

**APPENDIX 14: PAPER PREPARED BY A WORKING GROUP PROPOSING A HYBRID OF EXISTING
'FIXED FEE' AND 'BUDGETING' SCHEMES FOR CLINICAL NEGLIGENCE AND PERSONAL INJURY
CLAIMS UP TO £100,000**

PROPOSED COSTS MATRIX FOR THE INTERMEDIATE TRACK

PERSONAL INJURY AND CLINICAL NEGLIGENCE

1. PREAMBLE

- a. This paper is presented at the invitation of Jackson LJ, for a small working party to consider a hybrid of existing “fixed fee” and “budgeting” schemes. We refer to this below as the “Intermediate Track Matrix” or “ITM”
- b. This submission does not deal with the wider issues raised in Jackson LJ’s consultation: how far might fixed costs be extended vertically or horizontally (if at all); how much should successful parties recover; piloting; should QOCS be extended etc? These, and other, issues have been the subject of lengthy submissions by others and are outside the scope of this paper.
- c. This submission begins with the assumption that the decision is made to abandon the status quo and puts forward an alternative scheme.
- d. The scheme applies to:
 - i. Claimant, Defendant, Clin Neg and PI.
 - ii. Claims up to the value of £100K, which would otherwise normally have been allocated to the Multi-track¹.
- e. With modest amendments, it might easily be adapted to other areas, e.g. commercial etc?
- f. **Figures are included in the ITM for the purposes of illustrating the workings of the scheme, only.** This working party does not have the data to allow reasoned and evidenced figures to be suggested. If the ITM is adopted, further detailed work on figures will be required. These are likely to differ (at least for some phases), between PI and Clin Neg and Claimant and Defendant to reflect the work properly required.
- g. We understand that an alternative proposal exists for standard “templates”, which are then reviewed, in each case at a CCMC. For the avoidance of doubt, this proposal goes further that that: applying a fixed matrix and avoiding case by case budgeting.

2. THE OBJECTIVE OF THE SCHEME

- a. To satisfy the DOJ objective of predictability and proportionality² in costs;

¹ See CPR 26.6 – Value over £25,000, or trial over 1 day, or expert oral evidence from more than one expert per party in any one field or more than two fields.

² Taking into account: the sums at stake, complexity and the conduct of the litigation.

- b. To minimise the reduction in the quality of justice inherent in standard “fixed” costs systems (use of cheap/ under-qualified file handlers; inappropriate avoidance of specialist input, for example from counsel and/or experts; under settlement; attritional conduct by Defendants etc.)
- c. To encourage issues to be narrowed, experts to be agreed and complexity to be minimised, where appropriate and at the earliest opportunity.
- d. To minimise the time and expense (wasted) in dealing with costs issues and the consequent effects on cash flow.

3. THE KEY FEATURES

- a. The scheme is an evolution of the existing budgeting scheme in the multi track. Case management will proceed as at present but without CCMC, precedent H and (in general) costs draftsmen.
- b. The scope for costs disputes (and detailed assessment) is minimised.
- c. The money spent on costs issues is significantly reduced;
- d. The court’s time and resources spent on costs is significantly reduced;
- e. The ITM is easy to understand and apply.
- f. The rule makers will set a series of core matrices (e.g: claimant Clin Neg, defendant PI etc.);
- g. The core matrix will apply to most cases, but additional standard variations will be required for common variations³.
- h. The court controls costs in each case by directing which issues can be pursued and experts relied on, not vice versa;
- i. The ITM applies save:
 - i. Where the rules specifically allocate such claims to the MT;
 - ii. Where the court orders the claim to be allocated to the MT;
 - iii. To the extent that a party successfully applies to the court for the core matrix to be varied on the grounds that it is not a “standard” case⁴.

³ An obvious example is a fatal claim in which there has been an inquest. This will vary from the core matrix for phase 1 (to allow for involvement in the inquest), but subsequent phases will be the same as the core matrix.

⁴ For example: “group” litigation; new/controversial area of law requiring appeal court consideration; issues of general public importance; multiple claimants etc.

- j. Application to vary the matrix or allocate to MT:
 - i. The precise threshold for allowing applications will require further consideration, but should be set so that applications of this type are the exception rather than the rule;
 - ii. Unsuccessful applicants will bear the costs of such applications.
- k. The ITM applies to all phases of the litigation (including “incurred” costs)
- l. The figures for each phase and the size of the “adjustment” allow the rule makers to “tune” the scheme (with the benefit of experience) to:
 - i. Achieve proportionality;
 - ii. Reflect the work that is properly required to achieve a just outcome;
 - iii. Incentivise:
 - 1. Claimants to work efficiently;
 - 2. Defendants to make concessions and P36 offers (where appropriate), at the earliest opportunity, to minimise complexity and cost.
- m. The ITM avoids “false” incentives that might distort the conduct of the litigation. (For example, the “front loading” of costs to avoid those costs being budgeted, or the “tactical” preservation of issues merely to put pressure on a Claimant)

4. THE CORE MATRIX (WITH ILLUSTRATIVE FIGURES)

No	Phase Up to and including	Solicitor	Liability Expert (each)	Quantum Expert (each)	Counsel
1	Letter of response	£4,000	£500	£0	£500
2	Service	£4,000	£250	£500	£1,000
3	Directions	£2,000	0	0	£0
4	Exchange of expert reports	£3,000	£1,000	£1,000	£1,000
5	Receipt of Experts’ joint statements	£3,000	£500	£500	£1,000
6	ADR	£2,000	0	0	£1,500
7	Trial preparation	£2,000	0	0	£3,000
8	Trial (per day)	£1,000	£1,000	£1,000	£1,000

5. ADJUSTMENTS FOR COMPLEXITY/PROPORTIONALITY

Value	Adjustment		"Issues" ⁵	Adjustment	Experts	Adjustment
Up to £25k	1		1	1	0- 4	1
Up to £50K	1.5		2	1.25	5 -8	1.25
Up to £100K	2		3	1.5	9+	1.5

6. Notes on the operation of the scheme:

a. ADJUSTMENTS:

- a. Applied cumulatively (value x issues x experts);
 - b. Applied phase by phase
 - c. All apply to lawyers fees/costs
 - d. "Value" adjustment only, applied to experts' fees
 - e. "Value" is the gross sum recovered (before all deductions, including CRU and contributory negligence) for Claimants and the statement of value for Defendants.
 - f. "Experts" is the total number (both sides) of experts that remain as "live" issues in the case. For example – if the court orders that an expert shall not give live evidence at trial, they are not counted for subsequent phases. If an expert is reporting on both liability and quantum, that is counted as "2" experts.
- b. Court fees are recovered as charged;
 - c. Costs of applications are recovered as ordered.
 - d. Where counsel is used for an item of work not specifically allowed for in the budget (e.g. attending a CMC), this is paid from the solicitor's "pot" for the relevant phase, at a fee negotiated between solicitor and counsel

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⁵ Breach/Causation/Quantum

APPENDIX 1 - ILLUSTRATIONS

The tables below illustrates how the scheme might apply in practice. The illustrations show the two extremes and a typical, middle ground, example.

Example 1: Value less than £25K, quantum only. Breach and causation admitted early, following internal inquiry.

No	Phase, up to and including	Value	Issues	Experts	Lawyers' adjustment	Solicitor		Counsel		Quantum Experts		Note
						Starting point	With adjustment	Starting point	With adjustment	Starting point	With adjustment (for value)	
1	Letter of response	1	1	1	1	£4,000	£4,000	£500	500	£0	0	
2	Service	1	1	1	1	£4,000	£4,000	£1,000	1,000	£500	£500	
3	Directions	1	1	1	1	£2,000	£2,000	£0	0	0	0	
4	Exchange of expert reports	1	1	1	1	£3,000	£3,000	£1,000	1000	£1,000	£1,000	
5	Receipt of Experts' joint statements	1	1	1	1	£3,000	£3,000	£1,000	1000	£500	£500	No material disagreement between the medical experts. Not required to attend trial.
6	ADR	1	1	1	1	£2,000	£2,000	£1,500	1000	0	0	
7	Trial preparation	1	1	1	1	£2,000	£2,000	£3,000	3000	0	0	
8	Trial (1 day)	1	1	1	1	£1,000	£1,000	£1,000	1000	£1,000	0	
	Total						21,000		9,500		£2,000	Grand total: £32,500

Example 2: Up to £100K – Delayed caesarean section leading to respiratory and neurological complications in child, all issue fought to trial

No	Phase, up to and including	Value	Issues	Experts	Lawyers' adjustment	Solicitor		Counsel		Liability Experts		Quantum Experts		Notes
						Starting point	With adjustment	Starting point	With adjustment	Starting point	With adjustment (for value)	Starting point	With adjustment (for value)	
1	Letter of response	2	1.5	1	3	£4,000	£12,000	£500	1,500	£500	£3000	£0	0	3 liability experts: obstetrics, paediatric neurology, respiratory
2	Service	2	1.5	1	3	£4,000	£12,000	£1,000	3,000	£250	£1500	£500	£2000	2 quantum experts: respiratory and neurology
3	Directions	2	1.5	1.25	3.75	£2,000	£7,500	£0	£0	0		0		Care expert allowed. Defendant allowed like experts to Claimant. 6 on each side = 12.
4	Exchange of expert reports	2	1.5	1.5	4.5	£3,000	£13,500	£1,000	4,500	£1,000	£6,000	£1,000	£6,000	

No	Phase, up to and including	Value	Issues	Experts	Lawyers' adjustment	Solicitor		Counsel		Liability Experts		Quantum Experts		Notes
						Starting point	With adjustment	Starting point	With adjustment	Starting point	With adjustment (for value)	Starting point	With adjustment (for value)	
5	Receipt of Experts' joint statements	2	1.5	1.5	4.5	£3,000	£13,500	£1,000	4,500	£500	£3,000	£500	£3,000	
6	ADR	2	1.5	1.5	4.5	£2,000	£9,000	£1,500	6,750	0		0		
7	Trial preparation	2	1.5	1.5	4.5	£2,000	£9,000	£3,000	13,500	0		0		
8	Trial	2	1.5	1.5	4.5	£1,000	£4,500	£1,000 (5 days)	22,500	£1,000	£12,000	£1,000	£12,000	Each expert attends 2 days of the trial
	Total						£81,0000		56,250		£25,500		£23,000	Grand total: £185,750

Example 3: £50K value. Issues and experts conceded/agreed as the litigation progresses.

No	Phase, up to and including	Value	Issues	Experts	Lawyers' Adjustment	Solicitor		Counsel		Liability Experts		Quantum Experts		Notes
						Starting point	With adjustment	Starting point	With adjustment	Starting point	With adjustment (for value)	Starting point	With adjustment (for value)	
1	Letter of response	1.5	1.5	1	2.25	£4,000	£9,000	£500	£1,125	£500	£750	£0	£0	All issues live. One liability expert
2	Service	1.5	1.25	1	1.875	£4,000	£7,500	£1,000	£1,875	£250	£375	£500	£750	One quantum expert Defendant concedes breach in letter of response
3	Directions	1.5	1.25	1	1.875	£2,000	£3,750	£0	£0	£0	£0	£0	£0	Court allows each side to have experts on causation, condition and prognosis and care (6 in total)

No	Phase, up to and including	Value	Issues	Experts	Lawyers' Adjustment	Solicitor		Counsel		Liability Experts		Quantum Experts		Notes
						Starting point	With adjustment	Starting point	With adjustment	Starting point	With adjustment (for value)	Starting point	With adjustment (for value)	
4	Exchange of expert reports	1.5	1.25	1.25	2.34	£3,000	£7,020	£1,000	2,340	£1,000	£3,000	£1,000	£1,500	Defendant concedes causation prior to exchange of expert reports. Case proceeds on quantum only (4 experts in total)
5	Receipt of Experts' joint statements	1.5	1	1	1.5	£3,000	£4,500	£1,000	1,500	£500	£0	£500	£1,500	Annual care costs agreed. Life expectancy remains in issue. Care experts not required at trial.
6	ADR	1.5	1	1	1.5	£2,000	£3,000	£1,500	£2,250	0	0	0	0	
7	Trial preparation	1.5	1	1	1.5	£2,000	£3,000	£3,000	£4,500	0	0	0	0	

No	Phase, up to and including	Value	Issues	Experts	Lawyers' Adjustment	Solicitor		Counsel		Liability Experts		Quantum Experts		Notes
						Starting point	With adjustment	Starting point	With adjustment	Starting point	With adjustment (for value)	Starting point	With adjustment (for value)	
8	Trial	1.5	1	1	1.5	£1,000	£3,000	£1,000 (2 days)	3,000	£1,000	0	£1,000	£1,500	Condition and prognosis experts attend for 1 day of the trial
	Total						£40,770		£16,590		£4,125		£5,250	Grand total: £66,735

APPENDIX II - KEY WORK IN EACH PHASE

No	Phase, up to and including	Solicitor	Expert (each)	Counsel
1	Letter of response	Initial instructions from client Draft preliminary statement Obtain and sort medical records Obtain screening report Prepare letter of claim	Prepare screening report Preliminary conference	Consider the medical records Preliminary conference with Claimant and expert.
2	Service	Review letter of response Obtain Claimant's and expert's views on letter of response Obtain condition and prognosis report Prepare preliminary schedule of loss Issue and serve	Comment on letter of response Prepare condition and prognosis report	Written preliminary advice on prospects Draft POC
3	Directions	Consider defence Prepare draft directions and case summary Attend CMC Provide availability		

No	Phase, up to and including	Solicitor	Expert (each)	Counsel
4	Exchange of expert reports	Update medical records and finalise bundle of medical records Disclosure Prepare and serve witness statements Obtain expert report Conference with expert Exchange expert reports	Prepare report Conference	Conference with experts
5	Receipt of Experts' joint statements	Conference with expert Agree agenda	Conference Expert meeting Joint statement	Conference with expert.
6	ADR	Final schedule ADR		Final schedule ADR
7	Trial preparation	PTR Bundles		Trial preparation
8	Trial	Attendance	Attendance	Attendance