

The Warden



Stephen Nickell, Nuffield College, Oxford OX1 1NF

9<sup>th</sup> December, 2008

Sir Anthony Clarke  
Master of the Rolls  
Room E214  
Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Dear Sir Anthony

**Guideline Hourly Rates for 2009**

The Advisory Committee on Civil Costs recommends the attached Table of Guideline Hourly Rates to apply from 1<sup>st</sup> January, 2009. As you know these guideline rates are broad approximations to be used only as a starting point for Judges carrying out summary assessment. These rates are interim in nature in the sense that there remain some unresolved issues which are made clear in the enclosed document entitled “The Derivation of New Guideline Hourly Rates”, from which you will understand that at least one member was pressing for an immediate reduction in rates. The unresolved issues include the extent of work done by solicitors outside the region in which they are located and the extent to which referral fees can account for the gap between the hourly rates charged by claimants’, as opposed to defendants’, solicitors. We hope to have looked at these specific issues by 2010.

Our new interim Guideline Hourly Rates are based on data collected in a survey of solicitors and other interested parties as well as both written and oral evidence provided by representatives of the main interest groups and others. The information collected refers to the calendar year 2007 and, as last year, we have used the rise in the ONS Average Earnings Index (AEI) for Private Sector Service industries, excluding bonuses, seasonally adjusted, from 2006 Q3 to 2008 Q3 to uprate the 2007 numbers.

I should emphasise that the Committee sees this as unfinished business and that when the outstanding issues have been resolved, we shall revisit the question.

All Best Wishes

Stephen Nickell

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**New Guideline Hourly Rates for 2009**

	Band A	Band B	Band C	Band D
London 1	402	291	222	136
London 2	312	238	193	124
London 3	225-263	169-225	162	119
National 1	213	189	158	116
National 2/3	198	174	144	109

The rates for London 3, Bands A and B are presented as ranges following the format of the Guide to The Summary Assessment of Costs. These ranges go some way towards reflecting the wide range of work types transacted in these areas.

## **The Derivation of New Guideline Hourly Rates**

### **1. Introduction**

The Committee was tasked with the production of a new set of Guideline Hourly Rates (GHRs).

We based the new set on a survey of solicitors offices and insurance firms as well as written evidence solicited from interested parties and oral evidence from the representatives of key groups (details in Appendix).

The existing GHRs for 2007 are set out in Table 1.

**Table 1**  
**Guideline Hourly Rates Prevailing during 2007**

	Band A	Band B	Band C	Band D
London 1	380	274	210	129
London 2	292	222	181	116
London 3	228 (210-246)	184 (158-210)	152	111
National 1	195	173	145	106
National 2	183	161	133	101
National 3	167	150	128	95

- Band A - Solicitors, over 8 years qualified experience.
- Band B - Solicitors or Legal Executives, over 4 years qualified experience.
- Band C - Other qualified Solicitors or Legal Executives.
- Band D - Trainee solicitors, paralegals and equivalent.

Details of the regions, London 1, 2, 3; National 1, 2, 3 may be found in The Guide to the Summary Assessment of Costs. In this Guide, GHRs for London 3, Band A and Band B are presented as ranges which are shown in parentheses.

## **2. Significant Features of the Survey Data**

The core survey data were generated from the 129 responses from solicitors offices and refer to the 2007 calendar year.

Key features of the survey data are:

- i) Average hourly rates charged by solicitors in London are slightly below the GHRs. The gap is somewhat larger for London 1 than for London 2, 3.
- ii) Average hourly rates charged by solicitors outside London are slightly above the GHRs, particularly in National 1.
- iii) On average, the average hourly rates charged by solicitors in National 3 are the same as those charged by solicitors in National 2.
- iv) There is no suggestion that the relativities across the Fee Bands embedded in the GHRs are at variance with those revealed by the charges recorded in the Survey.
- v) Data provided on the reduction in submitted Bills of Costs suggest that the main reason why cost bills were reduced was via the number of hours of work claimed not via the hourly rate.
- vi) The data we collected and that reported in evidence provided by the Association of British Insurers (ABI) suggest a large gap between the rates charged by claimants' solicitors and those charged by defendants' solicitors for Personal Injury (PI) or Clinical Negligence (CN) cases. No such gap exists for Chancery (CH) or Employment Tribunal (ET) cases. In PI/CN cases the rates charged by claimants' solicitors were around the GHRs, those charged by defendants' solicitors were 20-35 percent lower.

### **3. Key Issues Arising from the Survey Data**

A number of issues arise from the data and evidence.

1. The first difficulty arises from the tendency for the responses provided by solicitors simply to reflect the existing GHRs. It might be argued that rates for ET work, which are not out of line with other comparable rates, do not suffer from this problem because GHRs are not used in a formal way to govern costs in this type of work. On the other hand, it may also be argued that GHRs may well be used informally when negotiating costs in ET cases, so this may not help.

However, we do find systematic variations between our survey results and the GHRs, which suggests that there may be other forces at work. Furthermore, it should also be noted that it is not possible to generate data on the rates which would be observed in a world where GHRs do not exist. So we look this issue squarely in the face and move on.

2. A closely related difficulty which we faced arises from point vi) above. The ABI suggested that we have a set of rates which are not influenced by GHRs and reflect the unfettered interplay of market forces, namely the rates charged by defendants' solicitors in PI/CN cases. As we have already noted, these are 20-35 percent below claimants' solicitors rates which represents a gap of around £35-£60 per hour averaging across Fee Bands.

However, it may be argued that claimants' solicitors incur additional costs arising both because claimant work does not appear at the door in a steady, uninterrupted flow and because they must pay "marketing" costs, such as referral fees. For example, a standard PI case of 10-20 hours of time and a referral fee of £400-£800 generates additional costs of £20-£80 per hour of a claimant solicitor's time. This is, however, merely a back-of-the-envelope calculation and we intend to pursue this issue by gathering further information. The purpose would be to find out precisely how much of the gap between claimants' solicitors rates and defendants' solicitors rates can be accounted for by referral fees. Of course defendants' solicitors also incur marketing and related costs which will be taken into account in the analysis.

The ABI case goes deeper, arguing that the very existence of GHRs enables claimants' solicitors to pay referral fees and that the Claims Management Industry is, therefore, only able to exist in its present form because GHRs are significantly higher than the "market rate". Indeed, in the oral evidence, it was put to us that the Claims Management Industry serves no socially useful purpose, the claimants only need the Yellow Pages to find solicitors and that reducing GHRs to the level of fees charged by defendants' solicitors would eliminate a significant degree of anticompetitive behaviour. It was argued that solicitors were analogous to plumbers who do not need to advertise on television to compete in their market.

The counter argument, also put to us, is that the existing claims management system is vital on "access to justice" grounds, that the real resources used in advertising for and collecting cases are a key part of ensuring that claimants find their way into the legal system and that enabling claimants' solicitors to pay for these resources via referral fees is a necessary part of the civil legal system.

These are deep waters. However, the Committee intends to pursue these issues by, initially, investigating the role of claims management companies and other introducers as well as their profitability and the extent to which they influence legal charges. In the meantime, the Committee feels unable to take the decision to move GHRs in the direction of defendants' solicitors rates when such a move could ultimately have serious implications for access to justice. We shall, however, return to this issue when we have gathered further information and undertaken more analysis along the lines described above.

3. A further question which exercised us was why average hourly rates charged by London solicitors were below the GHRs (see i) and rates charged by National solicitors were above the GHRs (see ii). One argument is that London firms undertake some work outside London for which London rates are not applicable whereas National firms undertake some London work for which London rates apply. Alternatively, it may be that London GHRs are slightly too high and National rates slightly too low. We did not have enough evidence to attach precise weights to these two possibilities. Because of this, it is our intention to gather further information on this question. It is important to recognise that we are not attempting to address the

question of whether the applicable rate should be fixed by reference to where the client should reasonably instruct a solicitor and/or the complexity of the work. These matters are separately addressed by case law and it is not our intention to interfere with judicial discretion in this area.

#### **4. The New Guideline Hourly Rates**

In the light of the body of evidence described in Section 2 and following the arguments set out in Section 3, we generated a set of GHRs along the following lines, taking the existing GHRs as the baseline:

- a) Reduce London 1 rates by 2% across the board.
- b) Reduce London 2, 3 rates by 1% across the board.
- c) Raise National 1 rates by 1% across the board.
- d) Leave National 2 rates unchanged.
- e) Raise National 3 rates to National 2 level.

The pattern of the new GHRs (2007 levels) is set out in Table 2.

	<b><u>Table 2</u></b>			
	<b><u>New Guideline Hourly Rates (2007 levels)</u></b>			
	Band A	Band B	Band C	Band D
London 1	372	269	206	126
London 2	289	220	179	115
London 3	226 (208-244)	182 (156-208)	150	110
National 1	197	175	146	107
National 2/3	183	161	133	101

These rates must now be updated to 2009 and here we use the same mechanism as was used to update the existing GHRs from 2007 to 2008. Thus we use the rise in the ONS Average Earnings Index (AEI) for Private Sector Service industries, excluding bonuses, seasonally adjusted from 2006 Q3 to 2008 Q3. This rise is almost exactly 8%. New GHRs for 2009 are set out in Table 3. These include the ranges for London 3, Band A and Band B.

**Table 3**

**New Guideline Hourly Rates (2009 levels)**

	Band A	Band B	Band C	Band D
London 1	402	291	222	136
London 2	312	238	193	124
London 3	244 (225-263)	197 (169-225)	162	119
National 1	213	189	158	116
National 2/3	198	174	144	109

For summary assessment of costs, the GHRs for London 3, Bands A and B will appear in the form of ranges, reflecting the wide range of work types transacted in these areas.

Finally, in the light of the discussion in Section 3, these rates are interim in nature and may be described as such.



## APPENDIX

### The Survey

1. In order to collect evidence on the current rates for civil legal work, the committee launched surveys of the following interested parties:

- Solicitors;
- Insurers;
- Local authorities; and
- Trade unions.

2. Other organisations were invited to provide written evidence but were not the subject of structured quantitative surveys. Those which submitted a response were :

- Medical Protection Society
- Institute of Legal Executives
- Union of Shop, Distributive and Allied Workers
- Thornleys Solicitors
- Irwin Mitchell
- Thompsons Solicitors
- Liverpool Law Society
- Association of District Judges
- Association of Personal Injury Lawyers
- Association of British Insurers

3. Furthermore during the course of the Committees deliberations oral evidence was invited from the following:

- Association of Personal Injury Lawyers
- Forum of Insurance Lawyers

- Motor Accident Solicitors Society
  - National Accident Helpline
  - NHS Litigation Authority.
4. The numbers of responses received were very small for both the Insurers and Local Authorities surveys (15 and 11) respectively. These numbers were insufficient to allow much meaningful statistical analysis of the results beyond the production of aggregate, summary statistics covering all respondents. While these were produced and considered by the committee as part of their deliberations, most of the analytical work focused on the survey of solicitors, which was the only one to yield enough responses (129 in total) to make statistical analysis genuinely worthwhile. The remainder of this appendix therefore describes the Solicitors survey only.
  5. The sample frame for this survey was the Law Society's database of practicing solicitors firms in England and Wales. This relevant database extract was taken in November 2007 and we are grateful for the assistance of the Law Society Strategic Research Unit in providing the necessary data.
  6. From this sampling frame a total of 1,500 firms were selected for inclusion in the survey, broken down into three sampling strata of 500 firms each, as follows:
    - Firms based in London;
    - Firms based outside London in one of 9 other major cities (Newcastle-upon-Tyne, Leeds, Manchester, Liverpool, Sheffield, Nottingham, Birmingham, Bristol and Cardiff);
    - Firms not in either of the above groups.
  7. Within each stratum, firms were sampled with probability proportionate to their size as measured by the number of partners and qualified solicitors working for the firm. The very wide disparity in firm size (ranging from single-handed operations to very large firms employing hundreds of fee earners) meant the largest firms in each stratum were included in the sample virtually as a matter of course.

8. The survey form (Appendix A) was designed to capture prevailing fee rates in four categories of solicitors' civil work, as follows:
  - Personal injury (excluding clinical negligence);
  - Clinical negligence;
  - Chancery;
  - Employment Tribunals.
9. The Guideline Hourly Rates are directly applicable in the first three categories on this list, all of which relate to court-based litigation. However, issues of cost settlement do not arise in the Employment Tribunals. This category of work was nonetheless included in the survey as an informal 'control group' in order to see the extent to which the prevailing Guideline Hourly Rates were influencing the rates payable in other areas of civil justice.
10. Given the very broad range of firms being asked to participate, the survey form was necessarily designed as a 'one-size-fits-all' document. It also needed to be of a manageable size, to avoid imposing an unreasonable burden on respondents. It was therefore inevitable that there were some aspects of the financing of civil work (e.g. conditional fee agreements, referral fees paid to claims management companies) which the survey could not explore fully.
11. Survey forms were sent out in paper form at the end of May and respondents were required to respond by 20 June. As the requested information was commercially sensitive, those asked to participate in the survey were advised that the information provided would be treated in absolute confidence and held securely within the Ministry of Justice. It would only be used by professional statisticians as part of the analysis relating to the calculation of the guideline hourly rates and any future work of the Committee where the information collected was relevant. No individual respondents would be identified through any material published or released.

## The Analysis

12. A total of 129 responses were received and used in analysis of the results, giving an implied response rate of just under 8%. There was only one instance where a response was received but not used in analysis – this was from a single firm that supplied separate responses for each of its offices around the county (8 in all). In order to avoid giving disproportionate weight to the rates of this firm in the analysis, only the responses from its London office and its largest non-London office were used, with the remainder discarded.

13. The breakdown of responses by the prevailing Guideline Hourly Rate band of the responding office was as follows:

London 1	18
London 2	13
London 3	5
National 1	51
National 2	31
National 3	11

14. It was thus generally possible to produce aggregate summary statistics for each individual GHR band, apart from London 3.

15. The analysis mainly focused on the effect on hourly rates of three key variables:

- Geographic location;
- Category of work;
- Whether firm typically acts for claimants, defendants or both.

16. Given the limited number of responses and the low response rate, all statistics supplied to the committee were presented in their unadjusted form (i.e. without any weighting scheme having being applied).

## **Solicitor Questionnaire**

## **Appendix A**

Please enter the name of the firm, address and postcode below.

**Note** - If your firm has more than one office, please enter below the address and postcode of the office where the largest number of fee earners are based.

**Please then complete the remainder of the questionnaire with reference to work done at this office.**

Name

Address line 1

Address line 2

Address line 3

Address line 4

Postcode

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### **General notes**

This questionnaire asks for the average hourly rates (in £) charged by fee earners of different levels of experience in your firm. It also asks for the overall percentage reduction in initial Bills of Costs submitted.

It covers four broad categories of work:

- Personal Injury cases (excluding clinical negligence);
- Clinical Negligence cases;
- Chancery cases; and
- Employment Tribunal cases.

**Please give the average hourly rates in each case, net of any success fees under a Conditional Fee Agreement.**

**Rates and other figures should be for the 2007 calendar year (1 Jan - 31 Dec).**

If more than one set of hourly rates applied during this period, please give those which were in place during the largest portion of the year.

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**Personal Injury cases (excluding clinical negligence)**

Number of **Personal Injury cases (excluding clinical negligence)** which were settled or concluded from this office during 2007.

Do you act mostly for claimants or defendants in these cases? (tick relevant box)

Act mostly for claimants   
Act mostly for defendants   
Act for both

Please enter the average hourly rates **charged** for the fee earner bands shown.

**Hourly rate charged** (£ average)

**Band A**

(Solicitors, >8 years qualified experience)

**Band B**

(Solicitors or Legal Execs, >4 years qualified experience)

**Band C**

(Other qualified Solicitors or Legal Execs)

**Band D**

(Trainee solicitors, paralegals and equivalent)

Please enter the overall percentage reduction (as a result of the judicial assessment process or settlement negotiations), in initial Bills of Costs submitted by you, in 2007.

Please enter below the name of the Court which hears the largest proportion of this office's **Personal Injury cases (excluding clinical negligence)**.

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**Clinical Negligence cases**

Number of **Clinical Negligence cases** which were settled or concluded from this office during 2007.

Do you act mostly for claimants or defendants in these cases? (tick relevant box)

Act mostly for claimants   
Act mostly for defendants   
Act for both

Please enter the average hourly rates **charged** for the fee earner bands shown.

**Hourly rate charged** (£ average)

**Band A**

(Solicitors, >8 years qualified experience)

**Band B**

(Solicitors or Legal Execs, >4 years qualified experience)

**Band C**

(Other qualified Solicitors or Legal Execs)

**Band D**

(Trainee solicitors, paralegals and equivalent)

Please enter the overall percentage reduction (as a result of the judicial assessment process or settlement negotiations), in initial Bills of Costs submitted by you, in 2007.

Please enter below the name of the court which hears the largest proportion of this office's **Clinical Negligence cases**.





**Chancery cases (insolvency, contract, land, intellectual property, etc.)**

Number of **Chancery cases** which were settled or concluded from this office during 2007.

Do you act mostly for claimants or defendants in these cases? (tick relevant box)

Act mostly for claimants   
Act mostly for defendants   
Act for both

Please enter the average hourly rates **charged** for the fee earner bands shown.

**Hourly rate charged** (£ average)

**Band A**

(Solicitors, >8 years qualified experience)

**Band B**

(Solicitors or Legal Execs, >4 years qualified experience)

**Band C**

(Other qualified Solicitors or Legal Execs)

**Band D**

(Trainee solicitors, paralegals and equivalent)

Please enter the overall percentage reduction (as a result of the judicial assessment process or settlement negotiations), in initial Bills of Costs submitted by you, in 2007.

Please enter below the name of the court which hears the largest proportion of this office's **Chancery cases**.

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**Employment Tribunal Cases**

Number of **Employment Tribunal cases** which were settled or concluded from this office during the 2007.

Do you act mostly for claimants or defendants in these cases? (tick relevant box)

Act mostly for claimants   
Act mostly for defendants   
Act for both

Please enter the average hourly rates **charged** for the fee earner bands shown.

**Hourly rate charged** (£ average)

**Band A**

(Solicitors, >8 years qualified experience)

**Band B**

(Solicitors or Legal Execs, >4 years qualified experience)

**Band C**

(Other qualified Solicitors or Legal Execs)

**Band D**

(Trainee solicitors, paralegals and equivalent)

Please enter below the location of the Tribunal hearing centre which hears the largest proportion of this office's **Employment Tribunal cases**



**Reduction in Bills of Costs**

Where bills of costs are reduced, please indicate the main reason by ticking the appropriate box for each case type:

	<b>Personal Injury</b>	<b>Clinical Negligence</b>	<b>Chancery</b>
1. Reduction in the number of hours	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Incorrect band of fee earner for the work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Reduction in the hourly rate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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**Signature of completing officer**

**Print name in full**

**Position in Firm**

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