



Informing Progress - Shaping the Future

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The extension of fixed recoverable costs (FRC)

Following up on the responses to the 2019 consultation on FRC, the government has now set out its proposals, which largely follow the recommendations made by Jackson LJ.

The government views the existing FRC regimes to have been a success and to have resulted in costs savings.

It is therefore proposed that FRC be extended across civil cases generally. To support the FRC objective of proportionality, costs will, in most cases, be dependent on the amount of damages. However, the proposals also recognise that the importance and complexity of a case will not always be determined by its value alone, and such cases will be allocated to a higher band as appropriate.

The fast track (claims with damages of up to £25,000)

FRC will be extended to more fast track cases, which will be allocated to one of the four bands of complexity, as set out in existing FRC regimes.

Counsel's fees will only be ring-fenced in Band 4 and in NIHL cases.

An unsuccessful band challenge will incur a costs liability of £150, but this will be kept under review.

The current provision in CPR 45.29J, enabling a party to exit FRC in the fast track in exceptional circumstances, will continue to apply.

IN BRIEF

The fixed recoverable costs regime will be extended to all fast track claims and to certain 'intermediate' cases valued at up to £100,000.

Provision is made for the costs consequences of Part 36 offers and unreasonable behaviour on the fast track.

Credit hire claims

These will fall into Band 1.

Package holiday sickness claims

These will fall within Band 2.

Noise Induced Hearing Loss (NIHL)

The revised FRC regime will include NIHL claims valued at below £25,000 in damages but with a new process and separate grid of FRC.

There will be certain mandatory actions to be taken by both claimants and defendants in NIHL letters of claim and response.

The government does not propose introducing standard directions but considers “this should be taken forward by the industry”.

‘Intermediate’ claims

The government has rejected the notion of having a separate intermediate track. Instead, the fast track will be extended to include cases valued between £25,000–£100,000 in damages. The existing multi-track court fees will be retained for new intermediate cases, but this will be kept under review.

Allocation of £25,000 to £100,000 claims

It will be the role of judges to exercise their discretion and ensure that £25,000 to £100,000 damages claims are appropriately allocated to one of the four bands to be introduced. No case should be allowed to exit from the proposed FRC regime, unless there are exceptional circumstances. It is anticipated that a new Practice Direction, similar to CPR 26.8, will be introduced to (i) give guidance on allocation, and (ii) indicate the information the court needs in order to make an appropriate band allocation.

An unsuccessful challenge to allocation should incur a costs liability of £300. However, it is the government’s view that challenging band allocation (or resisting a challenge) without sufficient basis could amount to unreasonable behaviour, incurring further costs penalties.

General provisions:

Claims excluded from the expanded fast track

Mesothelioma/asbestos, complex PI and professional negligence, actions against the police, child sexual abuse, and intellectual property claims will be excluded from the extended FRC regime.

Part 36 offers and FRC on the fast track

Where a Part 36 offer has been made, an uplift of 35% of FRC will apply to the stage during which and those after the relevant period expires.

Other grounds for awarding an uplift

The appropriate penalty for unreasonable behaviour during litigation will be a percentage uplift on FRC of 50%.

There will be a 25% FRC uplift for each additional claimant, in claims that arise from the same set of facts.

The existing provisions for London weighting in fast track FRC regimes, which 'provide for a 12.5% uplift on fixed costs payable to a party who lives in the London area and instructs a legal representative who practices in the London area', will apply to the new FRC regimes.

Vulnerability

The government's stance is that there may be grounds to make limited exceptions to FRC for specific vulnerabilities, rather than more expansive allowances that would be contrary to the objectives of FRC. It is therefore proposed that the new fast track FRC regime could cover the specific vulnerabilities set out in the guidance to the legal aid Family Advocacy Scheme, and that a specified, percentage uplift of FRC (25%, in keeping with the 25% bolt-on that is currently available under the Family Advocacy Scheme to those who '[have] difficulty giving instructions' as a result of a verified mental impairment) could be available in respect of parties who meet these criteria, upon judicial certification. Consideration will be given as to how the Directions Questionnaire could be amended to incorporate this percentage uplift.

It is recognised that additional disbursements may be needed for specific vulnerabilities (such as where a sign language interpreter may be required).

Approval of settlements

In drafting the rules for consideration by the CPRC, the government will consider whether the arrangements for settlements for protected parties (adults lacking mental capacity and children, as under RTA cases) should be extended to the new FRC regimes.

The full report may be found at [Fixed recoverable costs consultation - Ministry of Justice - Citizen Space](#). It includes details of the representations made by all interested parties and the government's responses to specific questions raised.

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