BIRMINGHAM LAW SOCIETY

one profession • one region • one voice

Response to Ministry of Justice Consultation on Fixed Recoverable Costs

September 2023

Response of the Personal Injury Committee of the Birmingham Law Society to the Ministry of Justice Consultation on Fixed Recoverable Cost

This response has been prepared by the Personal Injury Committee of the Birmingham Law Society. The Society is the largest local law society with some 5,000 members. The response represents the collective view of the Personal Injury Committee whose members are specialist lawyers practising in the personal injury sector and are from all branches of the legal profession.

i. Fixing costs on assessment: Do you have views on the proposal outlined at paragraphs 11-12 above, as well as on how any rule might be drafted?

Fixing costs on assessment would not be appropriate. and indeed, would likely present more problems than solutions. In Personal Injury Claims, a number of Defendant firms routinely argue points that are neither proportionate, nor reasonable. This approach drives matters to the day of the hearing, only to settle at the doors of the court after much wasted time and costs. To fix costs without the sanction of assessing the reasonable costs of assessment would merely serve to incentivise late settlement and further delay matters.

In the event, numerous and often pointless challenges are made that simply waste a receiving party's and court time. There should be an appropriate order for the reasonably incurred costs, and appropriate sanctions. Fixing costs will not solve any problems but will create them.

It is often the case that a reasonably sized, litigated action will involve a good deal of work. A personal injury disease case is very different to a simple debt case. To simply fix a 'one size fits all' process is not only inappropriate, but unworkable, and simply seeks to compare apples with oranges.

ii. Fixing costs in Part 8 claims: Do you have views on the proposal outlined at paragraph 17 above, as well as how any rule might be drafted?

The proposed costs are very small and entirely unworkable.

Very often litigation is overtaken by costs arguments, and the costs are as problematic, if not more contentious than the original claim. In the event a paying party drives their opponent to a costs only hearing. The work required to deal with costs should certainly be properly remunerated, to stimulate early resolution, as opposed to driving a matter to an endpoint with no effective sanction.

iii. Inquest costs / restoration proceedings: Do you have views on the proposals outlined above on these issues (at paragraphs 21 and 23 respectively)? What should any potential rules to address the issues look like?

Inquest costs - Representing a party (particularly a deceased's family) at inquest should always be properly remunerated. A Solicitor, and more so, the Advocate's handling of a case - whatever the value, should never require less in preparation, simply dependent on value. Assistance at inquest is often the make or break of the case, with a unique opportunity to question witnesses, to consider evidence and documents.

It should never be the case that a party, particularly the family of a deceased, should be left to fund inquest proceedings themselves at perhaps one of the most difficult times of their lives.

Restoration Proceedings - The cost of restoration proceedings should always be remunerated. The rule should not merely apply to NIHL claims, but to all disease, and indeed general matters, where the step to litigation is a mandatory step prior to the issue of proceedings.

iv. A potential rule to provide for the recoverability of advocacy fees in cases that are (a) settled late and (b) vacated: Please give your views generally on these proposals, as well as on the questions on these respective issues, which are at paragraph 36.

The PIBA and Bar Council proposals are endorsed.

v. Uprating the fixed trial advocacy fees in the extended FRC regime: Do you have views on the proposal outlined above at paragraph 41?

The proposed 4% uplift on fees is simply inappropriate and hugely out of step with inflationary considerations.

A far better approach would be an annual increase in line with inflation after an appropriate adjustment.

With all due respect, the 620% rise seen in court fees just a short period of time ago, requiring seriously injured Claimants and their families to find court claim issue fees of £10,000, along with the introduction of additional hearing fees, and very regular uplifts of most court fees, rather puts the discussion into perspective. Why have there been massive and regular increases in disbursements to what is a public service, but very little consideration to the remuneration of those professionally assisting?

vi. Clinical negligence claims at 26.9(10(b): Do you have a view on the proposed way forward at paragraph 50?

The views of APIL are endorsed. Quoting directly from an APIL press statement:

The rules suggest that clinical negligence cases valued between £25,000 and £100,000, should be moved to the new intermediate track if 'both breach of duty and causation have been admitted.' But it is not specified at what stage of the case those admissions must be made. If they are not made until late in the proceedings, a solicitor will have had to undertake a significant amount of work on the case, only to then find that fixed costs are applied which do not cover the costs of the work undertaken.

This creates a very real risk that solicitors may not take on clinical negligence cases of this value.