

DEKA
CHAMBERS

Understanding the New Fixed Costs Regime

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The Civil Procedure (Amendment No. 2) Rules 2023 (SI 2023 No. 572 L. 6)

- In force 1 October 2023 (at least on its face).
- But N.B. special provisions for PI and disease claims: see Rule 2(2).
- Only apply to non-disease PI claims where the cause of action accrues on or after 1 October 2023.
- For disease claims where a (compliant) Letter of Claim has not been sent before 1 October 2023.



Complexity Banding

- *Assignment* within the new FT and IT
- Rule 26.14: when a claim is *allocated* to the FT or IT, the court must *assign* it to a complexity band.
- Allowable costs will be commensurate with the complexity of the claim.
- Allowable costs in Tables 12 (FT) and 14 (IT) of new PD 45
- Parties can agree the complexity band.
- Position on CB to be stated in the DQ.
- Re-assignment only if a) there has been a change in circumstances and (b) the court decides that the change in circumstance justifies reassignment. (new rule 26.18(3))



The new Fast Track

(5) Subject to paragraphs (6) and (10), the fast track is the normal track for any claim—

(a) for which the small claims track is not the normal track; and

(b) the claim—

(i) is a claim for monetary relief, the value of which is not more than £25,000; or

(ii) is or includes a claim for non-monetary relief and—

(aa) if the claim includes a claim for monetary relief, the value of the claim for monetary relief is not more than £25,000;

(bb) the claim meets the criteria in paragraph (6)(a) and (b); and

(cc) the court is satisfied that it is in the interests of justice for it to be allocated to the fast track.



The new Fast Track

(6) The fast track is the normal track for the claims referred to in paragraph (5) only if the court considers that—

(a) the trial is likely to last for no longer than one day; and

(b) oral expert evidence at trial is likely to be limited to—

(i) one expert per party in relation to any expert field; and

(ii) expert evidence in two expert fields.



FT Complexity Bands

- Complexity bands are set out in Table 1 in Rule 26.15.
- Does not apply to noise-induced hearing loss claims.



FT Band 1

- (a) road traffic accident related, non-personal injury claims; and
- (b) defended debt claims



FT Band 2

- (a) road traffic accident related, personal injury claims which are or should have been started under the RTA Protocol; and
- (b) personal injury claims to which the Pre-action Protocol for Resolution of Package Travel Claims apply



FT Band 3

- (a) road traffic accident related, personal injury claims to which the RTA Protocol does not apply;
- (b) employer's liability (accident) and public liability personal injury claims;
- (c) possession claims
- (d) housing disrepair claims; and
- (e) other money claims



FT Band 4

- (a) employer's liability disease claims (other than a claim for noise induced hearing loss);
- (b) complex possession and housing disrepair claims;
- (c) property and building disputes;
- (d) professional negligence claims; and
- (e) any claim which would normally be allocated to the fast track, but is nonetheless complex.



Table 12 – Amount of FT costs

- Four sections: A-C set out how the costs vary depend on the stage at which the claim completes. Section D sets out trial advocacy fees.
- Subdivisions within sections A (claims which settle before issue) and D (trial advocacy fees) further refine the amount of costs depending on the value of the claim.
- Subdivisions within section B further refine costs depending on when, post-issue the claim settles.
- Section C sets out non-advocacy trial fees.



Amount of FT costs – claims which settle before issue Table 12, Section A

- Vary from £nil (*sic!*) for a Band 1 claim with damages of less than £5k, to £3k + 10% of damages over £10,000 for a Band 3 claim.
- All Band 4 claims regardless of value attract £2,600 plus 15% of damages, plus £510 per extra defendant.



Amount of FT costs – claims which are issued but settle/discontinue before trial Table 12, Section B

- Essentially three substages:
 - Issue to allocation
 - Allocation to Listing
 - Listing to Trial
- Vary from £2,100 for a Band 1 claim which concludes before allocation up to £7,900 + 40% of damages (plus £760 per extra defendant) for a Band 4 claim which concludes after it has been listed for trial.



Amount of FT costs – non-advocacy trial costs Table 12, Section C

- No subdivisions: simple variation by band.
- Band 1: £3,800.
- Band 2: £3,200 + 20% of damages (agreed or awarded).
- Band 3: £5,100 + 30% of damages (agreed or awarded).
- Band 4: £7,900 + 40% of damages (plus £760/extra D).



Amount of FT costs: trial advocacy fees Table 12, Section D

- Four subdivisions by value (<£3k, £3k to £10k, £10k to £15k and >£15k).
- Vary from £580 for a Band 1 claim with damages of £3k to £2,900 for a Band 4 claim with damages of >£15k.

Specialist legal advice: Table 13

- Where claim would normally be assigned to Band 4: see Rule 45.46.
- Post-issue advice (in writing or conference): £1,000.
- (Drafting) statement of case: £500.
- In addition to the Table 12 costs.
- Must be «justified».
- A presumption that there will be one advice, but the court can award a further sum if that additional advice is justified: see r.45.46(3).



What does the intermediate track apply to?

Cases between £25,000.00 - £100,000.00

(New) CPR 26.9(7)(c): The intermediate track is the normal track where:

1. The trial will not last longer than three days.
2. Oral expert evidence is limited to two experts per party
3. Claim may be appropriately managed under the procedure under Section IV of Part 28
4. No additional features which would make the claim inappropriate for the intermediate track.

What claims do not apply to the intermediate track? (New CPR 26.9(10))

Mesothelioma or asbestos claims

Claims for clinical negligence unless (i) the claim is one which would normally be allocated to the intermediate track and (ii) both breach of duty and causation are admitted)

Claims in respect of abuse, harm or neglect of or by children or vulnerable adults.



What claims do not apply to the intermediate track? (New CPR 26.9(10))

Claims in which the court order trial by jury if satisfied there is a matter in issue as set out in S. 66(3), CCA 1984 **or** S. 69(1), SCA 1981

Claims against the police involving an intentional or reckless tort, or relief or remedy in relation to the HRA 1998



Example:

Andrew drives a car. Bertha is a passenger.

Colin collides into them. Both Andrew and Bertha suffer personal injury as a result of the accident.

They bring a claim pleaded at £50,000.00 against Colin. Breach, causation and quantum are in dispute.

Starting Point: CPR r 26.7

Court will decide which track it should be allocated to, and assign it a complexity band (**CPR r 26.7(1)**)

Court may order an allocation hearing if it thinks it necessary.

Court must consider whether **CPR 45.5** applies and whether it is in the interests of justice to make such an order.



Multiple Claimants and Fixed Costs

General Rule: Each Claimant is entitled to the costs of their own claim in accordance with the applicable rules (**new CPR 45.5(1)**), except:

Where the claim is for a remedy to which the claimants are jointly entitled, and they are joined to the party to comply with **CPR 19.3 (new CPR 45(2))**

OR....



Multiple Claimants and Fixed Costs

Court orders that the additional claimant is entitled to only 25% of the principal claimant's FRC because:

“It is in the interests of justice to do so, having regard to whether the claim of each claimant arises from the same or substantially the same facts and gives rise to the same or substantially the same issues” (**new CPR 45.5(5)**)

Application: CPR 26.16

Complexity Band 1	Complexity Band 2	Complexity Band 3	Complexity Band 4
<p>Any claim where</p> <p>a) Only one issue is in dispute</p> <p>b) Trial is not expected to take longer than a day, including (i) PI claims where liability or quantum is in dispute or (ii) defended debt claims</p>	<p>Any less complex claim where more than one issue is in dispute, including personal injury accident claims where liability and quantum is in dispute.</p>	<p>Any more complex claim when one issue is in dispute but which is unsuitable for assignment to complexity band 2 (including noise induced hearing loss claims and employer's liability disease claims)</p>	<p>Any claim which would normally be allocated to band 1 – 3 but is unsuitable because there are serious issues of facts and law.</p>



Recoverable Costs

The only costs allowed are the fixed costs in Table 14 and disbursements set out in Section IX (**new CPR r 45.50(1)**).

Disbursements: Section IX, CPR 45

Court may allow any disbursement which has been reasonably incurred, other than a disbursement covering work for which costs are already allowed in Section VII (**CPR r 45.60**)

Fixed Costs for Intermediate Track, Complexity Band 2 (new CPRPD45 Table 14)

Stage	Complexity Band 2
S1: From pre-issue up to and including the date of service of the Defence.	£5,000.00 + 6% of damages
S2: Specialist legal representative providing post-issue advice in writing or in conference or drafting a statement of case	£2,000.00
S3: From date of service of the defence up to the earlier of the date set for CMC or the order giving directions under r 28.2.	£7,700.00 + 12% of damages
S4: End of S3 up to and including the date set by the court for inspection of documents	£9,400.00 + 12% of damages
S5: End of S4 up to and including dates set by the court for service of witness statement or expert reports.	£11,000.00 + 12% of damages
S6: End of S5 up to and including the date set for the pre-trial review	£15,000.00 + 16% of damages

Fixed Costs for Intermediate Track, Complexity Band 2 (new CPRPD45 Table 14)

Stage	Complexity Band 2
S7: Specialist legal advice advising in writing/conference following the filing of the defence	£1,700.00
S8: End of Stage 6 to the date of trial	£17,000.00 + 20% of damages - £870 if the party did not prepare the trial bundle
S9: Attendance of a legal advocate (other than the trial advocate) at trial per day, less an amount equivalent to 50% per day where trial lasts no more than half a day.	£870.00
S10: Advocacy Fee (Day 1)	£3,500.00
S11: Advocacy Fees for subsequent days, less an amount equivalent to 50% per day where, on any subsequent day, the trial lasts no more than half a day.	£1,700.00

Fixed Costs for Intermediate Track, Complexity Band 2 (new CPRPD45 Table 14)

Stage	Complexity Band 2
S12: Handing down of reserved judgment + consequentials, where dealt with separately from trial	£580.00
S13: ADR: additional fee payable only once where a mediation or JSM takes place	£1,200.00
S14: ADR: additional fee payable only once for specialist legal representative attendance at a mediation or JSM covered by S. 13	£1,700.00
S15: Approval of settlement for child, unless it is approved at trial	£1,400.00

Counter-claims and Pre-Action/Interim Applications

If a counter-claim is successful, then the FRC rules apply as if the counterclaim was a claim (**New CPR 45.7**)

However, this does not apply where the only remedy sought by the counterclaimant is a defence to the claim (**New CPR 45.7(2)**).

Applications have costs of **£333.00 (IT) or £250 (FT)** (**New CPR PD45 Table 1**).



Vulnerability

Court will consider an amount of costs which is greater than FRC where:

- (a) the party or witness is vulnerable,
- (b) that vulnerability has required additional work to be done and
- (c) By reason of that additional work alone, the claim is for an amount that is at least 20% greater than the amount of FRC

CPR PD1A(4): provision for how the court is to give effect to the overriding objective in relation to vulnerable parties or witnesses.



Unreasonable behaviour

Possible for parties to apply for fixed costs to be increased/reduced by 50% based on the other party's unreasonable behaviour (rule 45.13)

“unreasonable behaviour is conduct for which there is no reasonable explanation”



Part 36

Where a Claimant beats their own Part 36 offer at trial, instead of costs assessed on the indemnity basis, they will be entitled to claim additional costs (**new CPR r 36.24(4)**).

Additional costs being 35% of the difference between the fixed costs for (a) the stage applicable when the relevant period expires and (b) the stage applicable at the date of judgment (**new CPR r 36.24(5)**).



Issues: APIL Judicial Review

1. Clinical Negligence Claims: what does it mean to say that 'breach of duty and causation' are admitted?
2. Lack of support for solicitors dealing with vulnerable clients, despite the fact that these costs are now recoverable (*Santiago v MIB* [2023] EWCA Civ 838)



Issues: APIL Judicial Review

3. Exclusion of inquests costs and restoring companies to the Companies Register.

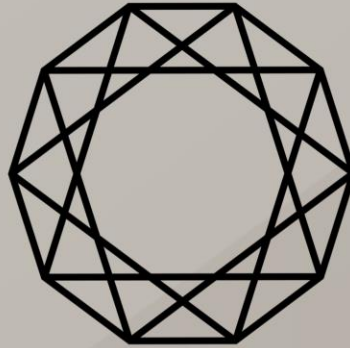
4. No ability for parties to contract outside of the fixed costs regime.

How to prepare

In non-PI claims, seriously consider issuing pre-1st October 2023.

Check your retainers and client care documents; costs recovery claims are likely to ‘explode’.

Real ‘battle’ will be in determining which complexity band applies. Defendants are likely to think about making tactical admissions.



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