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Legal executives to recoup same fees as solicitors

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Lord Dyson approves Grade A parity for legal executives with sufficient experience

The Master of the Rolls, Lord Dyson, has approved a change to guideline hourly rates (GHRs) to allow chartered legal executives to recover costs at the same level as solicitors once they reach eight years' post-qualification experience in litigation (known as Grade A rates). The change will come into effect on 1 October.

The Costs Committee of the Civil Justice Council, chaired by Mr Justice Foskett and reporting to the Master of the Rolls, recommended that chartered legal executives with equivalent experience should be afforded the same recognition in the guidelines.

The Master of the Rolls, in his decision document, stated: "I also accept the recommendations to amend the criterion for Grade A fee earners so that it includes fellows of CILEx with eight years' post-qualification experience (section 6.1)."

Costs lawyers

He added: "Costs lawyers who are suitably qualified and subject to regulation [are to] be eligible for payment at GHR Grades C or B, depending on the complexity of the work (section 6.2). Both of these recommendations were supported by persuasive evidence and arguments. I propose to introduce these changes on 1 October 2014."

Sue Nash, chair of the Association of Costs Lawyers said that she was "delighted" that the "professionalism and expertise" of cost lawyers had been recognised in the report and had been accepted by the Master of the Rolls.

Nash said: "This recognition reflects the effort put in by the Association of Costs Lawyers to enhance the skills of our members and the work that we have done jointly with our regulator, the Costs Lawyer Standards Board (CLSB), to ensure robust regulation of our professional standards. We have unprecedented numbers signed up to our new, updated training course starting in September and with the active participation of cost lawyers in various consultations and costs committees, this latest announcement gives further confirmation of the professionalism and standing of our members."

Nash added that granting legal executives with eight or more years' experience Grade A status fee earners was a "timely recognition of their own expertise and experience, as well as of the diverse routes to professional qualification as a lawyer."

CILEx president Frances Edwards said: "I am grateful to Mr Justice Foskett, the Committee and Lord Dyson for being receptive to the evidence we submitted. Many of our members have reported that the guidelines have not reflected modern practice in the sector, and that firms have not been deploying their staff, or recouping costs, to the full extent."



Edwards added: "This recommendation recognises the professional standing of chartered legal executives, and will be welcomed by CILEx members and firms across the country."

The change will come into effect around the same time as parliament votes to extend individual practice rights for CILEx members.

'Victory for common sense'

Meanwhile, the Law Society chief executive, Desmond Hudson, has welcomed Lord Dyson's rejection of the recommendations to amend the Guideline Hourly Rates payable to solicitors.

"This is a victory for common sense and for the Law Society," said Hudson. "We cooperated throughout this review by providing some of our publicly available research data, and the committee included representatives from the Society. However, we were clear from the start that our data was not obtained for the specific purpose of a review of the Guideline Hourly Rates. We expressed our concerns about both the relevance of the Law Society data being used in this way and the need for robust and relevant evidence.

"The Master of the Rolls has proposed urgent discussions with us and the government. We look forward to working together to find a solution satisfactory for our members and the public interest. That process has to be transparent."

Hudson continued: "Our representatives on the committee must be congratulated on their hard work and commitment to the task. That time and effort has not been wasted as lessons have been learned. Some of the committee's recommendations have been accepted by the Master of the Rolls. Occasions such as this – along with the success of our recent Court of Appeal interventions in connection with court sanctions – prove what an invaluable and irreplaceable asset the Society is to its members.

"The Master of the Rolls should also be congratulated on the stance that he has taken to seek more robust and relevant evidence before making his final decision."



'The market should determine rates'

John Bramhall is the president of London Solicitors Litigation Association

"The LSLA has been awaiting the outcome of the Master of the Roll's deliberations on the Costs Committee of the CJC's recommendations on GHRs with some nervousness.

"The concern was that rather than the normal market-driven or inflationary increase, we would have seen a fundamentally different approach adopted leading to a potentially significant reduction in recoverable rates. The LSLA has consistently believed the market should determine rates and that the CJC Committee's model – expense of time plus a seemingly arbitrary pre-determined profit level – was not going to reflect market rates fairly. The LSLA notes that the MR has rejected the Costs Committee's recommendations, emphasising the original intention of the guidelines, as reiterated by Jackson – that 'the aim of the GHR should be to reflect market rates'.

"While it is disappointing for the MR to conclude that the data available to the committee fell short of adequate for him to determine appropriate rates for GHRs, we support that conclusion. We will urge the committee to revisit its criteria better to reflect the MR's view that reliable market evidence is needed so that GHRs are a broad approximation of actual rates in the market.

"The LSLA will continue to assist the committee in its work, and note that the changes that are to be made to rates for costs lawyers and legal executives seem pragmatic and sensible given the increasing role both have in contested cases."



'The writing is on the wall'

Chris White is a senior costs draftsman at Plexus Law

"After both sides of the industry have waited with bated breath for a long time the outcome is something of an anti-climax to those of a defendant persuasion, although claimant PI firms will doubtless be breathing a collective sigh of relief.

"With many such firms basing their business model on the employment of junior unqualified fee earners to conduct PI claims the proposed reductions to the Grade C and D charging rates would have had substantial impact at a time when many are still reeling from the impact of other reforms such as fixed fees for fast

track and the abolition of success fee recovery.

"The writing would, however, appear to be on the wall, with these rate changes, or something very much like them, likely to be introduced after a further period of consultation. This is a temporary stay of execution only and will soon continue the drive to curtail the excessive costs in civil litigation that has been so prevalent over the last 15 years.

"When the reduced rates are introduced it will be interesting to see the extent to which they are adopted at District Judge level. The courts have hitherto viewed the rates as a starting point or guide only and have augmented them where a matter was viewed as complex or difficult, particularly in multi track cases.

"With fixed fees only for fast track cases going forward the battle ground for defendants will be those multi track cases and the attempts by claimants to increase the lower rates substantially to reflect any perceived complexity in the litigation or indeed their own individual overheads. Those arguments now promise to have far more at stake for both parties than ever before."



'Avoiding change for the sake of change'

David Johnson is the president of the Forum of Insurance Lawyers (FOIL):

"The Master of the Roll's announcement around Guideline Hourly Rates reflects many of the concerns that FOIL raised when giving evidence before the CJC's Costs Committee.

"Variation of the GHR has the potential to significantly impact on litigation costs and with that, insurance premiums. In light of that fact, FOIL has consistently maintained that any change in the GHR would need to be supported by a solid body of independently gathered and verified evidence. The budgetary constraints on the CJC's Costs Committee were always likely to make it difficult for them to obtain sufficiently robust evidence on the issues. Moreover, even had that evidence been forthcoming it would not account for the full effects of the Jackson reforms, which have yet to fully crystallise.

"Against that background, FOIL is pleased to see an avoidance of change for the sake of change. It is also pleased to see that within its recommendations, the committee did not recommend different rates for different types of litigation but did advocate a new paralegal grade, both points that featured in FOIL's consultation response."