is therefore fitting that I should start by paying tribute to Sir Rupert's extraordinary achievement since January 2009. The challenge which he faced from a standing start in 2009 would have defeated any normal human being. Within a year, he produced a formidably detailed, coherent, well-expressed, and evidenced-based interim report and final report. To anyone else, that would have been more than enough, but, over the next two years, he almost single-handedly argued his case with all the many opponents to his reforms, lectured to any group who invited him, and negotiated with the Government and professional groups. And, contrary to almost all predictions, his proposals have now become law.

[1] I wish to thank John Sorabji for all his help in preparing this lecture.

3. Even Sir Rupert's most determined opponents have nothing but admiration for his achievements, his remarkable ability to marshal facts and arguments and his equally remarkable ability to argue his corner. It is a cruel irony that he should have been hit by serious illness just at the time that his proposals reached their culmination, but I am very pleased to tell you that he is well on track to be back, fighting fit, in a few months. Unsurprising for someone who is not just a judge, but a force of nature.

4. There are many aspects of Sir Rupert's proposals which are worth discussing. Despite the heated debate which has taken place over the past three years, most of them are relatively uncontroversial, and many of them are already being piloted or developed in some other way. This morning, I want to concentrate on three topics which have not been much discussed so far, a Costs Council, the practice of hourly billing for legal work and the introduction of contingency fee agreements. Before doing so I want to make some general remarks about litigation cost and the Jackson review.

(2) Excess litigation cost

5. Excess litigation cost has for too long been an endemic and unwelcome feature of our civil justice system. In his 1986 Hamlyn lectures, Sir Jack Jacob rightly described it as having long been '*the most baneful feature of English Civil Justice.*[2]', and he was by no means the first person to do so. In the quarter century that has passed since those lectures things have got worse, and that is despite the 1988 Civil Justice Review[3] and Lord Woolf's Access to Justice Reports[4] and the reforms that they both effected. But, as Cyril Glasser pointed out in 1994, when considering the Woolf Review, '*our litigation*

[2] J. Jacob, *The Fabric of English Civil Justice*, (Stephens) (1986) at 274 – 275.
[3] Report of the Review Body on Civil Justice (Cm 394, June 1988) (HMSO).
[4] H. Woolf, *Access to Justice: Interim Report to the Lord Chancellor on the Civil Justice System in England and Wales* (HMSO) (1995); Woolf, *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales* (HMSO) (1996).

crisis is not likely to be solved by a single two-year inquiry.[5]' The Woolf review may well have been a two year inquiry. It was not a single one though. We have had similar reviews at least every decade since the turn of the 20th Century. We have just had one more, which is now in the process of being implemented: the Jackson review.

6. The Jackson review faced a tougher problem than previous reviews, and particularly the Woolf review. It did not simply have to deal with the perennial problem of excess litigation cost. If that had been its only challenge, the challenge would have been Herculean enough, but it also had to solve two further problems.

7. First, Jackson had to propose a solution to a new and wholly unwarranted increase in litigation costs generated by the reforms to conditional fee agreements, introduced by the Access to Justice Act 1999. In other words, it had to propose reforms aimed at undoing the harm caused by the introduction of success fee and ATE insurance recoverability under that Act. These changes, which I shall call 1999 CFAs, were not merely independent of the Woolf reforms, but they went a significant way to undermining the success of those reforms.

8. Secondly, Jackson had to solve a problem generated by both the Woolf reforms and the 1999 CFAs, namely satellite costs litigation, a type of litigation which the Court of Appeal described in 2002, as having '*become a growth industry, and one that is a blot on the civil justice system*.[6]' What was true in 2002 was all the more true in 2008 when my predecessor as Master of the Rolls, with the support of the Minister for Justice[7], took the decision to initiate a fundamental costs review under the expert hand of Sir Rupert.

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[5] C. Glasser, *Solving the Litigation Crisis*, [1994] The Litigator 14 at 21.
[6] *Times Newspapers Ltd v Burstein* [2002] EWCA Civ 1739 at [60].
[7] See B. Prentice MP, Statement of 5 November 2012 reproduced at < http://www.judiciary.gov.uk/publications-and-reports/review-of-civil-litigation-costs/civil-litigation-costs-review-press-notices>.

9. Sir Rupert's numinous interim and final reports provide a comprehensive and evidence-based analysis of the problems affecting our system, coupled with a carefully considered and detailed series of recommendations aimed at fixing those problems and, as a consequence, reducing litigation cost. The majority of those recommendations are currently being implemented. Time will, of course, tell the extent to which they succeed in improving things.

(3) A Costs Council

10. To my mind one fundamental way in which we can give the reforms the support they will need is through the creation of, as Sir Rupert recommended following the Civil Justice Council's previous endorsement of the idea, a Costs Council[8].

11. One big push every ten years or so to meet a crisis is neither a proper nor a sensible way to deal with the problem of litigation costs. It is not sufficient to sit back and watch a system become progressively out of kilter and only then act when continuing to do nothing ceases to be a realistic option. We need to adopt an approach which identifies, and resolves in so far as possible, problems early, and which consists of a group of people who constantly monitor, analyse, and improve the litigation cost picture in a consistent, informed and coherent way. So, rather than having decennial civil justice reviews, each aimed at reducing litigation cost and then failing, we should have a way of constantly monitoring and improving things.

12. One day in the future, it may be that the call to adopt the US costs rule or the German fixed costs regime will become too great to resist, However, we are not there yet, and, so long as we maintain our present system of costs shifting and leaving market forces to determine costs between lawyer and client, we should not duck the responsibility of

[8] R. Jackson, *Review of Civil Litigation Costs: Final Report* (HMSO) (December 2009), chapter six <http://www.judiciary.gov.uk/NR/rdonlyres/8EB9F3F3-9C4A-4139-8A93-56F09672EB6A/0/jacksonfinalreport140110.pdf>.

implementing a policy of intense and constant scrutiny where costs are concerned. Active case and costs management in individual cases is not enough. Only a Costs Council can provide the necessary, active, expert scrutiny of litigation costs at the macro level. It remains my hope that the recommendation for a Costs Council should be established will be implemented, and that members of your organisation, with their particular expertise in the field of legal costs, will serve on it and advise it.

13. I now want to turn to hourly billing, one of my specific topics this morning. Before I do, however, it is very important to emphasise, as Sir Rupert so often does, that the Jackson reforms are to be operated and judged as a whole. Two of the many impressive features of Sir Rupert's proposals are their breadth and their coherence. There has been little debate or comment about many of them, because they are obviously sensible and have no direct or obvious financial consequences for any lawyer. However, that does not alter the fact that, in due course, the landscape of litigation will be greatly changed by Jackson, not merely because of his hotly debated proposals on the way costs can be recovered from clients and opponents, most of which is being dealt with under LASPO, but also because of his many other reforms, most of which are being covered by changes in the CPR. Having said that, it is not sensible, indeed not possible, to discuss all his proposals in a single talk. It is for that reason that, in the remainder of today's address, I shall concentrate on only two aspects. First, hourly billing.

(4) Hourly Billing

14. Hourly billing for legal services is nothing new. It has long been established in common law jurisdictions. In the United States it was pioneered by a lawyer called Reginald Heber Smith. In 1940 he explained the rationale underpinning hourly billing in this way,

> '*The service lawyers render is their professional knowledge and skill, but the commodity they sell is time, and each lawyer has only a limited amount of that. Efficiency and economy are a race against time. The great aim of all organizations*

> *is to get a given legal job properly done with the expenditure of the fewest possible hours.*[9]'

In order to enable the job to be done in the fewest possible hours he proposed the introduction of the timesheet. Time recording was to be the vehicle to manage the cost of work[10]. That was the theory – born of time and motion studies – behind the innovation.

15. As with many things, practice deviated from theory. As explained by Ronald Baker in his recent critique of hourly billing,

> '*. . . as [Smith] makes clear, the timesheet was introduced mainly to perform cost accounting. It was a way to manage and cost the inventory, but after lawyers became acclimated to completing a daily timesheet, it became the inventory lawyers sold.*[11]'

16. Hourly billing in the US thus came about because a time and cost-management tool became the template for billing. Rather than work out the price of the job at the outset and then budget time and cost according to the price, the total price became a function of hourly cost of each element of the job – reading papers, corresponding with clients, witnesses, and opposing lawyers, conducting research. Only at the conclusion of the litigation would the total price be known. The obvious consequence of this is that rather than acting as a break on litigation costs, hourly billing became a vehicle for the expansion of those costs.

17. Whether hourly billing came about here in precisely the same way as in America, the position reached in both jurisdictions is the same: hourly billing at best leads to inefficient practices, at worst it rewards and incentivises inefficiency. Moreover, it undermines effective competition in the provision of legal services, as it '*penalizes . . . well run legal business whose systems and processes enable it to conclude matters*

[9] R. Heber Smith, *Law Office Organization*, 26 A.B.A. Journal 393 (1940) at 393.
[10] For a discussion see, R. Baker, *Implementing Value Pricing: A Radical Business Model for Professional Firms*, (Wiley) (2010) at 116ff.
[11] Baker *ibid.*

rapidly.[12]' It also penalises the able, those with greater professional knowledge and skill, as they will tend to work at a more efficient rate. In other words, hourly billing fails to reward the diligent, the efficient and the able: its focus on the cost of time, a truly moveable feast, simply does not reflect the value of work.

18. In conceptual terms, hourly billing crucially confuses cost with value. In practical terms, any business which bases its charges simply on costs does not deserve to succeed, or even, some might say, to survive. One of the main reasons for the decline of British industry between 1880 and 1980, and especially in the first half of the 20th century, was its charging system – that of cost plus – compared with its German and US competitors, who charged market value.

19. Hourly billing was, as you may be aware, an area which Sir Rupert's costs review left, at least by the standards of the vast majority of the review, relatively unexamined. He noted however that,

> '*In relation to lawyers' charges GC would like to move away from hourly billing. Indeed this is possible for some transactional work, in respect of which GC can go out to tender to several law firms on a fixed fee basis. However, this has not proved practical for most litigation, because no-one knows where the case will go. No-one has yet suggested any viable alternative to hourly billing in litigation.*[13]'

That no-one has suggested a viable alternative is something which needs to be remedied, and the sooner the better. An approach to litigation costs based on value-pricing rather than hourly-billing is one which urgently needs to be worked out and applied. Rather than treating time as the commodity which is being sold, we should be adopting an approach where skill and experience are the commodities which are sold.

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[12] R. Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services*, (2010) (OUP) at 151.

[13] R. Jackson, *Review of Civil Litigation Costs: Preliminary Report* (May 2009, Vol. I) at 100 <http://www.judiciary.gov.uk/NR/rdonlyres/D2C93C92-1CA6-48FC-86BD-99DDF4796377/0/jacksonvol1low.pdf>.

20. Three relatively new developments may prove to be spurs to innovation, towards value-pricing rather than time-pricing, and. The first development arises from Government policy, and it is the birth of alternative business structures (ABSs). It may be that the ABS business model will sound the death knell of hourly billing, as it will lead to more positive and market-orientated practices. The second development arises from economic change, and it is the present financial constraint on actual and potential clients. I believe that some clients are already pushing for fixed price quotations for jobs, based on the propositions that a lawyer should (i) have some idea of what the proposed case will involve, and (ii) should be prepared to make money on some case and lose on others. This may well serve to encourage efficiency and expertise. Thirdly, there are the consequences of technological change: it may well be that the internet, and the development of legal price comparison websites, will help drive innovation – giving an impetus to the greater adoption of fixed pricing for legal work.

21. Fixed pricing can, of course, work in a number of ways. Most obviously, it could refer to a fixed price for an individual piece of work – a single set of proceedings. Equally, it could refer to a specific class of work – for instance, there might be a fixed price for all fast track PI claims. The price offered might also incorporate other, optional, fixed price elements. A menu of optional fixed prices could be offered in addition to the basic fixed cost to cover the possibility that additional work would be generated if, for instance, more than one expert had to be instructed. It could also incorporate a menu of optional charges to cover the possibility that work over and above that quoted for at the outset might need to be carried out. The fixed price would, in each case though be predicated on the value placed on the work.

22. A fixed price approach would not necessarily have to operate on an individual case basis. Businesses, whether SMEs or large businesses, or other entities such as local authorities, could conceivably move to an approach pioneered in America, said by Richard Susskind

to have been adopted by Cisco. Professor Susskind explains how 75% of Cisco's $125 million annual legal expenditure was allocated to fixed fee legal work, and, for a fixed annual fee, one law firm, Morgan Lewis, carried out almost all its litigation work[14].

23. The key issue for both law firm and client is to set the premium at a suitable level taking account of, for instance, the risk of litigation, the nature and value of work which might have to be done under the agreement, as well as an element of profit. There is a clear potential here for costs to be kept down below levels generated by hourly billing, whilst maintaining a proper level of service and a competitive profit margin.

24. Equally, as was the case with Cisco and Morgan Lewis, the prospects that costs could be reduced are enhanced under this type of agreement as both client and law firm have an incentive to work together to minimise potential legal costs. Morgan Lewis and Cisco adopted a number of measures including, for instance, to minimise the possibility that Cisco would end up the defendant in proceedings[15]. This, no doubt, generated further costs-savings, both in terms of the fixed fee arrangement and the cost to the firm of work carried out under it, while maintaining a competitive level of profitability for the law firm. The key to such relationships, and fixed-fee arrangements, will be to set the annual or monthly fee (or premium) where both sides benefit, yet costs are reduced from those generated by open-ended hourly billing. Of course, any such cost-benefits which arise from such relationships will be multiplied here given our cost-shifting rule.

25. Innovation is, of course, not unknown. There are alternatives to hourly billing, and it would seem, from the US experience, viable ones; no doubt some firms already work on a fixed fee basis in some instances, some may have done so for some time. We need however to look more closely at such alternatives to see if they are viable on a more

[14] Susskind, *ibid* at 152 – 153.
[15] See M. Chandler, *State of Technology in the Law*, (25 January 2007) <http://blogs.cisco.com/news/cisco_general_counsel_on_state_of_technology_in_the_law/>.

general basis within the framework of litigation as it occurs here. It may be that what was viable in the United States would not be viable here. I very much doubt that that was correct. And if it was before 2007, I doubt it could be correct now, in an era where ABSs have arrived and the first steps to real and significant reform to the structure of legal practice are being taken. I would have thought that fixed fee arrangements are likely to become more attractive to both clients and lawyers in the coming years, not least when – and I hope it is when and not if – Sir Rupert's, and before him Lord Woolf's, recommendation that fixed fees become the norm for fast track litigation. Where the fast track, eventually, leads, the multi-track may then follow. That however is possibly a thought for another day. But what is for today is my second specific topic, contingency fees.

(5) Contingency Fee Agreements

26. Fixed fee agreements are one possible alternative to traditional hourly billing. Contingency fee agreements, or as we are to call them Damages-Based Agreements or DBAs, provide another possible alternative. There are, of course, a number of different types of contingency fee agreement. The variation endorsed by Sir Rupert was that operative in Ontario. As he said in his Final Report,

> '*. . . both solicitors and counsel should be permitted to enter into contingency fee agreements with their clients on the Ontario model. In other words, costs shifting is effected on a conventional basis and in so far as the contingency fee exceeds what would be chargeable under a normal fee agreement, that is borne by the successful litigant.*[16]'

On the Ontario model, the contingency fee can be calculated in a number of ways. As Sir Rupert noted,

> '*The premium for success [in Ontario] may be either a multiple of the ordinary fee (up to a multiple of about 5) or, alternatively, a percentage of the sum recovered by the plaintiff. . . In other actions (in practice mainly*

[16] R. Jackson, (December 2009) at 131.

personal injury actions) the premium for success is a percentage of the damages.[17]'

27. Sir Rupert's Report did not express a view as to which, if any, of the potentially different methods by which Ontario permits the contingency fee to be calculated, he favoured. But he did recommend that the contingency fee should be subject to a cap. Where a DBA is entered into in a personal injury claim, the contingency should not exceed 25% of the damages, excluding damages for future costs and losses[18].

28. Parliament has now implemented the recommendation to introduce DBAs through section 45 of LASPO. The legislation leaves the detail to be fleshed out by regulations and rules of court. The Civil Justice Council has recently established a working party, chaired by Michael Napier who has recently steered the Council's work on the Third Party Funders' Code to fruition, to consider the effective implementation of DBAs. The working party is, for instance, to consider the nature of any regulations that may be made to limit the percentage that lawyers could recover by way of the contingency fee and whether, in certain circumstances, they should provide for court approval of certain contingency fee percentages. It will also consider, and make recommendations concerning, possible rules of court concerning costs assessments where there is a DBA.

29. One thing which the CJC working party will need to consider is the interplay between the introduction of DBAs and allocation of proceedings to different procedural tracks. Significant practical differences, and effects, may arise for instance where a DBA is entered into in respect of a claim which is allocated to the small claims track. Such a claim cannot be subject to cost-shifting, whereas the claim would, at least potentially and usually, be subject to cost-shifting if it was allocated to the fast track or multi-track. This

[17] R. Jackson, *Review of Civil Litigation Costs: Preliminary Report* (May 2009, Vol. II) at 632 <http://www.judiciary.gov.uk/NR/rdonlyres/642936FA-292D-4432-8CF2-B2A44C7FC4FB/0/jacksonvol2low.pdf>.

[18] R. Jackson, (December 2009) at 133, '*I therefore recommend that no contingency fee deducted from damages should exceed 25% of the claimant's damages, excluding damages referable to future costs or losses.*'

point may become all the more pertinent if the small claims track limit is raised to £10,000 and even more so if it is raised to £15,000 as the government intends[19].

30. In cases where a claim falls within the no cost-shifting regime, it is possible that, contrary to what some believe, a DBA will be preferable to other forms of funding agreement, including conditional fee agreements. Care will need to be taken to ensure that differences between the various funding mechanisms do not provide improper incentives for claims to be pursued, to the detriment of clients and the proper administration of justice, on particular procedural tracks when they ought properly to be pursued on a different track. Care in drafting rules, and a robust attitude by the courts, will need to ensure that this does not become a fertile ground for meretricious satellite litigation.

31. More generally, care will also need to be taken to ensure that the rules governing DBAs are as simple and straightforward as possible. Again, we cannot afford creating a situation where satellite litigation concerning the nature and enforceability of DBAs becomes as common, and detrimental, a feature of litigation as was satellite litigation over 1999 CFAs in relation to litigation after the Access to Justice Act. DBAs cannot be allowed to become yet another blot on the landscape of civil justice. Regulations and rules governing their operation should as far as possible be drafted so that such a possibility cannot arise in practice. We must therefore learn from the problems which arose from 1999 CFAs and keep it simple.

32. Just as important as keeping the rules and regulations simple is ensuring that DBAs themselves are kept simple. One of the things the CJC's working party will be looking at is the elements which a DBA ought to contain. It is not for the working party to prepare a standard form DBA; that may well be a matter for the professional and regulatory bodies.

[19] Ministry of Justice, *Solving disputes in the county courts: creating a simpler, quicker and more proportionate system – The Government Response*, (Cm 8274) (February 2012) at 11.

Ontario may well once again prove a source of inspiration through its 2004 Contingency Fee Agreements Regulations[20]. Those Regulations specify that a valid agreement requires, amongst other things, a statement that explains the nature of the contingency and how the fee is calculated, a record of the fact that the client has discussed with the solicitor different fee options available, and a reminder of the client's right to have the solicitor's bill reviewed by the court[21].

33. It will also be very important to understand how the projected regulations, and agreements made under them, have operated in practice since 2004. It may be the case that as many problems have arisen in Ontario as arose here under the Conditional Fee Agreements Regulation 2000[22]. On the other hand they may well have operated without any problems at all. Again, we need to learn from practice and not simply theory. The CJC working party's work will be invaluable in this regard.

34. DBAs will, I hope, not succumb in practice to the problems which bedevilled 1999 CFAs. More importantly I hope that they prove a spur to innovation; innovation which sees both solicitors', and counsels', fees set according to something other than the traditional hourly billing model. There may well be some practical resistance to this. Some have already argued that there is little incentive for solicitors to act on DBAs in circumstances where they could act on a CFA. Kerry Underwood has expressed that opinion in this way,

> '*In personal injury cases contingency fees are almost entirely pointless from a solicitor's point of view as they are subject to all of the restrictions that apply in relation to conditional fee agreements AND the solicitor has to allow a pound for pound reduction in relation to any costs received from the losing party, something that does NOT apply in relation to the conditional fee success fee*[23].'

[20] Contingency Fee Agreements (Ontario Regulation 195/04).
[21] Ontario Regulation 195/04 s2 and see s3.
[22] SI 2000/692.
[23] K. Underwood, *Contingency Fees and Damages-Based Agreements*, at [16] <http://kerryunderwood.wordpress.com/2012/01/31/contingency-fees-and-damages-based-agreements/>.

35. It is an interesting opinion. But it might seem to neglect the client's point of view in a new legal market place. It may be that it would be unattractive from a solicitor's perspective to offer a DBA, rather than a CFA, in a personal injury case. But what one solicitor finds pointless may represent another solicitor's competitive advantage. Given the choice between a solicitor who only offers CFAs and one who offers CFAs and DBAs at more advantageous prices, and perhaps with normal costs calculated by way of fixed fee rather than hourly billing, clients cab reasonably be expected to appreciate where their interests lie. In other words, the brave new world of DBAs may well help to encourage a more genuinely competitive market place, in which solicitors are having to become ever more client – or consumer - focused.

(6) Conclusion

36. The introduction of DBAs, combined with the reform of CFAs, the changes made to the legal market by the Legal Services Act 2007, the present straitened economic circumstances, and the development of the internet as a marketing and business medium will probably result in legal practice becoming even more competitive than it is now. I suspect that, partly as a result of these factors and the consequent competitive nature of the profession, we see a profession which is very different from what is like now.

37. Greater freedoms through new permitted business structures and new permitted fee charging, coupled with greater transparency and ease of marketing, and the purchasing of legal services through the internet, will inevitably result in major changes. In the new virtual market place, it seems to me that there will be an inevitable, often irresistible, pressure on lawyers to offer client-friendly fee structures and fee agreements. The argument which posits that it is not in a solicitor's interest to offer a DBA where a CFA is otherwise available may well founder on the ever more transparent and competitive market place, which should encourage rival firms to offer DBAs, perhaps incorporating fixed-fee agreements. That is for the simple reason that such arrangements are more

client-friendly, and, at least in a more perfect market, should secure the work, and should therefore see legal fees driven down.

38. Of course, this sounds like bad news for lawyers, as reduction in legal fees would appear to equate with worse pay for lawyers. And, at first sight, this may also have adverse implications for legal services, as, if lawyers are less well paid, the profession will not attract the best. However, closer analysis suggests that this should by no means necessarily so. Indeed, the drive for lower legal costs should represent an opportunity for forward thinking lawyers. If litigation is cheaper, elementary economics suggests that there will be more of it. Rather than charging high in a few cases, and driving away those with valid claims from the courts, lawyers should be able to charge realistic fees, and encourage many more clients to instruct them to fight their case. So, significantly lower legal costs should not lead to less money for lawyers, but it should lead to better value for money, and should give to our citizens what so many are currently denied, namely access to justice.

39. Excess legal cost has for too long disfigured our civil justice system. The Jackson reforms, now enacted in large part by LASPO, and rules of court which are to be introduced in April 2013 seek to rein in such costs. Like the Woolf reforms before them, it is unlikely that they will be the end of the story. Unlike the Woolf reforms, they are not going to be adversely effected by the introduction of unconnected reforms to CFAs, although the reforms to legal aid may well play the part which CFAs played for the Woolf reforms. But we cannot be certain.

40. What can be said with certainty is that by building on the Woolf reforms, and undoing the negative effects of the current CFA system, the Jackson reforms represent the boldest attempt to cure our costs problem yet attempted. Should they fail to reduce costs, it

seems to me that we will face a stark choice: the rejection of the English costs rule and the adoption of either a US-style costs rule or a German-style fixed costs regime.

41. At this juncture I do not see either choice being necessary. Changes such as the introduction of DBAs, along with the other Jackson reforms, and the growth of fixed fee agreements and the decline of hourly billing will, I hope, ensure that litigation costs are properly reduced and rendered proportionate. As such they ought to ensure, without the need for radical and fundamental reform, that – to adapt the words of Wilkie Collins, '. . . *the law . . . [will in future no longer be] the pre-engaged servant of the long purse . . .*[24]'. On the contrary, proportionate costs will ensure that the law is a servant capable of being engaged, when necessary, by all.

42. Finally, the Jackson reforms cannot be implemented without the assistance and expertise of practitioners. I would like to express my thanks to the Association of |Costs Lawyers and its many members who have done so much work to help implement the reforms.

[24] W. Collins, *The Woman in White*, (Oxford) (2008 reissue) at 5.