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Fixed Costs in Low Value Clinical Negligence Claims

Following the consultation that ran from 31st January to 22nd to April 2022, the Department for Health & Social Care has now published its proposals for fixed recoverable costs in lower damages clinical negligence claims (LDFRC). It is proposed that LDFRC will apply to cases with a value at settlement or judgment from £1,501 to £25,000, inclusive.

The LDFRC scheme will exclude claims:

- (a) where the allegations of negligence would require the claimant to adduce medical expert evidence as to breach of duty of care and causation from more than three medical experts;
- (b) made against two or more defendants, where the allegations of negligence against each defendant are materially different;
- (c) arising from a still birth or neonatal death, including claims made by secondary victims;
- (d) where limitation is raised by the defendant as an issue.

Claims where the claimant is a litigant in person will not be included in the LDFRC scheme. All claims on behalf of protected parties or children should remain in the fixed costs scheme with an increased bolt-on amount of £1,800.

The proposed LDFRC scheme will be set out in a new Protocol, ('the LVCD Protocol'), amendments to CPR and practice directions.

The aim of the LVCD Protocol is to facilitate resolution, by requiring parties to exchange expert evidence in the pre-action phase and to participate in resolution stages. The LVCD Protocol will describe the behaviour the court expects of the parties prior to the start of proceedings. The CPR

and associated practice directions will set out the fixed costs themselves, sanctions for non-adherence to the LVCD Protocol and certain other details of the scheme.

The CPR enables the court to impose sanctions where the Protocol is not followed. The proposals for an LDFRC scheme for clinical negligence claims set out in the 2022 consultation proposals and in this consultation response document will be submitted to the CPRC, during the latter half of 2023. The intention is that the new rules will come into force on the common commencement date for secondary legislation in **April 2024**.

There is to be a further consultation focusing on the specific issue of disbursements under the proposed LDFRC scheme, inviting views on a proposed way forward on disbursements for all claims in the LDFRC scheme (see link below).

There will be two separate tracks for qualifying low value clinical negligence claims, a standard track and a light track. There will be a dedicated streamlined process for each track, reflecting the characteristics and requirements of claims on each track. All claims to which the LVCD protocol applies should be progressed on the standard track unless they are claims which would be considered suitable for the light track. The light track is designed for claims where the circumstances giving rise to the claim are such that it is anticipated that there will not be any dispute over issues of liability or that liability can be resolved quickly.

The proposed LVCD pre action protocol will begin with the letter of claim in either light or standard tracks and will be considered to have completed when: (a) 28 days have passed following receipt of a neutral evaluation outcome (the end of the post evaluation offer period); (b) a claim is settled at any time during the LVCD protocol processes; (c) a claimant confirms at any time that they are discontinuing their claim; (d) the parties agree, following mandatory stocktake, not to proceed with a neutral evaluation; (e) the defendant does not agree, following mandatory stocktake, to participate in a neutral evaluation requested by the claimant.

The response paper sets out the proposed processes and timescales for each track; the evidential requirements; and the fixed costs framework.

Proposals for neutral evaluation are a key feature in ensuring that claims which have been unable to settle after the initial party exchange and the stocktake phase have a further opportunity to settle and avoid costly litigation where that is possible. The expectation is that few claims would need to go to neutral evaluation as it should be possible for parties to reach resolution in earlier phases.

Full details of the proposals and the further consultation may be found at:

[Government response: fixed recoverable costs in lower damages clinical negligence claims \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/consultations/2023/04/2023-04-20-fixed-recoverable-costs-in-lower-damages-clinical-negligence-claims)

[Fixed recoverable costs in lower damages clinical negligence claims – a supplementary consultation on disbursements - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/2023/04/2023-04-20-fixed-recoverable-costs-in-lower-damages-clinical-negligence-claims-a-supplementary-consultation-on-disbursements)

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