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Time to make progress on fixed fees

Costs budgeting was a key initiative of the Jackson reforms but pressure on resources and the time involved in approving costs budgets has led to considerable delays and a number of proposals to row back from this reform.

Costs budgeting is far from perfect: it doesn't control pre-issue costs, there is a need to build in contingencies that are unlikely to be needed, and there is a need to budget on the basis of a fully contested trial which in most cases doesn't happen. The Forum of Insurance Lawyers (FOIL) believes that fixed recoverable costs is a more certain, less cumbersome and more realistic approach to reducing costs.

There is a growing consensus in favour of extending fixed recoverable costs to cases at the lower end of the multi-track. Lord Justice Jackson has recommended it, the Department of Health supports the principle for clinical negligence claims and Lord Faulks, Minister of State for Civil Justice, speaking at the Association of Personal Injury Lawyers' (APIL) conference in May, said that Government supported the principle.

There is nothing new in fixed recoverable costs. We already have them for many personal injury claims up to the fast track limit and for intellectual property claims up to £500,000.

For too long fees have been determined by the cost of lawyers

doing what is considered reasonably necessary in each case. On the face of it, this may not seem to be a bad approach, but the reality is that without adequate restraint costs have got out of hand, and in some cases, badly out of hand.

Lawyers are resourceful and should be encouraged to use their skills to find more efficient ways of working. Defendant injury lawyers and many commercial lawyers have trodden this path for years. They have innovated and managed to stay profitable whilst delivering better value for money. There is no reason why this approach should not be applied to litigation generally.

The Ministry of Justice has its hands full with a range of proposed reforms but it is disappointing that, despite being promised fixed fees in clinical negligence claims by October, we have only seen limited activity on fixed costs since January. Lord Faulks's speech to APIL gives some encouragement and FOIL believes the time is right to press ahead with this.

FOIL has set up a working party to look at Lord Justice Jackson's proposals in detail and would like to encourage progress on this issue. ●

DUNCAN RUTTER, President, Forum of Insurance Lawyers (FOIL).