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FOIL UPDATE 24th April 2023



Implementation of the extended fixed recoverable costs (FRC) regime: October 2023

IN BRIEF

The Procedure Rule Committee's (CPRC) has approved in principle the rules for extending the FRC regime with effect from 1st October 2023.

The CPRC has published draft papers incorporating the proposed amendments to Part 26 and PD 26, Part 28 and PD 28, Part 36, Part 45 and PD45. These are subject to formal ratification by the CPRC and the Master of the Rolls, as Head of Civil Justice, as appropriate, to be followed by ministerial concurrence and approval by Parliament.

There is also draft note explaining the changes to the Civil Procedure Rules (CPR).

In brief, the changes which will come into force are:

1. From 1 October 2023, FRC will be extended across the fast track and in a new intermediate track for simpler cases valued up to £100,000 damages.
2. In the fast track, there will be four complexity bands (1 to 4 in ascending order of complexity) with associated grids of costs for the stages of a claim.

The CPRC has published draft details of the changes to fixed recoverable costs that will come into force on 1st October 2023, including the new Intermediate Track.

3. Less complex multi-track cases under £100,000 damages will be allocated to a separate intermediate track. There will be four complexity bands (1 to 4 in ascending order of complexity) with associated grids of costs for the stages of a claim.
4. There will be new standard directions for the intermediate track.
5. In drafting the new rules, a generic approach has been taken so far as possible such that all categories of case are covered by the same rules. An exception to this is noise induced hearing loss (NIHL) claims.
6. Judges will retain the discretion to allocate more complex cases valued at under £100,000 to the multi-track, so that complex cases will not be inappropriately captured by the extended FRC regime in any event. The new intermediate track will capture cases which can be tried in three days or less, with no more than two expert witnesses giving oral evidence on each side: more complex cases will be allocated to the multi-track.
7. The new FRC will apply to claims where proceedings are issued on or after 1st October 2023, save for personal injury. The new FRC will apply to personal injury claims where the cause of action accrues on or after 1st October 2023; and will only apply to disease claims where the letter of claim has not been sent to the defendant before 1st October 2023.
8. The FRC tables have been updated for inflation and will be adjusted for inflation in the future but a claim will be subject to the same table of costs that is in place on the date when a claim is issued for the duration of that case. The MoJ propose to review the tables of costs and the extended FRC regime more generally in three years' time.
9. As previously publicised, changes have been made to the QOCS regime in personal injury cases in Part 44 of the CPR, following *Ho*.
10. There are provisions dealing with vulnerability which will apply to both the existing and new FRC, and will also take effect from 1st October 2023.
11. There are exceptions from FRC: housing claims; a mesothelioma claim or asbestos lung disease claim; one which includes a claim for clinical negligence, unless both breach of duty and causation have been admitted; a claim for damages in relation to harm, abuse or neglect of or by children or vulnerable adults; a claim that the court could order to be tried by jury if satisfied there is in issue a matter set out in section 66(3) of the County Courts Act 1984 or section 69(1) of the Senior Courts Act 1981; claims against the police involving an intentional or reckless tort, or relief or remedy in relation to the Human Rights Act 1998. (This exclusion does not apply to a road accident claim arising from negligent police driving, an employer's liability claim, or any claim for an accidental fall on police premises).

Separate proposals are made for these excluded claims, full details of which are to be found by following the link at the end of this Update.

12. There will be fixed assigned values for individual bands, and in mixed claims (involving both monetary and non-monetary relief), FRC will be calculated in part by reference to the damages awarded, and also the assigned value for non-monetary relief, taken together.

13. Subject to specified exceptions, two sets of FRC may be calculated when a party is successful in both defending a claim and in bringing a counterclaim.

14. There are provisions for FRC where there is a preliminary issue trial and the entitlement to costs in cases involving a preliminary issue trial is addressed in rule 45.48 for the fast track and rule 45.51 for the intermediate track.

15. The arrangements for Part 36 offers to settle in low value personal injury cases already subject to FRC have been updated to cover all FRC claims.

Full details of these proposals may be found at: [About us - Civil Procedure Rule Committee - GOV.UK \(www.gov.uk\)](https://www.gov.uk/about-us/civil-procedure-rule-committee) but of particular interest will be the tables of proposed FRC to be found at: [frc-cpr-pd-45-draft-early-publication.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/454545/frc-cpr-pd-45-draft-early-publication.pdf)

FOIL President **Nicola Critchley**, who is also a member of the Costs SFT comments:

Extending fixed costs gives the parties certainty over their level of exposure to each other's costs and FOIL has always been supportive of fixed costs being extended. FOIL welcomes the release of the draft rules at this stage to give the industry the opportunity to review. As always, the devil will be in the detail and history dictates that with any reform there is a period of bedding in and litigation on the interpretation of the rules. In the coming weeks FOIL will be digesting the rules, what it means for defendants and compensators and will provide commentary and guidance on the same.

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