

# 5 Stone Buildings

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## Guideline Hourly Rates: an update

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08/10/2021

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## **What are the guideline hourly rates (“GHR”) ?**

- Introduced in late 1990s
- Guideline figures of solicitors' hourly rates, intended to assist judges in making a summary assessment of costs at the end of a one day hearing
- Before last week, last updated 2010
- On 1 October 2021 updated by the Master of the Rolls following a recommendation from the Civil Justice Council

## **Before 2010**

- Guide to the Summary Assessment of Costs, last published in 2005
- Guideline Hourly Rates updated yearly from 2007 – 2010.
- Master of the Rolls responsible for GHR from 2007. Advised by the Advisory Committee for Civil Costs until after Jackson report in 2009.

## GHR 2010

Grade	Fee Earner	London 1	London 2	London 3	National 1	National 2	National 3
A	Solicitors and legal executives with over 8 years' experience	£409	£317	£229-267	£217	£201	£201
B	Solicitors and legal executives with over 4 years' experience	£296	£242	£172-229	£192	£177	£177
C	Other solicitors or legal executives	£226	£196	£165	£161	£146	£146
D	Trainee solicitors, paralegals and other fee earners	£138	£126	£121	£118	£111	£111

## **GHR 2010**

- Divided by grades of fee earner
  - Grade A: solicitors over 8 years' qualified experience
  - Grade B: solicitors or legal executives over 4 years' qualified experience
  - Grade C: other qualified solicitors or legal executives
  - Grade D: trainee solicitors, paralegals or equivalent.

## GHR 2010

- Divided into three separate London grades and three separate national grades
  - National 1: Major cities and legal centres (e.g. Birmingham, Manchester, Cardiff); South East (e.g. Cambridge, Guildford) and other wealthy areas (e.g. Chester)
  - National 2: Other cities (e.g. Coventry, Nottingham, Sheffield). Outer city areas (e.g. Outer Leeds, Outer Newcastle)
  - National 3: Smaller cities (e.g. Leicester, Stoke, Preston). Larger towns and rural areas (e.g. Grimsby, Blackburn, Hereford, Shrewsbury)
  - London 1: EC1-4
  - London 2: W1, WC1-2, SW1
  - London 3: Remainder of W & SW, NW, N, E, SE and Bromley, Croydon, Dartford, Gravesend and Uxbridge

## **Developments**

- The Advisory Committee on Civil Costs (ACCC) recommended an earnings-related increase in 2011 (in line with previous years) but Lord Neuberger MR declined.
- In Oct 2012, ACCC disbanded, functions transferred to the Civil Justice Council, which established a costs committee (Jackson reforms)
- CPR 44.3(2) introduced in 2013
- CJC costs committee chaired by Foskett J carried out a review in 2014

## **CPR r 44.3(2)**

- (2) where the amount of costs is to be assessed on the standard basis, the court will – (i) only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred....”



## **The Foskett recommendations: May 2014**

- Expense of Time (EOT) methodology
- The committee's approach was to focus on “what it costs lawyers to run their practices”.
- Criticised:
  - “self-selection” nature of the respondents
  - Very small sample
  - Didn't take into account the impact of CPR r 44.3(2)

## The Foskett recommendations

- Rejected by Lord Dyson MR who made a detailed statement.
  - (i) It is important to emphasise that the GHRs are guideline rates. The original intention was to provide the Judiciary and others with a simplified scheme of rates to be used in undertaking summary assessments of costs. As Lord Phillips MR explained in 2004: "The guide is intended to be of help and assistance to Judges, but it is not intended as a substitute for the proper exercise of their discretion having heard argument on the issues to be decided."*
  - (ii) It is also important to emphasise that the guidelines were originally intended to be broad approximations of actual rates in the market.*

## After Foskett

- Lord Dyson – April 2015
  - No funding available for in-depth survey
  - Not enough firms willing to participate to provide level of detailed data.
  - GHRs becoming less and less relevant.
  - Existing rates remain in force for foreseeable future alongside proportionality and costs management

## ***Ohpen Operations UK Ltd v Invesco Fund Managers Ltd [2019] EWHC 2504 (TCC)***

- per O'Farrell J

*"[14]...the hourly rates of the defendants' solicitors are much higher than the SCCO guideline rates. It is unsatisfactory that the guidelines are based on rates fixed in 2010 and reviewed in 2014, as they are not helpful in determining reasonable rates in 2019. The guideline rates are significantly lower than the current hourly rates in many London city solicitors, as used by both parties in this case. Further, updated guidelines would be very welcome."*

*"The hourly rates charged cannot be considered in isolation when assessing the reasonableness of the costs incurred; it is but one factor that forms part of the skill, time and effort allocated to the application."*

## ***PLK & Ors (Court of Protection Costs) [2020]*** **EWHC B28 (Costs)**

- Assessment of hourly rates claimed by Deputies
- Since *Re Smith and others* [2007] EWHC 90088 (Costs) the COP would allow the GHR as claimed.
- Assessment of COP costs undertaken primarily by Costs Officers who needed guidance.
- Over 8000 COP costs assessments per annum.

- It seems clear to me that the failure to review the GHR since 2010 constitutes an omission which is not simply regrettable but seriously problematic where the GHR form the 'going rates' applied on assessment. I do not merely express some empathy for Deputies engaged in COP work, I recognise also the force in the submission that the failure to review the GHR since 2010 threatens the viability of work that is fundamental to the operation of the COP and the court system generally. [31]*

	Guideline Hourly Rates			
Bands	A	B	C	D
London 1	£490	£355	£271	£165
London 2	£380	£290	£235	£151
London 3	£275-320	£206-275	£198	£145
National 1	£260	£230	£193	£142
National 2	£241	£212	£175	£133

## **Cohen v Fine & Ors [2020] EWHC 3278 (Ch)**

- HHJ Hodge: Increase of 35%

*In my experience of sitting in the Business & Property Courts, both in the North-west and in the Rolls Building, the present Guideline Hourly Rates are considerably below the rates actually being charged by the solicitors who practise in those courts. Likewise, the Table of Counsel's Fees bears no relationship to the fees which the courts see being charged for counsel appearing in the Business & Property Courts. In my judgment, pending the outcome of the present review, the Guideline Hourly Rates should be the subject of, at least, an increase that takes due account of inflation"*



## ***ABS Company Ltd v Pantaenius UK Ltd & Ors*** **[2020] EWHC 3270**

*"First of all, the rates are significantly out of date. They were fixed in 2010 and they, therefore, reflect the position as it was in 2010, not as it was in 2020. Although Mr Watthey submits that it is wrong simply to look at inflation, because solicitors' rates have suffered commercial pressure, particularly in respect of work carried out for big institutional clients such as insurers. Whilst that submission is made, as it seems to me, that is a difficult submission for me to act on without real evidence upon which to arrive at a judgment. The conventional approach in relation to guideline rates is to uplift them by about 25 per cent in order to reflect the effects of inflation on the figures previously arrived at."*

HHJ Pelling at [63]

## **2021 consultation**

- Working group formed by Sir Terence Etherton MR in 2020.
- Chaired by Mr Justice Stewart
- Terms of reference:

*“To conduct an evidence-based review of the basis and amount of the guideline hourly rates (GHR) and to make recommendations accordingly to the Deputy Head of Civil Justice and to the Civil Justice Council during Trinity term 2021.”*

- Interim report open for consultation between 8 January and 31 March 2021
- 103 responses to consultation
- Final report published on 31 July 2021

## The committee

- Chair – Mr Justice Stewart  
Deputy Chair – Senior Costs Judge Gordon-Saker  
Circuit Judge – Nigel Bird  
District Judge – Simon Middleton  
District Judge – Judy Gibson  
A consumer representative – Elisabeth Davies  
A costs barrister – Nicholas Bacon QC  
A 'claimant' solicitor – David Marshall  
A 'defendant' solicitor – Peter Causton  
A commercial solicitor – Jeff Lewis  
A costs lawyer – David Cooper  
A Chartered Legal Executive – Lawrence Shaw
- Observed by:  
A MOJ representative – Robert Wright
- The group will also be supported by:  
Academic – Prof Paul Fenn  
Academic – Prof Neil Rickman

## **Interim report for consultation January 2021**

- *The history of GHRs between 2010 and the present is one where it has become apparent that the holy grail of rigorous, fully evidence- based precision, sought but not achieved by the Foskett committee, is simply not possible."*
- *"GHRs are guideline rates. The intention of the rates is to provide a simplified scheme and the guidelines are intended to be broad approximations of actual rates in the market. The approach of the present working group, therefore, has been to attempt to guide the GHR ship through the narrow strait between the Scylla of comprehensive but unachievable evidence and the Charybdis of arbitrariness."*

## Interim report proposals

- (i) Methodology
- (ii) Changes areas London 1 and London 2
- (iii) New proposed GHRs
- (iv) London 1 Grade D
- (v) Changes to the geographical areas
- (vi) Form N260
- (vii) Revisions to the text of the Guide

## Methodology

- Evidence on what was allowed by Costs Judges on provisional and detailed assessment
- BPC: hourly rates judges awarded on summary assessment
- Costs experts:
  - 8 Senior Courts Cost Office (SCCO) Judges
  - SCCO Costs officers
  - 26 Regional Costs Judges (RCJs)
- Members of the legal profession
  - Historical (1 April 2019 to 31 August 2020)
  - Prospective (1 September 2020 to 27 November 2020)

## Responses to methodology

- A number agreed with methodology: perfection impossible
- But a substantial number disagreed (mostly claiming parties)
- Criticisms dismissed by the Working Group

## **Recommended changes to London 1 & 2**

- London 1: very heavy commercial and corporate work. (not restricted to any particular postcode)
- London 2: all other work carried out by firms geographically located in either the City of London or areas at present covered by London 2
- London 3: Outer London
- Considerable support. But what does “very heavy commercial and corporate work by centrally based London firms” mean?



## Proposed guideline hourly rates

Grade	Fee Earner	London 1	London 2	London 3	National 1	National 2
<b>A</b>	Solicitors and legal executives with over 8 years' experience	£512 (£409)	£373 (£317)	£282 (£229-£267)	£261 (£217)	£255 (£201)
<b>B</b>	Solicitors and legal executives with over 4 years' experience	£348 (£296)	£289 (£242)	£232 (£172-£229)	£218 (£192)	£218 (£177)
<b>C</b>	Other solicitors or legal executives and fee earners of equivalent experience	£270 (£226)	£244 (£196)	£185 (£165)	£178 (£161)	£177 (£146)
<b>D</b>	Trainee solicitors, paralegals and other fee earners	£186 (£138)	£139 (£126)	£129 (£121)	£126 (£118)	£126 (£111)

## **Response to new GHRs**

- *It would not be unfair to summarise the responses from receiving and paying parties by saying that the former argued that the proposed GHRs were insufficient and that more specialisations should be recognised as warranting separate and higher GHRs; the latter that they were based on totally flawed methodology and that no increase was warranted or, indeed, that the present GHRs were too high. [2.7]*

## **Grade D fee-earners**

- The interim report asked specifically whether the rate of £186 for London 1 Grade D was too high.
- Range of responses
- WG said they struggled on this but with no explanation said there was not a good reason for departing from the data and maintained £186

## **Recommended changes to national rates**

- Working group proposed that National Band 3 should disappear and be merged into National Band 2 – none of the respondents disagreed
- The whole of Kent, East Sussex, West Sussex and Surrey should become Band 1 (as only named cities were included).
- Existing National Band 1 counties and other National Band 1 centres will remain in National Band 1
- All other areas will be or remain in National Band 2.

## **The Revised Guide**

- Updating references to rules and practice directions
- LASPO updates
- Decision that summary assessment need not be carried out by the judge
- Post-2013 test of proportionality
- LIPS extended
- Rates for counsel have been removed as the working group considered that they are hopelessly out of date and unhelpful.
- Qualified costs lawyers eligible for payment at grades B or C depending on the complexity of the work done.

## **Summary assessment: Form N260**

- Reported problem that firms charging for work at Central London office rates while much or all of the work it carried out in regional or outsourced office.
- Signatory required to specify the location of the fee earners carrying out the work.
- Generally supported but practical issues arose
- Adopted by the Working Group

## Final report recommendations

- Methodology used in Interim Report sufficiently sound basis on which revised GHR should be based
- Hourly rate allowable for LIPs increase
- Recommended changes for London 1 and 2
- GHR proposed in Interim Report should be implemented in full
- No good reason for departing from data produced for London 1 Grade D
- Removal of National 3
- Updates to the Revised Guide
- Form N260 update

## What's next?

- Sir Geoffrey Vos MR approved the new GHR while ordering a further review within two years.



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Thank you.  
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