LSLA Response to Consultation on Guideline Hourly Rates – Civil Justice Council

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

The London Solicitors Litigation Association (LSLA) would like to praise the highly comprehensive methodology used. It is a welcome relief that this consultation is based on information largely collated from experienced Costs Judges and the profession. The information collated from the Business and Property Courts (BPC), Senior Courts Costs Office (SCCO) Judges, the SCCO Costs officers and Regional Costs Judges and from members of the legal profession is in our view, the best available evidence and that which is being applied in practice. It is up to date and reflects the 2020 position.

The forms circulated in order to collate the data as to rates that were awarded or agreed, and the entities to which they were sent, ensured that real data was captured rather than market hourly rates or some estimation as to rates reflective of the costs of running a law firm. We agree with the working group that the use of market rates as the sole yardstick is problematic (in the absence of evidence as to the extent to which clients are charged the shortfall between market rates and rates allowed), and that (save for London 1), there should not be different rates for different types of work.

We consider the Report to be an excellent attempt to resolve a complex problem and are encouraged that progress on GHRs can now be made.

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

The LSLA agrees with the proposal to remove the link to a City of London address as the criterion by which the highest bracket of rates is applied, and instead to apply the London 1 rates by reference to the type of work rather than the office location (within London) of the solicitors.

However, we disagree that London 1 rates should be "for very heavy commercial and corporate work". This definition is vague and will introduce a new and unnecessary uncertainty as to which are the applicable rates.

This problem is easily avoided by applying London 1 rates to all work proceeding in the BPC (in London) or in the Rolls Building. By definition, work in the London BPC/the Rolls Building is of a relatively high value or complexity, as it is not possible to bring the proceedings in the London BPC/the Rolls Building (or proceedings will be transferred out to the county court) if not.

Furthermore, since the London 1 rates are based on BPC data, the proposed London 1 rates already reflect the rates that are awarded in relation to all work in the BPC rather than only "very heavy" cases.

iii) The recommended GHRs set out in para 4.18 of the report

As the LSLA exists to represent litigators practising in London, it would not be appropriate for us to comment on the proposals concerning the merging of the National 1 and 2 bands or on the proposed GHRs for outside of London 1 and 2.

We generally have a high degree of confidence in the methodology adopted and the data collated as to the GHRs. In relation to the paucity of data for London 2, we consider that the

correct approach was adopted in re-allocating the professional data to more accurately reflect those firms being within London 2 rather than London 1 (para 4.8). Indeed, this leads to a more convincing data set for London 1.

We are not surprised that the working group found that receiving parties are likely to agree lower rates than they would achieve at assessment. It is certainly our experience that clients are prepared to take a lower sum in order to secure early payment and so as not to embark on detailed assessment proceedings. It would be our expectation that in bringing the GHRs up to date to reflect market practice, there may be less of a difference between costs recovered a) pursuant to agreement or b) on assessment as parties will be able to have a workable and realistic benchmark to work from. Indeed, one could even hope that in doing so, less cases will proceed to assessment and thereby free up valuable court time.

We consider that the GHRs set out in para 4.18 of the Report are a marked improvement on the existing GHRs. They will give inexperienced judges a better steer and provide a simplified scheme to assist in the exercise of their discretion taking into consideration the complexities and value of the claim. However, while we appreciate that information has been collated from specialised Costs Judges and from legal professionals, we do believe that the proposed GHRs are, on average, lower than the actual rates charged to clients by the LSLA's member firms. We suspect that this may reflect the fact that the data gathered by the working group comprised rates that were in turn pulled down by the existing GHRs. We are mindful of the considerations set out at para 2.9 of the Report in which the working group indicated that the downward pull of the existing GHRs was substantially diminished but we do believe that it is still a significant factor.

Given the objective is to ascertain broad approximations of actual rates in the market, and the relative paucity of data in respect of London 1 and London 2, the LSLA believes that the working group should recommend the collection and analysis of further data from London firms (an exercise with which the LSLA would be willing to assist); and that in the meantime, the proposed GHRs for London 1 should be increased across the board by say 10 to 15% which broadly reflect the LSLA member firms' average rates charged for work in the London BPC.

iv) Whether the rate of £186 for London 1 Grade D is too high; if so, what rate should it be and why?

We agree with the working group that it does not make sense to depart from the evidence of the mean based on the data collated in respect of one particular grade of fee earner. We have indicated that the LSLA believes the London 1 rates should be increased from those proposed. However, regardless of that suggestion, the LSLA does not believe that there is any basis for regarding the rate of £186 for London 1 Grade D to be too high. On the contrary, that rate is lower than the rate typically charged by LSLA members in London 1 work especially before the BPCs.

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

As the LSLA exists to represent litigators practising in London, it would not be appropriate for us to comment on these changes.

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?

The LSLA would strongly advise against making any such recommendation:

- First, the linkage between location of fee earners and the rates allowed should be weakened rather than strengthened. The linkage is increasingly irrelevant and is a relic from an age in which the guideline hourly rates were intended to reflect a calculation as to the overheads in running a law firm, ie the expense of time. The working group has correctly abandoned using that concept to inform its recommendations and so it should recognise that office location will inevitably become redundant in determining the applicable rates. The working group has already made that step in relation to London 1 and, although it was not felt able to go further in that regard outside of London 1, we believe the working group should have done so and future reviews will inevitably do so. The operating models of law firms have been changing for some time and the pandemic has accelerated that change. It is now possible to operate a law firm (including one doing "very heavy" commercial work) entirely remotely. There is no good reason why paying parties should pay more, or less, depending on whether the fee earners carrying out work are (notionally) located in an expensive office or operate from a virtual law firm with a postbox.
- Secondly, it is not practically feasible to specify the location of fee earners carrying out the work. Due to flexible working practices and the ability to operate remotely, the 'location' of a fee earner is similarly flexible. Fee earners could adopt different locations for marketing or organisational purposes and may be at different locations at different times of the week, whereas in reality for the past year, nearly all fee earners have actually worked from home. What will happen in practice is that firms will notionally specify a central London location for fee earners in order to attract

London 1 or London 2 rates, regardless of the location in which the individual is physically located during working hours.

- Thirdly, adding to the requirements of the N260 will simply add an additional layer of cost for little benefit.
- Fourthly, it is not consistent with the purpose of summary assessment for judges to be directing themselves to such minutiae as the location of individual fee earners.

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

The LSLA generally agrees with the revised contents of the Guide. However, we disagree with the definition of London 1 in Appendix 2 as 'very heavy commercial and corporate work by centrally based London firms'. We believe the definition of London 1 should be 'work carried out in cases proceeding in the [Business and Property Courts (in London)] or [Rolls Building]'. We believe this should certainly apply to all solicitors with a London postcode (but do not express a view as to whether it should extend to all solicitors nationwide regardless of office location).

viii) Any other comments?

The LSLA was formed in 1952 and represents the interests of a wide range of civil litigators working in London. It has over 3,350 members, ranging from the sole practitioner to major international firms, and including almost all of the major litigation practices. Nearly 50 firms hold corporate membership (Addleshaw Goddard, Allen & Overy, Ashurst, Baker & McKenzie, BDB Pitmans, Charles Russell Speechlys, Clifford Chance, CMS Cameron McKenna Nabarro Olswang, Collyer Bristow, DAC Beachcroft, DLA Piper, Edwin Coe, Eversheds Sutherlands, Fox Williams, Freshfields, Gibson Dunn & Crutcher, Harcus Parker, Hausfeld, Herbert Smith Freehills, HFW, Hogan Lovells, K&L Gates, Kingsley Napley, Latham & Watkins, Linklaters,

Mayer Brown, Mishcon de Reya, Moon Beever, Norton Rose Fulbright, Osborne Clarke, Penningtons Manches Cooper, Reed Smith, Rosling King, RPC, Russell-Cooke, Schillings, Signature Litigation, Simmons & Simmons, Slater & Gordon, Slaughter and May, Stephenson Harwood, Stewarts Law, Taylor Wessing, Travers Smith, Watson Farley & Williams, White & Case, Winston & Strawn and Withers.) Members of the LSLA Committee regularly sit on the a number of consultative bodies including the Civil Justice Council, the Chancery Court Users Committee, the Rolls Building Users Committee, the Law Society Civil Litigation Committee and the Commercial Court Users Committee, as well as ad hoc groups such as the working parties on the Disclosure pilot scheme and the review in relation to witness statements. As a consequence, the LSLA has become the first port of call for consultation on issues affecting civil and commercial litigation in London, and is at the forefront of the process of change.

Members of the LSLA have a wide range of views and it is not practicable in a single response to reflect all of them. To the extent that certain members may disagree with some of the views expressed in this response, for example, members whose main clients are defendant insurance companies with an interest in reducing the costs burden on those clients, those members are making separate submissions through their firms. Our response therefore reflects the perspective of members whose practice involves acting for both claimants and defendants across many different subject areas.

We consider that new GHRs should be implemented as soon as possible and agree with the working group that there is no reason for a phased introduction, which would lead to confusion and possible further revisions necessary given the passage of time.

	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%)