

Evidence from users of the services and others

94. We asked some 170 users or organisations of users of architects' services to give us information or views. This was done mainly by letter accompanied by a questionnaire asking for specific information on the use made of the services of architects in private practice and the methods of payment for them, and for views on the advantages and disadvantages of scale fees. Since the inquiry was being conducted simultaneously with our separate inquiry into the supply of surveyors' services (see paragraph 8), we used the same letter and questionnaire to seek similar information for both inquiries.

95. The majority of those we approached were big organisations, but our selection of local authorities was made so as to take account of authorities of different sizes and to achieve a reasonably balanced regional distribution. The interests of small individual users were taken into account by seeking evidence from various organisations including the Consumers' Association and six consumer groups.

96. We received evidence in response to our requests from about 120 witnesses. These included the Department of the Environment and other Government departments concerned with building construction programmes; 18 local authorities of various sizes; four local government associations; 18 public corporations including the main nationalised industries; seven housing associations; 60 companies comprising large industrial and manufacturing groups, property developers and property investment companies, retailing groups, brewery and hotel groups, and insurance companies; the Consumers' Association and two consumer groups. We also received a few unsolicited submissions.

The evidence

97. Most of the user witnesses generally paid fees for architects' services in accordance with professional associations' scales. Some witnesses who generally paid scale fees occasionally negotiated special fees having regard to particular circumstances in which the services were supplied (for example in the case of specially large projects or where one firm of architects supplied services continuously or was given a large number of jobs by the same client), and on these occasions some used the scales as a basis for the negotiations. One big local authority reported that its practice was to reduce the normal RIBA scale fee by one-sixth, to allow for a measure of assistance provided to architects by the authority's own professional staff. The tendency towards negotiation of fees appeared considerably stronger amongst private sector users than amongst public sector users. Only about seven per cent of the user witnesses said that they did not as a rule pay scale fees at all, and these were nearly all industrial or commercial companies.

98. About 60 per cent of the witnesses considered that the scale fee system involved a mixture of advantages and disadvantages, about 25 per cent stated only advantages, and about 10 per cent stated only disadvantages (the remainder

gave no comment on advantages or disadvantages). Nearly half the witnesses gave a view which could be interpreted as definitely favouring retention of the scales, compared with only about one-tenth against. Thus the weight of comment was generally in favour of scale fees, but this was coupled with some reservations about certain features of the present system and a desire to have freedom to negotiate charges in particular cases. A few witnesses remarked that there was sufficient flexibility within the framework of the existing system to permit a reasonable amount of negotiation over architects' charges. On the other hand, some others had on occasions met with some rigidity in attempting to negotiate charges which were not strictly in accordance with the professional associations' scales.

99. We summarise below the main advantages and disadvantages stated and modifications suggested by the witnesses. Additional detail is given in Appendix 5.

Advantages and disadvantages of scale fees

100. The main advantages claimed for scale fees may be summarised as follows:

- (a) The client can forecast with reasonable accuracy the cost of professional services that will be incurred in a project. This is a help in financial budgeting and prevents disputes arising over fees after the work has been done.
- (b) The client can concentrate his choice of professional advisers on quality of service, in terms of professional skill, integrity and general management competence, rather than on price. Some users added that price competition for professional services would pose problems of evaluation of competitive quotations and lead to reduced standards of service.
- (c) The use of scales saves administrative effort and costs, through avoidance of the need to calculate and negotiate special fees for each job.
- (d) The scales are a useful yardstick for negotiation in cases where the full scale fee does not seem appropriate.
- (e) The existence of the scales helps to put a ceiling on the prices of architects' services, since the minimum scale fee tends also to become the maximum.
- (f) Scale fees approved by the national associations are linked to defined services and carry with them an expectation of a high standard of service to go with the standard fee.
- (g) The scales give some measure of security to the practitioner.

101. The main disadvantages stated were as follows:

- (a) Scale fees do not always reflect the amount of the work done, or responsibility undertaken, by the architect in particular cases. The *ad valorem* basis of the scales involves acceptance of a 'swings and roundabouts' principle of payment, but the view is widely held that

the present architects' percentage scale for new works does not discriminate adequately between projects of different sizes and types. While the fee for low cost and complex works may be too low, there is not enough reduction in the percentage fee for higher cost works or for relatively straightforward structures where the architectural work is correspondingly diminished.

- (b) In times of inflation of construction costs *ad valorem* scales can result in excessive payments to architects. As the basis of calculation of the fee is the cost of the building, every increase in cost generates an increase in fees, without necessarily an increase in effort or matched by a proportionate rise in the architects' own costs.
- (c) The same standard fee is payable under the scales irrespective of the competence or experience of the practice supplying the service or the actual level of service provided.
- (d) The calculation of an architect's remuneration as a percentage of construction cost gives no incentive to the architect to contain costs on his client's behalf.
- (e) The method of charging a percentage fee based on total construction cost is inequitable where the cost includes a substantial amount of work for which other independent consultants are responsible.
- (f) There is insufficient flexibility in the scales to allow for repetition of design work, continuity of work provided by the client and other circumstances which can arise on particular projects to reduce the architect's normal work or responsibilities.
- (g) The imposition of mandatory scales is a severe restriction on competition and inhibits, if it does not entirely prevent, the negotiation of lower fees where this might be appropriate.

Modifications suggested by the witnesses

102. Many witnesses suggested changes to meet their criticisms of the existing scale fees. There was, however, general acceptance of the need for scales in some form. Although some witnesses favoured the complete replacement of scale fees by negotiated fees in all cases, these were in a very small minority. The suggestion most frequently made was that scales should become recommended rather than mandatory, thereby giving sufficient flexibility to agree a fee different from the scale fee where this was warranted by the circumstances of a particular project. This would enable clients to negotiate fees in appropriate cases based on the actual amount of work undertaken and architectural skills and responsibilities needed in connection with the project. A variant of this suggestion, put forward by several witnesses, was that there should be flexibility to negotiate up to a maximum which could be charged for the services.

103. The suggestion that the scale fees should be reduced in status from mandatory to recommended was accompanied in the evidence of some witnesses by the suggestion that the scales should not be fixed by the architectural profession itself but should be determined by an independent review body, on which the interests of clients and the profession would be represented. The

review body would arrange for the collection and analysis of detailed evidence before recommending any changes. This proposal was made by Government departments with responsibilities in the construction field, which together represent the largest single client interest (see paragraphs 10 and 11 of Appendix 5). A similar suggestion was made in evidence submitted jointly by the Greater London Council and the Inner London Education Authority (see paragraphs 36 to 41 of Appendix 5) and by the Association of County Councils (see paragraph 44 of Appendix 5).

104. One of the witnesses, who was concerned that the present percentage scales did not necessarily result in fees closely related to the architectural work content, suggested that a possible solution was to have 'a basic set of fee guidelines with a professional adjudication panel empowered to vary them when the parties involved are initially agreed it is desirable to do so'.

105. Several witnesses suggested that the present scales which apply to all types of building should be replaced by differential scales, whereby the percentage fee varies with the complexity of the building. Another suggestion made by a number of witnesses was that the scales should allow for more tapering, that is reduction in the percentage fee as the value of the construction work rises.

106. One witness suggested that there was a need for review of the apportionment of fees over the component parts of an architect's normal services, since in the witness's view too high a percentage was attributed to pre-contract services as distinct from the work done during the construction stages of a project.

107. Several witnesses suggested that there should be an abatement of the architect's normal fee when independent consultants, such as structural, mechanical and heating and ventilating engineers, were employed for part of the design work.

108. There were various other suggestions for achieving greater flexibility in application of the scales. Several witnesses said that the scales should make greater allowances for reductions in the fee to take account of repetition of design work, for example in major housing schemes containing only a small number of dwelling types. Two witnesses suggested that there should be allowances for continuity of work for a single client; for example where the client commissioned a succession of new building projects of a similar kind. One witness suggested that scales should provide for *ad hoc* agreement with clients on the fee for preliminary work for projects which became abortive.

109. To alleviate the difficulties caused by inflation, a number of witnesses suggested that the client should be entitled to be charged on the basis of a percentage of the accepted tender cost rather than final construction cost, at least for that part of the architect's work done before the building contract was let. This would act as a safeguard against increases in project costs which caused increases in the architect's fee without a corresponding increase in the cost of the architectural work done.

110. One or two witnesses drew attention to the need to consider the respective roles of the various consultants involved in construction projects and the aggregate of the fee payable to them. This included the suggestion that there should be a new scale of fees appropriate to integrated partnerships comprising architects and other consultants in the construction field.

Comparisons with methods of charging for solicitors' services

111. The scale fees formerly charged for certain solicitors' services have been abolished during recent years. Some witnesses thought that their experience of the results of abolition of these scale fees was relevant.

112. The solicitors' scale fees covered ordinary conveyancing business. Between 1968 and 1971 the NBPI made three reports on solicitors' remuneration¹. As a general objective the NBPI considered it desirable to bring about a closer relationship between charges and expenses for legal work.

113. Solicitors' remuneration for non-contentious business, which includes conveyancing, is governed by orders made by a statutory committee consisting of the Lord Chancellor, other senior members of the judiciary, the President of The Law Society², one other solicitor and, for registered land, the Chief Land Registrar. The scale fees were abolished by the Solicitors' Remuneration Order 1972, which came into operation in January 1973. In place of statutory scales this provides that solicitors 'shall charge such sums as may be fair and reasonable having regard to all the circumstances of the case and in particular to:

- (i) the complexity of the matter or the difficulty or novelty of the questions raised;
- (ii) the skill, labour, specialised knowledge and responsibility involved;
- (iii) the time spent on the business;
- (iv) the number and importance of the documents prepared or perused, without regard to length;
- (v) the place where and the circumstances in which the business or any part thereof is transacted;
- (vi) the amount or value of any money or property involved;
- (vii) whether any land involved is registered land within the meaning of the Land Registration Act 1925; and
- (viii) the importance of the matter to the client.'

114. The Order also provides that the remuneration certificate procedure shall apply to all conveyancing business. This procedure, which is free of charge to the client and does not prejudice his right to have the bill taxed (ie approved or reduced) by the Court, allows him to require the solicitor to obtain a certificate from The Law Society stating that in their opinion the sum charged is fair and reasonable or if not what lesser sum is fair and reasonable. In the absence of taxation the sum certified is the sum payable by the client.

¹Report No 54, *Remuneration of Solicitors*, Cmnd 3529; Report No 134, *Standing Reference on the Remuneration of Solicitors, First Report*, Cmnd 4217; Report No 164, *Standing Reference on the Remuneration of Solicitors, Second Report*, Cmnd 4624.

²The Law Society is both the governing body and the major professional association for solicitors in England and Wales.

115. Six of our witnesses expressed opinions on the results of the abolition of the legal scale fees. Four said that charges had increased and one of them added that administration had been made more difficult because of the need to consider charges on a *quantum meruit* basis. Another said that abolition had not reduced legal costs significantly. On the other hand one said that abolition had given more flexibility in negotiation, with no evidence of any deterioration in service.

116. The Lord Chancellor's Office told us that reliable information on the effects of the Order could only be obtained by a fairly full-scale survey. We noted a report in the Consumers' Association magazine *Which?* for June 1975 about fees for buying and selling a house, based on an examination of the recent bills of about 500 Consumers' Association members and a comparison of the charges with the old scale fees. The conclusion with regard to solicitors' conveyancing fees was that fees for unregistered property were on average about the same as the old scale fees but with a fair amount of variation. Fees for registered property had increased overall by about 30 per cent. We obtained no information ourselves on how far these increases in fees for conveyancing of registered property were justified in relation to solicitors' costs. The Consumers' Association report pointed out that the fees for conveyancing of registered houses had always been less than for unregistered houses and that the NBPI had considered that the gap between the two scales should be narrowed.

Evidence from overseas countries

117. We made inquiries about the supply of architects' services and the methods of charging for them in the other EEC countries, Sweden and the United States of America. Some of the main features are described below, and Appendix 6 contains a more extensive account.

118. On the continent there is commonly some form of published scale of fees which is laid down either by law or by the national association of architects. In most cases the scales are intended to represent the minimum charges for which the work should be performed. An exception is in the Federal Republic of Germany, where maximum fees are prescribed by law, with provision for the agreement of higher fees in special circumstances. The basic method of calculating the fee is generally as a percentage of construction cost, and it is usual for buildings to be categorised for calculation of the architect's fee according to their complexity. Some of the building categories are defined in considerable detail, with up to six categories and corresponding sets of scales for each. Another noteworthy feature of the continental scales is the extent to which the percentages are graduated downwards as the building construction cost rises, with many more steps than are allowed for in the RIBA scales. Although the method of charging by percentage of construction cost is general, there are alternative methods in some countries. In Sweden, for example, the architect's fee may by agreement be calculated on the basis of the cubic capacity of the building if this is considered more suitable. In France there are different systems of payment for public sector and private sector work. Regulations for public sector work made in 1973 introduced a complex method of calculating fees using percentage scales which relate payment to the content of the services and

complexity of the work and to a target sum rather than to final construction cost, with reductions in the fee if the construction cost falls outside a margin of tolerance around the target. The private sector in France conforms more with the practice of other continental countries.

119. In the United States of America architects have had great freedom in pricing their services and have used a number of methods, but the main traditional method has been the charging of a percentage of construction cost. Recommended scales of fees were issued by branches of the American Institute of Architects until recently. Buildings were grouped according to their complexity, and different scales applied to each group. In 1972, following anti-trust action, the American Institute of Architects signed a consent decree, as a result of which associations of architects can no longer legally agree upon fees even on a recommended basis. However, we were informed by the RIBA that the Federal government has since laid down regulations which ensure that for its own works architects are selected on the basis of qualifications before negotiations on their fees are commenced, thereby avoiding competitive tendering for architectural services, and a similar policy has been adopted by several states. The RIBA thought it important to recall that American anti-trust legislation does not permit any defence that restrictive practices are in the public interest.