

FOIL

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Sights on extension of costs regime



Fixed legal costs in personal injury litigation are not always popular with lawyers. Hourly rates generally allow the exercise of professional judgement regarding how much work a case demands, subject to client agreement. Fixed costs, however, impose a budget. If a case cannot be concluded within budget, the lawyer is working on his own time, at his own cost. This dynamic has shaped much of the legal debate about litigation costs.

The Jackson and related reforms have introduced a significant extension of the fixed costs regime, with the horizontal and vertical extension of the Claims Portal, as well as fixed costs outside the Claims Portal for RTA/EL/PL claims up to the fast track claim limit. By one estimate, the reduction in legal fees to Claimant solicitors in low value RTA work was in the order of 60%.

Little surprise that Claimant solicitors have moved into areas where work still commands hourly rates. Noise-induced hearing loss and clinical negligence have seen significant spikes in claims and associated costs.

There are signs, however, that the extension of fixed fees will continue. Lord Dyson M.R. has repeated his long-held

call for fixed fees to apply to all fast track cases (value up to £25,000) and smaller multi-track claims. He has challenged the MoJ to state publicly if they object. The Civil Justice Council, responding to the Insurance Fraud Task Force interim report, added its weight to the call for the extension of fixed fees to reduce litigation costs and, indirectly, to reduce incentives to commit insurance fraud.

The ABI has launched a campaign to extend the fixed fee regime to disease claims outside the portal. Similarly, the Law Society is holding focus group sessions with members around the potential for the introduction of fixed costs in clinical negligence claims. With all these developments, a betting man might put money on there being a further significant extension to the fixed costs regime.

It can be a challenge to work within such a regime. However, the current position cannot continue. There is too much waste and disproportionately high costs in lower value claims. The time is right for reform. In the upcoming consultations and negotiations, I hope Claimant and Defendant lobbys can work together to produce a regime that delivers a good quality service for clients at a fair and reasonable cost to the matters in dispute.

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