

**FOIL**

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## Jackson's legacy extends upwards...

**W**e now have Lord Justice Jackson's latest report into the thorny issue of fixed costs, and it is an evolution of his earlier reports. Space restricts me from repeating details here, but the headline is that he proposes new fixed recoverable costs (FRCs) for the remaining cases worth up to £25,000 as well as the majority of claims worth up to £100,000.

He recommends that both values of claim should fall into four bands of complexity with, as you would expect, higher levels of FRCs for the more complex bands. As with the current process, the actual level of FRCs depend on the stage reached, with four stages being used for claims worth up to £25,000 and six above that level, both with a trial stage in addition. For claims up to £25,000, Jackson largely builds on the existing regime, while over that level he relies on data from existing cases in trying to set the right level as well as a subjective view.

We also have proposals for fixed costs for cost only proceedings, which comes down on the side of replacing the entitlement to hourly rates in a 'Broadhurst v Tan' situation, to a percentage increase on the FRCs.

As Jackson went through his series of seminars engaging with practitioners, it became clear to him that it perhaps wasn't as simple as he may have thought back in his January 2016 paper,



hence the increased stages and complexity bands. He also noted that practitioners had largely come to terms with cost budgeting since that time, although he lamented the inability to control costs at the pre-litigation stage and notes that that probably would require primary legislation. Generally speaking, his proposals will not be seen as draconian as some feared at the outset, demonstrating his ability to listen to the industry.

This may well be his swansong, and given he took this task on at the request of both the Lord Chancellor and the Master of the Rolls, it is likely that the new Lord Chancellor will share the intention to implement his conclusions. The next step will be a consultation, on the terms that will give everyone a chance to respond to the figures proposed, but it is difficult to see at the present time when the MOJ will find the time to produce that consultation.

Thereafter, however, primary legislation is unlikely to be required, and so the changes should be achievable without Parliamentary involvement at what is a very busy and difficult time for the government. Even so, it is unlikely implementation will take place before October 2018 and possibly April 2019. ♦

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