



FIXED RECOVERABLE COSTS & PROFESSIONAL NEGLIGENCE



Introduction

The Fixed Recoverable Costs ("**FRC**") regime came into effect on 1 October 2023. This extends to almost all areas of civil litigation including professional negligence claims. In this article, we discuss the regime's practical implications by reference to one of our cases.

The FRC Regime: A Brief Recap

The FRC regime applies to professional negligence cases with a financial value of up to £100,000 issued on or after 1 October 2023. The driving force behind the extension of the regime is the saving of costs – a topic significant to all areas of civil litigation.

Many will be familiar with the long-standing fast track process, which is applicable to cases with a financial value of £10,000 to £25,000. Similarly, many will also be familiar with the multi-track process which is the usual course for cases with a financial value of more than £25,000. However, the FRC regime introduced a newly created intermediate track, which will apply to cases: (i) with a financial value between £25,000 to £100,000; (ii) where the trial is expected to last no more than 3 days, and (iii) where there are likely to be no more than two experts per party [CPR, Rule 26.9(7)]. What this means is that cases which would have previously been allocated to the multi-track will now be allocated to the intermediate track.

Within the fast track and the newly created intermediate track, the FRC regime introduces a set of complexity bands. These bands are numbered 1 to 4 in ascending order of complexity. The applicable complexity band and the stage of litigation reached will determine the parties' level of recoverable costs.

For illustration, we replicate the table setting out the level of recoverable costs for the intermediate track for Stage S1, which includes the pre-issue of the claim up to and including the date of service of a Defence:

TABLE 14: rule 45.50 – amount of fixed costs in the intermediate track

Stage	Complexity Band			
	1	2	3	4
S1 From pre-issue up to and including the date of service of the defence	£1,600 + an amount equivalent to 3% of the damages	£5,000 + an amount equivalent to 6% of the damages	£6,400 + an amount equivalent to 6% of the damages	£9,300 + an amount equivalent to 8% of the damages

Guidance on the types of claims that may fall within each band is set out in a table in CPR Part 26.16.

A CASE STUDY

The application of the FRC regime is wide and its introduction has already assisted us in securing a very favourable costs settlement on behalf of our client.

We recently acted in a claim which fell within the Pre-Action Protocol for Professional Negligence. The case had a quantum of around £100,000 and was ongoing for some two years prior to the introduction of the FRC regime. Whilst at its core the case was a relatively straightforward dispute, the case required two sets of experts, namely, a valuation expert and a quantity surveyor.

Having settled the case for a sum significantly below the £100,000 claimed, it then became apparent that the costs claimed were significant and, indeed, almost double the sum of the settlement itself.

Therefore, the introduction of the FRC regime could not have been more timely for our client. Indeed, with reference to the newly created intermediate track and the relevant complexity bands, we put forward strong submissions to the Claimants' solicitors on costs. Ultimately, our submissions were accepted, and we obtained a very favourable costs settlement of under 30% of the costs claimed.

TAKEAWAY POINTS

Evidently, the FRC regime can be truly influential to claims which fall under its jurisdiction. Certainly, it cannot be overlooked by either claimant solicitors or defendant solicitors. For defendant solicitors, it can prove to be very useful in ensuring that claimant solicitors' costs are capped. However, this will not be

lost on Claimant solicitors. Indeed, we are likely going to see claimant solicitors attempting to argue that their case falls outside of the FRC regime entirely or at least into a higher complexity band to gain the security of a higher rate of fixed costs. Perhaps, we will also see claimants trying to advance the value of their claim over £100,000 with a view to take it out of reach of the FRC regime.

The introduction of the FRC regime may also lead to claimants having a far lower appetite in allowing claims to remain within the pre-action stage, with claimants now determined to progress claims across the various stages of litigation as soon as their level of costs reaches the fixed recoverable costs threshold for each respective stage.

It is clear that the FRC regime significantly changes the landscape for smaller and medium sized claims. Whether you are a claimant or a defendant, a careful eye needs to be kept on the practical implications of the FRC regime and the case law which will arise from it.

Further Information

Given the generality of the note it should not be treated as specific advice in relation to a matter as other considerations may apply.

Therefore, no liability is accepted for reliance on this note. If specific advice is required, please contact one of the Partners at Caytons who will be happy to help.

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Perceptions

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