

Civil Justice Council

GUIDELINE HOURLY RATES

WORKING GROUP REPORT FOR CONSULTATION

A response by the Association of Personal Injury Lawyers

30 March 2021



Introduction

APIL's working group welcomes the invitation to comment further on the proposals for guideline hourly rates (GHR) and the contents of the Civil Justice Council's draft report.

Answers are set out below, identified by the numbering used in the CJC's consultation document.

(i) The methodology used by the working group.

APIL's main concern about the methodology used by the working group relates to its use of recovered hourly rates (taking the mean average of the figures and then including some element of inflation and complexity for CPR 44.43 factors). Guideline hourly rates and recovered rates based on them are already ten years out of date.

We have already made this point in our earlier submissions to the CJC that the recent judicial statements on GHR

- *"... these decisions ... corroborate APIL's view that the GHR has had a deflating effect for the past decade which continues to pull down market rates which is unsustainable in the longer term.*
- *'The problem with collecting data on rates recovered [assessed] is that the rates will inevitably reflect the current out of date GHRs and the data collected will inevitably be artificially depressed as a result.'*

By focussing on recovered rates, the disparity between recovered and actual market rates will be perpetuated.

It is clear from the data which APIL submitted to the CJC in December 2020 that the hourly rates that a personal injury claimant would pay his solicitor for services provided are often much lower than hourly rates which would usually be charged to the same individual for other types of work at the same firm. This makes it evident that the hourly rates charged for injury claims are artificially deflated by the historic GHR rather than inflated when contrasted to other practice areas.

APIL's survey of its own members revealed that there is a tendency in this sector to minimise the costs shortfall their clients face as those clients' damages awards are required to meet their long term injury related losses and necessities. There is the additional issue in that for awards made to children and parties who lack mental capacity, any costs shortfall

which would result in a deduction from damages has to be approved by the court. In such claims many solicitors will choose to either limit their charges to the existing GHRs or accept reductions for similar effect. That does have an effect, eventually, on the longer term sustainability of that work, - see the comments made by Master Whalan, in *PLK & Ors* [2020] EWHC B28 (Costs), who considered the appropriate hourly rate for Deputies and allowed an inflationary component of 20% to the GHR.

Use of appropriate indices

In our view there should have been more reliance on the various indices rather than only the recovered hourly rates which in our view have resulted in recommendations which are too low.

See our table at Fig.1 below which highlights the inequalities created by the methodology.

We take the view that the correct index to use is the Services Producer Price Inflation (SPPI) index for legal services.¹ It is not clear to us why the CJC would not use the SPPI (legal services) index when it is clearly representative of the level of cost inflation being experienced by the legal services sector.

There is no support, in the analysis or evidence submitted, for the assertion by Professor Rickman at Appendix I that

“... the reason for the larger increase in the Legal Services index is not clear, but it may be related to (1) the possibility that the sector has been slower to adopt cost-saving technology than others (including those in its wider Professional Services home), and (2) the focus (for almost all of the period) on ‘business-to business’ services may have biased the focus towards commercial services with costs that are harder to control.”

We have taken the 2010 GHRs, and compared them to:

- the proposed new rates, and;
- the rates if either the CPI or the SPPI indices were applied to the 2010 rates.

What the table shows (see fig 1 below) is that for that the rates allowed for all bands and virtually all grades represent less than CPI inflation (shown as a red number with ↓) on the

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<https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/servicesproducerpriceindices/previousReleases>

2010 GHR which was in itself almost certainly below the level of real market rates even in 2010.² If the SPPI for legal services is applied to the 2010 GHRs, then all band and all grades other than London D1 represent less than SPPI inflation. We have not compared to the RPI, as that index is discredited and the UK Statistics Authority has indicated that it will discontinue its use by 2030 and provide users with guidance to assist in moving away from RPI-related indices.³

1	REGION	GHR 2010 £.00	GHR proposed (2021) £.00	% Increase from GHR 2010 to proposed GHR 2021	GHR 2010 + CPI (23.5%) £.00	GHR 2010 + SPPI (34%) £.00
2	Legend				↓ less than proposed GHR	↓ less than proposed GHR
3					↑ more than proposed GHR	↑ more than proposed GHR
4						
5	London 1					
6	Grade A	409.00	512.00	24.69%	↑ 505.12	↓ 548.06
7	Grade B	296.00	348.00	17.57%	↓ 365.56	↓ 396.64
8	Grade C	226.00	270.00	19.46%	↓ 279.11	↓ 302.84
9	Grade D	138.00	186.00	34.78%	↑ 170.43	↑ 184.92
10						
11	London 2					
12	Grade A	317.00	373.00	17.66%	↓ 391.50	↓ 424.78
13	Grade B	242.00	289.00	19.42%	↓ 298.87	↓ 324.28
14	Grade C	196.00	244.00	24.49%	↑ 242.06	↓ 262.64
15	Grade D	126.00	139.00	10.32%	↓ 155.61	↓ 168.84
16						
17	London 3					
18	Grade A	248.00	282.00	13.71%	↓ 306.28	↓ 332.32
19	Grade B	200.50	232.00	15.71%	↓ 247.62	↓ 268.67
20	Grade C	165.00	185.00	12.12%	↓ 203.78	↓ 221.10
21	Grade D	121.00	129.00	6.60%	↓ 149.44	↓ 162.14
22						
23	National 1					
24	Grade A	217.00	261.00	20.28%	↓ 268.00	↓ 290.78
25	Grade B	192.00	218.00	20.15%	↓ 237.12	↓ 257.28
26	Grade C	161.00	178.00	10.56%	↓ 198.84	↓ 215.74
27	Grade D	118.00	126.00	6.78%	↓ 145.73	↓ 158.12
28						
29	National 2/3					
30	Grade A	201.00	255.00	11.94%	↑ 248.24	↓ 269.34
31	Grade B	177.00	218.00	23.16%	↑ 218.60	↓ 237.18
32	Grade C	146.00	177.00	21.23%	↓ 180.31	↓ 195.64
33	Grade D	111.00	126.00	13.51%	↓ 137.09	↓ 148.74
34						

Fig 1 – comparison of current GHRs with proposed rates and inflation indices

It is encouraging that the CJC accepts that the appropriate SPPI index (legal services, we would suggest) could be used when annually updating GHR. It is simultaneously disappointing that there is no firm commitment to do this, the CJC describing it as “currently impracticable” a premise which we do not accept.

² See our data submitted in our document: Civil Justice Council Guideline Hourly Rates 2020: A submission from the Association of Personal Injury Lawyers, December 2020

³ HM Treasury & UK Statistics Authority: A Response to the Consultation on the Reform to Retail Prices Index (RPI) Methodology, 25 November 2020.

Provided an acceptable index is agreed, there is no reason why regular reviews of the GHRs cannot be conducted with minimal disruption to both the judiciary and the legal profession.

We urge the CJC to recommend that a regular review of the GHRs at predetermined time intervals is put in place once an acceptable base for each band is agreed. We welcome the proposal to annually index the GHRs and encourage the CJC to recommend a more comprehensive review every three to five years.

(ii) The recommended changes to areas London 1 and London 2.

We have no additional comments on the recommended changes here other than those already made above.

(iii) The recommended GHRs set out in paragraph 4.18 of this report.

We have no additional comments on the recommended changes here other than those already made 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?

We would not object to the proposed London 1 Grade D rate, however the equivalent rates for the rest of the geographical bands are too low.

The low proposals for the national Grade D rates are problematic because the proposed judicial guidance currently excludes Grade D from enhancement factors. This will leave litigants who instruct specialist solicitors for complex and high value litigation (as is entirely reasonable), with a shortfall for any work which their solicitor delegates to a Grade D fee earner. Unless that inconsistency is rectified it could create an incentive for that work to instead be delegated to a Grade C fee earner, ultimately at higher cost to the paying party.

We also reiterate our concerns that using recovered rates, where Grade D fee earners are routinely discounted by the courts, entrenches rates for these fee earners and perpetuates historic court-based discounting which is inevitably based on the 2010 GHR.

In light of wage inflation for paralegals and trainees over the past ten years there is very little to recommend in this particular set of proposals.

(v) The recommended changes to the geographical areas in section 5 of this report and the recommendation to have two national bands.

The National 1 and 2 bands are so similar that in our view the place where work is done is only relevant where the claim is for London rates.

Hertfordshire and Bedfordshire are excluded from National 1 so that smaller legal centres such as Milton Keynes (392 law firms) and Lowestoft (105 law firms) are entitled to the higher rate, but two larger legal centres, St Albans (4,376 law firms) and Luton (1,150 law firms), are excluded and therefore do not.⁴

We recommend that the CJC reconsiders these changes to take this into account.

(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.

We have no additional comments on the recommendations here other than those already made above.

(vii) The recommended revisions to the text of the Guide in Appendix J.

We have no additional comments on the recommended revisions here other than those already made above.

A final comment on additional data submitted.

In section 4.14 of the CJC's document, it is noted that "*The DWF evidence may be an indicator that the modest increases recommended in this report are sensible and appropriate.*"

We disagree with this comment and take the view that the data submitted by DWF should be ignored. The DWF rates are lower than the rest of the data, and very similar to the original 2010 GHRs. That is illogical and runs contrary to the obvious trends which have been identified in the data collected by the CJC and the data does not correlate with any of the inflationary indices considered.

⁴ *Law Society Find a Solicitor Pro Search: organisations excluding in-house teams, government departments and other employers.*

About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has worked for 30 years to help injured people gain the access to justice they need, and to which they are entitled. We have more than 3,000 members who are committed to supporting the association's aims, and all are signed up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

Any enquiries in respect of this response should be addressed, in the first instance, to:

Helen Blundell

Legal Services Manager

APIL

3, Alder Court

Rennie Hogg Road

Nottingham

NG2 1RX

Tel: 0115 943 5400

e-mail: [**helen.blundell@apil.org.uk**](mailto:helen.blundell@apil.org.uk)