



Civil Justice Council Consultation:

*CJC Costs Working Group –
Consultation Paper – June 2022*

A Response by CILEX (The Chartered Institute of Legal Executives)

30-09-2022

Contents

Page

1. Introduction	3
2. General Points	3
3. Cost Budgeting	4
4. Guideline Hourly Rates	5
5. Digital Justice System	7
6. Fixed Recoverable Costs	9
7. Conclusion	12

1 Introduction

- 1.1 CILEX (The Chartered Institute of Legal Executives) is one of the three main professional bodies covering the legal profession in England and Wales. CILEX's diverse membership is made up of CILEX Lawyers, paralegals and other legal professionals. Our members are judges, advocates, partners in law firms and specialist lawyers working across every aspect of the law.
- 1.2 As of July 2022, CILEX recorded that 4,365¹ members identify as working within Civil Law. This total equates to just over 25 per cent of our total membership. CILEX felt it important not only to respond but to ensure that the voice of our members was heard within our response. As such CILEX conducted quantitative and qualitative research with our members working in this sector. We will refer either by theme or direct member quotes to applicable areas of evidence.
- 1.3 CILEX has previously responded to Government consultations regarding topics raised by the Civil Justice Council (CJC), as well as similar issues raised elsewhere. Areas such as whiplash reform, small claims limits and the more recent proposal for a Fixed Recoverable Costs (FRC) Scheme for lower value clinical negligence claims, have provided CILEX an opportunity to discuss the use of FRCs as well as digital justice.
- 1.4 CILEX has previously provided tentative responses to areas such as FRCs as well as digital justice, recognising the potential for such systems to achieve wider justice but warning against their use in certain scenarios. CILEX was pleased to have been included in previous CJC work regarding Guideline Hourly Rates (GHR) and welcomed the changes in the final 2021 report, including a title change for CILEX members.
- 1.5 Therefore, this submission will consist of principled responses, utilising CILEX member gained insights as well as our continual points of discussion raised in previous consultations. Please note that all figures have been rounded to the nearest whole number for ease of reporting purposes.

2 General Points

- 2.1 Cost Budgeting should be retained (3.11) but it requires updating (3.21) as well as consideration towards continuity (3.25) and judicial training (3.27)
- 2.2 GHR provides a general starting point for minimum charges (4.22) with both CILEX and our members generally agreeing that they should be reviewed every 2 years (4.31)
- 2.3 Whilst most members have not witnessed a change to costs due to digital justice systems (5.13) CILEX is still cautious towards the wider use of them due to the potential to drive legal and claimant fee claims (5.14)
- 2.4 CILEX agrees with members that there is a current lack of clarity between contentious and non-contentious business definitions (5.36)
- 2.5 CILEX and members hold concerns regarding the impact of FRC schemes as well as

¹ Please note that the 4,365 Civil Law CILEX Members represent a wide network of specialisms some of which may not be directly applicable to the work undertaken by the CJC consultation.

wider cost capping (6.54). Disadvantages to claimants as well as further empowerment of insurance companies must be considered by the CJC's Costs Working Group.

3 Cost Budgeting

3.1 Retention and default position

Members responding to CILEX were more in favour of the retention of Cost Budgeting with 68% agreeing that it should stay. Out of those informing CILEX that Cost Budgeting should be retained, 79% felt that such a service should operate as a "default on" basis. Members opting to keep Cost Budgeting were also generally more in favour of not changing the current format.

3.2 Cost Budgeting Changes

- 3.21 As mentioned above not all CILEX members felt that current Cost Budgeting has worked as well as it should. Within feedback, members mentioned how Cost Budgeting should be revisited more often throughout proceedings², how budgets should take place once directions have been set by the court, that budgeting was currently too rigid, that budgets should be based on amount of hours and disbursements³ and that rules should be made easier to amend along with considerations to ensuring certain sanctions are more proportionate⁴. Lastly one member felt that clarification is required for updated and partially approved budgets as this currently represents a grey area.
- 3.22 Within a recently hosted CILEX workshop attendees provided further amendments they were keen to see regarding Cost Budgeting. Currently it was felt that the majority of Qualified One-Way Costs Shifting (QOCS) cases should not require the defendant to serve budgets as this incurred unnecessary reviewing time and costs for a legal firm.
- 3.23 It was suggested that the current Cost Budgeting limit of £10 million should be reduced to £5 million. By making such a reduction members felt that judges would be more likely to engage with Cost Budgeting. However, it is recognised that such a change would require further consideration such as changes to claim forms, to allow for the stating of a Cost Budget value for instance.
- 3.24 Allotment of time before the Cost Management Conference (CMC) and Precedent R was discussed with members noting that an extension of time would help allow for meaningful negotiations to happen. Currently, negotiations have to be performed in potentially short time frames and in certain circumstances they are not carried out due to working commitments. One suggestion was to have the Precedent R form submitted 14 days in advance to allow enough time for such discussions to take place.

² CILEX Member Quote: "Cost budgeting should be revisited at more stages throughout proceedings/budgeted in stages as otherwise cases can quickly increase in complexity and cost and parties end up criticised or held to unrealistic initial cost estimates."

³ CILEX Member Quote: "The Budget should be based on amount of hours and cost of disbursements not on phase total, that way the hourly rate really will not play a part in the decision as the rules originally intended"

⁴ CILEX Member Quote: "The Rules should make it easier to amend cost budgets. Also CPR 3.14 should be changed for a more proportionate and discretionary sanction."

- 3.25 Continuity plays a major role in ensuring services are carried out correctly. Members felt that currently there is a lack of continuity in the organising of CMC and Costs and Case Management Conference (CCMC). All dates for the CMC, filing a budget and the CCMC should be placed on a singular order. Whilst it is appreciated that this can cause further complications regarding diary logistics, it was ultimately seen as a much clearer system for all parties involved. CILEX members had mentioned how different courts provide varied deliveries of CMC and CCMC dates. It is felt that a continuity of an established time between CMC and CCMC of 10 days would ensure that parties are able to resolve any issues and speak to experts properly without wasting time in joined or close together hearings. One model that was seen as successful is currently run by Sheffield, which split the CMC and CCMC into two 45-minute sessions with all dates provided on one order. CILEX members agree that such a delivery and consistency should be executed across all courts handling CMCs and CCMCs to ensure fairness of service.
- 3.26 Infant Claimants should be dispensed with as members feel that current court orders do not fully consider the possible future of such a claim. This has led CILEX members and their firms to prepare such budgets, which takes resources to do so and can lead to them not being required. Members felt that more consistency as well as greater consideration is required as to whether budgeting applies to such cases before orders are made.
- 3.27 Lastly in both CILEX's wider work with members and during our workshop there was significant discussion regarding judicial training and suitability towards Cost Budgeting⁵. Whilst it is appreciated that retention and recruitment to the judiciary is difficult, members still noted that further training/awareness of Cost Budgeting should be provided. At times it was mentioned that judges and deputy judges were not always best equipped within certain areas to perform accurate assessments of Cost Budgeting. Members were keen to see the adoption of a system that would allow for Cost Budgeting cases to be sectioned and sent to judges that specialise within a certain area. This would reduce time and possible confusion of casework by allowing for judges and deputy judges with the necessary expertise to quickly assess a case. It was mentioned that such a system potentially exists and operates within Manchester, which CILEX members were keen to see a possible expansion of. However, within an initial phase it must be reinforced regarding the importance of further judicial training to ensure familiarity with Cost Budgeting.

4 Guideline Hourly Rates (GHR)

- 4.1 CILEX has previously been involved with the 2021 Guideline Hourly Rates (GHR) report via a working group and shared progressive news with our members back in 2014 regarding Lord Dyson's announcement to allow Chartered Legal Executives to recover costs at the same level as solicitors once they reach 8 years' Post Qualification Experience in litigation (known as Grade A rates).

⁵ CILEX Member Quote: "Judges do not appreciate the expertise in preparing these and routinely slash costs without due consideration. Too little notice given of hearing dates and unrealistic additional demands for further costs information made late notice"

4.2 The purpose of Guideline Hourly Rates

4.21 CILEX was keen to understand our members' thoughts on what GHR exactly meant to them. Previously CILEX had publicly stated the following:

"The GHRs are the widely accepted guidelines used by the Courts in summary assessment of costs for the recoverable hourly rate for different grades of fee earner in different regions of England and Wales." (CILEX Press Release 2014)

4.22 Most members providing feedback felt that GHR acted as a starting point or a guide for what can be charged as a minimum for services provided⁶. Beyond the initial thoughts of how GHR worked in principle members raised further considerations.

4.23 One member felt that GHR helped ensure that adverse cost order amounts were fairly paid by unsuccessful parties, whilst another member stated that GHR allowed for defendants to challenge an opponent's legal representative costs to reduce the final costs as much as possible. A further member added that without such rates budgeting a cost assessment would be almost 'unworkable', exposing clients to potentially very costly situations⁷.

4.24 Members felt that GHR also indicated to the judiciary the broad view of work being undertaken within a civil proceeding.

4.25 One member made a further link between GHR directly reflecting an individual's expertise and experience as well as indicate geographical earning difference and cost of living⁸.

4.26 Lastly, some members noted that GHR allow them a levelled playing field across all legal professionals⁹ as well as ensuring a minimum amount is charged for more than just one grade of fee earner¹⁰.

4.3 Retention and Review of GHR

4.31 CILEX can say with confidence that both our and our members views are to retain GHR. Additionally, members indicated to CILEX that they were marginally more open to the use of GHR in a wider cost assessment role. When considering the frequency for review of GHR, members were in favour of either an annual or every 2-year review. Upon further analysis of these two possible review windows, CILEX is inclined to support the idea of one happening every 2 years. Our reasoning stands that an annual review may not provide a suitable

⁶ CILEX Member Quote: "The guideline rates are an absolute minimum allowed at assessment. They should be expected for any claim that requires no specialist knowledge and no complications. They all offer a guarantee of a bare minimum achievable at assessment and are absolutely essential to the management of a law firm"

⁷ CILEX Member Quote: "To prove some certainty as to what is considered to be a reasonable hourly rate. without it budgeting costs assessment would be almost unworkable. The client too would find themselves at the mercy of their solicitors made up rates"

⁸ CILEX Member Quote: "To reflect the expertise and experience of the individual lawyer who has completed the work and to reflect geographical differences in wages/cost of living"

⁹ CILEX Member Quote: "They allow us to quantify a claim, provide reserves to clients and maintain an equal playing field across the profession. Without guideline rates access to justice could be further reduced as affordability could become an issue."

¹⁰ CILEX Member Quote: "To ensure at least a minimum rate that can be claimed for each grade of fee earner, with enhanced rates above this for more complex and high value work. The rates are not great, and should be reviewed, but they are still a lot better than legal aid rates."

length of time for instrumental changes, opposition and argument to be made and reflected within the rates. As such both CILEX and our members feel comfortable that a review every 2 years would provide sufficient time for such changes to be discussed and implemented. CILEX members also acknowledged that there has been a significant gap between the 2021 report and the previous review, which was over a decade ago. As such CILEX calls for further continuity within this area regarding the frequency of GHR reviews.

4.4 Removal of GHR

- 4.41 Whilst both CILEX and most members agreed that GHR should be kept there were those that thought they should cease to be used. Whilst this is only a consideration held by a minority of members that engaged with CILEX it is important to include all perspectives within our response. Those disagreeing with GHR felt that they did not benefit the client and instead had them pay unrealistic rates for 'straightforward matters.' Another member felt that GHR was outdated and that costs should be worked out at a local level. They added that such a change would allow for more favourable recoverable costings based on geographical location¹¹.
- 4.42 One member mentioned that a fixed costs method could be applied instead of GHR. However, they caveated this stating that very strict guidance would have to be adhered to, to ensure that such a system would work.

5 Digital Justice System

5.1 Impacts of Digital Justice Systems on Costs

- 5.12 CILEX has previously discussed the impact of digital justice systems with Fixed Recoverable Cost (FRC) schemes, as such we explore the impact of FRCs further below.
- 5.13 Most members providing information to CILEX have not personally come across any implications or impacts as an effect of pre-action protocols and digital justice systems regarding costs.
- 5.14 However, CILEX and some of our members hold concern for impact on costs and wider impacts due to the introduction of such mediation systems. In particular legal fee claim increases as a result of damage based agreements being more frequently introduced¹² concerns CILEX. Such a possible rise could force clients to seek higher levels of compensation, which may fall outside of the purposefully created digital justice tools and other pre-action protocols. This subsequently could place further strain on the Civil Justice system with claimants looking to pursue cases on a larger scale, adding to possible court backlogs, cost of services and timescale for settlement.

¹¹ CILEX Member Quote: "The guideline rates are so out of date that they are not worth retaining. If removed then individual courts could assess costs based on relevant current information for the location where the solicitors practice and so would be much more likely to result in a more favourable costs recovery position for the receiving party."

¹² CILEX Member Quote: "An increase in legal fee claims as a result of damages based agreements being introduced due to solicitors applying their losses from the introduction of fixed fees to damages via agreement. Solicitor client claims have increased as a result"

5.2 Access Claim Costs before Issue

- 5.21 CILEX members that provided evidence regarding if current processes worked for assessing costs for a claim that settles before issue were split, however, marginally more respondents (52%) feel that current systems are not appropriate. This further prompts CILEX to recommend a light exploration of this area as it may provide room for further improvement.

5.3 Contentious and Non-Contentious Business

- 5.32 CILEX members demonstrated a mixed reaction to the current definition of contentious and non-contentious business. Just over half (52%) of members responding to us regarding this topic felt that current definitions were not appropriate.
- 5.33 Member feedback indicated to CILEX that one of the biggest issues between the definitions was as to when something stopped being non-contentious and became contentious¹³ as well as how the nature of non-contentious issues were contentious at heart¹⁴.
- 5.34 Several members were keen to point out how pre-action protocols should be placed under the definition of contentious,¹⁵ and that just because proceedings were not in hand did not mean that the work was non-contentious¹⁶.
- 5.35 One member felt that a significant amount of work is conducted prior to commencement, which may result in settlement beforehand. Their concern regarded how much of this work is claimable, which should be addressed if legal representatives are not being sufficiently remunerated for time and service provided¹⁷.
- 5.36 In principle CILEX agrees with member comments regarding the current lack of clarity regarding non-contentious and contentious business. CILEX argues that if legal practitioners are indicating a lack of clarity in meaning then lay members are surely furthermore at risk of not fully understanding their civil proceeding. CILEX is inclined to agree with member feedback that just because a circumstance is classed as non-contentious it is not to say that there has been significant contention shown by parties involved, which contradicts/falsely represents the situation at hand.

5.36.1 Additionally, similar to Legal Aid, CILEX is concerned that legal professionals may not being fully remunerated for

¹³ CILEX Member Quote: "Work which is defined as 'non-contentious' is in fact contentious. The definition needs to be revised"

¹⁴ CILEX Member Quote: "Just because a claim settles pre issue, does not mean there have been no contentious issues between the parties throughout"

¹⁵ CILEX Member Quote: "Work undertaken pre-issue is required under the Pre-Action Protocols that are in place to deal with contentious business. Therefore, pre-action work should be covered under contentious business"

¹⁶ CILEX Member Quote: "Pre-action activity in contentious matters should not be treated as non-contentious simply due to the fact that proceedings were not in hand."

¹⁷ CILEX Member Quote: "As the rules are now predicated on ensuring that you have "all your ducks in a row" prior to commencement, a huge amount of work is inevitably done to either ensure a settlement or commence litigation. If those costs cannot be included then there is a lacuna that needs to be addressed."

possible extensive work performed to either reach settlement before or leading up to commencement of civil proceedings. Whilst CILEX appreciates the difficulty in quantifying levels of work or setting fixed claimable parameters, we do encourage the CJC to consider how much time is expended by legal practitioner and how much is actually claimable.

6 Fixed Recoverable Costs

6.1 The Impact of Fixed Recoverable Costs

- 6.12 Members were generally more in favour of stating that FRCs had impacted other areas being consulted on by the CJC within this consultation, which includes GHR, Cost Budgeting and Pre-Action Protocols.
- 6.13 Members tended to provide mixed feedback as to why FRCs had or had not changed the landscape of other areas within the civil justice system. Those that had witnessed a change noted the following:
- FRCs limit what is claimable from unsuccessful defendants and if applied further would result in menial legal practitioner remuneration;
 - FRCs represent at times low value and high complexity cases, dissuading legal practitioners from taking on the work¹⁸
 - FRCs have impacted the above areas by lowering profit margins as well as impacting legal firm demographics and junior team members earning potential¹⁹ and;
 - Client Care²⁰ is impacted due to legal professionals working within tighter margins as well as concern of full access to justice due to FRCs capping work carried out²¹
- 6.14 Those that had not witnessed a negative change or had seen only minor changes stated the following:
- More FRCs means less budget and cost assessments
 - The FRC expansion has not been yet implemented and so requirements have not currently changed
 - FRCs are only applicable to certain cases and so have not majorly impacted the wider Civil Justice System

¹⁸ CILEX Member Quote: "I have seen solicitors not take cases on because they are complex but low value claims and the frc make it not worth their while. My view is that each case is different and should be based on its own merits. a low value claim can be more complicated that a higher value claim but as important to the client. why should the representation be drummed down / harder to find because of fixed costs."

¹⁹ CILEX Member Quote "The frc have impacted the costs budgets, as not all matters require a costs budget. Also, the frc impact the GHR as the profit margins are low, meaning junior fee earners work on frc cases, impacting the demographic in solicitors firms. Pre action protocols often get rushed, again due to the low profit margins"

²⁰ CILEX Member Quote: "They have removed the need for budgeting in some cases, they have squeezed margins so that solicitors are not always working on their normal GHR (i.e. working for less under a FRC model) which in turn impacts how claims are conducted to ensure they remain viable and profitable for many law firms . Ultimately this impacts client care"

²¹ CILEX Member Quote: "Fixed costs have of course impacted costs generally given they allow a sum for each point in the process. Those cases which are budgeted are normally multi-track cases where standard costs apply. Budgeting of course sets a maximum allowance for each parties expenditure and generally my Clients accept a cap if there is overspend in a phase of a budget. FRC sometimes do not allow for extra work that may have been done in a case as the costs are set, but I suppose the view is one of "swings and roundabouts"."

- 6.15 CILEX, similarly to our members, holds concerns over the possible wider impact that FRCs may create in limiting public access to justice. Further evidence disclosed within a CILEX member workshop acknowledged that whilst larger firms may have the infrastructure to take on FRC work, smaller firms could be more likely to refuse such cases due to the possible work involved and limited remuneration.
- 6.16 In addition to legal firms being less likely to take on such work, CILEX also considers the wider impact of FRCs on the Civil Justice System. Members and CILEX alike share concerns that the further expansion of FRCs and other capping methods could see the withdrawal of legal firms within this area. This firstly presents the possibility of larger firms establishing monopolies on such claims. It secondly represents a further pressure placed on legal advice agencies, that have suffered significant difficulties during the pandemic to keep afloat. Systems such as the Official Injury Claims (OIC) portal is designed for both represented and unrepresented claims, with the latter being emphasised through the website's homepage. However, the latest April to June 2022 data from the OIC continues to show a significant split of cases, indicating a higher volume of represented claims compared to unrepresented claims²². If further impacts of FRCs to the wider Civil Justice System begin to impact legal representation, then litigants could look to legal advice agencies for further support. Similarly, to CILEX's concerns regarding the current state of legal aid, we emphasise the importance of any further expansions considering how such resources will cope with increased user traffic.
- 6.17 Indeed, if litigants in person are unable to access legal help or advice then the possibility of Claims Management Companies (CMC) taking on a more significant role could become a possibility. Whilst recent OIC data states that between April 1st to June 30th 2022, 0.4% of claims were made by CMCs, it should not be discounted that such a figure could further grow if FRCs begin to further impact wider Civil Justice. Whilst CILEX appreciates that such entities are regulated by the Financial Conduct Authority or a legal regulator and overseen by the Claims Management Ombudsman, members have shared concerns as to the exact level of training some CMCs have.
- 6.18 CILEX's previous responses to FRC schemes have not directly assessed their impact on Guideline Hourly Rates, Cost Budgeting and Pre-Action Protocols. But we continue to advise that such schemes are not appropriate for all areas of civil law, and that their use should be supplementary to a host of possible actions that can take place before requiring potentially long and onerous hearings.

6.2 Extending Cost Capping and FRC Schemes

- 6.22 Nearly all CILEX members providing us with feedback felt that there should not be an extension of cost capping or FRCs to other areas currently not covered.
- 6.23 When delving further into why cost capping/FRC schemes should not be extended beyond current jurisdiction, members focused on; the complexity of

²² [Official Injury Claims data for 1st April to 30th June 2022](#). 64,637 claims made with representation in this period versus 6,081 unrepresented.

areas beyond FRCs and client representation, cost capping and case complexity, and how types of capping benefit insurance companies over all else.

6.3 FRC Extensions

6.32 Members felt that if cost capping in the form of FRCs was extended then:

- Work would become non-profitable and legal representation would stop working within that area;
- Unsustainability means a loss of access to justice for claimants due to a possible lack of legal appetite;
- Current systems prevent solicitors from providing the best possible service and force clients into paying higher deductions, which FRCs will not help²³;
- Some instances could benefit from being FRCs, however, other claims within the same groups are too complex and unsuitable for such extensions, which would ultimately drive down legal appetite²⁴;
- FRCs have insufficient evidence to promote their extension and drive poor defendant behaviour²⁵ and;
- FRCs make a baseline assumption on claimants and their claims, which is often incorrect as each case can require significant specialist help²⁶

6.4 Cost Capping

6.42 Members responding with specific feedback regarding cost capping stated:

- Further capping could stifle civil justice for the wider audience as well as create less incentive for those looking to enter this area of law²⁷and;
- Cases may be either complex in nature or represent a complex client, which require necessary time and remuneration for services provided²⁸

²³ CILEX Member Quote: "Solicitors already cannot charge and recover costs sufficiently to provide the best service. The client is left with paying larger and larger deductions by way of success fee and shortfall. There is no benefit to a client re frc's, only to the insurers who still fail to pass on any reduction in costs to their insured in any event. I do not think fixed costs should be expanded at all in any area as they are already undermining a clients right to appropriate representation in the most routine card, never mind if fixed costs limited work possible in a significant breach and causation case or catastrophic injury claim"

²⁴ CILEX Member Quote: "Litigation is entirely complex. While there are some instances of claims currently that may benefit from FRCs, if the scope of FRCs was expanded to include these claims, you would be including a plethora of other claims where this is not suitable. If it is too difficult for law firms to ensure the work is profitable, they will simply refuse to undertake the work. It is imperative to avoid this to ensure access to justice."

²⁵ CILEX Member Quote: "Fixed costs should not be extended. They are an unsophisticated blunt tool. Fixed costs do not regulate behaviour and can incentivise poor, disproportionate conduct by Defendants. There is insufficient evidence to support the extension of fixed costs."

²⁶ CILEX Member Quote: "FRC assumes all claims are the same and all claimants are the same . They are not. Each case has its own nuances, each claimant requires a different level of support i.e. you may have a very vulnerable and needy client and then in contrast one who barely requires your support. There is an assumption that when cases reach a certain value they become more complex. Whilst this is true to some degree, lower value claims can be just as problematic. For example, in clinical negligence the issues around breach and causation can be just as complex in a fast track claim as they are in a serious injury level case and will still require complex considerations and client support and careful management of expert evidence."

²⁷ CILEX Member Quote: "it would lead to more injustice and a further collapse in the civil arena. Yes have budgeting and possible capping where needed but don't stifle good cases just because of costs. I get that some firms became greedy but its gone too far the other way now making a lot of people wish they did not come into the law and some are leaving it which is a shame"

²⁸ CILEX member Quote: "Cost capping should not be extended. You may have an extremely difficult case or an extremely difficult client bumping up costs. Should not be restricted by either complexity of case or client."

6.5 Insurance Companies

6.52 Members providing evidence regarding possible outcomes for insurance companies if cost capping/FRCs were extended stated:

- Insurers will have more incentive to not settle early and that FRCs provide a lack of robust fixed amounts allowed²⁹;
- Insurers could use such introductions as ways to further drive down costs and reduce viability of cases, which could lead to distrust between public and legal professionals³⁰ and;
- FRCs are generally insurance company friendly and promote poor behaviour and remuneration³¹

6.53 A further member at a recent CILEX workshop added to the issue surrounding insurance companies. Within their feedback they acknowledged that an insurance company as the defendant will have access to legal help, which a lay member may not have such open access to. This provides a significant advantage to the insurance company, indicating that capped schemes could potentially further push claimants to not seek damage due to the outweighing of legal advantage.

6.54 CILEX is generally concerned at the idea of further extensions of either FRC schemes or cost capping. Indeed, such schemes have the potential to offer lay members the opportunity to seek compensation without the need for complex and potentially costly legal involvement. However, CILEX holds concerns that such extensions may not only disadvantage the public accessing these services but those working in civil justice. Member feedback as well as CILEX's previous responses have all indicated either general caution or opposition to the further advancement of such schemes. As such CILEX advises against the option of extending such schemes further unless there is significant evidence to counteract ours and our members feedback regarding this area.

7 Conclusion

7.1 CILEX commends the CJC Costs Working Group for the work they are undertaking within this area. We understand the complexity as well as the difficulty in ensuring a balance is struck between public access to such services and professional ability to continue to work within this particular legal sector. CILEX hopes that evidence collected regarding both our and our members views are helpful in establishing a good evidence base for the working group and looks forward to possible future engagements that the group may look to consult on.

²⁹ CILEX Member Quote: "Defendant insurers & other large organisations generally create a large amount of unnecessary and avoidable work for Claimants, even where liability is admitted. Extending FRC will mean that it is not possible to conduct a claim within the fixed amount allowed. From experience working as a costs lawyer for Defendant clients, the possibility of paying additional costs is usually the only factor that makes them consider settling early."

³⁰ CILEX Member Quote "The present system has been in place for coming up to a decade, yet the costs allowed have not been increased, despite inflation. This will only continue, especially with insurers wanting to drive down the costs, soon there will be no viability in cases, leading to more solicitor / client disputes and overall lack of trust in the profession. Further the whiplash reforms have prevented access to justice, innocent parties are now impacted due to the insurance industry wanting to reduce their pay out"

³¹ CILEX Member Quote: "FRC are defendant insurer friendly. They do not remunerate properly and they encourage poor insurer behaviour."

For further details

Should you require any further information, please contact;

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