



Informing Progress - Shaping the Future

FOIL UPDATE 4th July 2022



Civil Justice Council (CJC) Working Group – Initial Report

A working group set up at the request of the Master of the Rolls has published its initial report on costs. The group has adopted a strategic and holistic approach to its review of costs issues. This reflects in part the ongoing transformation of civil justice into a digital justice system. This report is the first of three stages, with the second being a consultation with a deadline of **30 September 2022**. The third stage will then be a final report, which will follow a series of costs conferences, the first of which will be held on **Wednesday 13 July 2022**.

The working group will be focusing on four areas:

1. Costs Budgeting;
2. Guideline Hourly Rates;
3. Costs under pre-action protocols/portals and the digital justice system;
4. Consequences of the extension of FRC.

The consultation is looking both at costs incurred before court proceedings have been issued and costs post-issue, within claims processes that will increasingly become digital.

1. Costs Budgeting

Under this heading the consultation seeks views on (i) whether costs budgeting should continue in its current form; (ii) whether it should be restricted in scope and if so how; (iii) whether it should be abolished altogether; and (iv) if costs budgeting is to be restricted or abolished,

IN BRIEF

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how an early focus on costs could nevertheless be maintained. An additional consideration is the use of the expressions “default on” and “default off”. These are shorthand for rules which provide that a measure, such as costs budgeting, is to take place unless the courts direct otherwise (default on) or conversely does not take place unless and until the court makes a positive direction to do it (default off). The costs management rules at present are default on for proceedings worth less than £10 million, subject to various exceptions. They are default off for cases over £10 million.

2. Guideline Hourly Rates ('GHRs')

The consultation is not intended to deal with a review of GHRs but rather it addresses two broad questions. First, what is the purpose and effect of GHRs in the current interlocking landscape; and second, if there is a place for GHRs in the future, what is the right approach to reviewing GHRs over time.

When looking at the first of these topics, the working group will take into account all aspects of the current landscape of civil justice, including changes such as the use of technology, including any impact of remote hearings and remote working, and the extension of fixed recoverable costs to cases valued at up to £100,000 and IPEC capped costs.

Within the consideration of the second topic the working group seeks to identify a feasible mechanism for reviewing GHRs: what the right approach should be and how often the GHRs should be subject to review. This offers a further opportunity for stakeholders to provide input into what methodology they believe should be used.

3. Costs under pre-action costs/portals and the digital justice system

Given the existence and importance of a large number of pre-action protocols and the relationship between pre- and post-issue processes, the working group has indicated that it ‘needs to think holistically about how all the costs associated with the resolution of the dispute are dealt with’. This approach takes into account the impact of ever-increasing digitalisation within the court system.

Integrated claims processes will be governed by rules created by an Online Procedure Rule Committee ('OPRC') to be established by powers set out in the Judicial Review and Courts Act 2022. This legislation expressly caters for the need for governance of the pre-action processes as well as those in online courts. It is therefore important for the CJC to examine the governance of pre-action costs at this stage.

Among the questions posed under this heading is whether there is a need to reform the processes of assessing costs when a claim settles before issue, including both solicitor own client costs, and party and party costs?

4. Consequences of the extension of Fixed Recoverable Costs ('FRC')

Again, the consultation is not intended to trespass on the work already underway in regard to the extension of FRC. The focus is on considering the wider implications of the changes to FRC for the rest of the civil justice system. As well as involving topics (1) to (3) above, the potential issues arising may have wider implications too. For example, there may be other areas in which some form of fixed costs or cost capping scheme may be worthy of consideration. A possible example could be certain kinds of high value specialist litigation.

An idea mooted recently has been to set up an extended form of costs capping arrangement, similar to the one operated in the Intellectual Property Enterprise Court but set at a higher level, for patent cases in the Shorter Trials Scheme.

The working group is particularly interested in receiving the views of respondents on the consequences of the extension of the FRC.

The full paper and the consultation questions may be found at: [Costs working Group - Consultation Paper – June 2022 \(judiciary.uk\)](#)

FOIL will be responding to the consultation.

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