



**Informing Progress** - Shaping the Future

## FOIL UPDATE

**11 January 2021**



## Update – Guideline Hourly Rates Review

The Civil Justice Council (CJC) working group on reviewing guideline hourly rates (GHR) has produced a report in support of the consultation that is now taking place. The consultation closes on 31 March 2021.

The last set of guidelines was published in 2005. They were updated annually (with the exception of 2006) until 2010, but no further updates took place after that.

The report stresses that its focus is on reviewing '*the basis...of the Guideline Hourly Rates*' to be applied when assessing costs on the standard basis. The report recognises that this review has taken place over a limited timescale but suggests that even with more time, it would not be possible to obtain from a sufficient number of firms of solicitors, the very detailed data that ideally should be analysed.

The methodology adopted was to ask all costs judges in England & Wales to complete an electronic form for the rates they allowed on all provisional and detailed assessments carried out between 1 September and 27 November 2019. Other interested parties were invited to provide the same information but, in addition, details of the rates allowed on summary assessments or agreed between parties for a longer period: 1 April 2019 to 27 November 2020. The report acknowledges that limited information is available for the Business and Property Court but it has nevertheless taken evidence from a 'snapshot period'.

### IN BRIEF

A Civil Justice Council working party has recommended increases in the Solicitors' Guideline Hourly Rates.

This review is based largely on data collected from costs judges for the period 1/09/2020 to 27/11/2020.

The average increase across all bands is around 18% when inflation in legal services is put by the ONS at around 13.3%.

The report addresses criticisms of the methodology, including the absence of an ‘expense of time’ analysis; that the period over which evidence was gathered is not sufficiently representative; and the impact of Covid-19, but declined either to alter its approach or pause the consultation. It sets out the views of a number of organisations which sent in detailed submissions.

The working group considers that, with the exception of London 1 and 2, the data sample sizes were sufficient for its purposes and more indicative of the appropriate rates than would be achieved by applying inflationary percentage increases to the existing GHR. For those London areas, adjustments were made to the GHR by combining data from other sources but it is recognised that the available evidence was very limited. This has led to a recommendation that the London zones should be redefined and GHR for a new London 2 zone should be the subject of a future review.

As for the rest of England and Wales, the working group concluded that the pooled data received from experienced costs’ judges and professionals was the best evidence on which its recommendations could be made.

The following table sets out those recommendations, with the figure in brackets representing the increase from the existing (2010) GHR.

	<b>Grade A</b>	<b>Grade B</b>	<b>Grade C</b>	<b>Grade D</b>
<b>London 1</b>	£512 (25.2%)	£348 (17.6%)	£270 (19.5%)	£186 (34.8%)
<b>London 2</b>	£373 (17.8%)	£289 (19.5%)	£244 (25%)	£139 (10.4%)
<b>London 3</b>	£282 (13.7%)	£232 (15.8%)	£185 (11.9%)	£129 (7%)
<b>National 1</b>	£261 (20.2%)	£218 (13.5%)	£178 (10.7%)	£126 (6.8%)
<b>National 2</b>	£255 (26.78%)	£218 (23.2%)	£177 (21.3%)	£126 (13.5%)

In the light of important changes that are likely to affect legal services, the working group recommends a further review of GHR but leaves it to the Civil Justice Council to determine when that should be. It hints at three years being a possibility, to include a review of the methodology adopted in this review. In the meantime, it suggests that once the revised GHR have been agreed, they should be uplifted annually in accordance with an appropriate index.

The full report may be found at: <https://www.judiciary.uk/wp-content/uploads/2021/01/20210108-GHR-Report-for-consultation-FINAL.pdf>

### Comment

It will be seen that the average increase across the bands is around 18%, a figure not far off the 20% increase in *PLK* but significantly less than the 35% increase in *Cohen v Fine*. However, as inflation for the period since 2010 (and the last review), based on The Office for National Statistics Services Producer Prices Index for the legal sector, was on average 13.3%, the average proposed increases are significantly higher.

FOIL will be responding to the consultation and commenting on the issues detailed at page 41 of the report, namely:

- (i) The methodology used by the working group.
- (ii) The recommended changes to areas London 1 and London 2.
- (iii) The recommended GHRs set out in the table above.

- (iv) Specifically, whether the rate of £186 for London 1 Grade D is too high; if so, at what rate it should be set and why?
- (v) The recommended changes to the geographical areas in section 5 of the report and the recommendation to have two national bands.
- (vi) Should the working group recommend that the Civil Procedure Rule Committee be requested to consider amending the summary assessment form N260 and the information provided on the detailed assessment bill? The amendment would be to require the signatory to specify the location of the fee earners carrying out the work.
- (vii) The recommended revisions to the text of the Guide to the Summary Assessment of Costs, which is set out in Appendix J to the report.

Members who wish to feed in their comments to the FOIL response are requested to send them to Shirley Denyer (Technical Director) on [info@foil.org.uk](mailto:info@foil.org.uk)

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