Weightmans

Fixed Recoverable Costs 9 months on

A Weightmans briefing

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Viewed by many as the biggest change to civil justice in a decade, the impact of the new regime has (so far) been evolutionary rather than revolutionary. Momentum will undoubtedly pick up pace as the scope of the rules increases with time and Weightmans will be there every step of the way, providing insights and comment to keep you updated.

Introduction

We were delighted to bring you our latest Round Table event: "Fixed Recoverable Costs - 9 Months On" on 8 July 2024. We had previously held a similar event in September 2023, before the launch on 1 October, when we looked ahead to the new regime and what we thought it could mean for our clients.

This time, before a large audience, we examined how the Fixed Recoverable Costs ("FRC") regime has developed and whether our predictions, hopes and fears have actually transpired.

I expressed a personal view that, so far, it has been a case of evolution rather than revolution. Whilst things are definitely changing, with some new fixed costs figures coming into play from April 2024, there are also some areas (in the world of clinical negligence in particular) where we were expecting new rules, but these are likely to be postponed until next year.

As we will see, my own experience seems to reflect what our audience has seen so far but there is definitely more to come in this area. In the meantime, our panel highlighted some of the practical tips, pitfalls and behaviours that they have seen so far and not all have been as expected with the rules around vulnerability, for example, not featuring as much as anticipated.

Richard Palmer

Partner

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Where are we now 9 months on?

Panel member, Ken Slade, a senior member of Weightmans' Knowledge Management team, was able to offer an overview of where we have reached 9 months on with a particular emphasis on the 6 April 2024 amendments. He summarised them as follows:

Increased FRC to reflect inflation:

- The FRC are the same figures proposed by Jackson LJ back in his report on costs from 2017, but increased to reflect inflation (in line with the Services Producer Price Inflation (SPPI) rate) up to January 2023, when the proposed new FRC rules were first published;
- The MOJ originally proposed reviewing the figures in three years' time, but conceded in their July 2023 consultation that high rates of inflation justified an increase from April 2024;
- The increased figures - which apply to any cases settled from 6 April 2024 - have been uprated in line with SPPI to reflect inflation between January 2023 and October 2023, which is an increase of 3.2%;
- Trial advocacy fees on the fast track bands 1-3 have also been increased in line with SPPI plus a further 4% to reflect the fact that the figures referred to by Jackson LJ in 2016/17 were from 2013. The MOJ has confirmed that it will use SPPI for future increases to advocacy fees.

Ken Slade

Principal Associate

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Services Producer Price Inflation (SPPI) rate)

3.2% Increase applies to any cases settled from 6 April 2024

4% Further increase To reflect that figures were from 2013

Company restoration fees and inquest proceedings

In response to concerns raised by stakeholders, the MOJ asked in its July 2023 consultation whether inquest costs in Fatal Accident Act claims and costs incurred in restoring a company to the register should be recoverable under FRC. Unsurprisingly, the answer was a resounding yes, so the rules have been amended to permit recoverability of these costs;

New rule 45.15A and Table 15A permits the claimant to recover £1,280 plus disbursements in cases where it was necessary to make an application to restore a defendant company to the register. Previously this head of costs was limited to noise-induced hearing loss cases but the rule does leave open the opportunity for defendants to argue that it was not necessary to restore the company;

In terms of inquest proceedings, the new rule 45.1(10) states that recoverable costs incurred in relation to inquest proceedings will not be fixed, thereby disapplying the FRC regime altogether.

New rules

- New rule 45.15A
- New rule 45.1(10)

Clinical negligence claims

Amendments to rule 26.9(10)(b) in force from April 2024 clarify that a clinical negligence claim can only be allocated to the intermediate track where there has been an admission of liability in full.

This means that the defendant accepts that the claimant has suffered loss, including the injury set out in the letter of claim under the Pre-Action Protocol for the Resolution of Clinical Disputes, caused by the defendant's breach of duty of care; and the admission is made in the defendant's letter of response provided in accordance with the Pre-Action Protocol.

Rule amendment

- Amendments to rule 26.9(10)(b) in force from April 2024

Trespass to the person

The addition of a presumption that claims against public authorities for trespass to the person will be allocated to the multi-track (new rule 26.9(10)(f))

New rule

- New rule 26.9(10)(f)

What is on the horizon for October 2024?

Coming down the line, Ken outlined that, maybe the following could happen...

Shortened costs assessment procedure and fixed costs of assessment

The MOJ canvassed views on a streamlined costs assessment procedure including fixed costs of assessment in their July 2023 consultation. According to their consultation response published in February 2024, this proposal received some support and the Government committed to implementing these changes, hopefully in October 2024. However, the Civil Procedure Rule Committee's minutes from December 2023 reveal that the committee felt that an "additional and lengthy new procedure" was unnecessary. It therefore remains to be seen when – or even if - this reform will be implemented.

Clinical negligence

- FRCs were on course to be introduced for lower-value (i.e. fast track) clinical negligence claims from October, but it's now looking as though it's going to be next year instead.
- Minutes from April's Civil Procedure Rule Committee meeting show that the intention was to finalise rule changes before the summer, in time for implementation in October but we understand that the sub-committee handling the reform still needs to resolve issues before being in a position to present draft rules and a proposed pre-action protocol.
- This being the case, it's very much a case of 'watch this space' for exact details of when FRCs are going to come into force for fast track clinical negligence matters, but it is likely not to be before next year.

What behaviours are we seeing?

Product Liability specialist, Karyn Brannigan, took a look at what behaviours we have seen over the last 9 months and offered some practical tips which may assist when dealing with some of the intricacies of the FRC.

Stages 1 and 3 of the intermediate track

With an eye on Stage 1 (covering all work from instructions to the date of service of the defence) and Stage 3 (from the date of the service of the defence, up to the earlier date set for a CMC or an order giving directions) of the intermediate track, Karyn took us through a worked example of a claim that settles for £50,00 and which is allocated to complexity band 2.

If the claim settles at Stage 1, profit costs would be just over £8,000. If that same case settled at Stage 3, the fixed costs to be paid would be just under £14,000.00, a difference of circa £6,000 and an uplift of almost 75%!

She explained that, realistically, after a defence is filed and the parties are waiting for a CMC or directions, not that much work would have been done. So, it is clear that from a claimant perspective, it is in their interest to get on with the case, as quite simply, the further the claim progresses through the stages, the more money they get.

But, from a defendant's perspective, if the claim is to be settled, one should try and get it settled in Stage 1. This does potentially put more onus on pre litigation handlers to have progressed the matter.

"If the claim settles at Stage 1, profit costs would be just over £8,000. If that same case settled at Stage 3, the fixed costs to be paid would be just under £14,000.00, a difference of circa £6,000 and an uplift of almost 75%!"

Karyn Brannigan

Extensions of time

The above point then segued nicely into another key point in respect of the intermediate track, which is in respect of requests for extensions of time.

Karyn explained that, as is often the case, it might be necessary at junctures to seek an extension of time – perhaps for further time to serve a defence so as to finalise investigations, clarify instructions and for execution.

As the key date which triggers the switch from Stage 1 to Stage 3 is the service of the defence, a claimant's solicitor might be reluctant to agree an extension so that the claim can move stages more quickly. However, there is the risk with this tactic of unreasonably refusing an extension in circumstances where there is a genuine reason for the extension sought.

We might therefore see a claimant's solicitor agreeing to an extension, but with the condition that Stage 3 fixed costs will apply.

From a defendant's perspective, there is a cost benefit analysis to take place. If the matter is genuinely not capable of settlement at these stages, there is no real prejudice. However, if there is some prospect of settlement at Stage 1, the benefit in agreeing that condition against the additional costs recoverable are worth weighing up.

Karyn also highlighted that if the court makes an order for directions and, as sometimes happens, the parties agree to extend those dates, the extended dates do not form the basis of the stage at which the claim settles for the purpose of calculating the level of FRCs. That is because the subsequent stages specifically refer to the works 'set by the court' as opposed to, for example, the service, exchange or as may be agreed or extended by the parties.

What anomalies have we seen?

Karyn shared with the audience some anomalies within the current drafting which are worth keeping in mind. In summary (but not exclusively) these were:

1. CPR Part 45.50(3) states that the costs to be awarded for Stage 1 in the intermediate track are subject to assessment up to the maximum figure shown for Stage 1, except in a claim for personal injury where the figure is fixed.

Why is this important? If you are operating in the non PI sphere it is important to not just agree to the Stage 1 figure – if you think it is inconceivable that that much time / money has been spent, you can seek to agree a lower sum and if necessary proceed to assessment.

2. For non-personal injury claims which settle pre issue, fixed costs do not apply as proceedings have not been issued post 1 October 2023. If Part 8 proceedings are then issued purely to address costs as between the parties, does that then count as proceedings issued post 1 October 2023 and the entirety of the costs are fixed? The school of thought is that the answer is yes.

Our experience is that in many cases, claimants were accepting fixed costs as the Rule Committee has indicated that they are looking at changing the lacuna that exists.

However, hot off the press is a provisional assessment decision where the court has said fixed costs do not apply to the entirety of the costs and hourly rate costs. We understand that this decision may be appealed via the costs assessment process so watch this space.

Sarah Cartlidge, who specialises in credit hire claims, also took a look at behaviours arising out of the new regime and provided some further practical tips.

Karyn Brannigan

Partner

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Lower costs and indemnity spend for our clients in cases where FRC apply.

Sarah explained that the level of costs which the receiving party recovers will be greater on the intermediate track than it will be on the fast track and similarly will be greater the higher the complexity band to which the case has been allocated. Therefore, in order to seek to lower those costs and your indemnity spend, there are a number of things you can do to look to try and limit those costs.

Most obviously, you will be wanting to settle the claim as early as possible. The recoverable costs increase in value the later the stage of litigation. Therefore, the earlier the stage, the less costs exposure.

In addition to the above, you can take steps to try and ensure that your claim falls within a lesser track and/or a lower complexity band. After the filing of the defence the parties submit a directions questionnaire, often known as a DQ (a document with information needed to determine which track to allocate a case to, and to set a court timetable).The submissions which are included within the DQ as to the track and complexity band to which you are contending the case ought to be allocated are a key part of that (see below). But you can actually take steps to limit the track and complexity band to which a case will be allotted throughout its lifecycle. This is because many of the factors which will be considered when making that allocation are tied up in the nature and complexity of the case.

Sarah Cartlidge

Partner

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The factors which are relevant when a court allocates a case to track are set out within the Civil Procedure Rules at rule 26. The key stages that have already been flagged are below;

The general rule is that cases worth £0 to £10,000 are small track matters.

£10,000 to £25,000 fast track matters.

£25,000 to £100.000 intermediate track matters.

Fast track case

In addition, for RTA cases they become fast track where there is an injury claim that it is worth over £1,000, and it involves a vulnerable road user; a foreign defendant vehicle; a bankrupt; a personal representative or a minor. Otherwise, they become fact track where there is an injury claim worth over £5,000. If there is a personal injury element to the matter and the case is not an RTA, if the injury has a value in excess of £1,500 then the case is fast track allocated.

When looking at that 'monetary value' it is important to understand that certain factors are and are not relevant when assessing the value. The monetary value is relating only to items which are in dispute. It also disregards any claims for interest and the litigation costs as well as the financial values which the CPR allots to any non-monetary relief (these are used for calculating costs only). Finally, it disregards any contributory negligence argument. This means that, if you have a case pleaded at £15,000 but liability is agreed 50/50 then the case will continue to be allocated to the fast track as its value is over £10,000.

However, it is not just monetary value which is relevant to the allocated track. The CPR has a list of factors which are also taken into consideration, as set out below:

- The complexity of the issues
- The nature of the remedy being sought
- The monetary value of any Part 20 or additional claims
- The importance of the case to the parties and their views
- Dealing with the case justly and proportionately
- The estimated length of the Trial
- The number of experts involved
- The number of parties involved in the action.

When the court determines the complexity band, for fast track matters the complexity band is dictated by the type of claim e.g. RTA non-PI; professional negligence; travel; disease etc. However, in the intermediate track the determination of which complexity band will be allotted is more interlinked with the number of issues in dispute (with the rules referencing liability and quantum as issues), the likely length of the final hearing and some reference to claim types.

So, what does all of this mean?

During the litigation you have some control over the recoverable costs. The less complex the case, the fewer issues involved, the shorter the likely trial, the fewer heads of loss being argued over – the lower the track and complexity band likely to be allocated. If you have an intermediate track RTA non-PI case in terms of value, if you admit liability and causation, you are likely to be allocated to complexity band 1. Similarly, if you have a case worth £30,000 but you can make an admission in respect of one head of loss totalling £6,000, you have a claim which can be argued to be fast track as only £24,000 is in dispute.

One behaviour which we have encountered already in managing the new FRC regime is where the defendant insurer doesn't have authority from their policyholder to admit liability so proceeds to deal with a case on a without prejudice basis. Is this sufficient for a case to considered to be quantum only, or are there still two issues outstanding?

From a tactical point of view the wise thing to do would be to confirm at the very least that you don't intend to require the claimant to prove the cause of action and that merely the amount of recoverable damages is in issue. These permit you to proceed without admitting liability but arguably makes the position much clearer for any argument as to complexity band.

How should a party present matters within their DQ to try and ensure that allocation to track and complexity band is found in their favour?

A detailed but measured submission is always best. This will ensure that you highlight the value in dispute excluding interest/costs/contributory negligence and if that isn't supportive of your proposal then also emphasising the other factors which support your argument e.g. nature and number of issues; number of experts; absence of additional claims/number of parties.

Ideally, try to communicate with your opponent to agree the track and band. If they don't engage or you cannot agree, make your submissions and if able ensure you address any expected submissions from the other side. If possible, it would be efficient to create standard documents or standard paragraphs to be included.

There is a risk that an allocation hearing could be called and to avoid any potential costs implications of that hearing, not overstating your case is important.

One of the areas we covered in our first roundtable was the issue around vulnerability. Sarah looked at whether this had had the impact that we were expecting.

We had previously speculated that claimant representatives would seek to maximise their costs by using CPR 45.10 (1). This is the rule which allows the court to consider a claim for an amount of costs (but not disbursements) which is greater than the fixed recoverable costs where a party or witness is vulnerable, and the vulnerability has required additional work to be undertaken. But that additional work claimed for must be at least 20% greater than the fixed recoverable costs. Such vulnerability would be:

(a) Age, immaturity;

(b) Communication or language difficulties;

(c) Physical disability or impairment;

(d) Mental health condition or significant impairment of intelligence;

(e) The impact on them of the case itself;

(f) Their relationship with a party or witness;

(g) Social, domestic or cultural circumstances.

At present we are not experiencing any such claims on the matters which are concluding and where fixed recoverable costs apply. This could be linked to the fact that many of those cases are non-injury/non disease cases. However, it was initially expected that there could be steps taken by certain firms seeking to inflate costs where the claimants were, for example, unable to speak English as a first language when involved in a credit hire claim. And yet our experience and feedback from the market is that this mark up of costs isn't being pursued.

It could be that a different experience is met when injury matters reach the costs stage. But we are also mindful that the CPR did allow recovery greater than the old fixed recoverable costs in exceptional circumstances – but any attempt to try and pursue this was limited. In our view, it may actually that the claimant representatives have decided not to head down this avenue as they either don't feel confident that they can show the vulnerability led to an uplift of over 20% in costs, or that the extra work and effort to prove this is disproportionate to the extra costs which they will recover; or indeed that any actually assessment could result in an overall recovery of costs below the fixed sums.

Louise Hawkfield, who leads our Costs team, then took a look at the issue of disbursements and how they are treated under the new regime.

Disbursements under the new FRC regime.

The rules for the both the fast and intermediate track simply allow for 'any disbursement which has been reasonably incurred, other than a disbursement covering work for which costs are already allowed'. Meaning that where work should have formed part of the fixed fee, an additional fee is not recoverable as a disbursement. On the face of it that seems straightforward enough, but we already have a great deal of debate about what is considered 'reasonably incurred' and what is considered ordinary case work that the solicitor could have undertaken themselves and should therefore have formed part of the fixed costs rather than a disbursement. Obviously, what constitutes "ordinary" case work is far more open to debate now that a much wider range of cases are subject to fixed costs, but disbursements such as agents' fees for obtaining witness statements or visiting accident sites are likely to be the subject of future disputes on this basis.

Similarly, for those of you that have been following the case law as to whether medical agency fees are recoverable the new rules provide no clarity. They preserve the old wording which has in fact now been extended to non-medical expert fees. Are we to take from this that agency fees for obtaining engineers' reports for instance are now recoverable, or is this just a correction of an old drafting error?

There is also another potential drafting error with how interpreters' and translators' fees are dealt with in portal claims. Where the claim settles without exiting the portal, there is no specific provision for these items yet in cases that have exited the portal there is. Whether this distinction is intentional remains to be seen but we suspect that, given the concerns surrounding access to justice, the courts will allow such fees. But arguably given the exclusion they are not recoverable.

Finally, for those of you familiar with RTA claims it is worth noting that the various fixed medco fees have not been revised to account for inflation.

Louise was then asked what has been the biggest change that the new FRC regime has introduced in respect of disbursements?

Her clear view was that this was counsel's fees, both in terms of their recoverability and how they are now dealt with. Where counsel's fees are recoverable (and the scope is limited) they are treated as add-ons to the applicable fixed costs rather than as disbursements, so the regime is quite prescriptive.

For instance, in fast track claims, provision is only made for recovery of counsel's fees in band 4. This excludes all RTA, EL and PL protocol claims where an advice is only allowed for valuing claims over £10,000 or for infant approval matters. The infant approval part is new as that was specifically disallowed under previous case law in portal claims.

Likewise, on the intermediate track, there are limited circumstances where fees are recoverable - nothing is recoverable pre-issue but post-issue an advice in writing or in conference or drafting a statement of case is recoverable. Following the filing of a defence a further advice in writing or in conference is recoverable and on bands 3 and 4 only there is an additional fee if counsel drafts a defence to a counterclaim. Note the repeated use of the word OR which Louise interprets as meaning they are only recoverable once, not multiple times. Save for that, counsel is limited to trial fees and attendance at a mediation or JSM. We know that fee is only recoverable once, so either a JSM or mediation but not both.

On top of those limitations the rules have an added requirement whereby counsel's fees are only recoverable if the advice or drafting is by the intended trial advocate or a specialist legal representative and the matter is within their specialist expertise. That is new and we have no guidance as to how the courts will interpret it, but interrogating counsel's areas of expertise and seeking to disallow their fees on the grounds that the claim in question is not within their "specialist expertise" seems like a risky venture. However, we had seen some firms scaling up their in-house advocacy departments and whether they will get past these new provisions is unknown. No doubt we will see it tested before long.

Costs Calculator demonstration

Louise provided a demonstration of Calculate Costs, our calculator that makes the complex simple. Calculate Costs brings together all of the rules post 31 July 2013 including the new rules and the updates in April.

It asks a few basic multiple choice questions such as claim type and whether the matter exited the portal whereupon it will establish the correct regime for you. It even includes hints and tips such as which boroughs attract London weighting and the issues that the court will consider when allocating to a track and band.

All of this information is therefore at your finger tips when considering the costs issues whether that be at the outset for reserving purposes, throughout the life time of the claim for costs benefit analysis and strategy purposes or at the conclusion to ensure the correct amount is claimed/paid.

A final report is provided which can be saved to your case files and referred back to or utilised for audit purposes. Next are some tables of the final report which illustrate Karyn's point about the differences between Stage 1 and Stage 3 settlements. If you would like any more information about Calculate Costs please do get in touch with Louise and she will be happy to provide you with a full demonstration and discuss pricing.

Louise Hawkfield

Partner

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Non-portal report example

Claim Type	**RTA**
Allocation	Intermediate Track
Stage Concluded	S3 - Defence or earliest between CMC list and Order for Directions
Complexity Band	Band 2
Agreed Damages	£50,000.00
S2 - Post issue advice	£2,065.00
S3 - Defence or earliest between CMC list and Order for Directions	£13,949.00
Profit Costs	£16,014.00
London Weighting (12.5%)	£2,001.75
VAT	£3,603.15
Subtotal	£21,618.90
Disbursements	
First Report via MedCo portal	£216.00
Engineers Report	£150.00
Subtotal	£366.00
GRAND TOTAL	£21,984.90

Non-portal report example

Claim Type	RTA
Allocation	Intermediate Track
Stage Concluded	S1 - Pre Issue to Defence
Complexity Band	Band 2
Agreed Damages	£50,000.00
S2 - Post issue advice	£8,162.00
S3 - Defence or earliest between CMC list and Order for Directions	£2,065.00
Profit Costs	£10,227.00
London Weighting (12.5%)	£1,278.38
VAT	£2,301.08
Subtotal	£13,806.45
Disbursements	
First Report via MedCo portal	£216.00
Engineers Report	£150.00
Subtotal	£366.00
GRAND TOTAL	£14,172.45

Polls

In this session, we ran two polls so as to gauge the experiences of our audience.
In the first poll, we asked the following question with the following results:

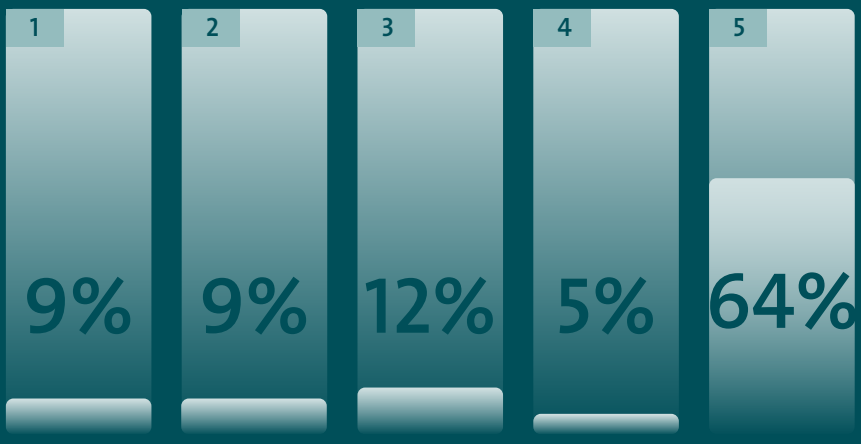
9 months on, have you seen a significant change to the way claims are handled in your role as a result of the new FRC regime?

A small change

No change at all

In our second poll, we thought that it would be interesting to repeat a poll that we ran in the first event with a view to comparing and contrasting the results 9 months on.
We asked the following question with the following results:

Based on what you have seen so far with the new FRC regime, what effect is it having on your own costs expenditure/exposure?



1: 9% - Decreased overall

2: 9% - Decreased initially then increase

3: 12% - Increase initially then decrease

4: 5% - Increased overall

5: 64% - No material change

Rather than the 54% of our 2023 audience that were expecting an increase in costs expenditure/ exposure (including those who thought that there might be an initial decrease), our 2024 audience overwhelmingly reported that they had seen no material increase in costs being paid out. Interestingly, this chimed with our own experience of "evolution over revolution" and it is clear that matters have not developed in the way, or with the pace, that our audience expected back in September 2023. It would seem that there is much more to come out of the FRC regime, including the themes we picked up in the Round Table event and have summarised below.

Your questions

During the course of the event, we received a number of questions, which were answered by the panel. In summary, these were as follows:

1. Can I have some clarification on the experts allowed in the fast and intermediate track. Is the maximum number allowed in the intermediate three experts? If so, what is to stop a claimant from getting a GP report which recommends three further experts, as this is four in total. Can a Claimant now exit the FRC process and seek standard costs? With that being said, will a judge be asked to rule what is reasonable if the defendant disputes the case exiting from the FRC regime?

There are 3 parts to this question and they were answered in order below;

- On the fast track, oral expert evidence is limited to two fields and one expert per party per field. On the intermediate track, the maximum number of experts to give oral evidence at trial is two experts per party. There are no other specific restrictions on the number of experts allowed but the court may consider allocating the matter to the multi- track depending on the complexity and how many issues are in dispute;
- There is nothing stopping a claimant obtaining such a report and pushing a matter into the multi- track and thus standard costs, but see our comments below. Karyn did highlight that one might wish to push back on GP reports when they are obviously not the right expert for instance if it is an orthopaedic injury;
- At the allocation hearing, the parties will each detail their positions and make submissions as to which track and band the claim should be allocated. As part of that process, a claimant would need to justify the different disciplines and it may be that all experts are allowed in writing but that only two are considered reasonable for oral evidence at trial. It is therefore very important to provide as much detail as possible in directions questionnaires (DQs).

2. If the third party solicitor's letter of claim makes no mention of which complexity band is considered appropriate, when making an offer pre-issue, how should one word any letter stating which complexity band is considered appropriate? Also, if the letter of claim suggests a particular complexity band but the claim falls below £25k, does the matter then go into fast track costs?

- When making offers pre-issue or indeed pre-allocation, as long as one makes it clear that fixed costs and not standard basis costs are being offered, it is unnecessary to specify the complexity band within the offer. Those arguments can be dealt with post-settlement. Strategically, one is best placed to conclude the damages and leave the costs dispute open for further debate otherwise the costs will continue to accrue which may move you into the next stage.
- Yes, that would be correct; if the damages are less than £25,000, the claim is very likely to be allocated to the fast track.

3. Regarding property damages cases, I have seen many cases now where a vehicle has hit a property, liability is admitted and a claimant firm is recovering on behalf of a property insurer, so a subrogated recovery. They argue complexity band 4 as it is a 'buildings and property dispute'. I have argued band 1 as a road traffic accident. What are your thoughts on this loophole in the rules?

- Sarah offered an initial view that perhaps this would fall into a road traffic accident band 1 claim but it will very much depend on the circumstances of the claim, the way the matter is pleaded and perhaps who has liability to pay those damages. For instance, the definition of a road traffic accident refers to an accident arising out of the use of a motor vehicle on a road or other public place in England and Wales. In these cases, the accident may not have been on the 'road' or 'public place' as the property would be privately-owned. As such, this "muddies the water" and we will need some guidance from the court on this point. In the meantime, and pending that clarification, both parties will no doubt continue to argue the opposite ends of the scale.

Summary

To summarise the position as we see it in July 2024, nine months or so into the new FRC regime, we have asked our panel members to provide, in a sentence or two, their key takeaway from the regime so far and what we might expect in the future. These are their thoughts.

Ken Slade
Principal Associate

Ken Slade - Even though we're nine months into the new regime, procedurally, this is still early days – particularly for those doing injury work. It will be very interesting to see what happens once the FRC personal injury work really starts to come through, especially if we get some case law, which will give us an indication of the judiciary's approach to disputes between parties on how the new regime is to be applied.

Karyn Brannigan
Partner

Karyn Brannigan - I would urge those dealing with claims pre-proceedings to monitor closely what opponents are doing and ensure a consistent approach to any adverse behaviours or clear strategies being adopted by opponents. And to also share them with your legal partners.

Sarah Cartlidge
Partner

Sarah Cartlidge – My message would be that your actions pre-litigation can affect the costs exposure – fewer issues, fewer heads in dispute, the lower the value – the lower the costs.

Richard Palmer
Partner

Richard Palmer – Don't expect to always be able to agree reasonable extensions of time as Claimants will want to get to the next stage to unlock further costs. Prepare early, protect yourself on costs with reasonable correspondence where extra time is required and be prepared to make a court application; that may be the only way to start to change those behaviours if parties are censured when acting unreasonably.

Louise Hawkfield
Partner

Louise Hawkfield – I would reiterate what I said at the first roundtable - THINK COSTS. At every stage, costs benefit analysis is crucial for strategy and reserving and our Calculate Costs tool can really help with that.

Weightmans

Contact information

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Thank you for your interest and participation.
We expect to run further FRC Round Table events as the regime develops but, in the meantime, please find attached the following useful links:

Webinar: Fixed Recoverable Costs 9 months on

Roundtable discussion: FRC: First Review and Comment

Fixed Recoverable Costs - the inside track :A Weightmans briefing