



Informing Progress - Shaping the Future

FOIL UPDATE 17th May 2022



Important developments in CPR

1. Consultation on changes to the Qualified One-Way Costs Shifting (QOCS) regime in personal injury cases

This consultation, which closes on **20th June 2022**, addresses the problems created by the decision in *Ho v Adelekun*. The issues concern (i) whether both damages and costs should form a fund for the defendant's costs where the claimant does not beat the defendant's offer at trial (in *Ho*), and (ii) the interplay of QOCS and Part 36 (as in *Cartwright*).

The suggested amendments to CPR 44.14 would

- Allow that a claimant's entitlement to costs is considered to be part of the overall fund against which set-off can be applied (i.e., damages, costs and interest); and
- Extend costs orders to deemed orders, so a defendant can enforce a deemed order for costs (especially following acceptance of a Part 36 offer) without the permission of the court.

The full consultation document is available at: [qocs-consultation-may-2022.pdf \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/104444/qocs-consultation-may-2022.pdf)

IN BRIEF

The MoJ proposes to extend CPR 44.14 to include costs in the fund available to defendants for QOCS set-off.

There are also proposals as to how vulnerability should be addressed in FRC cases.

The DCP is to become mandatory for defendants from 2nd June 2022.

2. Consultation on extending fixed recoverable costs (FRC): how vulnerability is addressed

This consultation considers how vulnerability should be addressed in FRC cases. The MoJ is keen to ensure that those who are vulnerable (either as parties or witnesses) are not disadvantaged in bringing or defending claims which are within the scope of FRC.

The MoJ now considers that vulnerability in respect of parties and witnesses under the extended FRC regime should be addressed on the following basis:

- (i) It is a judicial decision to determine whether or not the vulnerability gives rise to sufficient extra work to justify, exceptionally, an additional amount of costs;
- (ii) There needs to be a threshold, which is proposed to be 20% in line with existing provisions, of additional work caused by the vulnerability;
- (iii) The procedure by which people can establish a vulnerability uplift needs to be clear and simple; and
- (iv) The process needs to be retrospective (as with the assessment of costs generally), not prospective: the judge needs to be satisfied that sufficient extra work has been incurred, not that it may need to be.

A question arises as to whether these provisions should apply to existing FRC. The current 20%+ exceptionality route already applies in existing FRC and it may be that this should continue with this new proposal which has a similar basis. However, the impact of this would need monitoring. Given that existing FRC already cater for vulnerability to some extent, it may be that, if vulnerability uplifts are allowed in existing FRC cases other than exceptionally, the FRC may need to be reduced somewhat to account for this.

In the MoJ's 2021 FRC consultation response it said, on vulnerability that it would consider with the CPRC what arrangements were appropriate for vulnerability disbursements, consistent with the aims of FRC. In certain cases, already subject to FRC, only specified disbursements are recoverable. Those will remain, but it is not proposed to amend the rules to impose restrictions on recoverable disbursements in other cases – or to make any changes in relation to disbursements for vulnerability – at this time. This will be kept under review once the reforms are implemented.

The part of the consultation also closes on **20th June** and the full document may be found at:

[frc-vulnerability-consultation-may-2022.pdf \(publishing.service.gov.uk\)](#)

FOIL will be responding to both consultations and if any member has any comments, they are invited to contact FOIL's Technical Consultant, Shirley Denyer on info@foil.org.uk

3. The DCP becomes mandatory for defendants

Practice Direction 51ZB – The Damages Claims Pilot (DCP):

The Civil Procedure Rule Committee has approved the (145th) PD Update to require defendants who are legally represented to use the Damages Claims Portal for claims within its scope, pending approval by the Master of the Rolls and Ministerial concurrence. This is **due to come into force on 2 June 2022**.

It includes the requirement for the defendant's legal representative to [register with MyHMCTS](#) in order to access the system and receive notifications of claims.

The full PD Update is expected to be published soon. The online rules will then be updated accordingly.

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