

# NWL Costs Update – Fixed Recoverable Costs (FRC)

## FIXED COSTS RULES

### The Rules

The FRC rules were finally published on 21<sup>st</sup> April. They are draft only and intended to give parties 'advance notice and more time to familiarise themselves with the new regime'.

There is essentially a new CPR Part 45, a new PD 45 and amendments to Part 26, PD 26, Part 28, PD 28, and Part 36.

### When do they apply

To most civil proceedings.

The trigger date is the **1<sup>st</sup> October 2023**.

Most cases - proceedings issued on or after the date

PI cases - the cause of action accrues on or after the date

Disease cases - the LOC is sent after the date

### The Tracks

Cases are currently allocated to the Fast Track (FT) or Multi Track (MT). The rules introduce a new 'Intermediate Track' (IT). The IT will capture cases valued at under £100,000, with 2 experts or fewer and listed for 3 days or less.

Fixed costs apply to the FT and the IT but not to the MT. Note that complex claims under £100,000 can still be allocated to the MT and so avoid FRC.

### Which Case Types are not caught by FRC

The main cases excluded (and which will be allocated to the MT, are:

Housing Claims

Mesothelioma or asbestos lung disease claims

Clinical Negligence (unless both breach of duty and causation are admitted)

Abuse Claims

Claims against the Police

Protected Party claims

### Disbursements on the Intermediate Track

Covered by Party 45.60 which essentially provides that the court can allow any disbursement which has been 'reasonably incurred' – cue big arguments about disbursements – as to whether they are reasonably incurred or reasonable in amount.

### Other Points to Note

PD 45 Table 14 sets out the IT fixed costs

Part 26.16 sets out details of the IT complexity bands

CPR 45.2 states that VAT is addition to the fixed costs (assuming it is recoverable)

In general, each Claimant is entitled to their own FRC – save where jointly entitled (45.5)

Vulnerability of the client can result in additional costs if the claim is for 20% greater than the FRC (45.10)

Unreasonable behaviour could mean an uplift of 50% on the FRC (45.13)

Part 36 changes can mean a 35% uplift on the FRC

If the track or complexity band is reallocated – the new track band or rules will apply as if they had applied from the outset (45.14)

### The Intermediate Track FRC

The FRC are set out in Table 14 to PD 45 and have been updated from the 2017 Jackson figures to reflect inflation.

There are 4 complexity bands and 15 stages and the FRC run to some 4 pages. Complexity will determine the

level of costs – the more complex bands come with higher FRC. For brevity – the figures are not set out here.

### Example Intermediate Track Case Example

Consider a relatively complex PI case allocated to the IT and which settled for damages of £50,000 after service of witness statements and experts reports but before any PTR. In basic terms these are the figures for Stage 6 (excluding VAT, disbursements and any add on's) and depending upon the complexity band:

Band 1 - £13,400

Band 2 - £23,000

Band 3 - £24,000

Band 4 - £33,000

There is a difference of almost £20,000 between Band 1 and Band 4 and in turn a difference of around £10,000 between Band 2/3 and 4. This demonstrates the importance of the case being allocated to the highest possible complexity band.

### Thoughts

#### Pre-1st October

Double or triple your marketing budget now – and get as many PI cases in as you can with a cause of action arising before 1<sup>st</sup> October 2023 – in costs terms they are likely to be worth double or more than the FRC available for later cases.

If you are running any non-PI civil likely to be valued at under £1000,000 – get your cases issued before 01.10.23. If you don't, consider your retainer, get it amended to reflect you will be looking at FRC and be careful what costs you incur!

Get your retainers sorted generally – so that fixed costs are referred to and ensure they cover you for seeking a shortfall in costs from the client – this applies to all post 01.10.23 cases but also those civil (non-PI) cases you are running now which might not be issued by 01.10.23.

#### Post 1<sup>st</sup> October

Prepare fully for Allocation Hearings – they are likely to be very contested! You will not only need to argue which track the cases are allocated to, but which complexity

band – as both are unlikely to be agreed (and ensure you explain why in the DQ).

If following allocation to the IT, it transpires the case is more complex than envisaged try and get it reallocated to the MT – noting of course the paying party is likely to argue the opposite on MT cases – note however the requirements of Part 26.18.

Part 36 becomes even more important as it could be worth an extra 35% so make well judged Part 36 offers – which might tactically be at the beginning of a stage.

Do ask us for advice on the application of the FRC and additional claims for costs.

### Advice

If you need advice or any aspect of FRC please get in touch – we are here to help. We can also analyse some of your past cases and calculate what they would be worth under the new FRC rules. You already know the difference could be substantial – but understanding just how much of a difference could help you in planning for the changes.

### Contact

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