

FOIL**Prepared by Kysen PR**

Date 18 November 2016
Publication New Law Journal
Type of publication Legal Press

NewLawJournal
— Leading on debate, litigation and dispute resolution —

No guarantee on fixed costs following Quader

Date: 18 November 2016

Fixed costs do not apply to claims that start in the road traffic accident protocol but are later allocated to the multi-track, the Court of Appeal has held.

The claimants in the cases of *Quader v Esure*, *Khan v McGee* [2016] EWCA Civ 1109 argued that their costs were far higher than the sum available through the fixed costs regime. Lord Justice Briggs acknowledged that the Civil Procedure Rules indicated that fixed costs should continue to apply to claims commenced in the protocol. In an unusual decision, however, he allowed the appeal on the basis the effect of the Rules was “irrational” in the current context and must have had a different meaning.

The decision increases the costs payable by the defendants.

A spokesperson from the [Forum of Insurance Lawyers \(FOIL\)](#) said: “The Court of Appeal has found that the provisions on fixed costs set out in the rules contained a drafting error.

“Unexpectedly adopting the rarely-used approach of amending the rules to correct a mistake, the court has held that fixed costs do not apply to claims commenced under the Low Value RTA Protocol and later allocated to the multi-track. This 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.

“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.”