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## Claims allocated to the multi-track should be removed from the fixed costs regime, rules Court of Appeal 🗨️ 0

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BY MAREK HANDZEL ON NOVEMBER 17, 2016

LEGAL, NEWS

The Court of Appeal has decided that claims allocated to the multi-track should be removed from the fixed costs regime.

The judgment has been made after an appeal, brought by Nesbit Law Group, led to Lord Justice Briggs, Lord Justice Gross and Lord Justice Tomlinson deciding that the Civil Procedure Rules contained a drafting error, which it corrected.

In examining *Qader v Esure Services Limited*, the Court said on 16 November that it agreed with the appeal brought by the claimant representative Nesbit Law Group, who had contended that costs budgeting applied as usual for a multi-track claim that had been moved from the RTA Protocol. The defendant argued that the fixed costs regime applicable for claims exiting the RTA Protocol should still apply.

The Court said that close analysis of the history of the rules demonstrated that it was never the intention that cases in the multi-track should be subject to fixed costs and that it could correct obvious drafting errors.

Alan Nesbit, the founder of Nesbit Law Group, said that the decision was a crucial one for claimant lawyers.

“We have a number of cases which start in the Portal, a straightforward RTA case, and the defendant alleges fraud, so it comes out of the Portal. We then issue proceedings and we say it’s multi-track, the judge agrees that it’s multi-track and then at that point is when the problems arise,” said Nesbit.

"The reason this is so crucial is because we are both putting in budgets for say £50,000 – which are the costs you need to fight a fraud case – because it's very complicated and involves all sorts of detailed evidence. But if the appeal wasn't successful then that would limit us to fixed costs, so we would only get £3,500 for something that costs £50,000 to run.

"If defendants win on a fraud case, they still get their budget because they're not limited to fixed costs. How on earth can that be right and proper?"

The hearing involved another appeal – *Khan v McGee* – on the same subject by Nesbit Law Group, where the firm acted for the defendant. Permission was also given for both the Personal Injuries Bar Association (PIBA) and the Association of Personal Injury Lawyers (APIL) to intervene by way of written and oral submissions.

The Forum of Insurance Lawyers (FOIL) said that the case, and the judgment in *Bird v Acorn* handed down in the Court of Appeal last week, highlight that in a fixed costs regime the devil is in the detail.

"Any ambiguity or lacuna in the rules has the potential to create satellite litigation or pervert the objectives behind the rules," said FOIL in a statement.

"With Lord Justice Jackson about to begin work to deliver the Government's policy of extending fixed costs to as many civil claims as possible, these recent cases confirm the need for a robust and thorough approach, with clear rules that can withstand the day-to-day challenges to which any costs regime is subject. FOIL welcomes Lord Justice Jackson's work and will be submitting written evidence to his review."