

CJC COSTS WORKING GROUP
CONSULTATION PAPER – JUNE 2022

RESPONSE OF MR JUSTICE FANCOURT, VICE-CHANCELLOR OF THE COUNTY PALATINE
AND SUPERVISING JUDGE OF THE BUSINESS AND PROPERTY COURTS ON THE NORTHERN
AND NORTH-EASTERN CIRCUITS

1. I wish to confine my response mainly to an issue relating to Guideline Hourly Rates (GHRs), as described in the Paper.
2. I endorse the response of the Chancery Judges on the issue of costs budgeting and suggest that it is an important aspect of cost control in modern business litigation, but a more efficient process should be attempted to be devised, which if possible is less open to abuse than the current scheme. I wonder if a scheme of costs budgeting “light” might be introduced for cases valued at between £2.5 million and £10 million, as the considerable detail of costs budgets prepared in accordance with the existing scheme may not be needed, or so important, in cases of very substantial value. (I note that a form of BPC disclosure review “light” was introduced by amendment to PD 51U (now PD 57AD) for “less complex cases”, with a view to saving the expense of the full DRD procedure where cases did not justify that degree of expense being incurred.)
3. As regards GHRs, I have read and support Part 2 of the response of HHJ David Hodge KC dated 29 September 2022.
4. In particular, he is right to be concerned about the impact on regional business litigation of the significant difference between the GHRs in National Band 1 and the London Band 1. This disparity is likely to drive heavy commercial/business litigation away from the regions to London.
5. The philosophy underlying the regional Business and Property Courts, since their establishment in 2017, is that no case is too big to be issued and tried in the appropriate regional centre. In other words, however big and complex the case is, the proceedings should be conducted locally. The appropriate judicial resources will be provided in (and if necessary sent to) the local court. The intention is to help to establish better legal resources for regional clients in complex and large BPC litigation, and to save costs.
6. The current GHRs, which have a London 1 rate for “very heavy commercial and corporate work by centrally based London firms” cuts across this objective. Very heavy and corporate work will not only be done in London. It will be done also in Bristol, Birmingham, Cardiff, Leeds, Liverpool, Manchester and Newcastle. But if clients can only recover costs at one-half to two-thirds of the London rate, many will use London solicitors and issue in London instead, in order to obtain that perceived benefit.

7. As Judge Hodge's evidence demonstrates, it is not the case that for complex BPC work, regional (in his case, Manchester) firms bill at hourly rates that align with the National 1 rate. This is understandable. Although out of London charging rates are and should be lower, for complex BPC work the difference is not as great as reflected by the National 1 and London 1 bands. Hourly rates charged for complex BPC work are not equivalent to hourly rates charged for general civil litigation.
8. I suggest that it is important in principle to introduce a new National Band 1, with higher rates than the existing Band 1, to perform the same function as London Band 1. It should apply to complex business, commercial and property litigation in the BPC lists.

Mr Justice Fancourt

13.10.22