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Fixed recoverable costs: consultation on issues relating to the new regime

The Ministry of Justice has published a consultation on issues relating to the extended fixed recoverable costs (FRC) regime. The consultation opened on Friday 21st July and **closes on Friday 8th September 2023.**

FRC will be extended to a much wider range of civil cases on 1st October 2023.

This consultation considers various issues raised by stakeholders in response to the publication of the amended rules. As the MOJ wishes to ensure that the extension of FRC in civil cases works as effectively as possible, it is now consulting on the following issues

- (i) whether costs on assessment should be fixed;
- (ii) whether there should be fixed costs for Part 8 (costs only) claims;
- (iii) the recoverability of, separately, (a) inquest costs and (b) restoration proceedings, and how this should be dealt with in the CPR;
- (iv) the issue of providing for the recoverability of advocates' preparation in the CPR, in cases which (a) are settled late or (b) are vacated; and
- (v) whether the fixed trial advocacy fees now in Practice Direction (PD) 45 of the CPR should be further updated for inflation, and by how much;

(vi) whether to make explicit in CPR 26.9(10)(b) in respect of clinical negligence claims, that an early admission of liability must be made in the pre-action protocol letter of response.

Following the MOJ's consideration of the responses received, it is proposed that, assuming agreement by the CPRC by December 2023, amendments could be included in the CPR SI for implementation in April 2024.

The MoJ has also announced that, while inflation remains high, it will provide a further exceptional uprating to the FRC figures. The new figures are intended to be in place for April 2024.

FOIL will be considering a response to this further consultation. FOIL has lobbied for a shortened 'assessment' procedure for FRC disputes, to deal with disputes that will arise under the new FRC regime, for example regarding disbursements that are not fixed in amount and where the rules allow specific applications for an award of more or less than the FRC. FOIL has also argued for many years that FRC should be extended to Part 8 costs-only proceedings. It is supportive of the proposals on both issues included in the consultation paper.

Full details may be found at: [draft-consultation-on-frc-issues-summer-2023.pdf](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/118423/draft-consultation-on-frc-issues-summer-2023.pdf)
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