

COURT OF PROTECTION - BILLS OF COSTS
PRACTICE NOTE BY THE SENIOR COSTS JUDGE

1. This practice note is issued for the assistance of costs officers and practitioners in relation to the assessment of Court of Protection (COP) bills of costs in the Senior Courts Costs Office following the judgment of Costs Judge Whalan in *PLK and others* [2020] EWHC B28 (Costs). The judgment concerned the assessment of the hourly rates of Deputies and their staff in relation to general management charges in dealing with the affairs of a protected party. This guidance explains some practical consequences of that judgment.

Bills in relation to general management years ending on or before 31 December 2017

2. The judgment is limited to the years 2018 and following [para 35]. While it is recognised that every bill is fact specific, it was noted [para 30] that the approach taken in the cases of *Louise Smith* and *Yazid Yahiaoui* remains applicable. It follows that bills up to 31 December 2017 will continue to be assessed by costs officers on that basis and that *save in exceptional circumstances* the 2010 guideline hourly rates (GHR) will continue to apply.

Bills in relation to general management years 2018, 2019, 2020

3. The judgment recognised that costs officers should *exercise some broad, pragmatic flexibility when applying the 2010 GHR to the rates claimed* and that *if the rates claimed fall within approximately 120% of the GHR they should be regarded as prima facie reasonable* [para 35]. The judgment does not disapply or abrogate the indemnity principle. Consequently, costs officers will have no discretion to allow higher hourly rates than have been claimed. The judgment will be of relevance only where rates in excess of the 2010 GHR have actually been claimed in the bill.

4. On general principles, a Deputy may not withdraw or amend a detailed bill or substitute a new bill without the consent of the client or an order of the court. As the consent of a protected party cannot usually be obtained, any application to withdraw, amend or substitute a bill will have to be made to a costs judge on form N244 supported by evidence that the indemnity principle has been complied with.

5. Deputies are entitled to the informal re-consideration of bills provisionally assessed by a costs officer before the issue of a Final Costs Certificate. They should note that any request for re-consideration designed to recover rates higher than those claimed in the bill is unlikely to be successful. Any application and any appeal made after the issue of a FCC can be made only to a costs judge.

6. Costs officers will continue to have regard to the Deputy's terms and conditions of business, correspondence regarding hourly rates with the Court of Protection or Office of the Public Guardian, Form OPG 105 lodged with the bill, and the solicitor's certificate on the bill.

Andrew Gordon-Saker
Senior Costs Judge
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