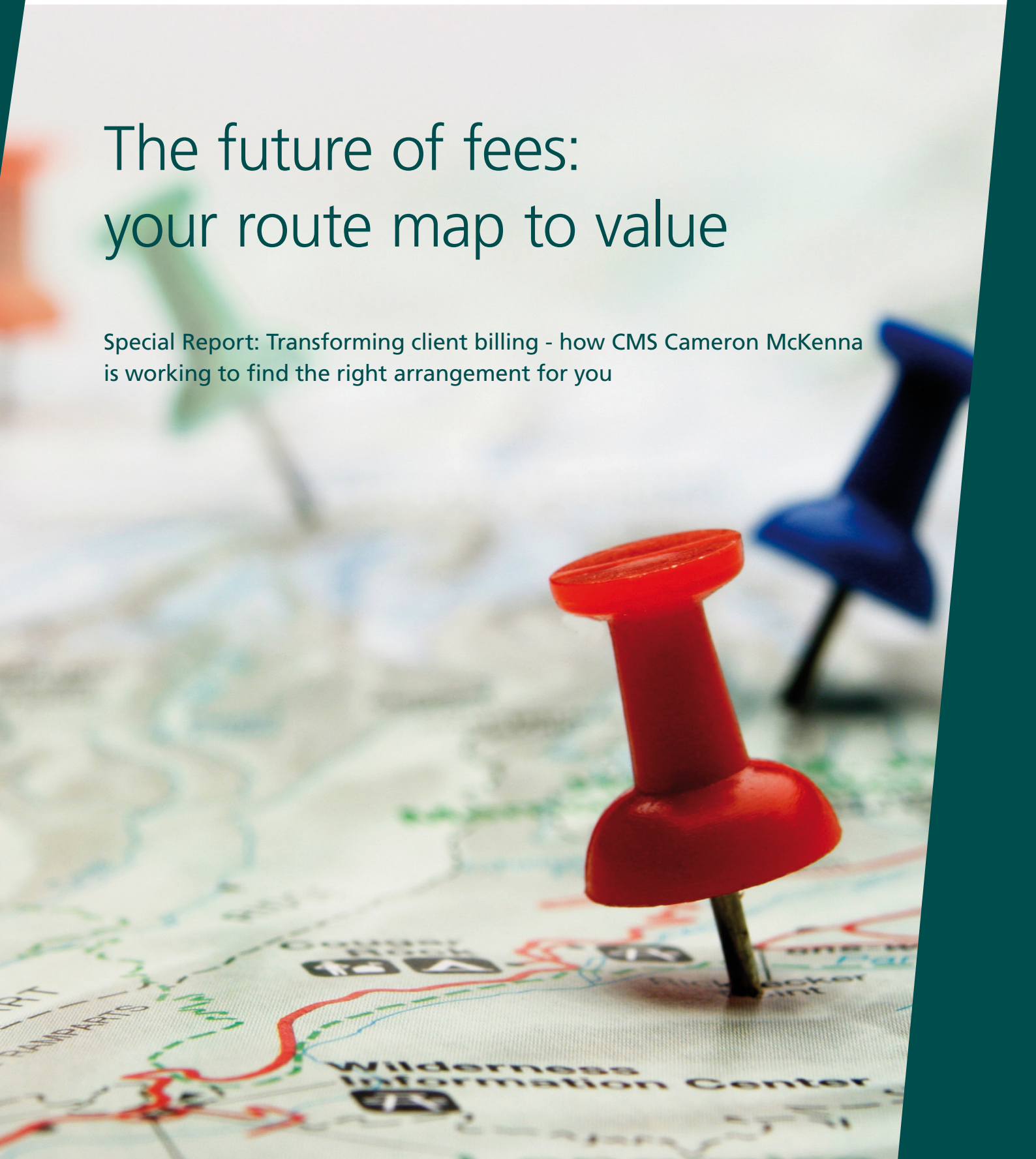
CMS

Law.Tax

The future of fees: your route map to value

Special Report: Transforming client billing - how CMS Cameron McKenna is working to find the right arrangement for you



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The future of fees – what do clients want?

It’s about bringing a client service culture to the heart of our firm so that we can tailor our service to the client.

Richard Price, Senior Partner

When clients say they want innovative fee structures and billing, what do they want to achieve? Is it simply a way of saying to advisers “tell us how we can get more for less” or is it actually about client service?

In other words, do clients want their advisers to demonstrate that they understand their organisation and are capable of adding value, not only in the way service is delivered, but also in the way they are charged for it?

My feeling is that it’s more the latter than the former. After all, purchasers of legal services will always be able to find ‘cheaper’ options out there, especially in this market. In terms of trends related to price, what has been interesting is the level to which the largest City firms are now either: a) buying work in the hope of achieving market share and developing more profitable relationships when the going gets good or b) developing new approaches in order to manage client work to fixed fees and tighter budgets.

How good any firm is at the latter still remains to be seen, given that much of the anecdotal market feedback from clients suggests that a huge volume of fixed fees are renegotiated at the end of a deal based on scope creep. Even basic project management by law firms still seems to be lacking.

For the past 30 years, I have been involved in pitching to clients and pricing work. What is becoming increasingly clear to me is that it’s not about any one solution or idea in relation to fees; it’s about bringing a client service culture to the heart of our firm, so that we can tailor all aspects of our service to the client’s particular needs, depending on what is vitally important to them at that time. It’s not always about being innovative to be cheaper; it’s often about being innovative to add value in a precise way that matters to a particular client’s organisation – it can even include throwing resource at a project to ‘get it done’ in a tight timeframe. The position of the ‘innovative’ firm, capable of delivering attractive, well-managed, thought-through fee arrangements for high-quality/value work remains vacant. Clearly, this is a position that CMS is keen to take and explains why we have invested so much time and energy in getting to the heart of the issues, training every one of our fee earners in best practice on pricing and billing techniques, and coming up with some ‘real’ solutions and practical guidance on how to achieve the fee arrangement that’s right for your organisation or for a particular project.

In this special report, we share the experience of our pricing team and examine how to scope what matters to your organisation. We also offer some top tips for managing down the price, if this is key to your agenda, as well as some ideas we have had that might inspire you. Being lawyers, we have included a ‘reality check’ to help you recognise the downside to some of the more innovative fee arrangements you may seek to undertake.

I hope you find this report helpful and I would be delighted to come and discuss any of the content with you in person.

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Cost certainty: your number one priority

"Time recording works primarily in the interests of the firm. It is a useful internal measure, but a poor indicator of value. it provides no incentive for productivity gains; in fact, quite the opposite – it rewards inefficiency. It feeds an attitude of 'it costs what it costs' and, as a result, even the most outstanding firms are criticised for their inability to deliver a piece of work to budget. clients have no cost certainty, the thing they want more than anything else when undertaking a major piece of work. This is also nothing new; it comes up in each and every one of our studies."

Nisus Consulting, 2009

What does 'value for money' mean?

"By reviewing all our client research (more than 150 interviews) and market reports analysing 'what clients want', and by drawing on the practical experience of our pitch and pricing teams, I have sought below to highlight some of the key issues that go to the heart of pricing effectively and help develop 'the right' fee arrangements for the future."

Judith Prime, Managing Director, Business Development

Requirements in recent proposals: what you've been asking for...

"…seek a proposal regarding fees, rebates, discounts or other innovative pricing mechanisms."

A major telecoms company

"As we are looking to maintain greater control of our costs, we are open to any innovative, flexible arrangement."

A leading consumer products company

"…consolidate our legal spend and achieve cost efficiencies through preferential pricing and better control over budgets with outside counsel."

A leading energy company

"…we are interested in exploring innovative pricing structures."

A leading financial services organisation

"…explore possible performance indicators and pricing innovation compared to simply paying by the hour."

A leading communications company

The right fee arrangement represents good value for money – but what does that mean?

A standard question that we ask clients during the service reviews we undertake is whether or not they receive value for money, and critically, what for them defines value for money. In general terms, value for money is assessed by clients instinctively – that is, they 'feel' they know whether or not they are receiving value for money.

It is not about the fee as such; rather, it is about whether the fee matches their expectations about the cost of the project/matter. Clients that have repeat work of a similar nature clearly build up a library of knowledge and experience that informs their understanding of what the appropriate level of fee should be.

Providing the service experience is good, and the fee is what is expected, a client will generally agree that they receive value for money. Sometimes there is cynicism regarding this question because clients believe that, if they tell you that they believe you provide value for money, you'll immediately put your fees up!

What's important to you? If your law firm were a car…

The challenge for those procuring legal services is defining for their organisation what 'fit for purpose' means. Imagine you are preparing for a road trip – it's a gorgeous sunny day and you fancy a speedy, racy ride for the two-hour drive. Now imagine the road trip is across three continents – the vehicle you choose is unlikely to be the same. This analogy is simplistic, but many consider legal advice to be 'the car that takes them from A to B'. More time could be spent considering the specific features the car needs to have that will make it appropriate/inappropriate for the task at hand.

Some of the broad questions clients could therefore consider before they procure legal services are included in the table on the next page.

Analysis tool: your legal priorities

Try our questionnaire to help you understand what you require.

— Do you want to be a priority client for your firm of choice?

— What does quality mean for your organisation? How important is brand?

— Does it matter where the work is undertaken?

— Do you want your client partner to be a trusted adviser to your business?

— Do you want to rely on your law firm for know-how, training and secondees?

— Do you expect your work to be partner-led or delegated to associates?

— Do you have different requirements for different types of work?

— Do you want to work with the best?

— Does sector knowledge count?

How can a client achieve the best price possible from a firm?

We recognise that, in this market, clients are being pressurised internally to cut costs. This leads to conversations with legal advisers/re-tenders and so on, where fees play a huge part of the discussion. This is exacerbated by the increasing use of procurement teams in the legal tender process. In response to this pressure from clients to deliver the 'best price', law firms have to improve their scoping, pricing, project management and communication mechanisms in order to meet the challenge appropriately – just as auditors/surveyors/management consultants and other professional advisers have done before them. Law firms can no longer claim special privilege or exemptions from these mechanisms simply because they are lawyers. As a consequence, clients should expect to see improved quotations and scoping of work, but also robust defence of the figures and approach. This means that legal advisers are less likely to be able to 'carry' a margin of error and debate the fee at the end of a transaction, which may have been possible before. This puts pressure on both clients and the adviser to have total clarity up front about the style of approach, objectives, measures and resources to be used, as well as establishing a protocol for agreeing any changes. It is a two-way street requiring trust and openness on both sides.

Clients can generally achieve the best savings by choosing to work with fewer providers on a more competitive basis.

We have produced the scorecard opposite to highlight some of the key levers that have an impact on price. The higher the score, the greater the savings your organisation can expect to make with your 'preferred adviser'.

Scorecard: scoping the best price for your organisation

Volume of work

We are one of our legal provider's largest clients

We can give a significant percentage of our work to one provider e.g. more than 33%

We can provide work across the organisation's offices and practice groups

We can accurately predict the split between what we perceive internally to be low-value/high-value work

Management of work

We would be happy to have a large portion of our work managed by an associate

We will allow the firm we appoint complete flexibility re: the resourcing of our work in terms of level of qualification and location

We are happy to take some risk on unimportant matters and direct our law firm appropriately

We are experienced in scoping work and instructing external counsel, and are realistic about the key variables to any deal/project

We are able to differentiate between the low-value and high-value work that we place externally

Added-value services

We don't expect to receive added-value services e.g. secondees/ tailored training

Client service

We will accept a basic service level agreement

We don't expect a firm to adopt our bespoke reporting/billing/ instruction protocols

Financial

We can pay our bills within 14 days

How to use this table:

Score each statement out of 5 (5= completely agree 1= would have great difficulty agreeing)

The higher the score you rate your organisation, the greater the savings your organisation can expect to make with your 'preferred advisers'

A flexible approach

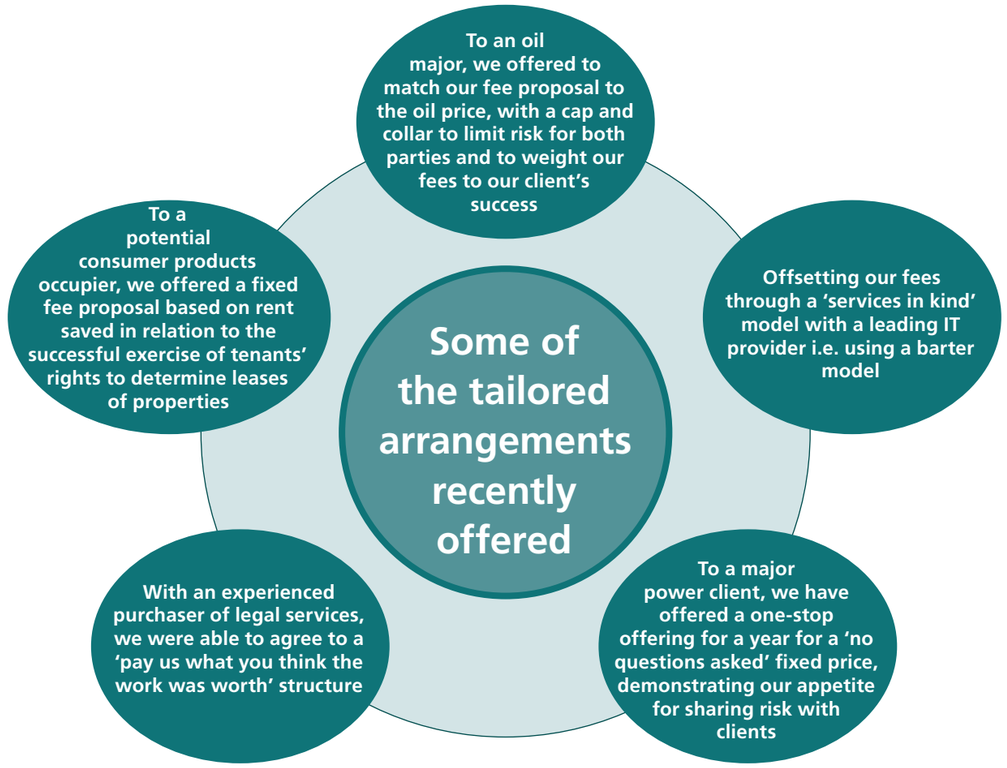
We have spent considerable time with many clients trying to find new ways of doing things, only to find that at the end of the day, they felt more comfortable with hourly rates. There is no right or wrong answer. From our side, our key motivation is to demonstrate that we are flexible and creative in finding the right solutions for our clients.

Judith Prime, Managing Director, Business Development

Matching fee structures to what you value

When clients know what they want to achieve and what measures will appeal to their organisation, it is possible to craft innovative and bespoke fee arrangements.

For example, some of the more unusual arrangements we have recently proposed to clients have included:



Innovative fee models available to clients

CMS has invested in professional project managers and pricing specialists during the past couple of years. As a consequence, our efforts in this arena have been publicly recognised by the likes of the *Financial Times*, which acknowledged, through its award programme, the level of innovation that we are bringing to clients in pricing their work.

As well as developing bespoke models for clients, the team has also used its experience to consolidate innovative ideas into a range of fee models, see below:

Top team
- **In summary**: removes any barriers (including cost) that stop the client from contacting the experienced individuals to whom they wish to talk.
- **What clients get**: unlimited access without clock-watching.
- **What CMS gets**: opportunity to pitch on all significant tenders at standard rates.
- **Reality check**: if the commercial realities don't match after a set review period, arrangement will be terminated/changed.

Value map
- **In summary**: a matchmaker fee model that tailors the pricing proposition to what clients value.
- **What clients get**: a fee proposal tailored to their objectives, ranging from cost certainty and the level of commercial objectives achieved to timeframes, perceived risk of reputation exposure and involvement of key personnel.
- **What CMS gets**: volume of work/incentivised to meet your objectives.
- **Reality check**: requires new protocols/internal measures.

Equity
- **In summary**: a relationship model that rewards a significant 'retainer' with value 'membership' rights.
- **What clients get**: cost predictability, free up-front contentious case appraisal, board attendance and off-the-clock advice, as well as secondees at cost.
- **What CMS gets**: opportunity to build/invest in mutually beneficial relationship with long-term expectations.
- **Reality check**: requires a significant, long-term commitment to CMS.

Hybrid
- **In summary**: a fusion of fixed/cap fees, a success payment and hourly rates.
- **What clients get**: a pragmatic, relatively easy-to-scope, performance-pegged service.
- **What CMS gets**: the opportunity to demonstrate value.
- **Reality check**: requires matter-by-matter scoping.

Fixed rate and cash-back
- **In summary**: a relationship model that plays on a fixed rate for all work 'same as last year less 8%', plus a '2% cash-back' set up that can be used at the client's disposal.
- **What clients get**: cost predictability. The legal department also has its own budget to use at its disposal e.g. to fund additional secondments and so on.
- **What CMS gets**: opportunity to build/invest in long-term relationships, as well as income predictability.
- **Reality check**: requires good estimating skills and workflow consistency to justify fixed rate.

One stop
- **In summary**: a fee model that rewards placing the majority of a client's legal budget with one provider.
- **What clients get**: cost predictability, easy-to-coordinate service, pan-European service.
- **What CMS gets**: income predictability, long-term relationship commitment.
- **Reality check**: requires a significant, long-term relationship commitment.

Challenge of implementation

Fee models that strike new ways of appraising service delivery are exciting, but they also represent challenges for both parties in the following ways:

— convincing everyone in your organisation that this is a sensible way to go

— finding comfort away from the predictability of hourly rates

— can be complex devising new measures and Key Performance Indicators

— scoping and estimating accurately the specific elements of your fee arrangement can be more challenging than simply arguing for, and agreeing, a reduced hourly rate

— firms need to have profitable relationships with their clients – if your firm can't deliver the service profitably, be wary of the long-term impact that this is likely to have on the relationship/service

— the more innovative fee arrangements require clients to commit to long-term relationships with their advisers and to place a large volume of work with them.

Transparent service delivery

CMS is passionate about service delivery. While this has become a much-hackneyed term, we believe that our investment in what is often regarded as the City's most developed client service review programme is proof that this is more than 'marketing speak'. Service delivery is critical in terms of the management of fee arrangements, particularly with regard to any scheme that is 'innovative'. So, as well as creating new financial/pricing models, we have also invested in developing reports that enable an organisation to have an effective management tool as well as 'transparent financial information'. Metrics that can be used include:

— risk/reputational measures

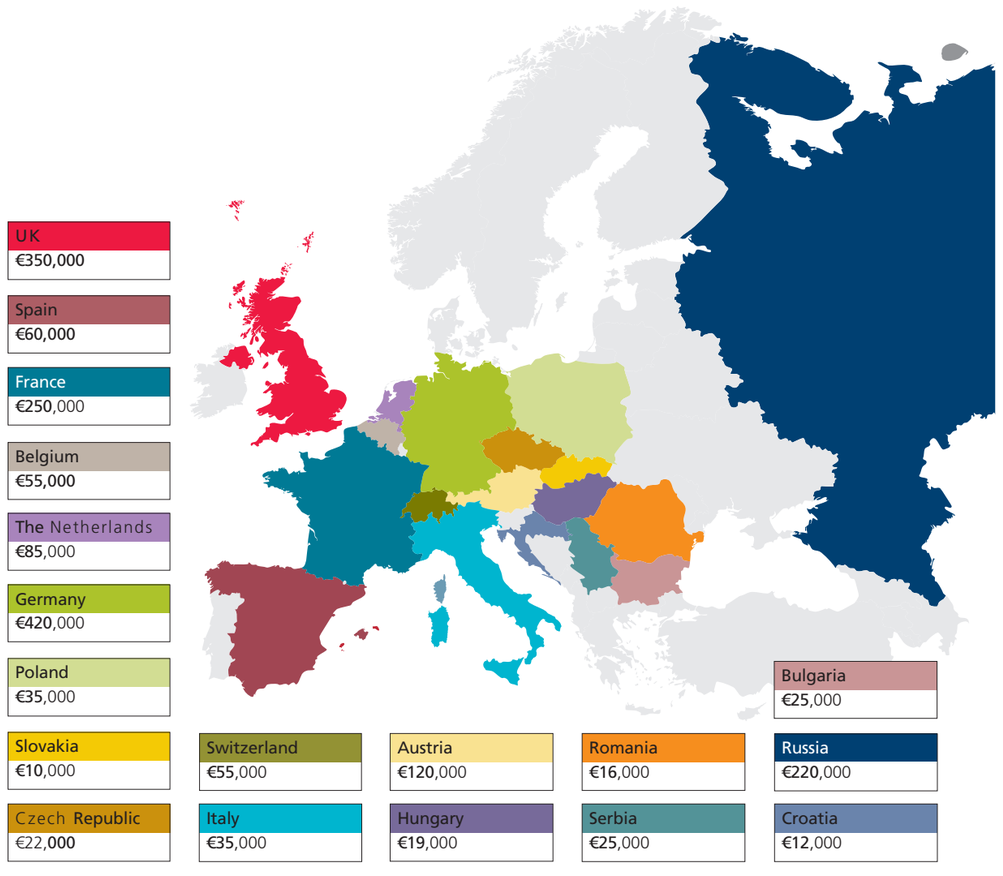
— cost v estimate barometers

— split of work by type as well as jurisdiction

— phase progress e.g. stage of dispute

— percentage of work by value.

Some of the financial information we display graphically for clients includes the geographic location of their work. Below is an example of how we can report your legal spend across jurisdictions – if a visual representation is useful to you.



Contact us

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Best in class

"I am ultimately responsible for our business and service to clients. Through our CMS academy and exposure to our business school partner, IMD, I appreciate how crucial it is for any organisation to grasp trends that affect their business/clients and deal with them. Pricing, billing and project management are significant issues for both our clients and us. Our strategic goal is to be 'best in class', with particular focus on being the best European provider of legal and tax services. As such, it is critical we get to grips with delivering more sophisticated pricing options that work for both parties. I hope that this report has made it clear that we are not shying away from the issues you face and that we will seek to work with all our clients to find practical ways of pricing and delivering the very best service that you need, wherever you need it."

Duncan Weston, Managing Partner

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