

NOTE CONCERNING THE FIXED RECOVERABLE COSTS REVIEW SEMINARS

BACKGROUND

The 2013 civil justice reforms have reduced litigation costs, for example by ending recoverable success fees/recoverable ATE premiums and fixing the costs of fast track personal injury claims. Even so, in many cases costs remain disproportionate and beyond the means of those who would wish to bring or defend claims.

Lord Justice Briggs stated at paragraph 5.24 of his Interim Report (December 2015):

“Despite all the efforts made over the last fifteen years, the cost of legal representation in the civil courts, coupled with the risk of liability for a successful opponent’s costs, still make the conduct through professional representation of small and medium-sized civil cases, other than for personal injuries on CFAs, disproportionately expensive and therefore unaffordable, measured against value at risk.”

In paragraph 5.14 of his Final Report (July 2016) Briggs LJ stated that public consultation had confirmed that view. He is supportive of the principle of extending fixed recoverable costs.

ANNOUNCEMENTS BY THE LORD CHANCELLOR, THE LORD CHIEF JUSTICE AND THE SENIOR PRESIDENT OF TRIBUNALS

In a paper presented to Parliament on 15th September 2016 the Lord Chancellor stated:

“Fixed recoverable costs are legal costs which can be recovered from the losing side by the successful party to a claim, at a prescribed rate. (For civil claims, these are set out in the Civil Procedure Rules). We will build on measures introduced in the last Parliament for low value personal injury claims, to limit the level of legal costs recoverable. These measures provide transparency and certainty for all parties and are designed to ensure that the amount of legal work done is proportionate to the value of the claim. We are keen to extend the fixed recoverable costs regime to as many civil cases as possible. The senior judiciary will be developing proposals on which we will then consult.”

In their joint statement “Transforming our justice system” dated September 2016 the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals stated:

“More needs to be done to control the costs of civil cases so they are proportionate to the case, and legal costs are more certain from the start. Building on earlier reforms, we will look at options to extend fixed recoverable costs much more widely, so the costs of going to court will be clearer and more appropriate. Our aim is that losing parties should not be hit with disproportionately high legal costs, and people will be able to make more informed decisions on whether to take or defend legal action.”

THE PRESENT REVIEW

On 11th November 2016 the Lord Chief Justice and the Master of the Rolls commissioned me to carry out a review with the following terms of reference:

1. To develop proposals for extending the present civil fixed recoverable costs regime in England and Wales so as to make the costs of going to court more certain, transparent and proportionate for litigants.

2. To consider the types and areas of litigation in which such costs should be extended, and the value of claims to which such a regime should apply.
3. To report to the Lord Chief Justice and the Master of the Rolls by the 31st July 2017.

This project requires me, with the assistance of assessors, to do the following:

- (i) Propose a scheme for fixed recoverable costs in respect of fast track cases which are not currently subject to fixed recoverable costs.
- (ii) Identify categories of cases (a) above the fast track or (b) not falling within any track, which should be subject to fixed recoverable costs and propose a scheme of fixed recoverable costs for such cases.

The Lord Chancellor has indicated in her statement of 15th September that the proposals resulting from this review will be the subject of consultation.

THE SEMINARS

The purpose of the seminars is to obtain constructive input from court users into this exercise. People who come along and simply say “don’t do it at all” will not be providing any assistance. By all means let people say, if it be their view, “I don’t agree with fixed recoverable costs, but if you are going to do it, this is what I recommend ...”

There will be five seminars:

- Monday afternoon 6th February, Leeds (capacity 50): property and chancery litigation
- Tuesday morning 7th February, Manchester (capacity 50): clinical negligence and personal injury
- Monday afternoon, 13th March, London (capacity 200): structural issues, counsel’s fees, expert fees, upper limit for cases subject to fixed recoverable costs
- Thursday morning 16th March, Birmingham (capacity 50): mercantile and business litigation
- Wednesday afternoon 5th April, Cardiff (capacity 80): judicial review and public law.

The plan is to have 4 speakers at each seminar. Begin with two 20 minute presentations, followed by discussion, then a tea/coffee break, then two more 20 minute presentations, followed by discussion. I will chair each of the seminars (as I did during the 2009 Costs Review).

Places at the seminars will be limited, as noted above. The Master of the Rolls’ private office will handle the invitations.

MY POSITION

I have expressed views about fixed recoverable costs in recent lectures (January and May 2016: available on the Judiciary website) and more recently in a book (“The reform of civil litigation”). Although I hold the view that fixed recoverable costs would be beneficial for lower value cases, I will keep an open mind for the time being about what types and levels of cases should fall within such a regime and what the costs figures should be. The purpose of the seminars is to explore the issues and the conflicting considerations which are in play.

Rupert Jackson

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