Practico Virtual Roundtable – 29 September 2022

Transcript

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Title: **Costs chat with friends**

In attendance: Jeremy Morgan KC ("JM")
Andrew Hogan ("AH")
Andy Ellis ("AE")

JM	Well, hello everybody and welcome to this the latest of Practico's costs chat among friends. The friends are as usual Andy Ellis the Managing Director of Practico, myself Jeremy Morgan, retired costs silk and consultant to Practico and we're very pleased to have with us again Andrew Hogan, the well-known costs barrister from Kings Chambers whose costs blog I'm sure many of you also follow. Just a little bit of housekeeping before we start talking. You don't have to make extensive notes of this because notes will be sent out to all of those on Practico's mailing list and there will be links to the YouTube version of this and also to podcast sites for those who want to hear the audio version. So having got that out of the way, a quick preview of what we're going to be talking about - a very quick look at a recent Court of Appeal decision on the Road Traffic Act Portal Stage Three, a look at a European Parliament Report which is of some interest despite Brexit and a further look at the [Civil Justice Council] Costs Working Group consultation, time for which has been extended to 14 October. But first the case of *Islington v Bourous* and I'll pass you over to the very capable hands of Andrew Hogan.
AH	[1:39] Good morning everyone. I think the first topic on the agenda, this case of *London Borough of Islington v Bourous* and the linked case of *Davis v Yousaf*, is worth talking about really for three reasons. The first reason is that it has to be one of the most turgid Court of Appeal judgments I've seen in recent years as it goes on about A1s, R1s, CJ1s and so on and it's very far removed from 'bluebell time in Kent' or any of the other more colourful judgments that litter the law reports, so it's not going to win any prizes for style. The second point is that it could be viewed as being a decision of particular interest to personal injury and I suppose road traffic practitioners because it deals with the portal and in particular how cases which are about 700,000 in number each year are dealt with by the Courts in ten or fifteen minutes of Court time in so far as they reach the stage of a Court hearing. To that extent it is interesting because it illustrates just how light touch the Court is when it comes to this sort of bulk disposal of low value cases worth up to £25,000. In essence what the case was about was claims for credit hire charges arising out of hire cars that had been hired by a couple of Claimants after accidents and the Defendant insurance company saying 'well

	there's actually quite a body of law on this and if you're going to bring such a claim you need to plead it in a particular way, you need to prove it in a particular way and we need to have the opportunity to challenge it in a particular way'. And the Claimants saying 'well actually you haven't raised any of these particular points in your short form pleadings or correspondence and if you wanted to raise those points this isn't a portal case at all'. Here you're talking about having a trial, in which case it comes out of the portal process and it goes into Part 7 and the costs consequences can be quite significant. The Court of Appeal effectively says that the Claimants are right about this, this is light touch and this is fifteen minutes of Court time. If you want to go down that route of investigation and challenge then you take it out of the portal and so you get to the situation where, without being overly simplistic, you have a Claimant asserting their case is worth £10,000, a Defendant at one stage in the process challenging that and saying it is worth say £5,000, there being no further forensic investigation or attempts to put in evidence or documents, the matter going off to a Deputy District Judge who says that there's nothing really here to discount what the Claimant is saying, so they get what they are asking for. I think the third point where this is significant is to look at this as representing a possible direction of travel because this is bulk litigation or litigation of a particular level and value, you have an online process which is highly rigid, highly mechanistic and you have the Court saying we're going to stick to that and we're not interested in wider investigations because we're concerned with rough justice at a proportionate cost. Now contrast that with an action in the commercial court where you might have millions of pounds at stake, in which case there is going to be a very large factual inquiry undertaken, possibly millions of pounds of costs incurred and at the end of it a 600-paragraph judgment from a High Court judge. So if you have those two as the bookmarks at the extreme of how we litigate cases in this country, the real interesting question as we move more towards an online digitised approach to wider and wider categories of cases, is how is the Court going to pitch the sieve? Is it going to be a very coarse grain sieve whereby you get something more akin to a portal process applied to cases worth £100,000 or £200,000 or is it going to be a much finer mesh with disclosure, witness statements, experts and a multi-day trial more akin to the top end of the situation? I don't think there's an answer to that now but what this case does show up, is a direction of travel which suggests that the digitisation approach is probably going to lead the way over and above the substantive law.
JM	Anything to add to that Andy?
AE	No. I think that was a really good summation of the case which I promised I've tried to read. I got as far as I could before I skipped to the bottom and then was very relieved to see that Andrew's going to be summing this one up for us. I think it just goes to show how tricky it will be to roll out some form of digital justice for cases that are not so similar – fact or almost identical fact as are this form of road traffic accident case. Obviously the sort of people that deal with these I suspect probably deal with nothing else because there are so many of them. Like Andrew, I don't know what the answer is, but I think this frames the question really well in terms of how can we get something that is more efficient, at cheaper cost and where can you land between those two bookmarks that will serve the interests of justice and keep

	things affordable.
JM	In a way it's a continuation of the long running issue which is in probably in any judicial system and certainly the British one, which is do you go for justice on the day and we've had bluebell time in Kent already, do you go for the old Denning approach where you never find out what the outcome is, or do you go for certainty and this is the latest more modern version of that contrast.
AE	I think the thing that makes us all feel queasy is certainty versus justice. I'm not quite sure that is why people go into these things. If it's a self-employed taxi driver, he just wants his money back, but everybody else? - I don't know.
JM	Then otherwise it costs a lot of money, it is a real problem. Moving on then to the second topic we are going to have which is, as I mentioned, something from the European Parliament. This is the Voss report from the European Parliament, but don't think that the Master of the Rolls has been moonlighting, it's another Voss with two s's - but I'll let Andrew explain more about that.
AH	[9:08] One of the big developments I suppose of the last 20 or 30 years has been the creation of a professional litigation funding industry. it's an industry which is worth billions and it plays a very significant role in terms of facilitating access to justice. Yet one of the oddities of the litigation funding industry, at least in England and Wales, has been that it is by and large unregulated, so you have this very stark divide in that the barristers are regulated, the solicitors are regulated, the costs lawyers are regulated, the ATE insurers are regulated and have to have capital adequacy requirements and file their accounts and you comply with the system of authorisation that they have. Yet at the same time the litigation funders who will be making non-recourse loans to litigants possibly going into millions of pounds are wholly unregulated. That might seem to be a fairly odd state of affairs. How has this developed? It might be thought that it has developed because of a light touch approach taken by successive government, but I suspect the true answer is closer to the fact that this is historical accident, no one has ever got round to proposing a system of regulation or taking cognizance of what is actually flowing to and from the accounts of litigation funders. There have been other attempts around the world to regulate litigation funding, most recently and most controversially perhaps in Australia. But what we have now had really this year, with a report in July and then an endorsement of that report in September by the European Parliament, is a proposal for a European Union wide system of regulation of litigation funding. Now of course I do believe that we are no longer part of the European Union, we're no longer vassals to the European super state and we've sloughed off the chains of feudal oppression that Europe used to impose on us, but of course to suggest that what happens across the channel doesn't impact us in any shape or form would be wrong and horribly naïve. The real question is, will we go down the European Union route of regulation to a lesser or greater extent or will we actually say, no, this is an opportunity for England and Wales to forge its own path to have either light regulation or no regulation. In which

case does that mean England and Wales become more attractive as a forum both for litigation funders and for the sort of cases that they fund? I think that is possibly the real issue here.

If we look at what has been proposed, Voss with a double 's' is a member of the European Parliament, as Jeremy says, not the Master of the Rolls in a slightly disguised role with a funny accent. He has put forward, as part of his report, his investigation into litigation funding, a draft European Union directive and he has invited and the Parliament has endorsed, the approach that the European Commission will take up this draft directive and make it law. Then it will be up to the member states to implement the European Union directive and, if they don't, then it will be applied in some shape or form anyway through the principle of direct effect.

[12:47] The actual content of the directive I would venture to say is every unregulated litigation funder's worst nightmare because what it proposes is first of all a system of authorisation akin to what a bank or insurance company has to undergo. It will also include requirements of capital adequacy in the sense that they have to prove they have enough money to fund the litigation but also of course potentially to indemnify the costs of the litigation as well. It proposes a cap on litigation funders' fees which for the general case will be 40% ensuring that the clients, the Claimants, keep 60%. There is possibly some scope for derogation from that, but the indication is very limited derogation. It also imposes requirements of transparency and disclosure, so there has to be full disclosure to the other side's litigation of the fact that there is a funder, the details of the funder and that they are providing the funding and possibly also disclosure to the court of the actual funding agreement so that the court can have a look at it and see where that takes us. Also it provides as the other big ticket reform a complaints system with coercive power so that if you have a fall out with your litigation funder and this could be on the one extreme a failure to provide indemnity, on the other extreme it could be failure to answer the correspondence, you can make a complaint to a third party body which will then have coercive powers to direct the funder to take remedial action. I suppose that, at the end of the day, the ultimate sanction would be loss of authorisation and inability to trade in the European Union. All of those are really major reforms which, if they come to fruition, will level the playing field upon which litigation funders operate in Europe and not in a good way as they would see it whereas at the same time raising as I said starkly this question - Does England and Wales, does the United Kingdom, go down the same path?

I think also what's worth bearing in mind is that already there is push back on this side of the channel with various commentators saying we can't have this here, this won't work, we won't take on cases which we would otherwise do. In those circumstances that has to raise an issue about access to justice even if the sceptical part of me is thinking well, you would say that wouldn't you, you're not going to embrace it in any shape or form.

The other point which of course isn't on the European agenda, but would certainly be on the agenda here if people tried to push forward a regulatory proposal, is whether you have regulation and authorisation of all cases brought by all categories of Claimant or whether you say in B2B disputes, these are big boys, they can take

	care of themselves, they don't need this, but there may be a role for it where you are dealing with consumer disputes. [16:10] I say that because certainly what caught my eye in the last year or so, was the very well-known Post-Office litigation and it seemed to be the case that virtually every week a tranche of convictions was being quashed by the criminal division of the Court of Appeal. There was of course a long running and extensive civil action seeking compensation, but in the Financial Times in 2021 they reported that, although the actual settlement was £58m, the actual money in hand for the Claimants was only £12m, £46m constituted deductions. Now the article is fairly top level in that it doesn't explain where the £46m went, but you're looking at that and thinking crikey, for whose benefit was this really being brought if that is indeed the level of deduction, and is there a role here for a 40% cap in consumer disputes or something like that. I think this is going to be really interesting. We are of course in the position that we have a government which is engaged in a bonfire of regulatory measures. It may not be a bonfire that lasts for very long given what seems to be building up politically at the moment with the pound crashing, pension funds on the verge of collapse and all the other horrible things one's reading about in the news here in September 2022, but irrespective of whether this Government goes the distance, irrespective of whether a Conservative regime is re-elected in a year or two's time, this isn't going to go away as an issue and it may very well shape or reshape the form of litigation funding in this jurisdiction for a generation.
JM	One of the other interesting details of the European draft directive was the court would actually examine these agreements when they came to be enforced and had the power actually to rewrite provisions which it thought were unfair or unreasonable. That would certainly put the fear of God among the litigation funders here. In preparing for this I've looked back at my copy of Jackson's final report because I remember we had discussed. The reason why there had been no regulation in the UK, at least at that time, was litigation funding was fairly new, was not very widespread, was largely confined to corporate clients who could look after themselves and it was thought that it would be too much to regulate at that time – a lot of regulation for relatively little benefit. But there was a clear marker put down that this thing will have to be reviewed as time goes by. I looked at the Association of Litigation Funder's website and saw an awful lot of new names that hadn't been around back in 2009 when Jackson's report was written and so it's a very interesting area. What's also interesting I found was that the European approach is perhaps typical of Europe, very heavy on regulation and also founded on a great deal of scepticism about third party funders and what they are really up to. In Australia they've had, as Andrew mentioned, reviews from time to time of the situation there because, of course, litigation funding first got off the ground really well in Australia. In a recent report on group litigation and third party funding in the federal court, they rejected the idea of regulation by a regulator and suggested that the court would be able to look after the situation with a few changes to the powers of the court – the power to discipline regulators for not complying with effectively what is the equivalent of the England and Wales overriding objective, and things like mandatory security for costs

	were seen as a way of protection against insolvency. There are a variety of ways of approaching these things, but I must say I agree with Andrew – this wouldn't be brought in in England by this government if only because it is being brought in in Europe, there is no better reason than that!
AE	Exactly. I think we should point out that we're currently speaking at 9:25am on Thursday morning. Even if it's tomorrow, by the time anybody watches this we might be in a different world. I was going to say that in preparing for this and reading some of Andrew's work on it, I went back to *Horizon*. We were involved in that at a very early stage on the budgetary side, before the budget itself was squeezed too much so they couldn't justify keeping us on. It does make me less sceptical and more concerned about the access to justice aspect, because I'm aware, without really being across all the details, that despite the fact we now see this as one of the great injustices of recent years, a lot of funders turned *Horizon* down before Therium took it on. With it I believe a lot of law firms had cold feet before Freethcartwright took it on. Without breaching any confidences, I am very aware that the budget that Freethcartwright were left with caused a lot of internal angst. They were very concerned to be able to keep up their professional responsibilities to their clients even though they probably knew that this was going to be money they weren't going to get back in full. Despite the fact that it may look superficially like a greedy funder case, if you just look at the FT summary, if it hadn't gone ahead, if they hadn't funded it in whatever way they did, [the scandal] might not have come to light quite in the way that it has done, which would be even worse.
JM	One other wider implication is that this is a European directive which probably will become European law because it is certainly part of the general approach on my side of the channel – I live in Italy. What is the impact on the legal market if you like, if third party funding is available in the UK but not in Europe on terms which many funders are prepared to accept? Does that have an impact on litigation? The draft European directive does not only apply to proceedings in the courts of a member state, but also before an arbitral body situated in a member state. Could this lead to a bit of a move of the seats of arbitrations? I raise that as a question.
AH	[24:15] I think it's very interesting because a case I did some years ago called *Essar*, which was in the commercial Court, was seeking to challenge the decision of an arbitrator. What the arbitrator had done was very interesting because he held that, under the United Kingdom Arbitration Act 1996, when he awarded costs unlike the awards of costs in the court, he could allow the cost of litigation funding as a recoverable head of cost. That was a very surprising view, it was upheld by the High Court Judge, Mr Justice Waksman I think it was, and he refused me permission to appeal to the Court of Appeal. Due to a quirk in the Arbitration Act that was it – you couldn't actually renew your application for permission to appeal to the Court of Appeal so that was where the case rested. I've seen one subsequent commercial Court decision which endorses his decision but what I haven't seen is the fact that if you're looking at regulatory arbitrage – making one jurisdiction more attractive than the other – that decision should have made England and Wales much more attractive for litigation funders. This directive, if it comes through I think Jeremy, is undoubtedly going to mean that there's going to be more pressure for regulatory arbitrage, there's going to be a push factor as opposed

	to a pull factor and you may very well find that it goes beyond seats of arbitration. People need to start looking at their terms of agreements as to how they are going to resolve their disputes. That would feed into the third issue that we're going to look at, fixed costs, I think is part of it and to what extent you can contract out of maybe a very restrictive costs regime. When you look at the Voss report, admittedly it's European Parliament not European Commission, but it looks like a done deal – the draft legislation is there ready to go and as you say it reflects the way European jurisdictions like to deal with things.
JM	I think that's a really interesting topic which Andrew raised and I'm very grateful that he did. I think it's 'watch this space' but possibly not for a day or two. Let's move on to the third topic we are talking about which is fixed costs and budgeting in the light of the [Civil Justice Council] Costs Working Group consultation.
AH	[27:13] The consultation has been extended from 30 September to, I think, 14 October, an extra two weeks. I'm not quite clear why, there has been a suggestion that it's to accommodate submissions in the *Belsner* case which is starting next week but I can't quite see it myself because there certainly won't be a judgment from Belsner before the consultation closes. We're in this situation where a very pointed, very limited consultation is being put forward which seems to have, I would say, three main targets. The first is fixed costs, the second is hourly rates and the third is the role of budgeting. Those are the three that I can imagine. Dealing with fixed costs. This all flows from the notion in the Jackson report that you should have a wider system of fixed costs and it flows from the second Jackson report, about five years ago now, saying that you should roll out fixed costs across the board for all categories of case, not just personal injury ones, that are worth up to £100,000 and now you have a situation where the government has adopted that approach with the idea that, by April 2023, you will have fixed costs in place for all categories of civil litigation with maybe one or two exceptions worth up to £100,000. Now the first point that struck me when I was looking at this many years ago was, who is asking for this, who wants this? I can see that in personal injury cases there would be a drive by the insurance industry to fix costs and I can also see in clin neg that the Department of Health would want to fix costs, and indeed it has been running its own agenda in that respect. But who else wants it, what interests want it? I am struggling to see what they are other than the notion that the Ministry of Justice wants to make things smooth and even without a balkanisation, as I think it is being called, of different areas of costs for different types of work. What that creates I think is a real problem and the problem is this. I don't think fixed costs per se are evil. If you were to say to a solicitor – here's your case worth up to £100,000 and your fixed fee for this will be £1m – they would snap their hands off at that. It's not the concept, it's the fact that the fixed costs will probably be lower than solicitors are charging at the moment for such a case, maybe a lot lower in fact, and also that once they have been set they will simply rust into position as has been the experience of all the fixed costs since the Woolf report effectively. The problem that that creates is that unless you strip out layers of work in litigation you're trying to get a quart's worth of value using a pint pot's worth of money and it just doesn't work. What then happens is that, rather than the costs being paid by the other

side's litigation, you have to dig deeper into the recoveries that are made by the client. That in turn will stoke the fires of solicitor and own client disputes and Solicitor Act assessments, I've no doubt about that. The real evil here, to my mind, of fixed costs is that nobody has either assessed, or thinks it is worth assessing, the effect on the legal profession more generally. I'll tell you why that matters.

The first point is I have never accepted that we're just private sector mercenaries looking to make money out of people's misery. No. The legal profession is a mature and complex system of law, has a constitutional role in ensuring that the rule of law endures. That's what we do. We hold people to account, we hold governments to account, we hold local authorities to account. Without us people will not be able to access the rights that the law gives them. If the effect of these fixed costs is to force lawyers out of business, or to truncate the number of lawyers doing a particular area of work, or to force them to withdraw from particular areas of work, that's not a good thing.

The second point which flows from that is, to my mind, this problem that we see where levels of renumeration go down and you start to get deserts of legal support. Let me give you an example. I have been a lawyer for I think three or four economic cycles now. One thing that rolls around every economic cycle are the housing disrepair claims. There's a crash, public expenditure is cut back, public authorities and housing associations don't maintain their housing stock, people start to live in appalling conditions, they litigate to get their landlords to make good the properties and to compensate them for having to live in squalor. Once legal aid went, the number of solicitors doing that sort of work dramatically declined. Solicitors at the moment can do it because they are getting standard basis costs – but these are not easy cases to run, the clients are not sophisticated, often the clients are illiterate or semi-literate. If solicitors can't run these cases on a fixed costs basis and have to withdraw from that area of work, you're going to have widespread adverse social harm because people won't be able to access their legal rights. That's just one tiny example of what the picture could be.

I'm really not a fan of fixed costs on a number of fronts, and I think that has got nothing to do with my own grubby financial interest, I'm sufficiently close to retirement now it won't affect me, but I can see the problems that it will leave for this country in the years ahead.

[33:35] If we look at the second issue, guideline hourly rates, one of the talking points that we've all debated over the last ten years, is how the 2010 guideline rates endured. Everything else changed, governments fell, the Olympics came and went, the guideline hourly rates kept on going and then we had attempts to reform, I think in 2014/2015, with Foskett and Dyson. Then we had a new broom saying, no we're going to get this done, and bringing in Mr Justice Stewart. He got it done in a way that Brexit was never quite done, and you had a set of guideline hourly rates and a set of guidance for summary assessment, but they made a rod for their own back. They said we need to look at this in two more years. That was 2021 and we're now looking at 2023 and suddenly with all the other things that are going on, on their own account they've got to look at it again.

What are guideline hourly rates? They are increasingly divorced from reality,

because they don't reflect the old A and B calculations, the expense of time. They reflect what various Masters and District Judges have been allowing around the country, but those are guesswork as to what the expense to a solicitor is, plus a reasonable level of profit. In the end they become more like a sort of floating tariff of fixed hourly rates which can be departed from on an increasingly limited basis depending upon the view of a particular judge. Do guidelines hourly rates still perform a role? Of course they do – unless you're going to fix costs for everything. But you can't fix costs for everything, that would be madness. They will I think become an increasingly arbitrary set of figures because I don't see the profession for one reason or another engaging, because they haven't engaged for at least twelve years in informing on empirical evidence-based data what it is costing to run litigation. That is a problem, but it's not a problem which has an easy solution.

[35:53] The third issue is budgeting. We've all been there, costs budgeting hearings, judges turning their noses up at having to get into the grubby fact of budgeting a case. If you start at the beginning, why do we have budgeting? The idea is that you should be able in our system to tell a client – this is what it is going to cost you if you win the case, this is what it is going to cost you if you lose the case. Budgeting has a role in effect as the hierarchical layer above fixed costs. Fixed costs tell you what you are going to get if you win and what you are going to get if you lose. Budgeting is the bespoke or more nuanced version of fixing the costs of litigation.

Does budgeting work? I've never seen any study which tells me, we've brought in this layer of additional costs which costs X, the benefits to the clients are Y, therefore budgeting, taking into account the drain on the public purse and judicial resources, is worth doing or not worth doing. That work just has never been done.

Instead you get a series of cliches and aphorisms – budgeting works – this sort of thing. My own view is that budgeting is a very useful tool indeed, because I think it would be wrong to go back to the old days where people don't have a clue what the other side are spending – or, dare I say it, even what their own lawyers are spending. But the question as to whether budgeting is correctly gauged at the moment is, I think, far from clear.

If you're in a situation where you are fixing costs up to £100,000, then that is taking out a huge tranche of cases anyway. Beyond that you've got the sort of low value, we're talking £101,000 and upwards, personal injury case or clinical negligence case, where you have the [Qualified One-Way Costs Shifting] rules in place, which means that practically the Defendant is never ever going to get back their costs. Some people will say to me, no that's not right because of course there's the Part 36 provisions. I would say that in one case in a hundred, two cases in a hundred, a Defendant makes an effective Part 36 offer that actually matters. Why are we spending all this money, all this time and adding delay into the process doing budgeting when it just won't matter for one side and when in relation to personal injury and clin neg cases, people have a fair idea of what an expert will cost, they have a fair idea of what the market rate for counsel will be and they know how long it should take a solicitor to run a case of a given magnitude with given dimensions, roughly. Why do you need budgeting at that level, especially if you know it's going to tack a nine-month delay onto the case, which isn't unrealistic given the current state of the list, during which more costs are being incurred. I've heard horror stories

	where people might have been able to agree the directions, but simply can't agree the budgets, so the case has to come to a stop until that CCMC has been dealt with. Where could budgeting be retained? There's a number of instances where it would have a real value. I'll give you two. Privacy and defamation cases. Often the damages in those cases are relatively low. You can claim for economic loss in that you've lost work or your business reputation has been trolleyed but in most of the cases that I see, in the context of costs assessment, the damages are low but the costs are high. You may say that this is a sort of case where budgeting does have a role, does have a value. Also bear in mind as well that in many of those cases you have free speech and freedom of expression considerations, which may give added force to being able to budget for a reasonable and proportionate level of costs at the outset. The other example is where you are not dealing with professional litigants, or even where professional litigants and a consumer are on one side, but you are dealing with two consumers – the boundary dispute. In the first few years of practice I certainly did boundary disputes, a horrible area of law. It was always the same. It wasn't about the six inches of land that had been invaded and usurped and taken over. Usually there was a long history of decades of antipathy between the neighbours which led to the dispute actually taking shape. Maybe they were arguing about what someone's leylandii were doing as well, but when that went to litigation costs of £100,000 a side for a five-day trial to determine where the boundary went and who had committed trespass were not unknown or even uncommon. What would then happen is that the losing side facing a £200,000 bill for their costs and their opponent's costs would have to sell their house and that would solve the neighbour dispute because they'd have to move. Is that a good thing? The answer is no and certainly for that sort of case, budgeting which focuses the parties' minds, how are you going to pay for this, is a very good thing it seems to me. In summary, that's what I think the three big issues are and that's my take on what they are for this consultation, which is still open.
JM	Well thanks Andrew that's very interesting. What you just said about the neighbour dispute reminds me again of the Jackson inquiry, when that was going on. I was always very opposed to the blanket recovery of 100% success fees and ATE premiums in all cases, because I thought of precisely that, the neighbour dispute. You have a silly dispute with your neighbour, or a perfectly sensible dispute about something else, but you are a private citizen fighting a private citizen or even a company. You lose and you end up paying more than double the costs which you would otherwise have paid and that always seemed to me a great injustice. Whether sweeping away recoverable success fees in PI cases against insurance companies was necessarily the consequence of all that I'm less sure about, but certainly in those cases it struck me as a most appalling potential injustice. The other thing that I wanted to mention is from what you said earlier on about the importance of the rule of law. I entirely agree. The example you give of housing

	disrepair cases is a very good example and we've got the same with crime as well at the moment, with the cutbacks in legal aid. I retired to Italy in 2013/14. I always thought talk of the rule of law and its importance was a bit of British superiority and a bit highfalutin and there was the Bingham Centre for the rule of law and all that kind of stuff. Moving to a country where the justice system does not work well, it doesn't work anything like as well as in Britain. You have very, very long delays, quite arbitrary decisions, and a system where most people avoid law if they possibly can because it is not a good solution. It really brought home to me that it is essential for civilised living, certainly in a democracy, that you should be able to challenge decisions you don't like, to take up disputes where you feel you have been wronged and to protect the quality of your home in the example that you've just given. It is something which we should definitely keep at the forefront of our minds and it's right to see these wider perspectives on what seem to be narrow technical issues. Andy anything to add?
AE	Only a footnote really. I found that review really helpful and I agree with very much of it. Talking about cycles of legal and regulatory fashion - paradoxically, somebody contacted me from Australia a couple of weeks ago to tell me that, in the State of Victoria, they are working actively – and there are reports on it – about moving away from scale costs which is their version of fixed costs and moving towards guideline hourly rates and budgeting. I think maybe some of the work that is happening over here, that they are now aware of, might have scared the horses a wee bit so there could now be delays. But just maybe, what we've got now with budgeting certainly is the worst system apart from all the others which is my take ion it. Compartmentalising [budgeting] for types of work I believe is a really interesting idea and I'd like to think that that has legs.
JM	Well look, I think that has pretty much done it, I'd really like to thank Andrew very much for a very, very interesting contribution on all of the topics we've discussed this morning. I'd like to leave on this note. Practico's sessions like this have been entirely online throughout the pandemic and many of you will know replaced earlier physical meetings we used to have in London before the pandemic put paid to that. This process is about to resume – and the first such session is going to be on 20 October and we're delighted to be able to welcome Lord Justice Birss, the chair of the CJC Committee we've been looking at just now and Deputy Head of Civil Justice with Alex Hutton KC, as I must use that term. We'll be welcoming back the bacon sarnie with any luck. It is by invitation only, but if any of you who are listening to this are interested in being invited and are not on the invitation list, do get in touch with Practico.
AE	The best person to do that with will probably be my colleague Deborah Burke whose email address and details are on the Practico website and easily obtainable.
JM	On that note we look forward to seeing some of you in London in person and once again thank Andrew for this really interesting discussion this morning.

AH	Thanks Jeremy, thank you Andy.