

### Civil Justice Council Consultation on Guideline Hourly Rates

For many years Guideline Hourly Rates (GHR) were published by HM Courts & Tribunal Service for use in summary assessments. Those GHR have also been used on many detailed assessments, however they have not been revised since 2010 (despite a review taking place in 2014).

Over the years there has been growing pressure for a thorough review of the GHR but no formal review or consultation has taken place since the 2014 review. The CJC Consultation Report was published in January 2021 and highlights the importance of GHRs as a vital tool for assessing costs, especially where an inexperienced Judge may be undertaking the assessment. The consultation period closes on 31 March 2021 and this briefing has been prepared as part of our process to formulate a response.

The consultation follows recent case law such as *PLK & Others (Court of Protection Costs) [2020] EWHC B28* and *Cohen v Fine & Others [2020] EWHC 3278 (Ch)* that highlighted the need for a review of the GHRs. In *PLK & Others*, which was a detailed assessment of general management costs in the Court of Protection, Master Whalan considered it appropriate to allow an enhancement on GHRs to take into account that no review had taken place since 2010 and also to allow for inflation since the GHR were published. In the latter case of *Cohen v Fine & Others*, HHJ Hodge QC stated that “the guideline hourly rates should be the subject of, at least, an increase that takes due account of inflation” and suggested that an enhancement of approximately 35% should be considered as a starting point going forward.

The CJC Consultation Report’s proposed hourly rates are outlined as follows and recommend increases ranging from 7% to 35%. With the proposed increased GHRs are other proposals which include merging the National 2 and 3 bands into a single band (the GHRs for those areas are already the same however, the locations have not previously been merged) and re-defining London 1 and 2 bands to reflect the types of work conducted as opposed to simply allowing rates based on postcodes.

The data obtained suggests that the London 1 band would be primarily for very heavy commercial or corporate work whether undertaken by firms geographically located in the City or Central London and the London 2 band would be for all other types of work carried out by firms within the City and Central London. This seems a very sensible change and reflects present day reality.

The CJC Consultation Report also includes provision for the N260 (Costs for Summary Assessment) to be slightly amended so that the signatory would have to specify the location of the fee earners conducting the work.

The proposals are based on a review of data between September 2020 and November 2020 taking into account decisions allowed by Regional Costs Judges, SCCO Costs Judges and authorised court officers as well as settlement data of hourly rates claimed and agreed between the parties as provided by solicitors.

The proposed rates are as follows:

Proposed Guideline Hourly Rates				
Bands	A	B	C	D
London 1	£512 (25.2%)	£348 (17.6%)	£271 (19.5%)	£186 (34.8%)
London 2	£373 (17.8%)	£289 (19.5%)	£244 (25%)	£139 (10.4%)
London 3	£282 (13.7%)	£232 (15.8%)	£185 (11.9%)	£129 (7%)
National 1	£261 (20.2%)	£218 (13.5%)	£178 (10.7%)	£126 (6.8%)
National 2	£255 (26.78%)	£218 (23.2%)	£177 (21.3%)	£126 (13.5%)

In order to finalise the report, the CJC have requested comments on the following:

1. The methodology used by the working group;
2. The recommended change to London areas 1 and 2;
3. The recommended GHRs as set out above;
4. Specifically, whether the rate of £186.00 for London 1 Grade D is too high and if so, what rate should be set and why?
5. The recommended changes to geographical areas with regard to National 1, 2 and 3 areas;
6. Whether the working group recommend that the CPR Committee be requested to consider amending the N260 and information provided on the detailed assessment bill to include location to be specified by the signatory; and
7. The recommended revisions to the text of the Guide to the Summary Assessment of Costs.

Responses to the report has been invited by 31<sup>st</sup> March 2021.

As paying parties have largely been relying on the 2010 GHRs it may seem that any new GHRs will have a detrimental effect on them, however, it is clear that revised guidance on hourly rates is required to bring more consistency that will benefit all parties. At present, there is little guidance as to what a paying party can expect to pay on costs assessment due to the aging GHRs and local variations as to how they are applied.

Also, what impact will revised GHRs have on costs budgeting? If the purpose is for a more reliable guide to reasonable hourly rates for detailed assessment, should that not also apply to costs budgeting? CPR 3.15 (8) prevents the court from fixing or approving hourly rates when costs budgeting, but should that be changed so that GHRs are applied and thus strengthen the connection between costs budgeting and detailed assessment? However, such a change risks CCMC hearings becoming more akin to detailed assessments and increase costs at that stage.

*This briefing is prepared by Malcolm Goodwin and Laura Dear. It is not intended to be an exhaustive statement of the law and should not be relied on as legal advice.*

