GUIDELINE HOURLY RATES

WORKING GROUP REPORT FOR CONSULTATION

JANUARY 2021

Contents

Section 1: Introduction

1.1. The Guide to the Summary Assessment of Costs ("The Guide") was last published in 2005. The guideline hourly rates (GHR) for summary assessment were updated in 2007, 2008, 2009 and 2010. The Master of the Rolls has been responsible for GHRs since 2007. At first he was advised by the Advisory Committee on Civil Costs (ACCC). In 2011 Lord Neuberger MR asked for more detailed evidence to support the ACCC recommendations for 2011. He did not accept the recommendations.

1.2. Meanwhile, on 21 December 2009 Lord Justice Jackson had produced the Review of Civil Litigation Costs: Final Report (the Jackson Report). In chapter 6 he recommended the setting up of a Costs Council to supersede the ACCC. One of the tasks of the Costs Council would be to set GHRs for summary assessments and also for detailed assessments. A Costs Council was not set up and GHRs still apply only to summary assessment. The Ministry of Justice, however, transferred the responsibility of recommending GHRs from the ACCC to the costs committee of the Civil Justice Council (CJC).

1.3. In May 2014 the CJC costs committee (chaired by Mr Justice Foskett) reported to the then Master of the Rolls, Lord Dyson MR, on recommendations on GHRs for 2014.[1] The terms of reference of the Foskett committee were:

- To conduct a comprehensive, evidence-based review of the nature of the Guideline Hourly Rates and to make recommendations accordingly to the Master of the Rolls by January 2014;
- On an annual basis to review the GHR and make recommendations to the Master of the Rolls regarding how they need to be updated;
- To monitor the operation of the costs rules, in consultation with the Ministry of Justice, and where appropriate, to make recommendations.

[1] https://www.judiciary.uk/wp-content/uploads/2014/07/GHR-final-report.pdf.

1.4. On 28 July 2014 Lord Dyson MR issued a detailed statement.[2] In short, he concluded that he could not make any changes to the GHRs based on the Foskett report. Certain extracts from that statement have been of particular importance in informing the present working group. They are:

(i) It is important to emphasise that the GHRs are guideline rates. The original intention was to provide the Judiciary and others with a simplified scheme of rates to be used in undertaking summary assessments of costs. As Lord Phillips MR explained in 2004:

> *"The guide is intended to be of help and assistance to Judges, but it is not intended as a substitute for the proper exercise of their discretion having heard argument on the issues to be decided."*

(ii) It is also important to emphasise that the guidelines were originally intended to be broad approximations of actual rates in the market.

1.5. Lord Dyson then reviewed the Foskett committee's methodology on rates. He noted that the approach was to focus on "what it costs lawyers to run their practices." It concentrated on solicitors and adopted the "expense of time" (EOT) approach. This required estimating the cost to law firms of an hour of fee-earner time, taking into account the full salary costs paid to fee earners for those hours and the expenses of the firm that need to be recovered from hours billed for the firm to break even. Once that figure was arrived at, a percentage mark-up was added to represent a reasonable profit element.

1.6. The principal data available to the Foskett committee comprised (1) the practising certificate holders' survey (PCHS) and the trainee solicitors' survey conducted annually by the Law Society's research unit, based on 1500 randomly selected individuals from private practice; (2) the firms' finance survey (FFS) undertaken in 2011 and based on a national random sample of 300 firms from sole practitioners to 25 partner firms; (3) the law management section survey (LMS), conducted by the Law Society's research unit on the basis of a self-selecting voluntary exercise, with most participants having

[2] https://www.judiciary.uk/wp-content/uploads/2014/07/GHR-mor-decision-july2104.pdf.

between 5 and 25 partners; (4) the committee's own survey which yielded 148 responses.

1.7. Lord Dyson noted the Foskett committee's concerns, namely (i) the LMS survey and its own survey suffered from self-selection of the respondents who replied: they were not a randomised survey; (ii) all the surveys were based on the responses of a very small part of the large community of civil litigation solicitors in England and Wales; (iii) the respondents to the LMS survey would not have engaged in a significant amount of multi-track litigation; and (iv) consideration ought to be given to measures to lessen the immediate impact of the proposed changes. This led the committee to recommend that the new GHRs should be phased in over two years.

1.8. Lord Dyson said he could not accept the recommendations for the new GHRs. The concerns expressed by the Foskett committee led him to conclude that the evidence on which its recommendations were based was not a sufficiently strong foundation on which to adopt the rates proposed. He found the first and second concerns particularly compelling, noting "that a relatively small non-randomised survey cannot be a secure basis for determining what it costs solicitors to run their practices. This shortcoming in the evidence is fundamental."

1.9. Finally, Lord Dyson considered the way forward. He rejected, as a temporary measure, reverting to the previous solution of altering the then rates in line with inflation, saying that this would be arbitrary and difficult to justify in the light of the recommendations (albeit not sufficiently evidence-based) that the average rates should in general be reduced. His opinion was that (i) efforts needed to be made to obtain far more comprehensive evidence than it was possible for the committee to obtain, stating that the resources available to the committee were "exiguous"; (ii) there needed to be public confidence that there was a reliable basis for GHRs. Lord Dyson proposed to have urgent discussions with the Law Society and the Government to see what steps could be taken to obtain evidence on which GHRs could reasonably and safely be based.

1.10. In April 2015 Lord Dyson MR published a short updated statement on GHRs.[3] He said he had held discussions with the Law Society and the Government. However, there was no funding available from any source for undertaking the sort of in-depth survey which the CJC costs committee and its expert advisors considered to be required to produce an adequate evidence base. Further, there was considerable doubt that even if such funds were forthcoming, there would be sufficient numbers of firms willing to participate to provide the level of detailed data required so as to produce accurate and reasonable GHRs. The statement concluded:

> "This exercise is not happening in a vacuum, and I am conscious of a number of trends in the legal services market and other factors that are rendering GHRs less and less relevant. They include, but are not restricted to:
>
> - advances in technology and business practices and models;
> - the ever-increasing sub-specialization of the law which is seeing the market increasingly dictate rates in some fields (particularly commercial law);
> - the judiciary's use of proportionality as a driving principle in assessing costs;
> - the greater adoption of (and familiarity with) costs budgeting amongst the judiciary and practitioners alike.
>
> Not least, I hope, of such factors, is a trend towards the greater use of fixed costs in litigation. I have long advocated their wider application, and will continue to press this point to Ministers and others in the hope that this important element of the Jackson reforms is implemented.
>
> Less relevance is not the same as no relevance, and I am conscious that there are still many uses to which GHRs are put. They remain an integral part of the process of judges making summary assessments of costs in proceedings. They also form a part, even if only a starting reference point, in the preparation of

[3] https://www.judiciary.uk/publications/guideline-hourly-rates/.

detailed assessments. They also provide a yardstick for comparison purposes in costs budgeting. I know that for some smaller practices GHR also offer a rate to base practice charges on, and to demonstrate to clients a national benchmark.

I am not therefore suggesting that the existing GHRs no longer apply.

The existing rates will therefore remain in force for the foreseeable future, and will remain a component in the assessment of costs, along with the application by the judiciary of proportionality and costs management."

1.11. Some anticipated changes have happened and some have not. Most solicitors still charge by reference to hourly rates rather than fixed fees. The proportionality test has not removed the need for GHRs – see paragraph 2.6 below. Fixed costs have not yet been extended since 2015. The Ministry of Justice consulted on extending fixed recoverable costs in 2019, following Lord Justice Jackson's 2017 report.[4] The impact of cost budgeting has not been evaluated in terms of the numbers or scope of detailed assessments.

1.12. In *Ohpen Operations UK Limited v Invesco Fund Managers Limited* [2019] EWHC 2504 (TCC) Mrs Justice O'Farrell was required to consider summary assessment of costs. The claimant submitted that the defendant's costs were unreasonably high, particularly when compared against the published GHRs. O'Farrell J said:

> *"[14]…the hourly rates of the defendants' solicitors are much higher than the SCCO guideline rates. It is unsatisfactory that the guidelines are based on rates fixed in 2010 and reviewed in 2014, as they are not helpful in determining reasonable rates in 2019. The guideline rates are significantly lower than the current hourly rates in many London city solicitors, as used by both parties in this case. Further, updated guidelines would be very welcome*."

1.13. The present working group[5] was set up by Sir Terence Etherton MR in February 2020.

---

[4] Ministry of Justice consultation: extending fixed recoverable costs in civil cases, 28th March 2019.

[5] The composition of the working group is to be found in Appendix A. Professional members were selected by the Law Society, CILEx and the Bar Council. The Lay Member was invited to join by the CJC. She pointed out that she had no mandate to represent consumers or consumer associations. Her continued presence was requested by the working group as a member 'sense checking' the work from a lay perspective. Comments from consumer associations will be welcomed during the consultation on the draft report.

His terms of reference, as subsequently amended after a meeting of the CJC on 17 July 2020[6] were:

> *"To conduct an evidence-based review of the basis and amount of the guideline hourly rates (GHR) and to make recommendations accordingly to the Deputy Head of Civil Justice and to the Civil Justice Council during Trinity term 2021."*[7][8]

The working group had to recognise from the outset that it would not be able, to quote Lord Dyson, to gather "far more comprehensive evidence than it was possible for the (Foskett) committee to obtain." It was therefore clear that a radically different approach was necessary.

1.14. In chapter 6 of the Jackson report are the following passages:

> *"2.4 if a Costs Council is set up, it should be chaired by a Judge or other senior person, who has long experience of the operation of the cost rules and costs assessment. It is appropriate for the Costs Council to include representatives of stakeholder groups. However, its membership should not be dominated by vested interests….the Costs Council… should include a consumer representative. It should also, in my view, include an economist and a representative of the MoJ. It is unrealistic to expect the Costs Council to act on the basis of the consensus, because of the conflicting interest which will be represented within it. The chairman will sometimes act as mediator and sometimes as arbitrator between opposing views, so as to ensure that fair and consistent recommendations are made on costs levels….*
>
> 3.9 monitoring and gathering information
>
> *"This will be an important and ongoing task for the staff who serve the Costs Council. The Costs Council will have to gather information, with the assistance of the Law Society, the Solicitor's Regulation Authority and the Bar Council, as to what it costs lawyers to run their practices."*

1.15. The Foskett report cited paragraph 3.9 above and focused on what it costs lawyers to run their practices adding "although the need for 'evidence-based' recommendations

---

[6] Amendment underlined.

[7] As a result of the Covid-19 Emergency evidence gathering was impossible for a number of months. Therefore, the date for recommendations to be made was changed from Michaelmas term 2020 and put back to Trinity term 2021.

[8] A letter was received from a Court of Protection Professional Deputy asking the working group whether remuneration by a percentage of the investable estate has any place in the future deputyship costs for general management. This is apparently the position in Scotland. It was considered that this was beyond the remit and expertise of the working group. It is a suggestion which we note in case it is thought appropriate for consideration in any future review.

has demanded, within the limits of the resources available, a more structured and rigorous examination of the situation than might appear from the approach foreshadowed in that passage in Lord Justice Jackson's report."

1.16. The history of GHRs between 2010 and the present is one where it has become apparent that the holy grail of rigorous, fully evidence-based precision, sought but not achieved by the Foskett committee, is simply not possible.[9]

1.17. The passages from the July 2014 statement of Lord Dyson MR cited above are important. GHRs are guideline rates. The intention of the rates is to provide a simplified scheme and the guidelines are intended to be broad approximations of actual rates in the market. The approach of the present working group, therefore, has been to attempt to guide the GHR ship through the narrow strait between the Scylla of comprehensive but unachievable evidence and the Charybdis of arbitrariness.

[9] After the Committee's first meeting where this had been determined, it was of interest to note that a member of the Foskett Committee wrote an article stating: "One major area in which the Foskett committee got bogged down was in attempting to ascertain the actual costs of running a litigation practice in different parts of the country. Not only was this an impossible task, but the rationale for attempting it in the first place had been flawed." https://www.lawgazette.co.uk/practice-points/guideline-hourly-rates-in-a-post-covid- world/5104208.article.

Section 2: The Basis of GHR

2.1. It is important to note at the outset that the working group's Terms of Reference required it to review "*the basis…of the Guideline Hourly Rates*…"

2.2. The starting point is to consider the basis of assessment of costs, when assessed on the standard basis. In this regard the rule change in the Civil Procedure Rules (CPR) as of 1st April 2013 is of significance. CPR 44.3 (2) provides:

> "(2) where the amount of costs is to be assessed on the standard basis, the court will –
>
> (i) only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred…."

2.3. This rule applies across the board to costs recoverable between the parties.[10]

2.4. The Foskett report, in adopting the expense of time (EOT) approach:

(i) relied upon Lord Justice Jackson's report in which he said *"the aim of the GHR should be to reflect market rates for the level of work being undertaken" and that "[these] would be the rates which an intelligent purchaser with time to shop around for the best deal would negotiate."*

(ii) took a conscious decision not to try to reflect the impact of the change in the rule which had come into effect on 1st April 2013.[11]

2.5. In relation to proportionality, Rule 44.4 provides:

> "44.4 (1) the court will have regard to all the circumstances in deciding whether costs were –
>
> (a) if it is assessing costs on the standard basis -
>
> (i) proportionately and reasonably incurred;

[10] The Guide to the Summary Assessment of Costs 2005 edition paragraph 7 states "the general approach to summary and detailed assessment should be the same."
[11] See in particular Foskett paragraphs 1.2 and 3.5.

(ii) proportionate and reasonable in amount…"

2.6. It follows that ideally the GHRs should be a guide to rates which are both reasonable and proportionate. In practice, however, the experience of the working group and its knowledge of past training by the Judicial College on the subject are that proportionality is usually applied to the assessment of costs after a preliminary figure, based on reasonable hourly rates allowed, has been arrived at. It is, therefore, not intended to reflect proportionality in the GHRs which the working group recommends. Judges should be aware that they are required by the Rules to allow only proportionate costs once an initial assessment has been made based on hours worked and hourly rates.

2.7. As part of the history of solicitors' hourly rates and the genesis of the GHR up to 2005, there is an article by HH Michael Cook entitled *Solicitors' Hourly Rates.*[12] Amongst other things, the author states:

> "(ii) the Judiciary
>
> I used to say that Costs Judges fixed the rate by pulling open the third drawer down on the right-hand side of their desk and looking at a bit of paper showing "the hourly going rate" for a particular class of work but no one knew where it had come from. A Costs Judge took issue with me: interestingly enough, he did not disagree that Costs Judges had bits of paper in the third drawer down but he said that they knew where they came from: they wrote them themselves, based on information learned from assessments. "*Sitting day in and day out, hearing other solicitors disputing or accepting them, we form a view as to market rates. We do not lay down the rates. We adjudicate on the opposing contentions of the parties."* In other words, Costs Judges do not fix rates, they merely reflect them."

2.8. Taking into account all these factors, and in particular that: (i) GHRs are broad approximations; (ii) there should be no difference in hourly rates allowed on detailed or summary assessment; (iii) the inappropriateness, especially given the CPR changes in 2013, of fixing rates by EOT/solicitors charging rates; (iv) the impossibility in any

[12] CJQ volume 24 (2005) page 142.

event of obtaining hard evidence of EOT/solicitors charging rates; - the working group resolved to seek evidence on what was in fact allowed by Costs Judges who have experience and expertise in reflecting what is reasonable and proportionate. The evidence was to be of the rates allowed on provisional and detailed assessment.[13] Cases which go to a detailed assessment hearing will be predominantly multi-track and perhaps towards the more complex end of the multi-track spectrum. Provisional assessments apply to detailed assessment proceedings commenced after 1st April 2013 where the costs claimed are £75000 or less.[14] If a party after a provisional assessment requests an oral hearing, it is at risk as to the costs of that hearing, unless it beats the provisional assessment by 20% or more.[15] Summary assessment is required in many cases, including complex multi-track applications and appeals. The working group bore all these factors in mind in deciding on its methodology. The broad spectrum of evidence obtained has assisted it in recommending new GHRs in full cognisance of the fact that assessing judges will use them as a guideline or starting point.

2.9. It was understood that the information being sought might be influenced by the existing GHRs. Any such input from the existing GHRs will, however, be very substantially diminished by the expertise of specialised Costs Judges, together with the fact that the existing GHRs are 10 years out of date. However, the possible influence of the outdated GHRs, together with a desire to obtain other sources of evidence, led the working group to seek information of rates claimed, rates suggested by the paying party and rates agreed by legal professionals.

2.10. The working group, aware that it did not have a Welsh representative, consulted DJ Marshall Phillips, the Regional Costs Judge in Cardiff. He said that he could not think of anything which needed to be considered from a Welsh perspective.

---

[13] It is important to note that provisional assessments are in fact detailed assessments carried out on paper with a right to make a written request for an oral hearing. However, in this report, the term 'detailed assessment' will, for economy of language, refer to all detailed assessments save those which are regulated by the procedure at CPR r47.15 and PD 47 para 14.

[14] CPR 47.15; PD 47 para 14.1.

[15] CPR 47.15 (10).

Section 3: Methodology

3.1. In obtaining evidence the first port of call was to enlist the assistance of the (then) 8 Senior Courts Costs Office (SCCO) Judges, the SCCO Costs officers[16] and the 26 Regional Costs Judges (RCJs) across England and Wales. A list of RCJs as at 1st December 2020 is contained in Appendix B. A copy of the letter sent to these Judges is attached as Appendix C.

3.2. The key section of the letter sent to Judges is as follows:

> *"GHRs are an important tool for assessing costs. They are particularly useful as a guide for Judges who are inexperienced in that area. What experienced Judges such as you in fact allow across a range of cases will be a highly important contribution to the report which the working group has to prepare.*
>
> *To that end, I am requesting you to complete the attached form electronically after every such assessment between 1st September 2020 and 27th November 2020…"*

3.3. A copy of the form which the Judges were asked to complete is attached as Appendix D.

3.4. The evidence from the SCCO/RCJs is for rates allowed on provisional and detailed assessment. It was not considered practicable to try to obtain from these Judges evidence on any summary assessments they may do in the relevant period.

3.5. In addition, the working group considered other sources of evidence. These were from members of the legal profession. A letter and forms for completion were sent to a number of organisations, listed at Appendix E. There have been at least 3 articles on the working group's work in the Law Society Gazette (17 April 2020, 11 May 2020 and 19 October 2020), and notices in the ACL News (10 September 2020) and the Costs Lawyers Standards Board September 2020 Newsletter. Also, some individual firms

[16] There are 12 costs officers, including the Principal Costs Officer, but only 2 of the costs officers assess civil between the parties bills (the rest do Court of Protection and legal aid bills).

were contacted directly. The letter to the profession and the forms they were asked to complete are attached in Appendix F.[17]

3.6. The profession was asked to provide two pieces of information, one historical covering the period 1 April 2019 to 31 August 2020, the other prospective, covering the period 1 September 2020 to 27 November 2020. In addition to the same information requested from the SCCO/RCJs, (i) summary assessment evidence was sought and (ii) the information was to include rates which were either awarded by the court at an assessment hearing or were agreed between the parties after the commencement of the assessment process.[18] It was recognised that absent a hearing most settlements would be in a lump sum. However, if professionals had agreed hourly rates, these would be relevant evidence of reasonable rates which should be taken into account in our recommendations,[19] particularly as many detailed assessments settle after Notice of Commencement and prior to the hearing. In addition, the letter to professionals sought evidence on rates claimed and rates proposed by paying parties.

3.7. It was appreciated that the above methodology would not produce much evidence for assessments of cases in the Business and Property Courts ('BPC'). Of course such work often falls within the ambit of paragraph 29 of the (proposed revised) Guide.[20] This is particularly so having regard to the enormous variety in the work of the BPC courts and the range of claim values, which can reach billions of pounds. Nevertheless, and in particular since it was a TCC case which was the catalyst for this review, the working group decided to seek evidence over a snapshot period of a few weeks on the hourly rates Judges awarded on summary assessment cases in the BPC. A copy of the letter and form for completion sent to the BPC judges are attached as Appendix G.[21] Letters

[17] Evidence was sought on GHRs assessed or agreed on an assessment. The experience of the working group was that, if there is a contested assessment, GHRs are usually in issue and have to be the subject of a ruling.
[18] See CPR 47.6 'Commencement of detailed assessment proceedings'.
[19] See current Guide para 10. "The fact that the paying party is not disputing the amount of costs can be taken as some indication that the amount is proportionate and reasonable".
[20] Appendix J, see below: Cf Para 43 of the current Guide.
[21] Cockerill J, the Judge in charge of the Commercial Court, pointed out the particular approach of that Court given the size and

were received from a small number of city commercial firms. The point was made about the difficulty of the limited number of detailed assessments and the fact that agreement as to costs was generally global and did not condescend to details of hourly rates. As expected there was relatively little information received by the working group from City of London commercial firms – see below.

3.8. The working group realised at the outset that the overall reliability of the evidence produced may suffer from shortcomings. These include:

(a) The relatively small number of cases that result in a detailed assessment may not be representative of the hourly rates effectively paid between parties by agreement. Further, the majority of cases where costs are agreed do not specify or record any hourly rate agreement. Costs are agreed in a global sum.

(b) Hourly rates awarded by Judges may be 'contaminated' to some extent by reliance on the 2010 GHRs with some uplift for inflation.[22]

(c) Insufficient data on which to form sound recommendations.

3.9. Once the approach to evidence-gathering was published the working group received a number of letters. Some of those letters were from legal representatives and bodies with a particular interest in acting for insurers, often in the personal injury sphere. There were concerns expressed. It is convenient to address those at this stage.

3.10. One theme was to request the working group to receive evidence of cost/profit. This could not be done as, once embarked upon, it would encounter precisely the same difficulties as the Foskett committee.

3.11. Another was that the hourly rates allowed by Costs Judges represent only a very small

---

complexity of the issues with which it often deals such that the form provided would be difficult to complete. She said that what the Commercial Court Judges therefore envisaged (i) to give the rates asked for by the parties and (ii) add a note explaining what % the judge gave overall and how the hourly rates fed into the decision.

[22] One correspondent referred to his concern that : "..using a dataset of historic hourly rates will only serve to "bake" into any new GHR the overheads and inefficient business practices of pre-COVID business models that are changing as a result of digitalisation and remote working"."

percentage of the hourly rates paid by parties in the vast number of cases. It was also suggested that those that do go to detailed assessment may be cases with complicating factors. We have mentioned the latter point in 2.8 above. However, (a) the working group was seeking to follow the traditional basis of the GHRs, i.e. what experienced Costs Judges do in fact award and (b) the evidence sought included evidence from the profession of hourly rates agreed between the parties. Of course, often such rates are not expressly agreed, since costs agreements generally deal in global sums. Nevertheless, substantial historical evidence was received from the profession and that is considered below.

3.12. Another suggestion was that the report be paused because of the effect Covid-19 was having on the business models of solicitors' firms. It was not within our remit to pause the review. Nor did we believe it to be necessary or appropriate. We have taken this factor into account in our recommendation for a further review within a relatively short period of time.

3.13. Fixed Recoverable Costs ("FRC") are still under review and are said to be likely to extend to cases of up to £100,000 in value. A pause of our review was therefore suggested to await the outcome of new provisions on FRC. Again, this is not within our remit; nor is it necessary or appropriate. We were required to report by Trinity term 2021 by conducting an evidence-based review of the basis and amount of GHRs.

3.14. In the field of costs, there will almost always be new initiatives and reasons to pause a review of GHRs so as to take account of them. The working group, apart from not being permitted by the terms of reference to delay reporting, takes the view that pausing for such matters would be a real failure to grasp the nettle which it has been charged to handle.

3.15. DWF, solicitors, sent a document said to be a representative sample of the settled costs data from April 2019 to October 2020. In their summary of the data, they made a number of points. Some reflected those made by other correspondents but, in addition, they included these: (a) reductions of 30% were made to profit costs claimed

suggesting that rates claimed are not reflective of rates paid on settlement; (b) hourly rates agreed are typically 18% lower overall that rates claimed and 21% lower for grade A; (c) their agreed rates broadly mirrored existing GHR to within a margin of less than 1.5%, save for a margin of 2.6% for Grade B; (d) hourly rates claimed for London firms were broadly 25% higher than for provincial firms and, on settlement, were reduced by an average of 20% compared with 15% for regional firms – they suggested that this perhaps indicated that London rates do not 'need to be set so far adrift from the provincial rates';[23] (e) reliance on counsel should lead to a commensurate reduction in time spent/rates claimed;[24] (f) where a Costs Management Order (CMO) is in place hourly rates are reduced on average by 12%, compared to 17% in litigated case where no CMO is in place. Comments on the DWF data are in Section 4.

FOCIS

3.16. The Forum of Complex Injury Solicitors (FOCIS) expressed a number of concerns. Their primary concern was that the exercise involves a significant risk of circularity, "as virtually most or all rates allowed or agreed in recent times will have been dragged down by the legacy of the now aged and flawed GHRs." They quoted, as illustrating the point, the comments of Master Rowley in *Shulman -v- Kolomoisky* that "*there is rarely any other starting point offered by the parties to the court when considering the appropriate level of hourly rates".*[25] The GHRs are of course a 'starting point', but they are not a finishing point. The working group sought evidence primarily from experienced Costs Judges and the profession. It did not seek evidence from Judges inexperienced in costs, where the risk of circularity would be greater.

3.17. FOCIS referred to the case of *PLK & Ors*,[26] as a case in which Master Whalan considered the appropriate hourly rate for Deputies in Court of Protection matters,

[23] They said this was relevant to overheads given changing work patterns and more home working.
[24] DWF suggested that this point reinforced 'that GHR cannot be looked at in isolation, the wider picture must be considered as part of the review'. The working group's view is that the effective use of counsel is a matter for the Judge on assessment. It is not possible to cater for it in this report.
[25] [2020] WL 06036091.
[26] [2020] Costs L.R. 1349. Mr Russell Caller, solicitor at Gilhams LLP and representing the Professional Deputies Forum kindly forwarded to the working group his witness statement dated 11th May 2020 which had been before Master Whalan.

"…where it remain(ed) the case that the GHR was his start point". In that case the Master was provided with a large volume of evidence.[27] He was "not satisfied that the evidence supports ...[the] contention that COP firms have experienced 'a significant increase in hard and soft overheads'...". With some qualifications and recognition of the pending role of this working group, he decided on the evidence before him that

"….in 2020 the GHR cannot be applied reasonably or equitably without some form of monetary uplift….my finding and, in turn my direction to Costs Officers conducting the COP assessments is that they should exercise some broad, pragmatic flexibility when applying the 2010 GHR…If the hourly rates claimed fall within approximately 120% of the 2010 GHR, then they should be regarded as prima facie reasonable. Rates claimed above this level will be correspondingly unreasonable…" [29], [35]

This case demonstrates that the Master looked carefully at the evidence before him and made his decision on that evidence.

3.18. FOCIS suggested that the working group should rather consider a reasonable market rate for differing types and scale of (multi-track) claim, and if clients are actually charged the between-the-parties cost shortfall as an indicator of whether the market rates are artificially inflated or deflated by the rates allowed by the courts. It is correct that the Jackson report made reference to market rates,[28] but the problem is that its definition of them was "...the rates which an intelligent purchaser with time to shop around for the best deal would negotiate". This is an elusive concept and not one which can be satisfactorily arrived at by considering the rates which a number of solicitors in the field/ geographical area agree with their clients.[29] Further, detailed information on whether and to what extent clients are actually charged the shortfall between costs agreed and costs recovered from the other party is difficult to come by.

3.19. FOCIS submitted data relating solely to complex injury claims with claim values more than £250,000.[30] This, FOCIS said, was to reduce the risk of decisions being made

[27] See judgment at [18]-[19].
[28] See para 2.4 above.
[29] DWF, on the basis of their data, albeit from a large basket of cases, though including higher value damages claims, seriously contest using rates claimed by claimants' solicitors.
[30] The data did not name the firms who had submitted the data to FOCIS. It comprised 52 returns from solicitors across a wide geographical location in the country.

solely in relation to personal injury data dominated by lower value claims. FOCIS said that the data showed that the market rate (with regional variations) for complex injury specialists is markedly higher than GHR (in the applicable region); further, that the rates allowed are, in most cases, well above GHR, but less than the market rate. FOCIS said that the rates allowed are still dragged down by arguments relating to the GHR and that most complex injury clients with claims post LASPO[31] are liable for own costs shortfall - hence the market rates are real client rates, not artificial rates set to maximise between the parties cost recovery. In addition FOCIS said that: (a) the duration of complex injury cases is typically 2 to 9 years and this significant delay in payment is a factor in justifying the market rates for complex injury claims; (b) there are very few other types of litigation where such lengthy deferred payment is the norm;[32] (c) courts do not award any interest on pre-judgment solicitors costs in CFA retainer injury claims. Consequently the hourly rate is the only consistent way for firms to recover the real cost of their business relating to such lengthy periods of deferred payment. FOCIS concluded that it considered complex injury claims to have more in common with other high value and complex forms of litigation than with lower value injury claim. FOCIS suggested that a party to a multi-track claim who makes a reasonable choice of solicitor for this type and scale of claim ought to be able to recover at up to market rate for that work, else the full compensation principle is eroded. The context was:

"These are claims of the utmost importance to our clients who have sustained life-changing disabling injuries and are reliant on the claim outcome to provide for their future financial wellbeing and care needs. It is consequently very important that they are able to instruct solicitors with genuine expertise in catastrophic injury claims."[33]

APIL

3.20. The Association of Personal Injury Lawyers (APIL) sent a submission. APIL made a

[31] Legal Aid, Sentencing and Punishment of Offenders Act 2012.
[32] FOCIS added that whilst it could be said that the deferred payment could alternatively be added to the success fee, the reality is that does not work in practice because the success fee cap is routinely hit, as it is limited to 25% of general damages and past losses, which are a small proportion of the value of (and work related to) most complex injury claims.
[33] Citing Mrs Justice O'Farrell in *Ohpen* at [15].

number of points which have already been canvassed, or are canvassed elsewhere in this report. In addition APIL said that the decisions in *Ohpen*, *Shulman* and *PLK* corroborate its 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. For firms to provide a high standard of service to their clients they need to be able to charge a rate that enables them to make a profit or they will cease to trade". APIL also made reference to the recent case of *Cohen* (see below) and provided statistics on inflationary increases on the present GHRs. APIL's submission included data from 46 firms giving details of average charge rates for personal injury and clinical negligence work, rates for specialist work and, if a firm conducted non-personal injury work, the rates charges in other areas. It said that its position was that obtaining data on market rates can provide an up to date indication of the real rates being charged in the sector. On its data it suggested that 62% of other multi-track rates are higher than those charged for personal injury work and that this, and other points, "undermine(s) one of the key concerns expounded by defendant personal injury lawyers: that conditional fee agreements (CFAs) act to artificially inflate the hourly rates claimed upon assessment by claimants. It is clear from our data that the hourly rates that a claimant would actually pay his solicitor for the services provided are much lower than hourly rates which would be agreed with and regularly paid by the same individual for other types of work at the same firm." APIL provided various graphs: (i) two of the average market rate for fast track and multi-track personal injury cases percentage increase on present GHRs, showing, across the country (excluding London 1 and 2 – for which APIL had insufficient data) increases of between 2% and 24% for fast track and between 19% and 39% for multi-track – the non-weighted averages (i.e. simply dividing the percentage in each area by the number of areas) being 15% and 26% respectively, (ii) two graphs showing (1) the average multi-track and (2) the average fast-track rate difference between personal injury and other types of work. The other types of work included tax, private client work, property commercial and company commercial. In respect of the additional information in APIL submission, the working group responds that the APIL data was not the data sought in the working group's methodology; the problem with taking

market rates as the yardstick has been dealt with above in paragraph 3.18; it is not proposed (save for London 1 - see section 4 below) to have different rates for different types of work, the recommended rates being based on all types of work; the relevant case law is considered in some detail later in this report.

3.21. The main points made by FOCIS, and to some extent by APIL, have been present since the inception of GHRs. The working group is of the view that the GHRs have hitherto correctly never provided different rates for different type of work, the concept being that they should be a simple guide and subject always to the provision in paragraph 29 of the proposed revised Guide.[34]

Summary

3.22. In addition the working group membership reflected a wide range of interests and contained a vast reservoir of costs experience on which to draw in considering and evaluating the evidence.

3.23. Finally, if its recommendations are accepted, the working group is confident that Judges who have to assess costs will have proper regard to the new GHRs but will (a) appreciate that they have been and always will be no more than a guide, (b) have due regard to para 29 of the proposed revised Guide and (c) exercise skill, care and common sense in the assessment of costs.

3.24. With those observations we now consider the evidence received and its analysis.

[34] Appendix J, see below. Cf para 43 of the present Guide. However, note in this context the proposed change to London 1 below.

Section 4: Evidence received and conclusions

4.1. The working group interprets its terms of reference[35] as requiring it to exercise judgement in deciding how to obtain evidence, in reviewing the evidence obtained and then deciding on its recommendations.

4.2. As set out above in sections 2 and 3, the working group considered carefully the best way to obtain data and took account of representations made by correspondents in relation to the obtaining of such data.

4.3. Attached as Appendix H is the detailed analysis of the data received, as carried out by Professors Fenn and Rickman.

4.4. The working group examined a number of matters in reviewing Appendix H. These matters are summarised in the following paragraphs.

4.5. First, leaving aside London 1 and 2,[36] which are dealt with separately below, the data sample sizes were sufficient (though a few were borderline sufficient) to allow reasonably precise estimates of the population means, i.e. the mean assessed hourly rates across all cases within a given grade/band area combination.[37] The degree of precision in each case can be represented by 95% confidence intervals as graphically represented in Appendix H.

4.6. Secondly, as one might expect, the standard deviation around the mean reduced from being at its highest at grade A to its lowest at grade D. This is consistent with more discretion being exercised by the judiciary in deciding on hourly rates (and perhaps practitioners in agreeing them) in relation to the higher fee earners.[38]

4.7. In paragraph 8 of the introductory text in Appendix H, Professors Fenn and Rickman say:

---

[35] See paragraph 1.13 above.
[36] London Band Grades: City of London, Central London and Outer London are, for ease of reference, referred to as London 1, London 2 and London 3, respectively.
[37] Professors Fenn and Rickman advised that the use of the mean was more appropriate but, in any event, given that the distribution of data was reasonably symmetrical there would not be a great difference between mean and median figures. Of course, the mean figures by their very nature encompass a range of results, both higher and lower than the mean.
[38] This is reassuring and indicates that paragraph 43 of the present Guide is respected.

> "Preliminary multivariate analysis of the data suggests that the assessed/agreed hourly rates are significantly lower for cases with provisional assessment by comparison with cases with detailed assessment…"

Provisional assessments are limited to cases where the costs do not exceed £75,000, though some provisional assessments will include large and complex claims which have settled at a relatively early stage. Further, a party dissatisfied with a provisional assessment can request an oral hearing, though at some risk as to the cost of that hearing.[39] The working group was of the opinion that the data from detailed assessment proceedings, both provisional and detailed assessments, together with the data provided by professionals, properly formed part of the picture. This was reinforced by the fact that in the national figures the results from the professional data and the judicial data were quite similar across the grades.[40]

4.8. For London 1 relatively little data was received in response to the letter to professionals. For London 2 it was much less.[41] Some London 1 data included personal injury solicitors who are geographically based in the City of London but who, so the working group were informed by the Senior Costs Judge, present their bills on the basis that they are London 2 firms.[42] The working group therefore asked Professors Fenn and Rickman to include this data in their tables for London 2 rates. The re-worked data from tables 1a and 2a are set out in table 5a.[43] The same was done with FOCIS London 1 data, for the same reasons. Adding in the FOCIS London 1 data[44] as well to London 2 gave the overall professionals' data for London 1 and London 2 contained in table 5b. Finally, the judicial data was pooled with the table 5b professionals' data, so as to produce table 5c.[45] These revisions resulted in an internally more logical outcome for

[39] See paragraph 2.8 above.
[40] Cf Appendix H tables 1a-1b, 2a-2b.
[41] See Appendix H Note 2.
[42] Though often asking for rates higher than the present GHR for London 2.
[43] Only the professionals' data could be so re-allocated. The judicial data was not sufficiently clear to enable this to be done. This means that London 1 in tables 1b and 2b is likely to include personal injury work.
[44] From table 6. As the note to that table makes clear, the FOCIS evidence was insufficient in sample size to permit firm conclusions. From the number of cases available it does demonstrate that Costs Judges tend properly to take into account the complexity and value of claims in allowing costs above the GHRs. In any event, for the reasons set out in section 3 of this report, the working group did not accept that there should be separate GHRs for the work reflected in the FOCIS data.
[45] Although the relevant data for London 3 and the National figures are reproduced in tables 5a-5c, they are unchanged from tables 1 and 2.

London 2 in that: (a) the figures for London 2 represent a reasonable percentage increase on present rates, broadly in line with other bands; (b) if the data had been used for London 1, these rates would have substantially reduced in Grades A-C, being the only such rates of any in the country (see table 2a and 2c). Even as re-worked in tables 5a and 5b, London 1 data were out of step with all other data.

4.9. London 1 data in table 5a included a total of 95 cases. Some 60% of these were commercial cases. Of the commercial cases, only about 20% included the value of the claim. Of those that did include the value of the claim, 27% were claims for under £1m, the mean being just over £4m.[46] This brief analysis shows that, absent the judicial data, for London 1 there was very little evidence on large commercial work. Macfarlanes LLP wrote a detailed letter. Apart from some matters to which reference has already been made in section 3 above, they made these points: (a) they did not have any data from detailed assessment or agreements on hourly rates during the period requested and they believed that this would be the case for City of London firms; (b) the fact that most disputes settle does not mean that GHRs are irrelevant to them as the rates are inevitably considered by the parties in settlement negotiation; (c) in *Ohpen* the rates claimed are reported to have been roughly double the amount provided for in the present GHR and the Judge did not reduce costs by reference to the hourly rates claimed; (d) in *Shulman* at [35] Master Rowley said of *Ohpen*: "I should be slow to draw any conclusions about the hourly rate she considered to be appropriate based upon the fact that she did not expressly alter the rates claimed". He allowed £750 for Grade A, £400 for Grade C and £200 for Grade D. He said at [17] "Other than the size of the case,[47] it does not seem to me that the second defendant has made out that the litigation was at all out of the mainstream that might be

[46] There were two Part 7 Claims/Unfair Prejudice Petitions valued at over £100m. The rates for those cases were Grade A claimed at £650 and £616.90, assessed at £650 and £575; Grade B £295 and £337.50 (assessed as claimed); Grade C claimed at £270 and £225 (assessed as claimed); Grade D £122.50 and £145 (assessed as claimed).

[47] The Claimant said USD 500 million, the Defendant accepted tens of millions of pounds. The case litigation settled at a relatively early stage. The Master said: "15. The claim brought by the claimant was clearly of a significant sum, however it might ultimately have been quantified, if the proceedings had gone any further.
The size of the case and its international flavour clearly justified the use of City solicitors to conduct the litigation…."

expected to be dealt with by City solicitors"; (e) in their experience "the hourly rates claimed in *Ohpen*, and allowed…. in *Shulman*, are at the bottom end of the spectrum of hourly rates charged by leading City law firms. The hourly rates claimed in *Shulman* (ranging from approximately £250 to over £1000) are closer to current market practice and are more reflective of the overheads that City law firms have to pay"; (f) proportionality of costs is much less of a problem in complex and high value commercial disputes.

4.10. The subset evidence from the BPC Courts is summarised in table 6. It was obtained over a period of 3-4 weeks in November 2020. On this table, the only area which is sufficiently statistically robust on which to base conclusions is London 1. The difficulty with London 1 is that it covers a vast range of work of varying complexity and size. The overall data has been difficult to obtain from professionals, perhaps because so little goes to detailed assessment (including provisional assessment under r 47.15), particularly in the very large cases, and hourly rates are even less likely to be agreed as a separate item than is the case in other areas and for different types of work. The majority of the London 1 BPC evidence in table 6 is based on the judicial summary assessment rates. The working group concluded that the proper approach to London 1 and London 2 was to re-define London 1 by nature of work by centrally based London firms, rather than by geographical location in the City, and to use the BPC data as the recommended GHRs for such work. London 1 would primarily be for very heavy commercial and corporate work, whether undertaken by firms geographically located in the City or central London. London 2 would be for all other work carried out by firms geographically located in either the City of London or the area at present covered by London 2. Reasons for this can be summarised in this way:

(i) It reflects the present practice whereby the very heavy commercial work attracts London 1 rates wherever in central London the solicitors are geographically located. This is evidenced by comparing the data results for London 1 in tables 2, 5 and 6 (BPC), the experience of the Senior Costs Judges,

the remarks of the Master in *Shulman*[48] and the comments of Senior Costs Judge Hurst in *King v Telegraph Group Limited.*[49]

(ii) Conversely, it reflects the present practice for rates for other work, again whether the solicitors are in the City or in the present London 2 area.

(iii) The confusion in the data for London 1 and London 2 (and lack of data for London 2) if attempts are made to assess the evidence on the traditional geographical areas. This is exemplified by comparing the results in tables 1c and 2c on the one hand with table 6 on the other.

(iv) The data, obtained primarily from BPC judges, for London BPC work reflects a somewhat larger percentage increase over present GHRs than in other areas, but that is to be expected by the redefinition of London 1 and London 2.[50]

4.11. How then to recommend GHRs for (the new) London 2? The results of the professional data re-allocated from table 2a to tables 5a-5c provided, as already stated, a more logical outcome. There was practically no judicial data on the present London 2. It was not possible to re-allocate judicial data covering London 1 to London 2. However, in table 5c is a pooling for London 2 of (i) table 5b evidence and (ii) such sparse judicial evidence as there was for London 2. The table 5c results for London 2 are then (a) broadly in line with the increase in rates in London 3 and the regions and (b) are not dissimilar to the present London 1 data in tables 1a-1c and 2a-2c, that data covering a very wide range of work but with little very high level commercial work.[51]

4.12. The working group recognised that there are anomalies in the present boundaries for

---

[48] "Whilst Canary Wharf may be located in a postcode outwith those allowed by the Guideline Rates for the City (EC1 to EC4), the presence of firms such as Skadden and Clifford Chance as well as many multinational financial institutions inevitably leads to the conclusion that rates equivalent to those to be found in the City are much more appropriate."

[49] [2005] EWHC 90015 (Costs) at [92]: "City rates for City solicitors are recoverable where the City solicitor is undertaking City work, which is normally heavy commercial or corporate work. Defamation is not in that category, and, particularly given the reduction in damages awards for libel, is never likely to be. A City firm which undertakes work, which could be competently handled by a number of Central London solicitors, is acting unreasonably and disproportionately if it seeks to charge City rates."

[50] Though not statistically significant in themselves, the BPC data on London 2 in table 6 are, as one would expect, in line with the BPC data for London 1.

[51] See paragraph 4.9 above.

London 2 and London 3, partly because of the London 2 boundaries being so circumscribed. A future review should carefully consider evidence on geographical location, particularly within London. Such future review should take into account changes in working practice brought about by new technology, the sequelae of the Covid-19 pandemic and the HMCTS reform programme. Meanwhile, costs judges will no doubt continue to take into account the nature, complexity and location of the work when assessing complex high-value work carried out by firms which are based in areas of central London but are located in London 3.

4.13. The rates in National 1 and National 2/3 have substantially converged.[52] The working group regarded the results as somewhat counterintuitive and wondered whether the results would be replicated on a future review. Therefore on balance it was not considered appropriate to recommend merging National 1 and 2 into a single national band. However, this is a matter on which responses are particularly requested during the consultation period. If National 1 and 2 are to remain, it may be that on the next review the question of a single national rate can be revisited in the light of expected changes in working practice over the next few years.

4.14. Data received from DWF was tabulated separately in tables 3 and 4 and not included in the other tables. It was presented in a different format from that sought in the Appendix F form sent to professionals.[53] A result of this was that if a rate was claimed at (e.g.) Grade A but the grade of fee earner was in dispute such that grade B was allowed, this was represented on the DWF data as a Grade A level agreed rate. If the same had happened on an Appendix F form, it would have been entered as a Grade B rate. The effect in those cases is to compare apples with pears.[54] Further, the note on the DWF tables 3 and 4 in Appendix H is a very important qualification in that 96% of

[52] Cf tables 1c and 2c. One factor is that on the judicial data in tables 1b and 2c there is a not insubstantial difference of Grade A rates, being £270 for National 1 and £247 for National 2. 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.
[53] Appendix F.
[54] The DWF data split the data into a number of rates, most of which were rate 1 or rate 2. A quick check carried out by a judicial member of the working group suggested that that the grade reduction arose in about 22% of the figures for Rate 1 and 12% of the figures for Rate 2.

the data resulted from agreement rather than from assessment. This is in contrast to the data in tables 1 and 2 where the majority is from assessment rather than agreement. The DWF rates are lower than the rest of the data, in fact not much different from the 2010 GHRs. Also, it was the experience of the working group that receiving parties are more likely to agree lower rates than they would achieve at assessment, so as to secure early payment and not expend further time and costs embarking on detailed assessment proceedings. Of course, it may imply that some firms doing the type and standard of work reflected in the DWF figures may still operate at a profit on those rates. The DWF evidence may be an indicator that the modest increases recommended in this report are sensible and appropriate.

4.15. The working group specifically considered the regional BPC courts. It concluded that there could not be recommended GHRs for the regional BPC courts which differ from the national 1 rates. This was because: (i) There was insufficient data for the regional BPC courts, (ii) Such data as was received, comparing Table 6 with table 1c and 2c, was generally in line with national rates;[55] (iii) the Judges who assess regional BPC rates are experienced BPC practitioners and can properly take into account the GHRs in deciding whether to award higher rates according to the provisions of paragraph 29 of the proposed new Guide; also if a case comes within the definition of a (new) London 1 case, those rates may also properly be considered so as to justify a yet higher rate. A concern is that solicitors may issue a regional BPC case in London so as to attract higher GHRs. In that regard the working group reproduce here paragraph 30 of the (proposed new) Guide as follows:

> "In a case which has no obvious connection with London and which does not require expertise only to be found there, a litigant who unreasonably instructs London solicitors should be allowed only the costs that would have been recoverable for work done in the location where the work should have been done: *Wraith v Sheffield Forgemasters Ltd* [1998] 1 WLR 132 (CA). It follows that a party who instructs London solicitors to pursue in London a claim which concerns a dispute arising outside London and which was suitable to be heard in the appropriate regional specialist court should also be allowed only the costs that would have been recoverable for pursuing the claim in that regional court

[55] National 1 table 2c Grades A-D (263, 221, 182, 127); National 1 table 6 Grades A-D (287, 218, 174, 114).

(and see Practice Direction 29 para 2.6A)."

4.16. The working group accepts that the data as thus explained is a reasonable summary of what the system produced between April 2019 and November 2020 (professional data) and September 2020 to November 2020 (judicial data). It is accepted throughout this report that valid criticism can be made of the methodology. It is, nevertheless, encouraging that the outcome figures in tables 1 and 2, save for London 1 and London 2, based as they are primarily on assessment by experienced judges, with some information of agreement between professionals, are reasonably consistent and robust.

4.17. The data analysis should by no means mandate the working group's recommendations. Factors examined were:

(i) The working group must evaluate all the evidence in coming to its recommendations. It must also take account of the representations received and summarised in section 3 above.

(ii) That evaluation is reflected in the preceding paragraphs. In particular the working group has had to use its experience and judgment in dealing with the approach to the London 1 and London 2 rates.

(iii) The working group considered the effect of inflation on the 2010 rates. An important difficulty with this is that the 2010 figures were more historic than evidence-based. Hence the baseline figure is seriously open to challenge. Nevertheless, the increase from 2010 (Q1) to 2020 (Q3) was, 13% using the Service Producer Price Index (SPPI) for all services, 17% on SPPI (for professional services), 34% on SPPI (legal services) and 24% using the Consumer Price Index.[56]

(iv) Further, on the evidence before Master Whalan in *PLK and Ors*,[57] his

[56] A helpful note on inflation price indices, prepared by Professor Rickman, is at Appendix I.
[57] See paragraph 3.17 above.

conclusion for Court of Protection assessments was that hourly rates falling within approximately 120% of the 2010 GHR should be regarded as prima facie reasonable.[58]

(v) Those percentages compare reasonably with the grade A percentage increases yielded by the data in Appendix H.[59]

(vi) Any other adaptation of the data results would not be based on evidence and/or clear shared experience.

4.18. Taking all those factors together, the working group concluded that the pooled data from experienced judges and professionals in Appendix H[60] were, generally speaking, the best evidence upon which its recommendations should be made, the only exception being London 1 and London 2. The recommendations of the working group are therefore set out below. The working group is of the opinion that these recommended GHRs will give to the inexperienced judge a better steer, by providing a simplified scheme to assist such judges without them being a substitute for the proper exercise for judicial discretion. The numbers in brackets represent the mean percentage difference from the current GHRs.[61] It can be seen that, despite the proposed redefining of London 1, apart from Grade D, the percentage increases for that area are not comparatively too high. The Senior Costs Judge's view is that for London 1 work, the rate to be allowed for Grade D should be in the region of £165-£170. That would represent an increase of 20%-23% on the present GHR which would be more in line with percentage increases generally in the table below. The working group was loath to depart from the evidence of the mean based on the data, but seeks consultation responses on this specific matter.

---

[58] In *Cohen v Fine and ors* [2020] EWHC 3278 (Ch), a BPC case, HH Judge Hodge QC, pending this review, allowed 35% increase on 2010 GHRs based on the Bank of England calculator. Unlike Master Whalan in *PLK,* he did not have the benefit of evidence and based his decision on his experience of sitting in the BPC in London and the North West.

[59] The percentage increases for grade A were greater than those for grade B, for grade B more than grade C, and for grade C more than for grade D.

[60] Tables 1c and 2c.

[61] The comparison with present rates is of doubtful value since the 2010 baseline GHRs were not evidence- based. Cf paragraph 4.17 (iii) above.

	Grade A	Grade B	Grade C	Grade D
London 1[62]	£512 (25.2%)	£348 (17.6%)	£270 (19.5%)	£186 (34.8%)
London 2[63]	£373 (17.8%)	£289 (19.5%)	£244 (25%)	£139 (10.4%)
London 3[64]	£282 (13.7%)	£232 (15.8%)	£185 (11.9%)	£129 (7%)
National 1	£261 (20.2%)	£218[65] (13.5%)	£178 (10.7%)	£126 (6.8%)
National 2	£255 (26.78%)	£218 (23.2%)	£177 (21.3%)	£126 (13.5%)

[62] Table 6.
[63] Table 5c.
[64] Tables 1c and 2c for London 3, National 1 and National 2.
[65] See footnote 52 above.

Section 5: Geographical areas

5.1. The proposals to change the definition of London 1 and London 2 have been set out in detail in section 4. This section deals with other matters relevant to geographical areas.

5.2. The working group's work took place against the backdrop of the pending HMCTS reform programme which is intended to change radically the way in which litigation is conducted and during the Covid-19 emergency. Both of these are likely fundamentally to affect the way in which the legal profession provides its services. In those circumstances, it was not considered sensible or possible to make further changes of substance to the existing geographical areas. Nonetheless, the working group concluded that it should correct what it perceives to be some obvious anomalies.

5.3. The first anomaly is that the GHR for National Bands 2 and 3 are the same and will remain the same under the working group's recommendations. There appears to be no reason why they should not be merged. Therefore it is proposed that National Band 3 should disappear and be merged into National Band 2.

5.4. Next, there are omissions in the present list. Geographical areas relevant to GHR bands are currently identified in 4 ways:

(a) By reference to a specific town or city: e.g. Bradford

(b) By reference to a part of specific city:

(i) Birmingham (inner and outer)

(ii) Cambridge (city and county)

(iii) Cardiff (inner and outer)

(iv) Chelmsford (North and South)

(v) Hull (city and outer)

(vi) Leeds (inner [within 2 km of the Art Gallery] and outer)

(vii) Manchester (central[66] and outer)

(viii) Newcastle (city centre [within 2 miles of St. Nicholas Cathedral] and "other than city centre")

(c) By county: Cambridgeshire ("Cambridge county"), Cornwall, Cumbria, Derbyshire, Devon, Dorset, Essex, Hampshire, Norfolk, South Yorkshire, East Suffolk, Wiltshire

(d) By region: Thames Valley

5.5. It follows that large parts of the country (including for example Northumberland, Durham, North Yorkshire, Lincolnshire, Nottinghamshire, Lancashire, Merseyside, Greater Manchester, Cheshire, Shropshire, Staffordshire, Herefordshire, Worcestershire, Warwickshire, Northamptonshire, Gloucestershire, Bedfordshire, Hertfordshire, Somerset, Surrey, West Sussex, East Sussex and Kent) are, except for named towns or cities, not allocated to a band.

5.6. Although there are a number of others, some 44 towns or cities where fee earners are likely to be based ("centres") have been omitted.

(a) In West Sussex, East Sussex, Kent and Surrey, Staines, Crawley, Horsham, Worthing, Hove, Brighton, Hastings, Ashford, Sevenoaks, Folkestone, Dartford and Thanet are omitted.

(b) In the Midlands, Lincs and Notts: Cannock, Leamington Spa, Loughborough, Wellingborough, Boston, Mansfield and Newcastle under Lyme are uncategorised.

(c) In Bedfordshire and Hertfordshire: Stevenage, Hatfield and Yarl's Wood are omitted.

(d) In North, East and West Yorkshire: Northallerton, Beverley and Bridlington are omitted.

(e) In Durham and Northumberland, Durham, Darlington, Newton Aycliffe, Peterlee,

[66] Manchester Central is a parliamentary constituency and a former Designated Civil Judge area

Sunderland, Gateshead, South and North Shields and Bedlington and Berwick upon Tweed are omitted.

(f) In Cheshire: Crewe, Warrington and Bootle, are omitted.

(g) In Lancashire and Greater Manchester, Leyland, Rochdale, Reedley and Fleetwood are omitted.

(h) In the South West, Weston-Super-Mare is excluded. The Isles of Scilly are not expressly included but fall within the ceremonial county of Cornwall.

5.7. The following solution is proposed pending any further review:

(a) The counties of Kent, East Sussex, West Sussex and Surrey should become National Band 1 counties. Medway, Maidstone, Canterbury, Lewes and Guildford are the only identified centres in those counties and each is categorised as National Band 1[67].

(b) Existing National Band 1 counties and other identified National Band 1 centres will remain in National Band 1.

(c) All other areas will be/remain in National Band 2.

5.8. Figure 1 is a map showing the HMCTS estate by regions and county which identifies geographical areas (and places) presently provided for and unallocated or excluded centres. The map legend identifies the location of the present and historic HMCTS estate. The map is a convenient representation of relevant locations but its legend can be ignored.

5.9. Figure 2 shows the broad effect of the proposed changes. Areas (and cities) in red will be National Band 1 and everywhere else will be National Band 2.

[67] Though Gravesend and Dartford are in Kent, they have been included in Outer London in the existing and earlier GHRs. It is proposed therefore that they be retained in London 3.

5.10. The working group has dealt with these perceived anomalies as best it can without any outside assistance.[68] It asks that particular scrutiny be given to the accuracy of this section by readers in the consultation period.

5.11. Following the shorthand of London 1, 2 and 3, it is proposed in the new Guide[69] to refer to the regions as National 1 and National 2.

[68] The majority of this work was done by Judge Bird to whom the rest of the group is very grateful.
[69] Appendix J.

Figure 1

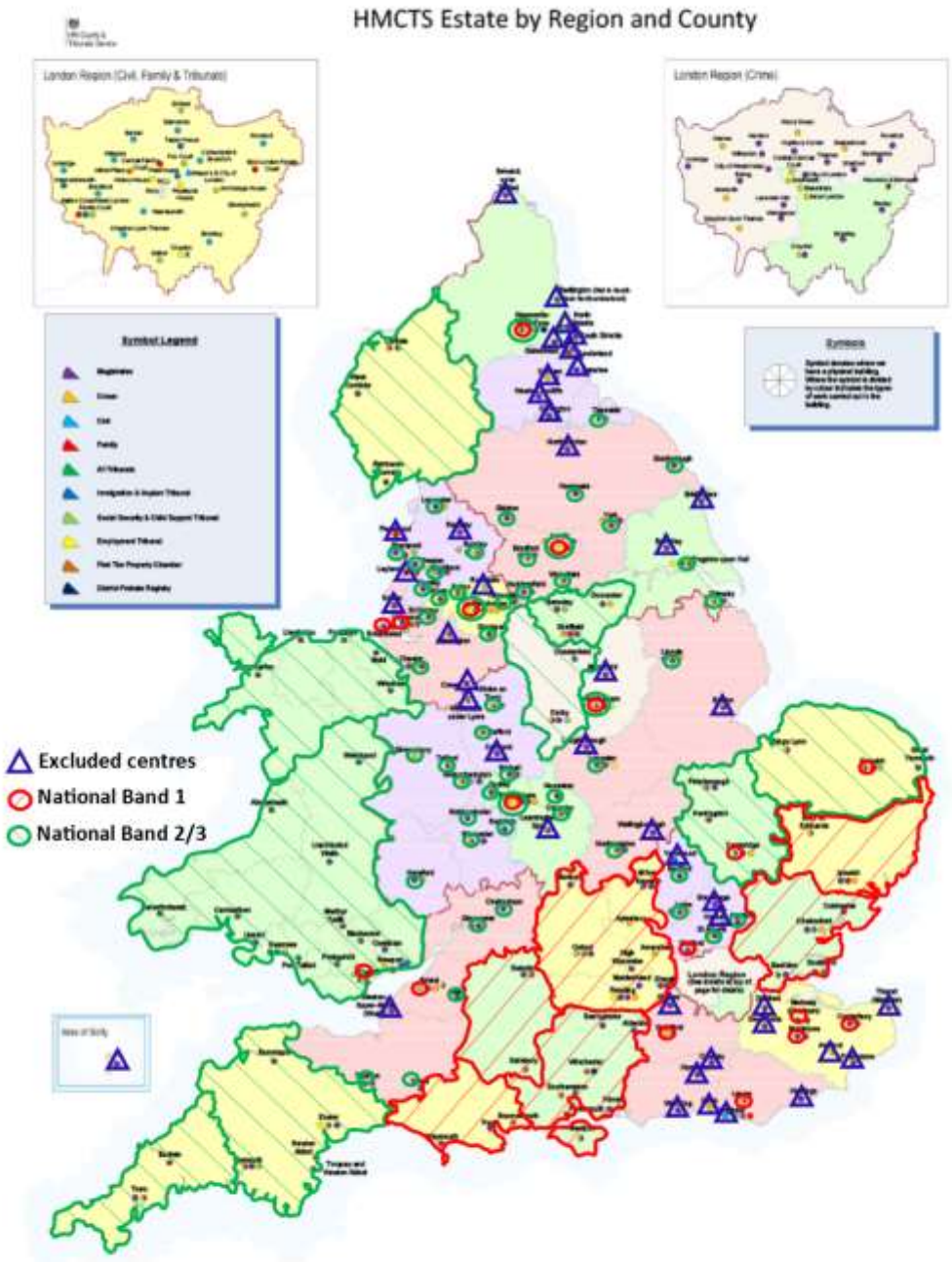

HMCTS Estate by Region and County
Excluded centres
National Band 1
National Band 2/3

Figure 2

[1] Though Gravesend* and Dartford are in Kent, they have been included in Outer London in the existing and earlier GHRs. It is proposed therefore that they be retained in London 3.

*Gravesend is not represented on this map.

Section 6: Future reviews

6.1. In an ideal world, the GHRs would be reviewed and updated on a very regular basis. This is currently impracticable. If the GHRs produced in this report are accepted as being soundly based, then in the short term they could be updated annually in line with an appropriate SPPI index.

6.2. As already mentioned, there are a number of important changes affecting and expected to affect the provision of legal services. A further review by a working group should be considered once the need is considered by the CJC to have arisen. This may well be within, say, 3 years, though it is difficult to predict, especially given the impact of the Covid-19 pandemic and the HMCTS reform programme. That would be the appropriate occasion to examine the methodology, how effective this working group's work has been, and any appropriate, evidence-based amendments to geographical areas.

Section 7: Other matters

7.1. Foskett[70] recommended that Fellows of the Chartered Institute of Legal Executives (CILEX) with 8 plus years' PQE should have parity with solicitors of equivalent experience; also that suitably qualified costs lawyers should be eligible for grades B and C. Foskett[71] further recommended that there should not be an additional grade A*, that separate GHR bands specific to specialist fields of civil litigation should not be introduced and that separate rates should not be introduced for detailed assessments of costs. Lord Dyson MR accepted all these recommendations.

7.2. The working group has not revisited these matters, given that they were the subject of detailed consideration in 2014.

7.3. Lord Dyson MR did not accept the recommendation by Foskett[72] to introduce a new grade E for paralegals. This was because there were no comprehensive data in respect of the range of paralegal salaries or costs, and therefore no proper basis for concluding that the recommendation reflected the market. Lord Dyson said:

> *"until reliable evidence of the market is available, grade D rates will continue to be the starting point for assessment."*

Given that the working group has sought no evidence on EOT, in particular in respect of any potential grade E fee earners, there has been no further consideration of this matter.

7.4. A reference was made by Foskett[73] to evidence concerning the way in which firms are charging for work at their Central London office rates, while much or all of the work is carried out in regional or outsourced offices. Foskett said:

> *"This will, of course, always be a matter for close scrutiny at that costs assessment stage."*

[70] Paragraphs 6.1 and 6.2.
[71] Paragraphs 6.3, 6.6 and 6.7.
[72] Paragraph 6.4.
[73] Paragraph 6.5.9.

However, some members of the present working group were not convinced that such "close scrutiny" takes place. The concern highlighted is one which, anecdotally, has existed for a number of years. It appeared to the working group that the Civil Procedure Rule Committee might be requested to recommend a small but significant amendment to the summary assessment form N260 and to the information provided on the detailed assessment bill. The amendment would require the signatory to specify the location of the fee earners carrying out the work.

7.5. The Guide has been reviewed and brought up to date.[74] A draft is attached as Appendix J. In particular the working group has revised the previous paragraph 43 in the new paragraph 29 and has removed all reference to rates for Counsel. The rates for counsel in the White Book 2020 44SC.39 are hopelessly out of date, our terms of reference did not include evidence gathering on such rates, which would be a wholly separate task of real difficulty.[75] The working group was unanimously of the view that these rates were unhelpful and should be deleted from the Guide.[76]

7.6. There is also the question of the implementation of the new GHR, if approved. The rates the working group has recommended are based on 2019-2020 data of what has been awarded or agreed. Therefore the working group sees no justification for any phased introduction of the rates. Nor is it convinced, given the present turbulent economic times but where interest rates are extremely low, that there should be any increase on the rates because of time lag, assuming that they are implemented in the near future.

7.7. The working group would like to thank Professors Fenn and Rickman for their enormous contribution in analysing the data, Sam Allan, Private Secretary to the Master of the Rolls and secretary to the CJC and Leigh Shelmerdine, Assistant Secretary to the CJC, who has been the lynchpin of the administrative support which the working group has received.

---

[74] The working group is grateful to Senior Costs Judge Gordon-Saker who carried out the main work on this revision.
[75] In any event counsel and Judges, as well as solicitors who negotiate most of counsel's fees, generally have more experience of the rates for counsel. Cf also *Cohen* at [28].
[76] Paragraphs 47-49 and Appendix 2.

7.8. Finally, a list of those who have written to the working group is attached as Appendix K. The working group would like to thank them and also all the judges and professionals who have kindly provided the evidence on which this report has been based.

Section 8: Consultation

8.1. The working group welcomes any comments on the contents of this draft report. In particular comments are sought on:

(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 paragraph 4.18 of this report.

(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 this 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.[77]

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

8.2. <u>Consumers</u>

As mentioned in the Introduction to this report, the Lay Member of the working group understandably did not feel that she had any mandate to represent consumers or consumer associations. Responses from these are invited and welcomed during the consultation period. At this stage the working group makes these points on GHRs and any changes to the rates: (i) insurance companies will need to assess any impact on premiums; (ii) successful represented litigants may have to pay any shortfall in the costs which they are liable to pay to their legal representatives and the costs they recover from the other party/parties; (iii) there could be an indirect effect on the fees

[77] See paragraph 7.4 above.

charged by legal representatives to consumers in non-litigious work; (iv) increases in GHRs will affect the costs of any litigant required to pay costs, including litigants in person.

8.3. **Please note: the consultation period closes at 4pm on Wednesday 31 March 2021. Comments/information received after that time and date will not be considered.**

8.4. **CLICK HERE** to respond to the consultation or paste the below into your browser. https://forms.office.com/Pages/ResponsePage.aspx?id=KEeHxuZx_kGp4S6MNndq2D9fyoof86xDjqmUjF03eRNUOTJXTDNPUElZUFJVM0NIR0NEOFY3WFRaQS4u

APPENDIX A

CJC Guideline Hourly Rates Working Group Members

Name	**Position/Organisation**	**Nominated by**
Mr Justice Stephen Stewart	High Court Judge (Chair)	
Senior Costs Judge Andrew Gordon-Saker	Senior Costs Judge (Deputy Chair)	
HHJ Nigel Bird	Senior Circuit Judge; Designated Civil Judge	
DJ Simon Middleton	District Judge and Regional Costs Judge	
DJ Judy Gibson	District Judge and Regional Costs Judge	Civil Justice Council
Ms Elisabeth Davies	Consumer representative	CJC Secretariat
Mr Nicholas Bacon QC	Costs barrister	Bar Council
Mr David Marshall	Claimant solicitor	Law Society
Mr Peter Causton	Defendant solicitor	Law Society
Mr Jeff Lewis	Commercial solicitor	Law Society
Mr David Cooper	Costs lawyer	Association of Costs Lawyers
Mr Lawrence Shaw	Chartered Legal Executive	CILEx

Observer to the working group

Mr Robert Wright	MOJ	

Academic advisers to the working group

Professor Paul Fenn		
Professor Neil Rickman		

APPENDIX B

	Regional Costs Judges 1 December 2020		
	Name	**Circuit**	**Court**
1	John Baldwin	Northern	Liverpool
2	Lee Jenkinson	Northern	Liverpool
3	Daniel Moss	Northern	Manchester
4	John Woosnam	Northern	Blackpool
5	Claire Batchelor	North Eastern	Sheffield
6	Ian Besford	North Eastern	Hull
7	Glennis Corkill	North Eastern	Barnsley
8	Sara Keating	North Eastern	Teesside
9	Theresa Searl	North Eastern	Newcastle
10	Judy Gibson	Midland	Worcester and Hereford
11	Phillip Griffith	Midland	Birmingham
12	Sean Hale	Midland	Nottingham
13	Richard Lumb	Midland	Birmingham
14	Lee McIlwaine	Midland	Lincoln
15	Augustine Rouine	Midland	Birmingham
16	Gareth Humphreys	Wales	South Wales
17	Marshall Phillips	Wales	Cardiff (covers Glamorgan & Central Valleys)
18	Matthew Porter-Bryant	Wales	Newport (Gwent)
19	Philip Glen	Western	Basingstoke
20	Richard Griffiths	Western	Exeter
21	Simon Middleton	Western	Truro
22	Tony Woodburn	Western	Taunton (and Yeovil)
23	Richard Matthews	South Eastern (South)	Oxford
24	Colin Bosman	South Eastern (North)	Cambridge
25	David White	South Eastern (North)	Luton (covers Hertfordhshire & Essex)
26	Nicholas Reeves	South Eastern (North)	Norwich

APPENDIX C

28 August 2020

To All Regional Costs Judges, SCCO Masters and Costs Officers

Very High Importance

Dear Judge/Costs Officer.

Re: Guideline Hourly Rates (GHR) report 2020.

I have been commissioned by the Master of the Rolls to chair a working group whose remit is to conduct an evidence-based review of the basis and amount of the guideline hourly rates and to make recommendations accordingly to the Deputy Head of Civil Justice and to the Civil Justice Council. Members of the group include Senior Costs Judge Andrew Gordon-Saker, Judge Bird (DCJ Greater Manchester) and District Judge Simon Middleton, as well as solicitors, a Barrister, and representatives of CILEx, consumers and the MoJ. A member of the Civil Justice Council will also join the group

I want to keep this letter as short as possible, but you will be aware that GHRs have not been revised since 2010, despite a report by the Foskett committee in 2014. The approach to and evidence for fixing GHRs is a complex matter.

The working group has resolved to obtain evidence as to what is allowed by costs judges and costs officers on detailed assessments (including provisional assessments) which they undertake.

GHRs are an important tool for assessing costs. They are particularly useful as a guide for Judges who are inexperienced in that area. What experienced Judges such as you in fact allow across a range of cases will be a highly important contribution to the report which the working group has to prepare.

To that end, I am requesting you to complete and send the attached form electronically as soon as possible after every such assessment between 1st September 2020 and 27th November 2020. The completed forms are to be emailed to CJC.GHR@judiciary.uk once an assessment has been completed. If preferable you can complete the form online here. This form is only being sent to Regional Costs Judges and SCCO Judges in the hope that there will be a very high response from a limited cadre of specialists.

It is difficult to overestimate the importance of your help in this regard. Your professional experience, reflected in the supply of information, will serve to guide the working group in producing its report. If the recommendations in the report are accepted, the benefit to the judiciary, the legal profession and court users as a whole will be very substantial. I appreciate that you are all busy. The form has been kept as short as possible. I would be very grateful if you would consider this task as a matter of priority for the 3-month period. As the responses arrive, the information will be considered and collated.

Thank you for your cooperation.

Your sincerely,

Stephen Stewart

Mr Justice Stewart

APPENDIX D

REVIEW OF GUIDELINE HOURLY RATES DETAILED ASSESSMENT (INCLUDING PROVISIONAL ASSESSMENT) FEEDBACK FORM FOR 2020 COSTS JUDGES AND COSTS OFFICERS

Name of assessing Costs Judge/Regional Costs Judge/Authorised Court Officer	
Court where assessment took place	
Court where claim was conducted, if different	
Type of claim e.g. PI, clinical negligence, other professional negligence, commercial dispute, property dispute, building dispute etc.	
Value of the claim and/or detail of any non-monetary remedy sought	
Location of receiving party's solicitors - town/city and postcode	
Receiving party	**Claimant ☐ Defendant☐**
Total of the bill as claimed to nearest £1000 (including VAT and disbursements)	£
Was it a provisional assessment?	**Yes☐ No☐**
Most recent hourly rates (excluding VAT) <u>claimed</u> by grade of Fee Earner:	**Grade A £** **Grade B £** **Grade C £** **Grade D £**
Most recent hourly rates (excluding VAT) allowed (whether by agreement or assessment) by grade of Fee Earner:	**Grade A £** **Grade B £** **Grade C £** **Grade D £**
Any 'out of the norm' features that affected hourly rates allowed? If so, what were they?	**Yes☐ No☐** **If Yes the factors were**

Please send this completed form to CJC.GHR@judiciary.uk

Dated

Thank you for your contribution to this data-gathering exercise.

Review of Guideline Hourly Rates

Assessment Feedback Form for Professions - 1 September 2020 to 27 November 2020

* Required

1. Level of Judge *

- ◯ DDJ
- ◯ DJ
- ◯ Master
- ◯ Deputy Master
- ◯ Recorder
- ◯ CJ
- ◯ HCJ
- ◯ Costs Judge
- ◯ Other

2. Court where assessment took place *

3. Type of claim *

- ◯ PI
- ◯ Clinical negligence
- ◯ Other professional negligence
- ◯ Commercial dispute
- ◯ Property dispute
- ◯ Building dispute
- ◯ Other

4. Value of the claim and/or detail of any non-monetary remedy sought *

5. Location of receiving party's solicitors -town/city *

6. Location of receiving party's solicitors - postcode *

7. Receiving party *

- ◯ Claimant
- ◯ Defendent

8. Total of the bill/costs schedule as claimed (to nearest £1000) (excluding VAT) *

9. What sort of assessment was it? *

- ◯ Summary assessment
- ◯ Detailed assessment
- ◯ Provisional assessment

10. Most recent hourly rates (excluding VAT) claimed by Grade A fee earner, if applicable:

11. Most recent hourly rates (excluding VAT) claimed by Grade B fee earner, if applicable:

12. Most recent hourly rates (excluding VAT) claimed by Grade C fee earner, if applicable:

13. Most recent hourly rates (excluding VAT) claimed by Grade D fee earner, if applicable:

14. Most recent hourly rates (excluding VAT) allowed (whether by agreement or assessment) by Grade A fee earner, if applicable:

15. Most recent hourly rates (excluding VAT) allowed (whether by agreement or assessment) by Grade B fee earner, if applicable:

16. Most recent hourly rates (excluding VAT) allowed (whether by agreement or assessment) by Grade C fee earner, if applicable:

17. Most recent hourly rates (excluding VAT) allowed (whether by agreement or assessment) by Grade D fee earner, if applicable:

18. Were the hourly rates allowed assessed by the court or agreed between the parties? *

- ◯ Assessed
- ◯ Agreed

19. Any 'out of the norm' features that affected hourly rates allowed? *

- ◯ Yes
- ◯ No

20. What were they?

APPENDIX E

List of professional organisations to which the letter and forms to the professions were sent in August 2020:

Association/Company
Action against Medical Accidents (AvMA)
Acumension
Association of British Insurers (ABI)
Association of Costs Lawyers
Association of Personal Injury Lawyers (APIL)
Birmingham Law Society
Commercial Litigation Association
Costs Lawyers Standards Board
Evolution Costs
Forum of Complex Injury Solicitors (FOCIS)
Forum of Insurance Lawyers (FOIL)
Housing Law Practitioner Association
Irwin Mitchell
London Solicitor Litigation Association
Manchester Law Society
NHS Resolution
Personal Injury Bar Association (PIBA)
Professional Negligence Lawyers Association
R Costings
Society of Clinical Injury Lawyers (SCIL)
Taylor Rose
The Law Society
Thompsons

APPENDIX F

A copy of the letter and forms for completion sent to the professions in August 2020

Please feel free to share this email with your members/colleagues to enable us to collect as much data as possible.

[Contact name]

[Organisation]

Dear

Re: Guideline Hourly Rates (GHR) report 2020.

I have been commissioned by the Master of the Rolls to chair a working group whose remit is to conduct an evidence-based review of the basis and amount of the guideline hourly rates and to make recommendations accordingly to the Deputy Head of Civil Justice and to the Civil Justice Council. Members of the group include Senior Costs Judge Andrew Gordon-Saker, Judge Bird (DCJ Greater Manchester) and District Judge Simon Middleton, as well as solicitors, a barrister, and representatives of CILEx, consumers and the MoJ. A member of the Civil Justice Council will also join the group.

You will be aware that GHRs have not been revised since 2010, despite a report by the Foskett committee in 2014. The approach to and evidence for fixing GHRs is a complex matter.

The group has resolved to obtain evidence as to what is allowed by (i) Regional Costs Judges and (ii) SCCO Costs Judges and authorised court officers on detailed assessments (including provisional assessments) which they undertake.

GHRs are an important tool for assessing costs. They are particularly useful as a guide for judges who are inexperienced in that area. What Costs Judges in fact allow across a range of cases will be a highly important contribution to the report which the group has to prepare.

To that end, I am requesting you to complete and send the attached two forms electronically.

The first form is an Excel spreadsheet which is intended to provide information on assessments between 1 April 2019 and 31 August 2020**. It is also intended to obtain evidence, if it is available, of agreement reached between legal professionals as to hourly rates whether or not there has been an assessment by a judge.**

It may be that you collect such information for management information purposes, in which case you may prefer to provide, or provide in addition, an extract or report derived from that source. This may include fuller details of what was claimed by the receiving party and offered by the paying party [and, if the hourly rates were assessed/agreed, what was assessed or agreed] in terms of preparation time, letters written etc.

Please be assured that your data will be treated in the strictest confidence. It would be very helpful if you could provide this information as soon as possible after 31 August 2020 and not later than 31 October 2020. Please send this information to CJC.GHR@judiciary.uk

The second form deals with costs assessments between 1 September 2020 and 27 November 2020. Please provide this information as soon as possible after each costs assessment. The form is attached as a word document and an excel spreadsheet, or you can complete it online here. You can choose which format is best for you. The completed word or excel form is to be emailed to CJC.GHR@judiciary.uk once an assessment has been completed.

Please send details of all the assessments on which you have/will have evidence, not just on selected cases.

It may be that you cannot complete every item of information requested on the forms. If this is so, please provide all that you have.

A number of professional organisations have been contacted about this exercise and more than one may ask you to respond. Please ensure that evidence about one assessment is not duplicated.

It is difficult to overestimate the importance of your help in this regard. Your professional experience, reflected in the supply of information, will serve to guide the working group in producing its report. If the recommendations in the report are accepted, the benefit to the judiciary, the legal profession and court users as a whole will be very substantial. I appreciate that you are all busy. The forms have been kept as short as possible. I would be very grateful if you would consider this task as a matter of priority. As the responses arrive, the intention is that the information will be considered and collated. It is hoped that a draft report will be ready for full consultation by the end of 2020.

Thank you for your cooperation.

Your sincerely,

Stephen Stewart

Mr Justice Stewart

REVIEW OF GUIDELINE HOURLY RATES 2020 ASSESSMENT FEEDBACK FORM - Professions

Level of Judge (e.g. DDJ, DJ, Master, Deputy Master, Recorder, CJ, HCJ, Costs Judge)	
Court where assessment took place	
Type of claim e.g. PI, clinical negligence, other professional negligence, commercial dispute, property dispute, building dispute etc.	
Value of the claim and/or detail of any non-monetary remedy sought	
Location of receiving party's solicitors - town/city and postcode	
Receiving party (please click appropriate box)	**Claimant☐ Defendant☐**
Total of the bill/costs statement as claimed to nearest £1000 (including VAT and disbursements)	£
What sort of assessment was it? (please click appropriate box)	**Summary assessment☐** **Detailed assessment☐** **Provisional assessment☐**
Most recent hourly rates (excluding VAT) <u>claimed</u> by grade of Fee Earner:	**Grade A £** **Grade B £** **Grade C £** **Grade D £**
Most recent hourly rates (excluding VAT) allowed (whether by agreement or assessment) by grade of Fee Earner:	**Grade A £** **Grade B £** **Grade C £** **Grade D £**
Were the hourly rates allowed assessed by the court or agreed between the parties?	**Agreed☐** **Assessed☐**
Any 'out of the norm' features that affected hourly rates allowed? If so, what were they?	**Yes☐ No☐** **If yes the factors were**

Please send this completed form to CJC.GHR@judiciary.uk

Dated

Thank you for your contribution to this data-gathering exercise.

Review of Guideline Hourly Rates

Assessment Feedback Form for Professions - 1 September 2020 to 27 November 2020

* Required

1. Level of Judge *

- ◯ DDJ
- ◯ DJ
- ◯ Master
- ◯ Deputy Master
- ◯ Recorder
- ◯ CJ
- ◯ HCJ
- ◯ Costs Judge
- ◯ Other

2. Court where assessment took place *

3. Type of claim *

- ◯ PI
- ◯ Clinical negligence
- ◯ Other professional negligence
- ◯ Commercial dispute
- ◯ Property dispute
- ◯ Building dispute
- ◯ Other

4. Value of the claim and/or detail of any non-monetary remedy sought *

5. Location of receiving party's solicitors -town/city *

6. Location of receiving party's solicitors - postcode *

7. Receiving party *

- ◯ Claimant
- ◯ Defendent

8. Total of the bill/costs schedule as claimed (to nearest £1000) (excluding VAT) *

9. What sort of assessment was it? *

- ◯ Summary assessment
- ◯ Detailed assessment
- ◯ Provisional assessment

10. Most recent hourly rates (excluding VAT) claimed by Grade A fee earner, if applicable:

11. Most recent hourly rates (excluding VAT) claimed by Grade B fee earner, if applicable:

12. Most recent hourly rates (excluding VAT) claimed by Grade C fee earner, if applicable:

13. Most recent hourly rates (excluding VAT) claimed by Grade D fee earner, if applicable:

14. Most recent hourly rates (excluding VAT) allowed (whether by agreement or assessment) by Grade A fee earner, if applicable:

15. Most recent hourly rates (excluding VAT) allowed (whether by agreement or assessment) by Grade B fee earner, if applicable:

16. Most recent hourly rates (excluding VAT) allowed (whether by agreement or assessment) by Grade C fee earner, if applicable:

17. Most recent hourly rates (excluding VAT) allowed (whether by agreement or assessment) by Grade D fee earner, if applicable:

18. Were the hourly rates allowed assessed by the court or agreed between the parties? *

- ◯ Assessed
- ◯ Agreed

19. Any 'out of the norm' features that affected hourly rates allowed? *

- ◯ Yes
- ◯ No

20. What were they?

Spreadsheet for professions to provide bulk data

SCHEDULE OF HISTORICAL DATA RELATING TO ASSESSMENT OR AGREEMENT OF HOURLY RATES FOR PERIOD 1 APRIL 2019 TO 31 AUGUST 2020

Email your completed form to: CJC.GHR@judiciary.uk

DATA FIELD	RECEIVING PARTY	LOCATION (SOLICITORS)	LOCATION (SOLICITORS)	COURT CATEGORY	COURT LOCATION (ASSESSMENT)	ASSESSOR	TYPE OF ANY ASSESSMENT	CASE TYPE	CLAIM VALUE	COSTS CLAIMED	COSTS ALLOWED or AGREED	HOURLY CHARGE RATES CLAIMED excluding VAT				HOURLY CHARGE RATES ALLOWED OR AGREED excluding VAT				HOW HOURLY RATES WERE DETERMINED	DECISION ON HOURLY RATES ALLOWED OR AGREED.
NOTES **Use codes**	Claimant (C) Defendant (D) Part 20 Claimant (PTC) Part 20 Defendant (PTD)	Town/City	Postcode	Supreme Court (SC) Court of Appeal (CA) High Court (QBD) (CHD) (FD) (TCC) (BBS) (COP) County Court (CC)	Name of Court or SCCO	Senior Costs Judge (SCJ) Costs Judge (CSJ) Deputy Costs Judge (DCSJ) Costs Officer (CO) Appeal Justice (AJ) High Court Judge (HCJ) Master (M) Deputy Master (DM) District Judge (DJ) Deputy District Judge (DDJ) Circuit Judge (CJ) Recorder (R) Regional Costs Judge (RCJ)	Summary Assessment (SA) Provisional Assessment (PA) Detailed Assessment (DA)	Personal Injury (PI) Clinical Negligence (CN) Commercial Litigation (CL) Family (FAM) Non Personal Injury (GL) Defamation (DEF) Interim Application or Injunction (IA)	If monetary to nearest £1000. If non-monetary = £0	To nearest £1000 including VAT, disbursements and any success fee	To nearest £1000 including VAT, disbursements and any success fee	Grade A	Grade B	Grade C	Grade D	Grade A	Grade B	Grade C	Grade D	Were the hourly rates allowed assessed by the court or agreed between the parties? (Agreed/ Assessed)	E.g. applied guideline rates, adjusted level of fee earner, added complexity putting it outside run of mill case.
EXAMPLE	C	King's Lynn	PE30 1JT	CC	King's Lynn	RCJ	DA	CL	£100,000.00	£200,000.00	£50,000.00	£250.00	£200.00	£160.00	£125.00	£201.00	£177.00	£146.00	£111.00	Assessed	

Spreadsheet for professions to provide bulk data

CURRENT DATA RELATING TO ASSESSMENT OR AGREEMENT OF HOURLY RATES FOR PERIOD 1 SEPTEMBER 2020 TO 27 NOVEMBER 2020

Email your completed form to CJC.GHR@judiciary.uk

DATA FIELD	RECEIVING PARTY	LOCATION (SOLICITORS)	LOCATION (SOLICITORS)	COURT CATEGORY	COURT LOCATION (ASSESSMENT)	ASSESSOR	TYPE OF ANY ASSESSMENT	CASE TYPE	CLAIM VALUE	COSTS CLAIMED	COSTS ALLOWED or AGREED	HOURLY CHARGE RATES CLAIMED excluding VAT				HOURLY CHARGE RATES ALLOWED OR AGREED excluding VAT				HOW HOURLY RATES WERE DETERMINED	FACTORS AFFECTING DECISION ON HOURLY RATES ALLOWED OR AGREED.
NOTES **Use codes**	Claimant (C) Defendant (D) Part 20 Claimant (PTC) Part 20 Defendant (PTD)	Town/City	Postcode	Supreme Court (SC) Court of Appeal (CA) High Court (QBD) (CHD) (FD) (TCC) (BBS) (COP) County Court (CC)	Name of Court or SCCO	Senior Costs Judge (SCJ) Costs Judge (CSJ) Deputy Costs Judge (DCSJ) Costs Officer (CO) Appeal Justice (AJ) High Court Judge (HCJ) Master (M)	Summary Assessment (SA) Provisional Assessment (PA) Detailed Assessment (DA)	Personal Injury (PI) Clinical Negligence (CN) Commercial Litigation (CL) Family (FAM) Non Personal Injury (GL) Defamation (DEF) Interim Application or	If monetary to nearest £1000. If non-monetary = £0	To nearest £1000 including VAT, disbursements and any success fee	To nearest £1000 including VAT, disbursements and any success fee	Grade A	Grade B	Grade C	Grade D	Grade A	Grade B	Grade C	Grade D	Were the hourly rates allowed assessed by the court or agreed between the parties?	E.g. applied guideline rates, adjusted level of fee earner, added complexity putting it outside

APPENDIX G

October 2020

To All full time and part-time judges who sit in the Business and Property Courts

Very High Importance. Re: Guideline Hourly Rates (GHR) report 2020.

Dear Judge,

I have been commissioned by the Master of the Rolls to chair a working group whose remit is to conduct an evidence-based review of the basis and amount of the guideline hourly rates and to make recommendations accordingly to the Deputy Head of Civil Justice and to the Civil Justice Council.

You will be aware that GHRs have not been revised since 2010, despite a report by the Foskett committee in 2014. The approach to and evidence for fixing GHRs is a complex matter. The working group has resolved to obtain evidence which includes what is allowed by costs judges and costs officers on detailed assessments (including provisional assessments) which they undertake.

However, such evidence is unlikely to contain much information that is relevant to work undertaken in the Business & Property Courts. Hence the Working Group, with the authorisation of the Chancellor and Flaux LJ is seeking your assistance.

We request you to complete and send the attached word document to CJC.GHR@judiciary.uk as soon as possible after every summary assessment you undertake in the BPC from now until 27th November 2020. If preferable you can complete the online form here. While summary assessment can be broad brush, a judge has to consider the individual elements of the bill item by item *(Morgan v Spirit Group [2011] EWCA Civ 68 at [27]).* Thus any decisions you make on hourly rates in BPC cases will assist the Working Group.

I appreciate that you are all busy. The form has been kept as short as possible. I would be very grateful if you would consider this task as a matter of priority.

Your sincerely,

Stephen Stewart

Mr Justice Stewart

REVIEW OF GUIDELINE HOURLY RATES FEEDBACK FORM FOR 2020 B &PC JUDGES

Name of assessing BPC Judge	
Court where assessment took place	
Type of claim e.g. property dispute, commercial dispute, building dispute, professional negligence, etc.	
Value of the claim and/or detail of any non-monetary remedy sought	
Location of receiving party's solicitors - town/city and postcode	
Receiving party	**Claimant ☐ Defendant☐**
Total of the costs statement (N260) as claimed to nearest £1000 (including VAT and disbursements)	£
Hourly rates (excluding VAT) <u>claimed</u> by grade of Fee Earner:	**Grade A £** **Grade B £** **Grade C £** **Grade D £**
Hourly rates (excluding VAT) allowed (whether by assessment or not challenged) by grade of Fee Earner:	**Grade A £** **Grade B £** **Grade C £** **Grade D £**
Any 'out of the norm' features, in the context of BPC cases, that affected hourly rates allowed or not challenged? If so, what were they?	**Yes☐ No☐** **If Yes the factors were:**

Please send this completed form to CJC.GHR@judiciary.uk

Dated

Thank you for your contribution to this data-gathering exercise.

Review of Guideline Hourly Rates

Assessment Feedback Form for BPC Judges - present to 27 November 2020

* Required

1. Name of assessing BPC Judge *

2. Court where assessment took place *

3. Type of claim *

- ◯ Property dispute
- ◯ Commercial dispute
- ◯ Building dispute
- ◯ Professional negligence
- ◯ Other

4. Value of the claim and/or detail of any non-monetary remedy sought *

5. Location of receiving party's solicitors - town/city *

6. Location of receiving party's solicitors - first part of postcode (e.g. M1 or CV32) *

7. Receiving party *

- ◯ Claimant
- ◯ Defendant

8. Total of the costs statement (N260) as claimed to nearest £1000 (including VAT and disbursements) *

9. Most recent hourly rates (excluding VAT) claimed by Grade A fee earner, if applicable :

10. Most recent hourly rates (excluding VAT) claimed by Grade B fee earner, if applicable :

11. Most recent hourly rates (excluding VAT) claimed by Grade C fee earner, if applicable :

12. Most recent hourly rates (excluding VAT) claimed by Grade D fee earner, if applicable :

13. Most recent hourly rates (excluding VAT) allowed (whether by assessment or not challenged) by Grade A fee earner, if applicable :

14. Most recent hourly rates (excluding VAT) allowed (whether by assessment or not challenged) by Grade B fee earner, if applicable :

15. Most recent hourly rates (excluding VAT) allowed (whether by assessment or not challenged) by Grade C fee earner, if applicable :

16. Most recent hourly rates (excluding VAT) allowed (whether by assessment or not challenged) by Grade D fee earner, if applicable :

17. Any 'out of the norm' features, in the context of BPC cases, that affected hourly rates allowed or not challenged? *

- ◯ Yes
- ◯ No

18. If so, what were they?

APPENDIX H

Review of Guideline Hourly Rates: Data Analyses

Professor Paul Fenn, University of Nottingham

Professor Neil Rickman, University of Surrey

1. Data provided to us came from two spreadsheets, which compiled case level data collected from the professions and from the judiciary respectively. The information collected on each case included the hourly rates claimed and agreed/assessed by grade of fee-earner, the location of the solicitors, and other features of the claim including claim value, case type and type of assessment.
2. There were very few cases from solicitors with London 2 postcodes (indeed zero in relation to grades B, C and D in the professional dataset), and for that reason we have omitted the London 2 band from the tables until more data are available. Also, given that the National 2 and National 3 bands currently have identical GHRs, and that the data showed very similar distributions for these bands, we have chosen to merge these together initially to maximise the sample sizes. This can be reviewed if the committee feels it desirable to have a distinction between these two location bands in future.
3. Our initial analyses of these data seek to establish whether the sample sizes are sufficient to capture the mean assessed/agreed rates across fee-earner grades and location bands with sufficient precision, and to compare these with the current GHRs.
4. We summarise the results for three different samples: professionals (N=578), judiciary (N=176) and a combined pool (N=754).
5. Tables 1a to 1c show the sample means by fee-earner grades and location bands for these three samples, together with the standard deviations (a measure of the range of assessed/agreed hourly rates around those means) and sample sizes within each grade/band combination. Figures 1a to 1c illustrate the spread of the data through histogram plots of the relevant distributions. It is clear that there is a range of assessments around the mean, but the sample sizes are sufficient in most grade/band combinations to ensure that the sample means are reasonably precise estimates of the population means. By “reasonably precise” we mean that they have sufficient statistical power to determine whether they differ from the current GHRs with conventional levels of confidence (i.e. 95%).
6. Tables 2a to 2c compare the sample mean assessed/agreed hourly rates with the current GHRs for all grade/band combinations. It shows the mean percentage differences across grade/band combinations. For most of these combinations, and for all three samples, the mean assessments are significantly higher than the current GHRs, although that is not true for the London 1 band.
7. To assess the statistical confidence in these differences, Figures 2a to 2c show the 95% confidence intervals as error bars around the assessed means and compare these with the current GHRs. Using the professional and pooled samples, it can be seen that for grades A, B and C outside London 1, the mean assessed hourly rates are significantly higher than the current GHRs, with at least 95% confidence. For grade D, the mean assessed/agreed rates are quite close to the current GHRs in all bands.

8. Preliminary multivariate analysis of the data suggests that the assessed/agreed hourly rates are significantly lower for cases with provisional assessment by comparison with cases with detailed assessment (there were too few cases with summary assessment for separate analysis).
9. We were provided with a separate sample of cases by a national costs management firm (DWF). These cases were predominantly PI/CN claims where the defendant was a liability insurer, and in virtually all cases the hourly rates in the final settlement were determined by agreement between the parties (in contrast to the data on hourly rates compiled by the CJC from professional and judicial sources, which were predominantly determined by judicial assessment). Tables 3 and 4 summarise these data: it can be seen that in most cases outside London, the agreed hourly rates are very close to the current GHRs.
10. Table 5a shows the mean assessed hourly rates from a revised professionals dataset in which certain firms located in the London 1 area, yet known to claim London 2 rates, have had their cases recoded from London 1 to London 2. The effect is to increase the London 1 means somewhat from the previous estimates, and to provide sufficient numbers of London 2 cases to allow estimates for that band. Table 5b extends this further by recoding the London 1 cases provided by FOCIS to London 2, and finally, Table 5c combines the recoded professional data with the judiciary data to further increase the overall sample sizes, particularly in respect of the London 2 band.
11. We were also asked to summarise separately two subsets of cases within the pooled data supplied to the CJC. These subsets relate to the data provided by FOCIS (Forum of Complex Injury Solicitors), and to the cases heard at Business Property Courts (BPC). In both of these subsets (summarised in Table 6) the hourly rates were substantially higher than those reported above for the aggregate datasets, but in most grade/band combinations the sample sizes were too small to identify the true means with much confidence. A possible exception to this are the BPC cases in London 1. Table 7 summarises the 95% lower and upper confidence limits around the estimated mean assessed hourly rates. We can be 95% confident that the true population mean assessed hourly rates lie between these two limits.

APPENDIX H

Table 1a: Means, standard deviations and sample sizes of assessed/agreed rates by grade and regional band [Professionals data only]

	Region											
	London 1			London 3			National 1			National 2/3		
Grade	Mean(£)	s.d.	N	Mean(£)	s.d.	N	Mean(£)	s.d.	N	Mean(£)	s.d.	N
A	359.35	130.14	79	287.02	77.45	98	258.96	42.60	164	256.30	46.43	115
B	285.53	46.86	47	237.97	54.74	76	219.82	35.14	120	223.25	34.48	76
C	227.90	51.43	64	189.63	38.82	85	178.47	27.09	146	178.51	29.37	86
D	139.97	30.21	78	132.34	13.15	94	126.64	12.73	157	126.64	13.76	115

Table 1b: Means, standard deviations and sample sizes of assessed/agreed rates by grade and regional band [Judiciary data only]

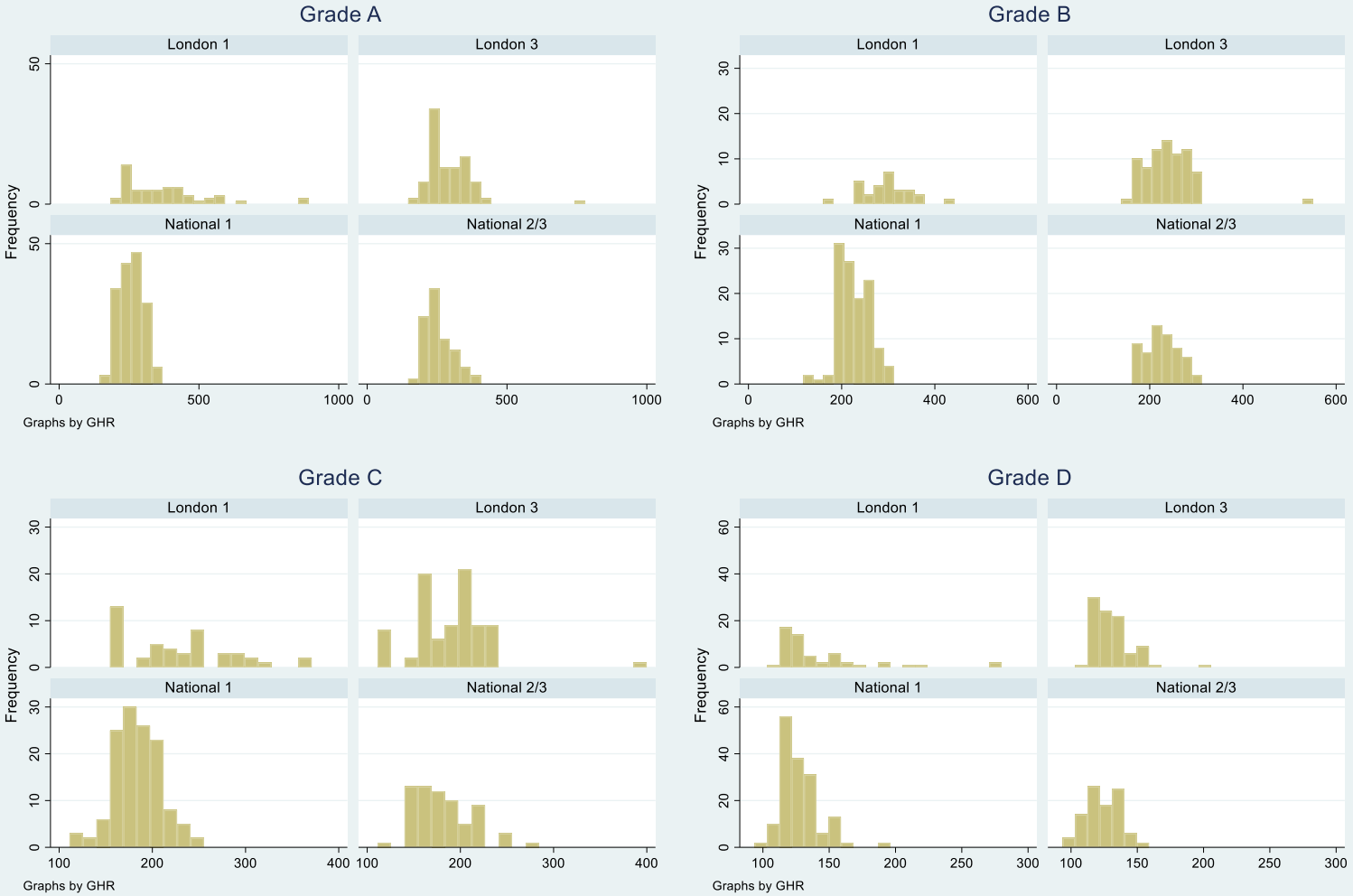
	Region											
	London 1			London 3			National 1			National 2/3		
Grade	Mean(£)	s.d.	N	Mean(£)	s.d.	N	Mean(£)	s.d.	N	Mean(£)	s.d.	N
A	388.32	155.75	28	259.59	44.90	23	270.00	49.24	31	246.62	33.15	21
B	298.00	99.22	20	213.59	21.33	27	204.41	24.53	34	206.94	19.49	16
C	226.44	57.53	25	167.73	19.02	26	176.79	19.89	29	170.18	15.27	17
D	149.04	38.72	27	123.01	7.26	42	123.80	11.44	45	123.31	12.27	26

Table 1c: Means, standard deviations and sample sizes of assessed/agreed rates by grade and regional band [Pooled data]

	Region											
	London 1			London 3			National 1			National 2/3		
Grade	Mean(£)	s.d.	N	Mean(£)	s.d.	N	Mean(£)	s.d.	N	Mean(£)	s.d.	N
A	366.93	137.13	107	281.80	73.05	121	260.72	43.77	195	254.80	44.67	136
B	289.25	66.32	67	231.58	49.35	103	216.42	33.64	154	220.42	32.88	92
C	227.49	52.88	89	184.50	36.33	111	178.19	25.99	175	177.14	27.66	103
D	142.30	32.65	105	129.46	12.40	136	126.01	12.49	202	126.03	13.52	141

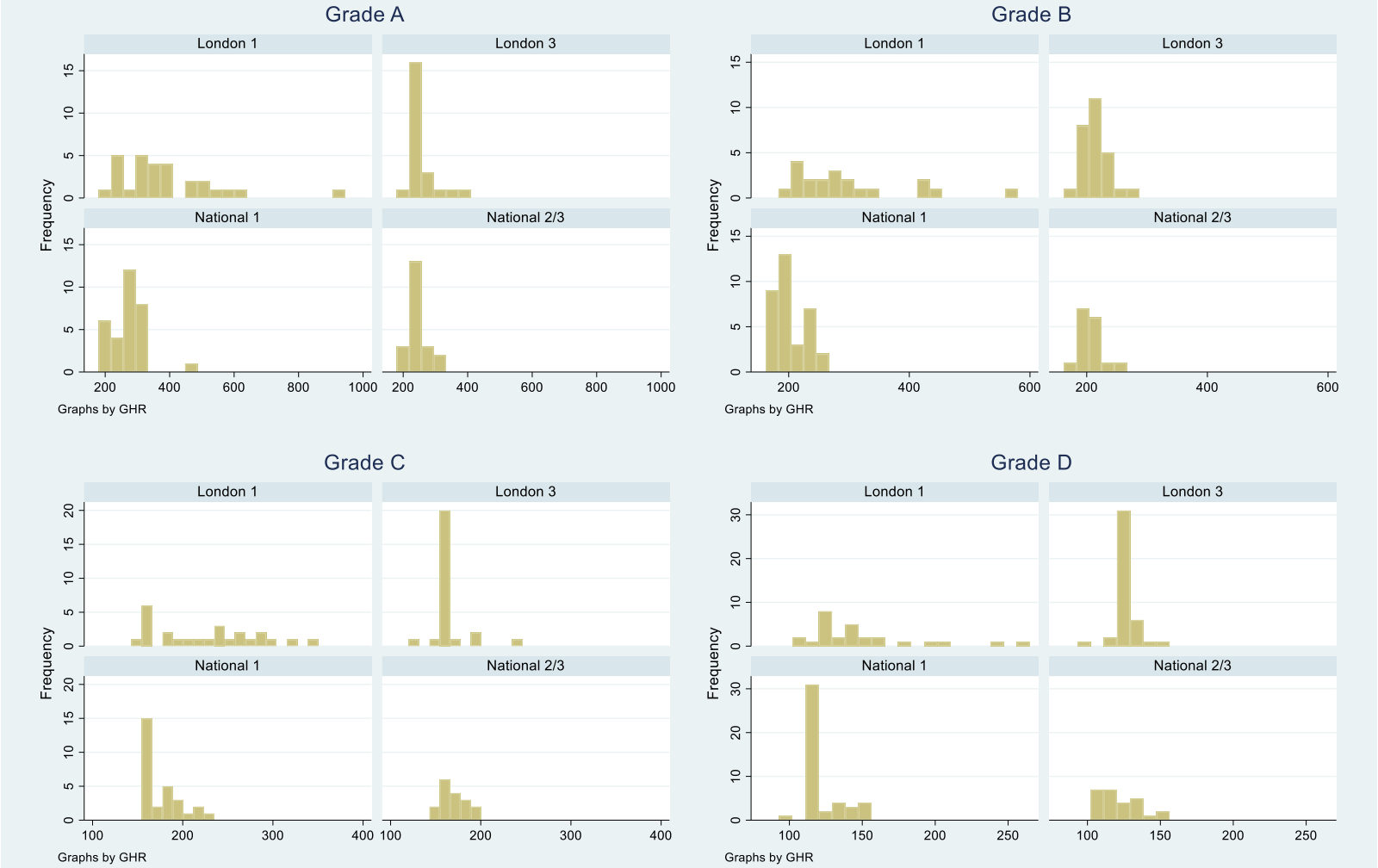
APPENDIX H

Figure 1a: Professions data



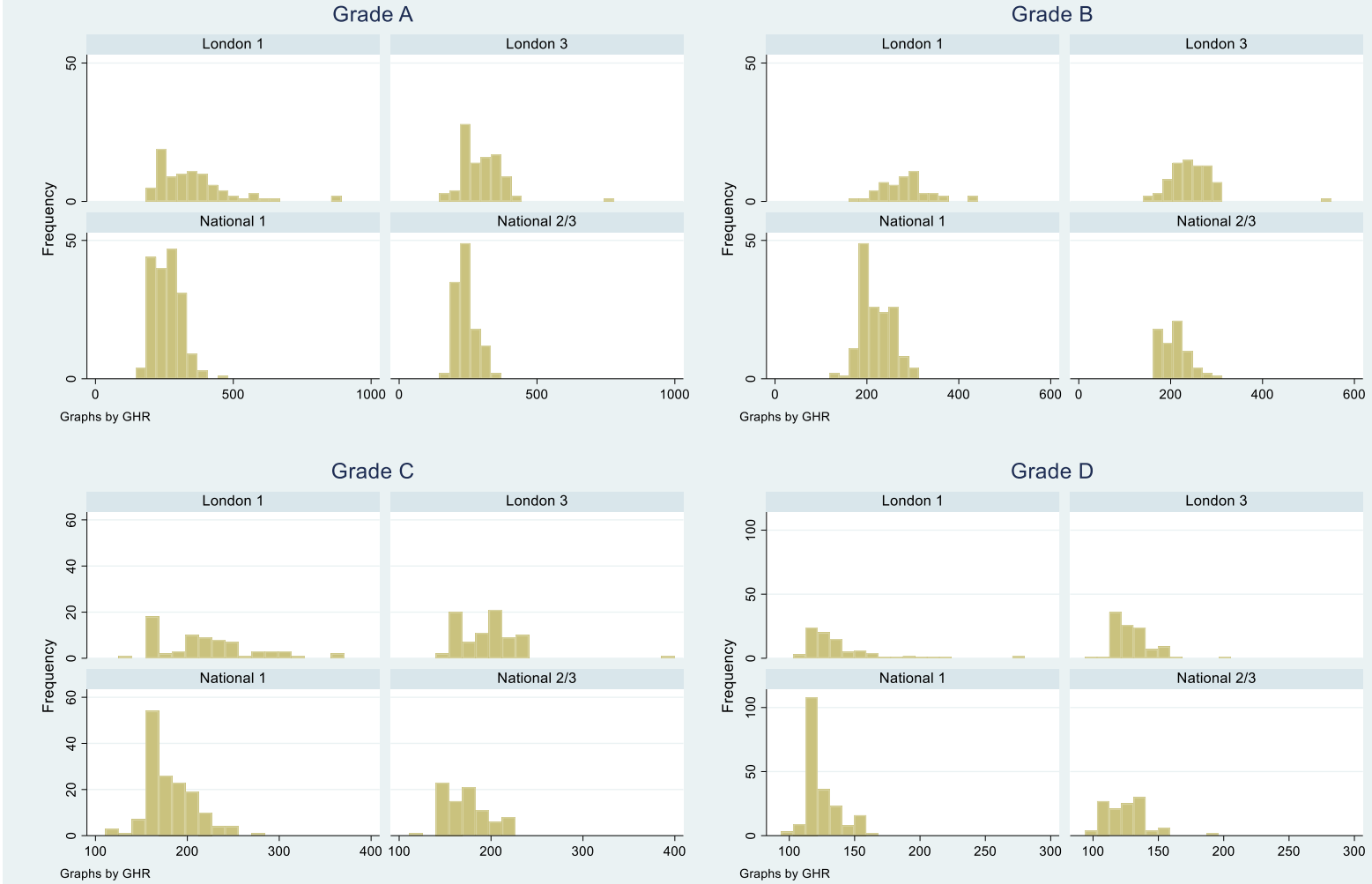
APPENDIX H

Figure 1b: Judiciary data



APPENDIX H

Figure 1c: Pooled data



APPENDIX H

Table 2a: Mean assessed/agreed rates by comparison with current GHRs [Professionals data only]

	Grade A			Grade B			Grade C			Grade D		
Profs	Mean assessment	Current GHR	Mean % diff	Mean assessment	Current GHR	Mean % diff	Mean assessment	Current GHR	Mean % diff	Mean assessment	Current GHR	Mean % diff
London 1	£359.35	409	-12.14%	£285.53	296	-3.54%	£227.90	226	0.84%	£139.97	138	1.42%
London 3	£287.02	248	15.73%	£237.97	200	18.98%	£189.63	165	14.93%	£132.34	121	9.37%
National 1	£258.96	217	19.34%	£219.82	192	14.49%	£178.47	161	10.85%	£126.64	118	7.32%
National 2/3	£256.30	201	27.51%	£223.25	177	26.13%	£178.51	146	22.27%	£126.64	111	14.09%

Table 2b: Mean assessed/agreed rates by comparison with current GHRs [Judiciary data only]

	Grade A			Grade B			Grade C			Grade D		
Judiciary	Mean assessment	Current GHR	Mean % diff	Mean assessment	Current GHR	Mean % diff	Mean assessment	Current GHR	Mean % diff	Mean assessment	Current GHR	Mean % diff
London 1	£388.32	£409	-5.06%	£298.00	£296	0.68%	£226.44	£226	0.19%	£149.04	£138	8.00%
London 3	£259.59	£248	4.67%	£213.59	£200	6.80%	£167.73	£165	1.66%	£123.01	£121	1.66%
National 1	£270.00	£217	24.42%	£204.41	£192	6.46%	£176.79	£161	9.81%	£123.80	£118	4.92%
National 2/3	£246.62	£201	22.70%	£206.94	£177	16.91%	£170.18	£146	16.56%	£123.31	£111	11.09%

Table 2c: Mean assessed/agreed rates by comparison with current GHRs [Pooled data]

	Grade A			Grade B			Grade C			Grade D		
Pooled	Mean assessment	Current GHR	Mean % diff	Mean assessment	Current GHR	Mean % diff	Mean assessment	Current GHR	Mean % diff	Mean assessment	Current GHR	Mean % diff
London 1	£366.93	£409	-10.29%	£289.25	£296	-2.28%	£227.49	£226	0.66%	£142.30	£138	3.11%
London 3	£281.80	£248	13.63%	£231.58	£200	15.79%	£184.50	£165	11.82%	£129.46	£121	6.99%
National 1	£260.72	£217	20.15%	£216.42	£192	12.72%	£178.19	£161	10.68%	£126.01	£118	6.78%
National 2/3	£254.80	£201	26.77%	£220.42	£177	24.53%	£177.14	£146	21.33%	£126.03	£111	13.54%

APPENDIX H


Figure 2a: Professions data
Grade A
Grade B
Grade C
Grade D
0
100
200
300
400
London 1
London2
London 3
National 1
Mean assessed rate
Current GHR

APPENDIX H


Figure 2b: Judiciary data
Grade A
Grade B
Grade C
Grade D
600
400
200
0
-200
300
100
-100
London 1
London 2
London 3
National 1
Mean assessed rate
Current GHR

APPENDIX H

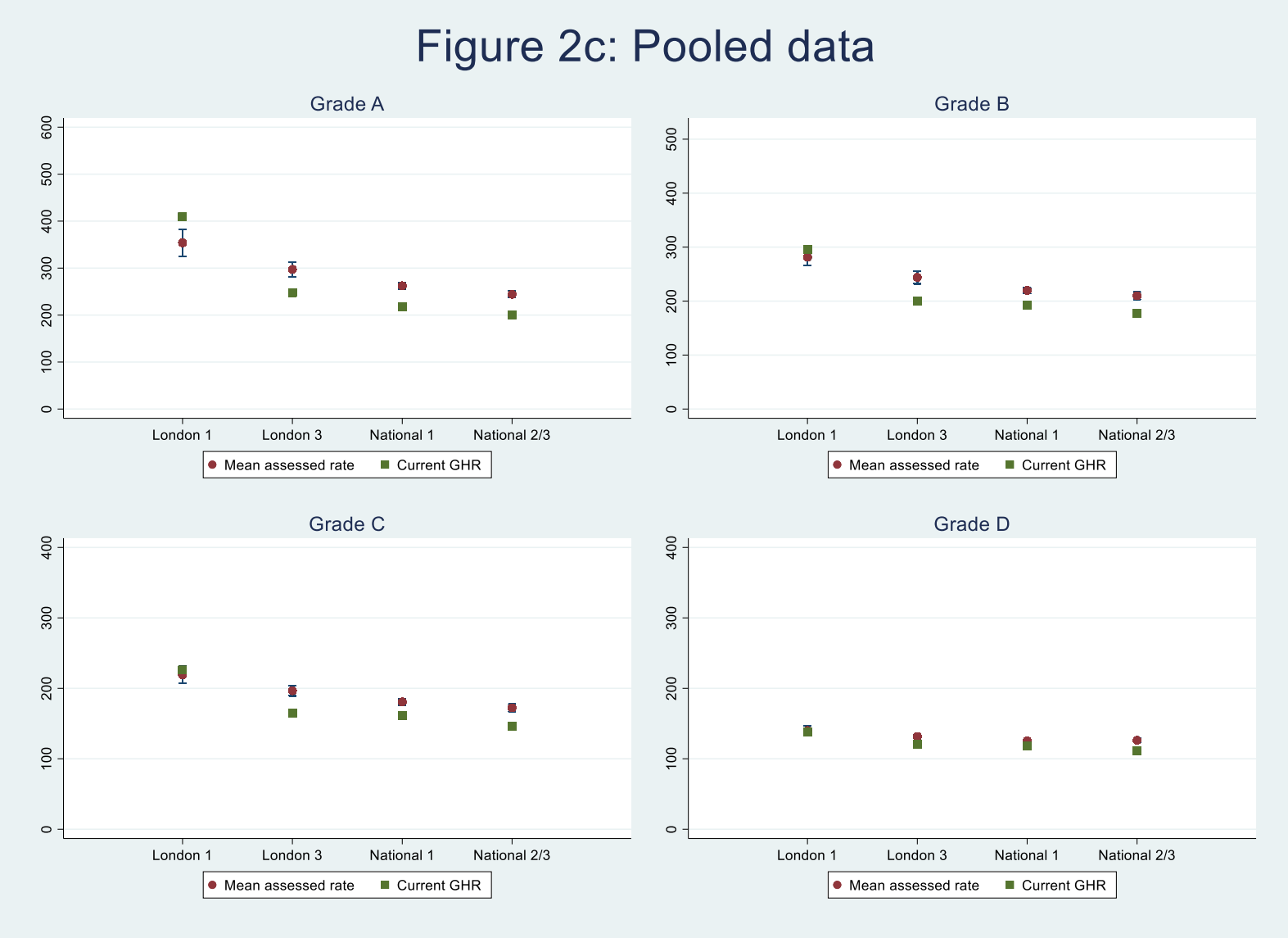


Figure 2c: Pooled data
Grade A
Grade B
Grade C
Grade D
London 1
London 3
National 1
National 2/3
Mean assessed rate
Current GHR

APPENDIX H

Table 3: Means, standard deviations and sample sizes of assessed/agreed rates by grade and regional band [DWF data*]

	Region											
	London 1			London 3			National 1			National 2/3		
Grade	Mean(£)	s.d.	N	Mean(£)	s.d.	N	Mean(£)	s.d.	N	Mean(£)	s.d.	N
A	£275.62	74.23	17	£242.24	64.16	23	£212.80	41.62	100	£198.94	42.68	155
B	£238.71	42.39	8	£218.22	36.66	9	£192.89	27.33	42	£184.81	35.00	66
C	£180.31	37.61	13	£177.40	26.83	15	£162.39	21.18	60	£151.25	22.97	122
D	£125.38	16.21	16	£128.55	14.97	22	£121.36	18.20	89	£118.57	15.65	120

Table 4: Mean assessed/agreed rates by comparison with current GHRs [DWF data*]

	Grade A			Grade B			Grade C			Grade D		
	Mean assessment	Current GHR	Mean % diff	Mean assessment	Current GHR	Mean % diff	Mean assessment	Current GHR	Mean % diff	Mean assessment	Current GHR	Mean % diff
London 1	£275.62	409	-32.61%	£238.71	296	-19.36%	£180.31	226	-20.22%	£125.38	138	-9.15%
London 3	£242.24	248	-2.32%	£218.22	200	9.11%	£177.40	165	7.52%	£128.55	121	6.24%
National 1	£212.80	217	-1.93%	£192.89	192	0.47%	£162.39	161	0.86%	£121.36	118	2.85%
National 2/3	£198.94	201	-1.02%	£184.81	177	4.41%	£151.25	146	3.60%	£118.57	111	6.82%

* Note: these are claims from a database of predominantly PI/CN claims where the defendant was a liability insurer. In virtually all of these claims (96% of the total), the parties agreed the hourly rates in the settlement – only 4% went to assessment.

APPENDIX H

Table 5a: Professionals data revised to switch some City law firm cases from London 1 to London 2

Band	Grade	Mean assessed hourly rate	Current GHR	Mean % difference	N
London1	A	£372.30	409	-8.97%	55
	B	£293.32	296	-0.90%	28
	C	£226.77	226	0.34%	46
	D	£142.65	138	3.37%	54
London2	A	£349.52	317	10.26%	27
	B	£277.60	242	14.71%	20
	C	£236.20	196	20.51%	20
	D	£136.26	126	8.14%	27
London3	A	£287.02	248	15.73%	98
	B	£237.97	200	18.98%	76
	C	£189.63	165	14.93%	85
	D	£132.34	121	9.37%	94
National1	A	£258.96	217	19.34%	164
	B	£219.82	192	14.49%	120
	C	£178.47	161	10.85%	146
	D	£126.64	118	7.32%	157
National2/3	A	£256.30	201	27.51%	115
	B	£223.25	177	26.13%	76
	C	£178.51	146	22.27%	86
	D	£126.64	111	14.09%	115

APPENDIX H

Table 5b: Professionals data revised to switch some City law firm cases and FOCIS cases from London 1 to London 2

Band	Grade	Mean assessed hourly rate	Current GHR	Mean % difference	N
London1	A	£366.77	409	-10.32%	46
	B	£288.05	296	-2.68%	19
	C	£217.48	226	-3.77%	37
	D	£142.76	138	3.45%	45
London2	A	£362.28	317	14.28%	36
	B	£285.93	242	18.15%	29
	C	£245.14	196	25.07%	29
	D	£137.72	126	9.30%	36
London3	A	£287.02	248	15.73%	98
	B	£237.97	200	18.98%	76
	C	£189.63	165	14.93%	85
	D	£132.34	121	9.37%	94
National1	A	£258.96	217	19.34%	164
	B	£219.82	192	14.49%	120
	C	£178.47	161	10.85%	146
	D	£126.64	118	7.32%	157
National2/3	A	£256.30	201	27.51%	115
	B	£223.25	177	26.13%	76
	C	£178.51	146	22.27%	86
	D	£126.64	111	14.09%	115

APPENDIX H

Table 5c: Pooled data revised to switch some City law firm cases and FOCIS cases from London 1 to London 2

Band	Grade	Mean assessed hourly rate	Current GHR	Mean % difference	N
London1	A	£374.93	409	-8.33%	74
	B	£293.15	296	-0.96%	39
	C	£221.09	226	-2.17%	62
	D	£145.12	138	5.16%	72
London2	A	£373.42	317	17.80%	43
	B	£289.15	242	19.48%	33
	C	£244.41	196	24.70%	34
	D	£139.12	126	10.41%	41
London3	A	£281.80	248	13.63%	121
	B	£231.58	200	15.79%	103
	C	£184.50	165	11.82%	111
	D	£129.46	121	6.99%	136
National1	A	£260.72	217	20.15%	195
	B	£216.42	192	12.72%	154
	C	£178.19	161	10.68%	175
	D	£126.01	118	6.78%	202
National2/3	A	£254.80	201	26.77%	136
	B	£220.42	177	24.53%	92
	C	£177.14	146	21.33%	103
	D	£126.03	111	13.54%	141

APPENDIX H

Table 6: Subsets of pooled data[1]; (a) FOCIS cases; (b) BPC cases

		FOCIS		BPC	
Band	Grade	Mean	N	Mean	N
London1	A	£400.56	9	£511.78	25
	B	£304.44	9	£348.47	16
	C	£265.00	9	£269.53	22
	D	£142.11	9	£185.80	21
London2	A			£531.25	4
	B			£372.50	2
	C			£281.67	3
	D			£155.00	3
London3	A	£341.67	9	£449.00	3
	B	£274.17	6	£405.00	2
	C	£210.00	9	£282.50	2
	D	£139.44	9	£153.67	3
National1	A	£293.10	21	£287.44	9
	B	£249.33	15	£218.40	5
	C	£198.63	19	£174.20	5
	D	£131.89	19	£114.80	5
National2/3	A	£337.00	10	£213.00	2
	B	£262.22	9	.	0
	C	£223.75	8	.	0
	D	£122.60	10	£111.00	1

[1] Note: some of these means are based on very small samples in each cell, and therefore should not be used to infer information about the true value of the population mean

APPENDIX H

Table 7: 95% confidence intervals around the mean assessed hourly rates, BPC cases in the London 1 band

Grade	Mean	Standard Error of Mean	Lower 95% confidence limit	Upper 95% confidence limit	N
A	511.78	34.81	443.55	580.01	25
B	348.47	24.01	301.42	395.52	16
C	269.53	12.34	245.34	293.72	22
D	185.80	10.94	164.36	207.24	21

APPENDIX I

Price indices

A principal motivation for upgrading the GHRs is to allow them to reflect changes in the costs faced by solicitors: to the extent that inflation has increased these costs, GHRs that are not uprated will be increasingly unremunerative in real terms. A straightforward way to uprate the GHRs, therefore, is to use a price index. A number of possible indices are available.

Services Producer Price Index (SPPI)

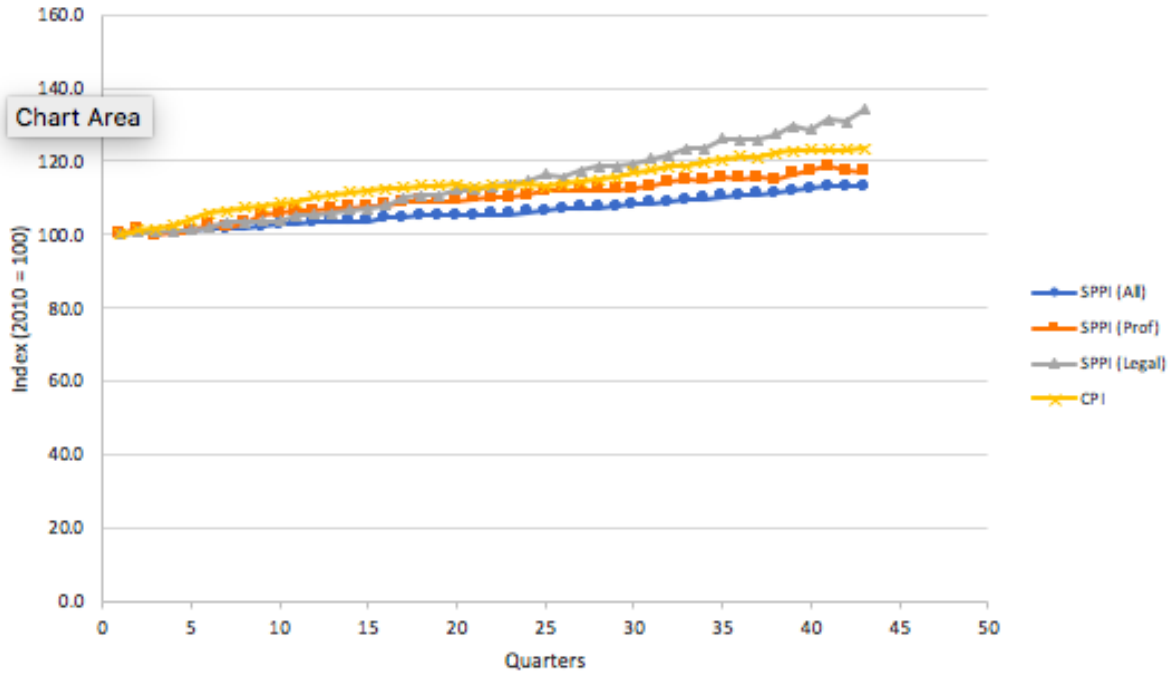
"The Services Producer Price Index (SPPI) measures the change in prices charged for services provided to UK-based customers. Prior to 2019, the SPPI had a 'business-to-business' coverage, including only transactions between businesses and other businesses, government and non-profit institutions serving households. From 2019, the scope of the SPPI has been extended to cover 'business-to-all' transaction that is, including also transactions to consumers (households) as a result of adopting new European legislative requirements within the Framework Regulation Integrating Business Statistics (see "Service Producer Price Index Methods Changes", ONS July 2020, p. 2.) The various individual SPPI can be aggregated into an 'All Services' version that provides an overall measure of service sector inflation, for those parts of the sector covered by the index.

Arguably, several components of the SPPI may be relevant to uprating GHRs:

- SPPI Legal Services: This reflects changes in the prices that law firms are able to charge other businesses, Government, non-profit institutions and (recently) consumers. While this may seem to be a natural candidate for uprating GHRs, there is a potential difficulty because it effectively compensates law firms for cost increases that may largely be in their control.
- SPPI Professional, Scientific and Technical Activities: This reflects changes in the prices charged for a wider number of services (including legal services). Arguably, this broader index is a reasonable alternative to the narrower Legal Services version and, as such, could be a suitable response to the concern raised above.
- SPPI All Services: This reflects changes in the prices charged for all the services in the SPPI. The broad sections covered are:
    - Water supply, sewerage and waste management
    - Repair and maintenance of motor vehicles
    - Transportation and storage
    - Accommodation and food
    - Information and communication
    - Real estate activities
    - Professional, scientific and technical activities
    - Administrative and support services
    - Education
    - Other services

Figure 1 shows how the 'All Services', Professional Scientific and Technical Activities' and 'Legal Services' SPPIs have changed (on a quarterly basis) between 2010 Q1 and 2020 Q3.

Figure 1: Service Producer Price Indices and the Consumer Price Index



The Figure shows that all three indices increased across the decade in question, with Legal Services rising by 34%, the wider definition of Professional Services rising by 17% and All Services (within the SPPI suite) rising by 13%. 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.

Consumer Price Index (CPI)

An alternative, frequently used, measure of inflation is the Consumer Price Index (CPI). This measures the change in cost of a common basket of goods and services purchased by consumers. The index has the benefits of calculating inflation from the prices of final good and services in the basket, and of covering a wider variety of goods than the SPPI. Of course, this latter benefit may be less important for uprating GHRs, where a measure of inflation that is closer to the legal (or service) sector may be more appropriate. Figure 1 shows the evolution of the CPI since 2010 Q1: it had risen by 23.5% by 2020 Q3.

APPENDIX J

GUIDE TO THE SUMMARY ASSESSMENT OF COSTS

SUMMARY ASSESSMENT

1. Paragraph 9 of Practice Direction 44 sets out the general provisions relating to summary assessment. Rule 44.1 defines "costs" and r.44.6 contains the court's power to carry out a summary assessment. (Appendix 1 to this guidance contains extracts from the relevant Rules and Practice Direction.)

WHEN A SUMMARY ASSESSMENT SHOULD BE MADE

2. The court should consider making a summary assessment whenever it makes an order for costs which does not provide only for fixed costs. The general rule is that the court should carry out a summary assessment of the costs:

(a) at the conclusion of the trial of a case which has been dealt with on the fast track, in which case the order will deal with the costs of the whole claim; and
(b) at the conclusion of any other hearing which has lasted not more than one day, in which case the order will deal with the costs of the application or matter to which the hearing related. If this hearing disposes of the claim, the order may deal with the costs of the whole claim.

Where the receiving party is legally aided

3. The court should not make a summary assessment of the costs of a receiving party who is legally aided. However, the court may make a summary assessment of costs payable by an assisted person. Such an assessment is not in itself a determination of that person's liability to pay those costs under s.26(1) Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Where the receiving party is represented under a conditional fee agreement

4. Where an order for costs is made before the conclusion of the proceedings and a legal representative for the receiving party has been retained under a conditional fee agreement the court may summarily assess the costs. Although most conditional fee agreements provide that the client is liable to pay the legal representative only if the client succeeds in the proceedings, such agreements commonly provide that the client is also liable to pay the base costs of an interim hearing (but not the success fee) if the client wins at that hearing, whether or not the client ultimately succeeds in the claim. An order for the payment of the summarily assessed costs should not be made unless the court is satisfied that the receiving party is at that time liable under the agreement to pay to the legal representative at least the amount of those costs. If the court is not so satisfied, it may direct that the assessed costs be paid into court to await the outcome of the case or shall not be enforceable until further order.

Where the receiving or paying party is a child or protected person

5. The general rule is that costs payable by or to a child or protected party should be the subject of detailed assessment. The court may carry out a summary assessment of the costs of

a receiving party who is a child or protected party if the solicitor acting for the child or protected party has waived the right to further costs. If the costs payable consist only of a success fee or a payment due under a damages-based agreement to the child's or protected party's solicitor, the court may direct that the costs be assessed summarily: r.46.4(5). Such costs, if incurred in respect of a child in a claim for damages for personal injury, should be assessed summarily only where the damages do not exceed £25,000: r.21.12(1A). The court may carry out a summary assessment of the costs payable by a child or protected party if an insurer or other person is liable to and financially able to discharge those costs.

Summary assessment by a costs officer

6. The court awarding costs cannot make an order for the summary assessment to be carried out by a costs officer (i.e. a costs judge or district judge). If summary assessment of costs is appropriate but the court awarding costs is unable to carry out the assessment on the day it may give directions for a further hearing before the same judge or order detailed assessment. Rule 44.1 defines "summary assessment" as the procedure whereby costs are assessed by the judge who has heard the case or application. However, it has been held that there is no absolute bar on assessment by a different judge[1].

STATEMENTS OF COSTS

7. Statements of costs should follow as closely as possible form N260 and must be signed by the party or the party's representative: Practice Direction 44 para 9.5(3). Forms N260A and N260B may be used in paper, pdf and electronic spreadsheet versions for the costs of interim applications and trials respectively. Where a party files an electronic spreadsheet version it must also file and serve a paper/pdf form.

8. Statements of costs must be filed and served not less than 2 days before a fast track trial and, for other hearings, not less than 24 hours before the start of the hearing: Practice Direction 44 para 9.5(4). Failure to comply with those time limits will be taken into account in deciding what costs order to make and about the costs of any further hearing that may be necessary as a result of that failure: para 9.6. Any sanction should be proportionate. The court should consider what, if any, prejudice had been caused to the paying party and how that should be taken into account. Possible courses to take include a short adjournment to enable the paying party to consider the statement of costs, adjourning the summary assessment to another date, ordering a detailed assessment, disallowing some of the costs which might otherwise have been allowed, or making no costs order at all.

THE APPROACH TO COSTS

9. The general principles applying to summary and detailed assessment are the same. For the summary assessment to be accurate the judge must be informed about any previous summary assessments carried out in the case. This is particularly important where the judge is assessing all of the costs at the conclusion of a case.

10. The court should not be seen to be endorsing disproportionate or unreasonable costs. Accordingly:

(a) When the amount of the costs to be paid has been agreed the court should make this

[1] *Transformers and Rectifiers Ltd v Needs Ltd* [2015] EWHC 1687 (TCC)

clear by saying that the order is by consent.

(b) If the court is to make an order which is not by consent, it will, so far as possible, ensure that the final figure is not disproportionate and/or unreasonable having regard to the overriding objective (r.1.1(2)). The court will retain this responsibility notwithstanding the absence of challenge to individual items comprised in the figure sought.

11. The costs which the paying party has incurred for its own representation may be relevant when considering the reasonableness and proportionality of the receiving party's costs. However, they are only a factor and are not decisive. Both parties may have incurred costs which are unreasonable and disproportionate, but only reasonable (and, on the standard basis, proportionate) costs may be allowed.

THE BASIS OF ASSESSMENT

THE STANDARD BASIS

12. Rules 44.3(1) and (2) provide that where the court assesses the amount of costs on the standard basis it will not allow costs which have been unreasonably incurred or are unreasonable in amount and will only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred. The court will resolve in favour of the paying party any doubt which it may have as to whether the costs were reasonably incurred or were reasonable and proportionate in amount.

THE INDEMNITY BASIS

13. Rules 44.3(1) and (3) provide that where the court assesses the amount of costs on the indemnity basis it will not allow costs which have been unreasonably incurred or are unreasonable in amount and it will resolve in favour of the receiving party any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount. The test of proportionality does not apply on the indemnity basis.

PROPORTIONALITY

14. Costs will be proportionate if they bear a reasonable relationship to (a) the sums in issue in the proceedings (b) the value of any non-monetary relief in issue in the proceedings (c) the complexity of the litigation (d) any additional work generated by the conduct of the paying party and (e) any wider factors involved in the proceedings, such as reputation or public importance: rule 44.3(5).

15. The Court of Appeal gave guidance on the application of the test of proportionality in *West v Stockport NHS Foundation Trust* [2019] EWCA Civ 1220. Having considered the reasonableness of the costs claimed, the court should consider the proportionality of the total figure considered to be reasonable having regard to the factors in r.44.3(5) and, if relevant, any wider circumstances under r.44.4. In doing so it should ignore unavoidable items such as court fees. If the court considers the total to be disproportionate it should consider each category of costs claimed (such as time spent drafting witness statements) and consider whether those costs were disproportionate. If they are, then the court should reduce the costs in that category to a figure that is proportionate. In that way, reductions for proportionality

will be clear and transparent. However, the court may also consider the proportionality of a particular item when it considers the reasonableness of that item.

THE AMOUNT OF COSTS

16. Rule 44.4(3) sets out the factors to be taken into account in deciding the amount of costs. Those factors include: the conduct of the parties, including conduct before as well as during the proceedings; the efforts made, if any, before and during the proceedings in order to try to resolve the dispute; the value involved in the proceedings; the importance of the matter to the parties; the complexity of the proceedings; the skill and specialised knowledge of the lawyers; the place where the work was done; and the receiving party's last approved or agreed budget.

GENERAL PRINCIPLES TO BE APPLIED IN SUMMARY ASSESSMENT

THE INDEMNITY PRINCIPLE

17. A party in whose favour an order for costs has been made may not recover more than he is liable to pay his own solicitors: *Harold v Smith* [1865] H & N 381, 385; *Gundry v Sainsbury* [1910] 1 KB 645 CA. There are exceptions to the principle, notably costs funded by the Legal Aid Agency and fees payable under certain types of conditional fee agreement.

18. The statement of costs (N260, N260A and N260B)) filed for summary assessment must be signed by the party or its legal representative. That form contains the statement: *The costs stated above do not exceed the costs which the [claimant/defendant] is liable to pay in respect of the work which this statement covers. Counsel's fees and other expenses have been incurred in the amounts stated and will be paid to the persons stated*.

19. The signature of a statement of costs by a solicitor is, in normal circumstances, sufficient to enable the court to be satisfied that the indemnity principle has not been breached: *Bailey v IBC Vehicles Ltd* [1998] 3 All ER 570 CA. A solicitor is an officer of the court and as Henry L.J. stated:
In so signing he certifies that the contents of the bill are correct. That signature is no empty formality.… The signature of the bill of costs … is effectively the certificate of an officer of the court that the receiving party's solicitors are not seeking to recover in relation to any item more than they have agreed to charge their client…

TIME FOR PAYMENT OF THE SUMMARILY ASSESSED COSTS

20. As a general rule, a paying party should be ordered to pay the amount of any summarily assessed costs within 14 days. Before making such an order the court should consider whether an order for payment of the costs might bring the action to an end and whether this would be just in all the circumstances.

LITIGANTS IN PERSON

21. Where the receiving party is a litigant in person r.46.5 governs the way in which the question of costs should be dealt with. A litigant in person may be allowed:

(a) where the litigant can prove financial loss (e.g. loss of earnings), the amount proved to

have been lost for time spent reasonably doing the work; or

(b) where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate of £19 per hour (the rate is fixed by Practice Direction 46 para 3.4).

22. A litigant in person who wishes to prove financial loss should produce written evidence and serve it on the other party at least 24 hours before the hearing: Practice Direction 46 para 3.2.

23. Generally, litigants in person may be expected to spend more time than would reasonably be spent by a legal representative. The time allowed to a litigant in person should therefore be measured against the time that would reasonably be spent by a person without legal training or specialist knowledge.

24. However, there is an absolute cap on the amount recoverable by a litigant in person, namely the reasonable costs of disbursements plus two thirds of the amount which would have been allowed if the litigant in person had been legally represented: r.46.5(2). The correct approach is therefore to assess the reasonable costs for the litigant to do the work at the appropriate rate, consider what a legal representative would have been allowed for doing that work, calculate two thirds of that figure, and allow the lower of the two figures.

25. Litigants in person are entitled to recover disbursements of the types which would have been made by a legal representative. They may also recover payments reasonably made for legal services relating to the conduct of the proceedings as well as the costs of obtaining expert assistance in connection with assessing the claim for costs. This does mean that a litigant in person may be able to claim both the cost of obtaining legal advice and services as well as the cost of doing the same work in person. Those qualified to give expert assistance in connection with assessing the claim for costs are listed in Practice Direction 46 para 3.1.

26. Although the definition of a litigant in person includes a lawyer, a lawyer who is represented in the proceedings by a firm in which that person is a partner, is not a litigant in person: rule 46.5(6)(b).

GUIDELINE FIGURES FOR SOLICITORS' HOURLY RATES

27. Guideline figures for solicitors' charges are published in Appendix 2 to this Guide, which also contains some explanatory notes. The guideline rates are not scale figures: they are broad approximations only.

28. The guideline figures are intended to provide a starting point for those faced with summary assessment.

29. In substantial and complex litigation an hourly rate in excess of the guideline figures may be appropriate for grade A, B and C fee earners where other factors, for example the value of the litigation, the level of the complexity, the urgency or importance of the matter, as well as any international element, would justify a significantly higher rate. It is important to note (a) that these are only examples and (b) they are not restricted to high level commercial work, but may apply, for example, to large and complex personal injury work. Further, London 1 is defined in Appendix 2 as 'very heavy commercial and corporate work by centrally based London firms'. Within that pool of work there will be degrees of complexity

and this paragraph will still be relevant.

INSTRUCTING LONDON SOLICITORS

30. In a case which has no obvious connection with London and which does not require expertise only to be found there, a litigant who unreasonably instructs London solicitors should be allowed only the costs that would have been recoverable for work done in the location where the work should have been done: *Wraith v Sheffield Forgemasters Ltd* [1998] 1 WLR 132 (CA). It follows that a party who instructs London solicitors to pursue in London a claim which concerns a dispute arising outside London and which was suitable to be heard in the appropriate regional specialist court should also be allowed only the costs that would have been recoverable for pursuing the claim in that regional court (and see Practice Direction 29 para 2.6A).

31. Where all or part of the work on a case is done in a different location from that of the solicitor's office on the court record, the appropriate hourly rate for that part should reflect the rates allowed for work in that location, whether that rate is lower or higher (provided that, if a higher rate is claimed, a decision to instruct solicitors in that location would have been reasonable).

IN HOUSE LAWYERS

32. The costs of in-house legal staff should be assessed as if they were in private practice, attributing to them a notional hourly rate based on the guideline rates for the relevant location. Unless it was reasonably plain that the indemnity principle would be infringed by this approach, it would not be practical to require a breakdown of the expenses of obtaining the services in-house: Re Eastwood [1975] Ch 112.

SOLICITOR ADVOCATES

33. Remuneration of solicitor advocates is based on the normal principles for remuneration of solicitors. It is not therefore appropriate to seek a brief fee and refreshers as if the advocate were a member of the Bar. If the cost of using a solicitor advocate is more than the cost of instructing counsel, the higher cost is unlikely to be recovered. The figures properly recoverable by solicitor advocates should reflect the amount of preparation undertaken, the time spent in court and the weight and gravity of the case.

34. Where the solicitor advocate is also the solicitor who does the preparation work, the solicitor is entitled to charge normal solicitors' rates for that preparation, but once the solicitor advocate starts preparation for the hearing itself the fees recoverable should not exceed those which would be recoverable in respect of counsel.

35. The fees of a solicitor acting as a junior counsel should not exceed the fee that would have been appropriate for junior counsel, as to which see below.

COUNSEL'S BRIEF FEES

36. Counsel's fees for advisory work and drafting are properly chargeable at hourly rates. However work done preparing for and attending a court hearing should be charged as a lump sum brief fee and not at an hourly rate. A proper measure for counsel's brief fee is to estimate

what fee a hypothetical counsel, capable of conducting the case effectively, but unable or unwilling to insist on the higher fees sometimes demanded by counsel of pre-eminent reputation, would be content to take on the brief; but there is no precise standard of measurement and the judge must, using his or her knowledge and experience, determine the proper figure: *Simpsons Motor Sales (London) Ltd v Hendon BC* [1965] 1 WLR 112 per Pennycuick J.

37. As a rule of thumb, junior counsel's reasonable fee will be one half of the reasonable fee of leading counsel, unless the junior or the leader has done substantially more or less work than would normally be expected.

THE TIME SPENT BY SOLICITORS AND COUNSEL

38. There can be no guidance as to whether the time claimed has been reasonably spent, and it is for the judge in each case to consider the work properly undertaken by solicitors and counsel and to arrive at a figure which is in all the circumstances reasonable (and, on the standard basis, proportionate).

EXPENSES WHICH ARE NOT GENERALLY RECOVERABLE

39. Although the court may exceptionally allow the following in unusual circumstances, generally the costs of postage, couriers, telephone calls, stationery and photocopying are not recoverable as they should be included in the hourly rate agreed between the solicitors and their client. No allowance should be made for reading incoming routine correspondence as the time spent is included in the routine charge for replying to it. Similarly, counsel's travelling time and expenses will generally be included in the brief fee agreed.

FAST TRACK TRIAL COSTS

40. The amount of fast track trial costs which the court may award (that is, the costs of the advocate preparing for and attending the trial) is set out in the table to r.45.38. Rule 45.37(2) provides definitions of "advocate", "fast track trial costs" and "trial". The court may not award more or less than the amount shown in the table except where it decides not to award any fast track trial costs or where r.45.39 applies. Rule 45.39 sets out the court's powers to award more than the amount of fast track trial costs where it was necessary for a legal representative to attend to assist the advocate, where a separate trial of an issue is ordered, or where the paying party has behaved improperly during the trial. It also sets out the court's powers to award less, where the receiving party is a litigant in person, where both a claim and a counterclaim succeed, or where the receiving party has behaved unreasonably or improperly during the trial.

THE COSTS OF APPEALS

41. On appeals where both counsel and solicitors have been instructed, the reasonable fees of counsel are likely to exceed the reasonable fees of the solicitor. In many cases the largest element in the solicitors' reasonable fees for work on an appeal concerns instructing counsel and preparing the appeal bundles. Time spent by the solicitor in the development of legal submissions should only be allowed where it does not duplicate work done by counsel and is claimed at a rate the same or lower than the rate counsel would have claimed.

42. The fact that the same counsel appeared in the lower court does not greatly reduce the reasonable fee unless, for example, the lower court dealt with a great many more issues than are raised on the appeal. It is reasonable for counsel to spend as much time preparing issues for the appeal hearing as were spent preparing those issues for the lower court hearing.

43. Although the solicitor may have spent many hours attending on the client, the client should have been warned that little of this time is recoverable against a losing party. Reasonable time spent receiving instructions and reporting events should not greatly exceed the time spent on attending the opponents.

44. There is usually no reason for more than one solicitor to spend any significant time perusing papers. A large claim for such perusal probably indicates that a new fee earner was reading in. Reading in fees are not normally recoverable from an opponent.

45. Although it is usually reasonable to have a senior fee earner sitting with counsel on the appeal hearing, it is not usually reasonable to have two fee earners. The second fee earner may be there for training purposes only.

46. In most appeals it will be appropriate to make an allowance for copy documents. The allowance for copying which is included in the solicitor's hourly rates will already have been used up or exceeded in the lower court. An hourly rate charge is appropriate for selecting and collating documents and dictating the indices. If the paperwork is voluminous much of this should be delegated to a trainee. Operating the photocopying machine is secretarial work for which no allowance should be made. Note that for the copying itself, a fair allowance is 20p per page. This includes an allowance for checking the accuracy of the copying.

SUMMARY ASSESSMENT WHERE THE COSTS CLAIMED INCLUDE AN ADDITIONAL LIABILITY (SUCCESS FEES OR ATE PREMIUM)

47. Following the Legal Aid, Sentencing and Punishment of Offenders Act 2012, success fees payable under conditional fee agreements made after 1st April 2013 are not recoverable between the parties except in limited classes of cases for which the commencement of the Act was temporarily deferred. The transitional rules are set out in Part 48.

48. After the event insurance premiums are not recoverable unless either:

(a) the policy was taken out before 1st April 2013; or
(b) the policy covers liability for the costs of expert reports on liability or causation in clinical negligence claims.

49. Where an additional liability (a success fee under a conditional fee agreement or an after the event insurance premium) continues to be recoverable from the opponent:

(a) If a summary assessment is made before the conclusion of the proceedings, the court may assess the base costs, but not the additional liability (success fee or after the event insurance premium): r.44.3A(1) as it was in force before 1st April 2013.
(b) If a summary assessment is made at the conclusion of the proceedings, or the part of the proceedings to which the funding arrangement relates, the court may summarily assess all of the costs including the additional liabilities, may order detailed assessment of the additional liabilities and summarily assess the other costs or may

order detailed assessment of all of the costs.

50. Where the court carries out a summary assessment of the base costs before the conclusion of proceedings it is helpful if the order identifies separately the amount allowed in respect of: solicitors charges; counsel's fees; other disbursements; and any value added tax. If this is not done, the court which later makes an assessment of an additional liability, will have to apportion the base costs previously assessed.

51. In assessing an additional liability, the court will have regard to the facts and circumstances as they reasonably appeared to the solicitor or counsel when the funding arrangement was entered into and at the time of any variation of the arrangement.

APPENDIX 1

CIVIL PROCEDURE RULES

Basis of assessment

44.3

(1) Where the court is to assess the amount of costs (whether by summary or detailed assessment) it will assess those costs –

(a) on the standard basis; or
(b) on the indemnity basis,

but the court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount.

(Rule 44.5 sets out how the court decides the amount of costs payable under a contract.)

(2) Where the amount of costs is to be assessed on the standard basis, the court will –

(a) only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and
(b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party.

(Factors which the court may take into account are set out in rule 44.4.)

(3) Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party.

(4) Where –

(a) the court makes an order about costs without indicating the basis on which the costs are to be assessed; or
(b) the court makes an order for costs to be assessed on a basis other than the standard

basis or the indemnity basis,
the costs will be assessed on the standard basis.

(5) Costs incurred are proportionate if they bear a reasonable relationship to –

(a) the sums in issue in the proceedings;
(b) the value of any non-monetary relief in issue in the proceedings;
(c) the complexity of the litigation;
(d) any additional work generated by the conduct of the paying party; and
(e) any wider factors involved in the proceedings, such as reputation or public importance.

(6) Where the amount of a solicitor's remuneration in respect of non-contentious business is regulated by any general orders made under the Solicitors Act 1974[2], the amount of the costs to be allowed in respect of any such business which falls to be assessed by the court will be decided in accordance with those general orders rather than this rule and rule 44.4.

(7) Paragraphs (2)(a) and (5) do not apply in relation to –

(a) cases commenced before 1st April 2013; or
(b) costs incurred in respect of work done before 1st April 2013,
and in relation to such cases or costs, rule 44.4.(2)(a) as it was in force immediately before 1st April 2013 will apply instead.

Factors to be taken into account in deciding the amount of costs

44.4

(1) The court will have regard to all the circumstances in deciding whether costs were –

(a) if it is assessing costs on the standard basis –
  i. proportionately and reasonably incurred; or
  ii. proportionate and reasonable in amount, or
(b) if it is assessing costs on the indemnity basis –
  i. unreasonably incurred; or
  ii. unreasonable in amount.

(2) In particular, the court will give effect to any orders which have already been made.

(3) The court will also have regard to –

(a) the conduct of all the parties, including in particular –
  i. conduct before, as well as during, the proceedings; and
  ii. the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;
(b) the amount or value of any money or property involved;
(c) the importance of the matter to all the parties;
(d) the particular complexity of the matter or the difficulty or novelty of the questions

[2] 1974 c.47

raised;
(e) the skill, effort, specialised knowledge and responsibility involved;
(f) the time spent on the case;
(g) the place where and the circumstances in which work or any part of it was done; and
(h) the receiving party's last approved or agreed budget.

(Rule 35.4(4) gives the court power to limit the amount that a party may recover with regard to the fees and expenses of an expert.)

Procedure for assessing costs

44.6

(1) Where the court orders a party to pay costs to another party (other than fixed costs) it may either –

(a) make a summary assessment of the costs; or
(b) order detailed assessment of the costs by a costs officer,

unless any rule, practice direction or other enactment provides otherwise.

(Practice Direction 44 – General rules about costs sets out the factors which will affect the court's decision under paragraph (1).)

(2) A party may recover the fixed costs specified in Part 45 in accordance with that Part.

PART 44 PRACTICE DIRECTION

Summary assessment: general provisions

When the court should consider whether to make a summary assessment

9.1

Whenever a court makes an order about costs which does not provide only for fixed costs to be paid the court should consider whether to make a summary assessment of costs.

Timing of summary assessment

9.2

The general rule is that the court should make a summary assessment of the costs –

(a) at the conclusion of the trial of a case which has been dealt with on the fast track, in which case the order will deal with the costs of the whole claim; and
(b) at the conclusion of any other hearing, which has lasted not more than one day, in which case the order will deal with the costs of the application or matter to which the hearing related. If this hearing disposes of the claim, the order may deal with the costs of the whole claim,

unless there is good reason not to do so, for example where the paying party shows substantial grounds for disputing the sum claimed for costs that cannot be dealt with summarily.

Summary assessment of mortgagee's costs

9.3

The general rule in paragraph 9.2 does not apply to a mortgagee's costs incurred in mortgage possession proceedings or other proceedings relating to a mortgage unless the mortgagee asks the court to make an order for the mortgagee's costs to be paid by another party.

(Paragraphs 7.2 and 7.3 deal in more detail with costs relating to mortgages.)

Consent orders

9.4

Where an application has been made and the parties to the application agree an order by consent without any party attending, the parties should seek to agree a figure for costs to be inserted in the consent order or agree that there should be no order for costs.

Duty of parties and legal representatives

9.5

(1) It is the duty of the parties and their legal representatives to assist the judge in making a summary assessment of costs in any case to which paragraph 9.2 above applies, in accordance with the following subparagraphs.

(2) Each party who intends to claim costs must prepare a written statement of those costs showing separately in the form of a schedule –

(a) the number of hours to be claimed;
(b) the hourly rate to be claimed;
(c) the grade of fee earner;
(d) the amount and nature of any disbursement to be claimed, other than counsel's fee for appearing at the hearing;
(e) the amount of legal representative's costs to be claimed for attending or appearing at the hearing;
(f) counsel's fees; and
(g) any VAT to be claimed on these amounts.

(3) The statement of costs should follow as closely as possible Form N260 and must be signed by the party or the party's legal representative. Where a party is –

(a) an assisted person;
(b) a LSC funded client;
(c) a person for whom civil legal services (within the meaning of Part 1 of the Legal

Aid, Sentencing and Punishment of Offenders Act 2012) are provided under arrangements made for the purposes of that Part of that Act; or

(d) represented by a person in the party's employment,

the statement of costs need not include the certificate appended at the end of Form N260.

(4) The statement of costs must be filed at court and copies of it must be served on any party against whom an order for payment of those costs is intended to be sought as soon as possible and in any event –

(a) for a fast track trial, not less than 2 days before the trial; and
(b) for all other hearings, not less than 24 hours before the time fixed for the hearing.

9.6

The failure by a party, without reasonable excuse, to comply with paragraph 9.5 will be taken into account by the court in deciding what order to make about the costs of the claim, hearing or application, and about the costs of any further hearing or detailed assessment hearing that may be necessary as a result of that failure.

No summary assessment by a costs officer

9.7

The court awarding costs cannot make an order for a summary assessment of costs by a costs officer. If a summary assessment of costs is appropriate but the court awarding costs is unable to do so on the day, the court may give directions as to a further hearing before the same judge.

Assisted persons etc

9.8

The court will not make a summary assessment of the costs of a receiving party who is an assisted person or LSC funded client or who is a person for whom civil legal services (within the meaning of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012) are provided under arrangements made for the purposes of that Part of that Act.

Children or protected parties

9.9

(1) The court will not make a summary assessment of the costs of a receiving party who is a child or protected party within the meaning of Part 21 unless the legal representative acting for the child or protected party has waived the right to further costs (see Practice Direction 46 paragraph 2.1).

(2) The court may make a summary assessment of costs payable by a child or protected party.

Disproportionate or unreasonable costs

9.10

The court will not give its approval to disproportionate or unreasonable costs. When the amount of the costs to be paid has been agreed between the parties the order for costs must state that the order is by consent.

APPENDIX 2

GUIDELINE FIGURES FOR THE SUMMARY ASSESSMENT OF COSTS EXPLANATORY NOTES

Solicitors' hourly rates

The guideline rates for solicitors provided here are broad approximations only.

Localities

The guideline figures have been grouped according to locality by way of general guidance only. Although many firms may be comparable with others in the same locality, some of them will not be.

In any particular case the hourly rate which it is reasonable to allow should be determined by reference to the rates charged by comparable firms. For this purpose the statement of costs supplied by the paying party may be of assistance. The rate to allow should not be determined by reference to locality or postcode alone.

Grades of fee earner

The categories of fee earners are as follows:

[A] Solicitors with over eight years post qualification experience including at least eight years litigation experience and Fellows of CILEX with 8 years' post-qualification experience.
[B] Solicitors and legal executives with over four years post qualification experience including at least four years litigation experience.
[C] Other solicitors and legal executives and fee earners of equivalent experience.
[D] Trainee solicitors, paralegals and other fee earners.

Qualified Costs Lawyers will be eligible for payment as grades B or C depending on the complexity of the work done.

"Legal executive" means a Fellow of the Chartered Institute of Legal Executives. Those who are not Fellows of the Institute are not entitled to call themselves legal executives and in principle are therefore not entitled to the same hourly rate as a legal executive.

Clerks without the equivalent experience of legal executives will be treated as being in the bottom grade of fee earner i.e. trainee solicitors, paralegals and fee earners of equivalent

experience. Whether or not a fee earner has equivalent experience is ultimately a matter for the discretion of the court.

Rates to allow for senior fee earners and for substantial and complex work

Many High Court cases justify fee earners at a senior level. However the same may not be true of attendance at pre-trial hearings with counsel. The task of sitting behind counsel should be delegated to a more junior fee earner in all but the most important pre-trial hearings. The fact that the receiving party insisted upon the senior's attendance, or the fact that the fee earner is a sole practitioner who has no juniors to delegate to, should not be the determinative factors. As with hourly rates the statement of costs supplied by the paying party may be of assistance. What grade of fee earner did they use?

As stated in paragraph 29 of the Guide:
In substantial and complex litigation an hourly rate in excess of the guideline figures may be appropriate for grade A, B and C fee earners where other factors, for example the value of the litigation, the level of the complexity, the urgency or importance of the matter, as well as any international element, would justify a significantly higher rate. It is important to note (a) that these are only examples and (b) they are not restricted to high level commercial work, but may apply, for example, to large and complex personal injury work. Further, London 1 is defined in Appendix 2 as 'very heavy commercial and corporate work by centrally based London firms'. Within that pool of work there will be degrees of complexity and this paragraph will still be relevant.

Guideline hourly rates

Grade	Fee earner	London 1	London 2	London 3	National 1	National 2
A	Solicitors and legal executives with over 8 years' experience	£512	£373	£282	£261	£255
B	Solicitors and legal executives with over 4 years' experience	£348	£289	£232	£218	£218
C	Other solicitors or legal executives and fee earners of equivalent experience	£270	£244	£185	£178	£177
D	Trainee solicitors, paralegals and other fee earners	£186	£139	£129	£126	£126

London

Band	Area	Postcodes
London 1	(very heavy commercial and corporate work by centrally based London firms[3])	
London 2	City & Central London – other work	EC1-EC4, W1, WC1, WC2 and SW1
London 3	Outer London	All other London Boroughs, plus Dartford & Gravesend

[3] Not restricted to any particular London postcode

National 1:

i. The counties of Bedfordshire, Berkshire, Buckinghamshire, Dorset, Essex, Hampshire (& Isle of Wight), Kent, Middlesex, Oxfordshire, East Sussex, West Sussex Suffolk, Surrey and Wiltshire
ii. Birkenhead, Birmingham Inner, Bristol, Cambridge City, Cardiff Inner, Leeds Inner (within 2km of City Art Gallery), Liverpool, Manchester Central, Newcastle City Centre (within 2m of St Nicholas Cathedral), Norwich City and Nottingham City.

National 2:

All places not included in London 1-3 and National 1

APPENDIX K

Organisations and individuals who sent correspondence to the working group

A major commercial firm

Association of British Insurers

BLM

DWF Solicitors

FOCIS

FOIL

Keoghs

Kingsley Napley Solicitors

Macfarlanes LLP

Rex Cowell Solicitors

Vincent Oakley