

'Right to be voluntary': Litigators respond to Jackson's latest fixed costs proposals

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City disputes partners have responded cautiously to proposals put forward by Lord Justice Jackson to extend the fixed recoverable costs (FRC) regime to a number of different claims.



Lord Jackson had been reviewing whether or not FRC should be introduced to all civil claims with a value up to £250,000. But in the [report - published 31 July](#) - he recommended introducing a voluntary capped costs pilot scheme solely for High Court claims valued up to £250,000.

Other proposals presented by Lord Jackson include introducing an intermediate track for claims between £25,000 and £100,000 as well as extending the FRC procedure to all fast-track cases.

For claims on the intermediate track, cases are suggested to be categorised according to complexity, with Band 1 being the most simple and Band 4 being the most complex.

The costs recoverable are dependent on which band the claim qualifies into, and which stage the claim is at. The maximum costs recoverable for a Band 1 claim is £68,450, while the maximum for a Band 4 claim is £100,000.

Herbert Smith Freehills head of banking litigation in the UK, Damien Byrne Hill, is sceptical of the proposals due to this complexity, and said: 'It's quite difficult. It's intended to be a simple scheme but there's a lot of complexity in it.'

Meanwhile, Simmons & Simmons dispute resolution partner and president of the London Solicitors Litigation Association (LSLA) Ed Crosse largely welcomed the idea but told *Legal Business* that it is 'right for it to be voluntary', adding that any forced usage of the regime 'would mean that some parties would not litigate at all' due to the desire to recover larger costs.

Another senior disputes partner commented: 'The reality of the FRC regime is that it won't affect the higher end work. This isn't the beginning of a wider regime that's going to spread up the food chain.'

Commercial costs lawyer and Practico managing director Andy Ellis welcomed the decision not to apply FRC to all civil claims worth up to £250,000, describing the plans as 'way too ambitious.'

He also expressed doubt over the potential 'simplification and semi-automation of some aspects of civil procedure' as a result of FRC being introduced, adding: 'FRC is not going to produce a fair recovery of the cost of necessary work'.

Lord Jackson first introduced the notion of applying FRC to all civil claims worth up to £250,000 in early 2016, and was met with severe criticism from the legal profession.

At the time, Fieldfisher's serious injury sector head, Jill Greenfield, told *Legal Business* that Lord Jackson's proposals took 'a completely unrealistic view on how these cases are run. Placing arbitrary limits on costs is grossly unfair if you've suffered serious injuries and are facing an aggressive defendant.'

In other recent litigation procedure news, the first case brought under the London courts' ongoing shorter trial pilot scheme concluded at the end of July.

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<http://www.legalbusiness.co.uk/index.php/lb-blog-view/10584-right-to-be-voluntary-litigators-respond-to-jackson-s-latest-fixed-costs-proposals>