

Report for Costs and Funding Committee of Scottish Civil Justice Council**Impact of Inflation in the period from 2009 until 2019 using published data****The Remit**

To consider the impact of three recognised Inflation Indices in the period 2009 – 2019 with a view to determining which, if any, offers the most reliable source data for use by the Cost and Funding Committee “CAFC” of the Scottish Civil Justice Council when considering representations from professional bodies in support of fee increases.

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1) Background

The CAFC have recently received a representation from the Society of Messengers at Arms and Sheriff Officers "SMASO" requesting a review of current fee rates. As part of their submission SMASO proposed instructing an independent analysis to be conducted by a well-known firm of Accountants. The proposal involved the production of data using "Activity Based Costing" to assist the CAFC in determining the case for fee increase. CAFC welcomed the SMASO initiative but ultimately formed the view that any data produced would be insufficiently reliable for the intended purpose. In reaching this view the CAFC noted that the sample size was too small, that ABC costing does not attain the level of year on year accuracy required and that, unless repeated annually at considerable cost, would not provide comparative data going forward.

Until 2014, the Law Society of Scotland produced a Cost of Time Survey "CoTS" which was used by the Lord President's Advisory Committee "LPAC", the immediate predecessor to CAFC. The sample size was considered to be sufficiently large and the dataset sufficiently robust to assist that Committee in reaching a view on whether any variation in fee rates was appropriate. It should be noted that LPAC did not always act upon the data produced and had regard for other sources when determining matters.

The Law Society of Scotland no longer conduct a CoTS but do provide their members with other data to assist in achieving best practice goals. Because the CoTS was heavily reliant upon a cost cycle, something that individual law firms can exercise discretionary control over at different stages of the economy, there was a suggestion that CoTS tended to over-state the case for increase during economic growth periods and to understate the case during periods of flat or negative growth. In practice, the cost savings applied by law firms during challenging economic periods such as that after the 2008 economic crisis become a factor in reducing average costs thereby reducing the justification for fee increase. This has the impact of further decelerating fee increases and, as a result, imposing the need for further cost saving measures. Equally, at times of rapid growth legal firms are confident enough to expand cost budgets on matters such as better accommodation, enhanced salary arrangements and a greater amount of non-core discretionary spending. This increases the cost base and forms a basis for larger fee increases in future years. It may be reasonable to assume that taken through a full economic cycle the overall rates arrived at will be fair as an average. However, it is unlikely that in any given year data will accurately reflect the performance of the wider economy.

2) Options

Given the need for the CAFC to proceed on an “evidence-based” approach and in the absence of quality data from representative groups, the Committee is examining data available from other sources. This paper looks at data provided by the Office of National Statistics, “ONS” and, in particular, three indices being: -

1. The Retail Price Index
2. The Consumer Price Index
3. The Consumer Price Index including Owner-Occupier Housing Costs

Note: ONS guidance on the relative merits of each Index can be found on the link below.

<https://www.ons.gov.uk/economy/inflationandpriceindices/methodologies/consumerpriceinflationincludesall3indicescpihcpiandrpiqmi>

3) The Impact of Inflation and the Appropriate Period

Previous data considered by the committee revealed that any examination of the available sources produced significant variations according to the start year and the period examined. Of the three indices available, RPI tends to be the most volatile and also produces the highest year on year increases in the longer term. CPI and CPIH tend to be more consistent but also produce smaller average annual increases.

RPI is no longer used by ONS as an accredited index for the purposes of measuring inflation although it is used by some UK Government departments as the source index for certain state-controlled charges such as rail fares. It is accepted generally that it tends to overstate the true rate of inflation for the purposes of base cost calculation. Although RPI data has been produced in the tables appended to this paper, it is recommended that RPI should not be regarded as a reliable source of data for the purposes of CAFC deliberations – see link below.

<https://www.theweek.co.uk/87811/rpi-vs-cpi-inflation-are-commuters-paying-the-price>

CPI and CPIH remain as approved sources of data for the purposes of measuring inflation although it should be noted that for a period until 2019 CPIH was regarded by ONS as failing to fulfil the criteria for accreditation. Given that both are costs indices they do contain some similarities with part of the data previously available provided by the Law Society of Scotland in their CoTS survey. They do not contain notional salary data, wage inflation information or calculations relative to the impact of issues such as commercial borrowing rates on business operation. However, given the size of the sample size they certainly address the issue of any skewing caused by variation in the sample group.

4) The Comparative Period

On further examination of the comparative period it should be recognised that the 2008 financial crisis impacted upon all three indices and any comparative exercise encompassing this period would require to reflect the way in which the downturn in the economy and government-induced stimulus impacted upon the various indices in the period thereafter. Particularly in the case of RPI where there was significant negative growth around this time the figures in the following years arguably indicate a period of 'catch-up' and are not necessarily persuasive in reaching an informed decision on true price increases over a longer period.

Looking at the bodies that make representation to CAFC most regularly it should be noted that both the Law Society of Scotland and SMASO obtained fee increases in 2008/9 and it is suggested that this would be an appropriate base year for the purpose of calculating the appropriate rate of increase. As an alternative and if it is felt that a start position sufficiently removed from the 2008 crash is preferred then 2014 offers a suitable start period. Starting in 2009 a ten-year dataset is obtained and the attached tables produce information extracted from ONS sources for each index together with results based upon the blended approach. The second dataset looks at the same data for the period 2014-2019 and it is noticeable that the second dataset justifies a more modest increase in existing fees for Solicitors.

Source: Office of National Statistics															
Figures converted to 2009 base year							Blended Average Figures								
SCJC 26 April 2021	RPI		CPI		CPIH		RPI, CPI + CPIH		RPI+CPI		RPI+CPIH		CPI+CPIH		
	Index	Growth	Index	Growth	Index	Growth	Index	Growth	Index	Growth	Index	Growth	Index	Growth	
2009	100.0	0.00%	100.0	0.00%	100.0	0.00%	100.0	0.00%	100.0	0.00%	100.0	0.00%	100.0	0.00%	
2010	104.6	4.61%	103.2	3.23%	102.5	2.50%	103.5	3.45%	103.9	3.92%	103.6	3.56%	102.9	2.87%	
2011	110.1	5.44%	107.9	4.62%	106.5	3.98%	108.1	4.68%	109.0	5.03%	108.3	4.71%	107.2	4.30%	
2012	113.6	3.53%	111.0	3.12%	109.2	2.73%	111.3	3.13%	112.3	3.33%	111.4	3.13%	110.1	2.92%	
2013	117.0	3.45%	113.7	2.77%	111.7	2.50%	114.2	2.91%	115.4	3.11%	114.4	2.98%	112.7	2.64%	
2014	119.8	2.76%	115.5	1.73%	113.3	1.59%	116.2	2.03%	117.6	2.25%	116.6	2.18%	114.4	1.66%	
2015	121.0	1.19%	115.5	0.00%	113.8	0.46%	116.7	0.55%	118.2	0.59%	117.4	0.82%	114.6	0.23%	
2016	123.1	2.10%	116.3	0.81%	114.9	1.14%	118.1	1.35%	119.7	1.45%	119.0	1.62%	115.6	0.97%	
2017	127.5	4.41%	119.4	3.12%	117.9	2.96%	121.6	3.50%	123.5	3.77%	122.7	3.69%	118.6	3.04%	
2018	131.8	4.26%	122.3	2.89%	120.6	2.73%	124.9	3.29%	127.0	3.57%	126.2	3.49%	121.4	2.81%	
2019	135.1	3.38%	124.5	2.19%	122.6	2.05%	127.4	2.54%	129.8	2.79%	128.9	2.71%	123.6	2.12%	
2020	136.3	1.20%	125.2	0.65%	124.4	1.73%	128.6	1.86%	130.8	0.92%	130.4	1.46%	124.8	1.19%	
Figures converted to 2014 base year							Blended Average Figures								
Paper 3.20	RPI		CPI		CPIH		RPI, CPI + CPIH		RPI+CPI		RPI+CPIH		CPI+CPIH		
	Index	Growth	Index	Growth	Index	Growth	Index	Growth	Index	Growth	Index	Growth	Index	Growth	
2014	100.0	0.00%	100.0	0.00%	100.0	0.00%	100.0	0.00%	100.0	0.00%	100.0	0.00%	100.0	0.00%	
2015	101.0	1.00%	100.0	0.00%	100.4	0.40%	100.5	0.47%	100.5	0.50%	100.7	0.70%	100.2	0.20%	
2016	102.7	1.70%	100.7	0.70%	101.4	1.00%	101.6	1.13%	101.7	1.20%	102.1	1.35%	101.1	0.85%	
2017	106.4	3.70%	103.4	2.70%	104.0	2.60%	104.6	3.00%	104.9	3.20%	105.2	3.15%	103.7	2.65%	
2018	110.0	3.60%	105.9	2.50%	106.4	2.40%	107.4	2.83%	108.0	3.05%	108.2	3.00%	106.2	2.45%	
2019	112.8	2.80%	107.8	1.90%	108.2	1.80%	109.6	2.17%	110.3	2.35%	110.5	2.30%	108.0	1.85%	
2020	113.8	1.00%	108.4	0.60%	109.8	1.60%	110.7	1.07%	111.1	0.80%	111.8	1.30%	109.1	1.10%	
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Notes	The consolidated figures have not been weighted prior to blending. This may result in minor inconsistencies in the index and growth figures, particularly in later years														
	The years 2009 and 2014 were chosen as base years as they give indicative inflation figures over a ten and a five year cycle respectively. Additionally, the Judicial Tables of Fees for Solicitors were revised in both years thereby providing directly comparable figures on the impact of adopting any particular index or blend. The element of 'catch up' from recession in 2008-2009 explains in part why the 2009-2019 tables produce evidence in support of higher hourly/task rates generally.														
	At the time of undertaking the original exercise in January 2020 it was also felt that the figures in the period between 2010 and 2013 represented an element of 'catch-up' following upon the 2008 financial crisis. This reflected a period of higher than normal inflation in the economy with all three indices recording their peak growth rates in 2011. During the period immediately preceding this period many of the monthly index figures were in the negative corresponding with periods of recession														
	In relation to the Tables of Fees for Solicitors, it should be noted that with effect from April 2019 they are now the subject of a unitised rate. The integrity of the unit is reliant upon the chosen figure being divisible by 4 and producing a whole number result. As the figures above are subject to the effects of rounding it is recommended that in being guided by any particular index or group of indices, the Council should not regard the results produced as being persuasive of the need to depart from 'the rule of 4'.														

5) Results

Looking at the figures produced and taking the blended CPI/CPIH as the ultimate source in 7) the impact upon the prevailing rate for Solicitors and for Messengers-at-Arms would be as undemoted. For the purposes of this exercise ONS figures based upon 1974 being treated as Year Zero (100 units) have been converted to a new start date of 2009. This will result in a very slight skew in the results but not one that would be considered to be statistically significant, i.e. less than 0.1%.

a) 2009 – 2019* Rates (Solicitors Judicial Rates)

- 1) 2019 rate applying RPI of 35.1% - £191.84 (2020 rate is 36.3% - £193.55)
- 2) 2019 rate applying CPI of 24.5% - £176.79 (2020 rate is 25.2% - £177.78)
- 3) 2019 rate applying CPIH of 22.6% - £174.09 (2020 rate is 24.4% - £176.65)
- 4) 2019 rate blending RPI/CPI/CPIH of 27.4% - £180.91 (2020 rate is 28.6% - £182.61)
- 5) 2019 rate blending RPI/CPI of 29.8% - £184.32 (2020 rate is 30.8% - £185.73)
- 6) 2019 rate blending RPI/CPIH of 28.9% - £183.04 (2020 rate is 30.4% - £185.17)
- 7) 2019 rate blending CPI/CPIH of 23.6% - 175.51 (2020 rate is 24.8% - £177.22)

*Based upon Solicitor's typical hourly rate figure for 2009 of £142.00. Note: Actual hourly rate at end of 2019 based upon information ingathered in 2017 and presented by Law Society of Scotland early in 2018 is £164.00 per hour.

b) 2009 – 2019 Rates (SMASO members)**

- 1) 2019 rate applying RPI - £119.83 (2020 equivalent is £120.90)
- 2) 2019 rate applying CPI - £110.43 (2020 equivalent is £111.05)
- 3) 2019 rate applying CPIH - £108.75 (2020 equivalent is £110.34)
- 4) 2019 rate blending RPI/CPI/CPIH - £113.00 (2020 equivalent is £114.07)
- 5) 2019 rate blending RPI/CPI - £115.13 (2020 equivalent is £116.02)
- 6) 2019 rate blending RPI/CPIH - £114.33 (2020 equivalent is £115.66)
- 7) 2019 rate blending CPI/CPIH - £109.63 (2020 equivalent is £110.70)

** Based upon Messenger at Arms rate for service or intimation of a document in 2009 (not an hourly rate). For 2009 figures the middle band figure of £88.70 has been applied. Subsequent Tables of Fees do away with the banding structure.

Based upon information ingathered in 2017-2018 the actual rate currently payable for this particular service is £103.78

c) 2014 – 2019 Rates (Solicitor’s Judicial Rates)

- 1) 2019 rate applying RPI - £175.96 (2020 rate is 13.8% - £177.53)
- 2) 2019 rate applying CPI - £168.00 (2020 rate is 8.4% - £169.10)
- 3) 2019 rate applying CPIH - £168.79 (2020 rate is 9.8% - £171.29)
- 4) 2019 rate blending RPI/CPI/CPIH - £170.97 (2020 rate is 10.7% - £172.69)
- 5) 2019 rate blending RPI/CPI - £172.07 (2020 rate is 11.1% - £173.32)
- 6) 2019 rate blending RPI/CPIH - £172.38 (2020 rate is 11.8% - £174.41)
- 7) 2019 rate blending CPI/CPIH - £168.48 (2020 rate is 9.1% - £170.20)

*Based upon Solicitor’s typical hourly rate figure of £156.00. Note: Actual hourly rate at end of 2019 based upon information ingathered in 2017 and presented by Law Society of Scotland early in 2018 is £164.00 per hour.

d) 2014 – 2014 Rates (SMASO members)

- 1) 2019 rate applying RPI - £112.63 (2020 equivalent is £113.63)
- 2) 2019 rate applying CPI - £107.64 (2020 equivalent is £108.24)
- 3) 2019 rate applying CPIH - £108.04 (2020 equivalent is £109.64)
- 4) 2019 rate blending RPI/CPI/CPIH - £109.44 (2020 equivalent is £110.53)
- 5) 2019 rate blending RPI/CPI - £110.13 (2020 equivalent is £110.93)
- 6) 2019 rate blending RPI/CPIH - £110.33 (2020 equivalent is £111.63)
- 7) 2019 rate blending CPI/CPIH - £107.84 (2020 equivalent is £108.94)

** Based upon Messenger at Arms rate for service or intimation of a document in 2014 of £99.85 (not an hourly rate). Based upon information ingathered in 2017-2018 the actual rate currently payable for this particular service is £103.78

It should be noted that these figures simply look at one part of the tables of fees applicable to both professions and not at the full range of fees applicable. The 2019 review of the tables of fees applicable to solicitors now means that it is possible to define all work in timed equivalents. That was not the case in 2009 and the % increases shown will vary slightly according to the activity undertaken. The same situation applies to SMASO members where most activities are measured in fixed monetary terms with no direct hourly rate equivalent. However, any percentage increase granted would have equal application to all activities.

6) Conclusion and Recommendation

Based upon the reliability of the evidence and the stability of the source data it is recommended that CAFC consider adopting the CPI index, the CPIH index or a blend of both. It is not recommended that the RPI index be used either as an individual source or as part of the blended data. In recommending a blend of CPI/CPIH as a possible source of data it should be recognised that the latter is simply a development of the former and that many of the contributory elements will be a factor in both calculations.

It is further recommended that the CAFC does not go beyond adopting the approved Index as a preferred source subject to further data being considered. Adopting any index or blended indices

as the sole source would turn the task of reviewing fee rates into an entirely mechanical exercise without the flexibility of responding to other factors not forming part of the data available.

7) Additional Observation

Irrespective of the Index used, the tables in this paper would appear to suggest that the prevailing rates in the current Tables applicable to both Solicitors and to members of SMASO are less than would be the case by simple application of any of the recognised ONS indices. However, given that the data used in justification of current rates was extracted in 2017 this is to be expected. The fact that ONS data is published monthly and is available shortly after each month end would deliver more immediacy to the whole process in the future.

Stewart Mullan, 30th January 2020 (updated 4th April 2021)