



## A FOIL consultation

August 2009

# Fast track predicable costs: planned by Woolf delivered by Jackson?

In Chapter 22 of his preliminary report Lord Justice Jackson reports that his and his panel of assessors' unanimous view is that they should take forward the recommendation included in the Woolf report, to extend predicable (in effect, fixed) recoverable costs across all fast track cases.

Jackson LJ has now established working groups to take forward that plan, across RTA, EL, PL, Disease and Housing Disrepair. FOIL representatives will be involved in all working groups except Housing. The impact will be far reaching – affecting not just the claimant community but all those involved in handling cases in these areas.

Members' input is needed to inform the debate and ensure that members' views shape FOIL policy. The issues are outlined below:

### General issues

1. Do you agree with the concept of predictable costs on the fast track?
2. Should claimant costs be predictable pre and post litigation?
3. Should defendant costs be predictable? If so, how should they be calculated? Should the approach be different for RTA, EL and PL?
4. Are predictable costs suitable for all the categories of case outlined above?
5. Are all fast track disease cases suitable for predictable costs?

### Costs matrix and payment trigger points

*Please consider the two draft matrices sent with this paper as Appendix 1 and 2. These have been produced as part of the preliminary report using data supplied during the consultation. They are illustrative only and open to debate*

6. Is some form of matrix the preferred solution?
7. Should the post-issue fees be staged as in Appendix 1, or a single stage as in Appendix 2?
8. What are your views on the payment trigger points in Appendix 1?
9. Should there be more or fewer stages?
10. How prescriptive should the regime be on maintaining fixed payment trigger points?
11. Should there be a reduction for early admission of liability? If so, what are your views on the figures given in the draft matrices?
12. What should happen if a defendant wins and obtains a costs order?

## **Experts and Counsel**

13. Should there be an additional fee if more than one expert is involved?
14. Will changes be required to the current practice on instructing experts to accommodate this regime?
15. Should experts' fees be fixed by the CJC, and, if so, how might that be achieved?
16. Should counsels' fees be permitted other than for advocacy?

## **Behaviour**

17. How are claimants to be discouraged from issuing or litigating to the next trigger point purely to increase costs?
18. How can "unreasonable conduct" by either party be dealt with?
19. How should allegations of fraud be handled?
20. How should an incentive be provided to both parties to settle using Part 36 or alternative provisions?

## **ATE**

21. What role should ATE have in the proposed regime?
22. Would you support the development of fixed or capped ATE premiums?

## **Other issues**

23. Should there be an 'escape route' from predictable costs for exceptional cases?
24. Should cases involving children and protected persons attract an additional fixed percentage uplift?
25. How should the issue of multiple claimants or defendants be handled?
26. How should the rates be kept under review? Is this a job for the Advisory Committee on Civil Costs? On an annual basis?

## **CFAs/Success fees**

27. What role do CFAs/success fees have in the regime?
28. If recoverable success fees are retained how should they be calculated?
29. If costs are fixed for claimants and defendants (see 2 and 3 above) where does this leave defendants' CCFAs? What type of 'win bonus' would you like to see for defendants?

**Any other comments on the proposals are also very welcome. Please forward your responses to Shirley Denyer by the end of August 2009, or if you would like any further information on the proposals please contact her at [shirley.denyer@foil.org.uk](mailto:shirley.denyer@foil.org.uk)**