

CJC Costs Working Group – Consultation Paper – June 2022

Response of the Civil Sub-Committee of the Council of HM Circuit Judges

1. This response is submitted on behalf of the Civil Sub-Committee of the Council of HM Circuit Judges.
2. After much discussion, the Civil Sub-Committee had concluded that the range of views held by Circuit Judges on the subject-matter of this consultation – particularly on costs budgeting and guideline hourly rates – is so broad, diverse and strongly held that it would be inappropriate for us to put forward a single response; any such response would not be representative of our members as a whole. Other areas covered by the consultation are more appropriately for court users to engage with.
3. We therefore resolved to encourage individual responses from Circuit Judges and we have emailed all Designated Civil Judges to that effect. We note that the deadline for responses has been put back by two weeks to 14 October.
4. We would, however, reiterate the submission that we made in response to the consultation paper issued by the working group led by Stewart J by way of response to question 2.5: *Are there alternatives to the current GHR methodology?* as follows:

National Rates

5. First, since the GHRs are intended to be broad approximations only, and their purpose is merely to act as a starting-point for summary assessment, we question both the wisdom and the utility of the inclusion of two separate National Rates. Given that the only differences between them amount to £6 for Grade A (less than 2.5%) and £1 for Grade C (less than 1%), we consider that the two areas should be merged in the interests of clarity, simplicity and equity. In this connection, we note that according to foot-note 52 of the consultation paper issued by the working group led by Stewart J: *“There was an anomaly in that Grade B rates for National 1 were £216 and for National 2 £220. The working group decided to rationalise these by recommending £218 for each.”* This shows how little real difference there is between the two proposed new National areas; and since the new recommended GHRs are not led entirely by the data, this reinforces our recommendation that there should be only one National Rate.
6. Secondly, we are also concerned about the substantial anomalies to which the existence of two National rates gives rise. It is difficult to understand why solicitors who practise in Moss Side and Whalley Range (in the Central Manchester Constituency) should be in National 1 whilst those practising in the neighbouring and more affluent Salford Quays (including Media City) and Altrincham areas should be in National 2. We suspect that solicitors find it difficult to understand the justification for (marginally) different GHRs in the different geographical areas covered by the two National Rates. We would also point out that for fee-paid judges who may not practise locally, the existence of two different National Rates may require solicitors to certify which of the two National Rates is the applicable rate.

Rates should be expressed to the nearest £5 or £10

7. Second, in the interests of simplicity of calculation and also because the GHRs are intended to be broad approximations only, their purpose being merely to act as a starting-point for summary assessment, we would urge that the GHRs should be rounded up (or down) to the nearest £10. In practice, attendances and work done on documents tend to be charged out in six minute units so the hourly rates should be readily divisible by ten for ease of calculation. This would make it much simpler, easier (and therefore cheaper) for the solicitors or costs draftsman who draw up the costs statements; and even more so for judges when they have to adjust the figures on a summary assessment (often under considerable pressure of time at the end of a hearing which may be over-running, and with the next case waiting to come on). Alternatively (but less helpfully), the figures could be rounded up (or down) to the nearest £5. Our experience is that, in practice, chargeable hourly rates are invariably expressed to the nearest £10 or £5. None of us have ever seen an hourly rate that is not so divisible. The present rates give the impression that they are the product of a process of aggregating a number of different specimen rates and then dividing the total by that number. That is not how hourly rates are arrived at in the real world.

HHJ Hodge KC

Chair, Civil Sub-Committee

Senior Vice-President

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