

Civil Justice Council – Costs Working Group Consultation:

A Response from the Law Centres Network

About us: The Law Centres Network is the national membership organisation for Law Centres. A Law Centre is a not-for-profit law practice specialising in social welfare law. Law Centres target their free services at the most disadvantaged people in their respective communities. Law Centres have been operating in the UK since 1970. There are currently 42 members in our Network and nearly all of them are civil legal aid providers in England and Wales.

Parts 1-3: we support the response from the Legal Aid Practitioners Group (LAPG) to these questions.

Part 4 – Consequences of the Extension of Fixed Recoverable Costs

4.1. To the extent you have not already commented on this point, what impact do the changes to fixed recoverable costs have on the issues raised in parts 1 to 3 above?

We believe that the introduction of Fixed Recoverable Costs (FRCs) as announced in 2021 would pose a real and immediate threat to the viability of civil legal aid work for many providers. It would drive more legal aid providers, who are already thin on the ground, away from legal aid work, where historically low fees have led all providers to rely where they can on recovering reasonable *inter partes* costs, that can be 3-6 times greater than legal aid costs. Furthermore, as we argued in a letter to the then-justice minister Lord Wolfson KC, in some areas of practice, such as disrepair claims against landlords, FRCs would load the dice against tenants, giving them no effective recourse to the courts to vindicate their rights and seek remedies.

To illustrate the gravity of this situation, we have collaborated with the Legal Aid Practitioners Group (LAPG), the Housing Law Practitioners Association (HLPAs), Shelter and Generation Rent on a report to evidence and analyse the impact of government proposals. [The report](#) appeared four months ago (June 2022), together with [a submission](#) to then-minister James Cartlidge MP that accompanied it and summarises its main points.

Since the report's publication, the Ministry of Justice (MoJ) and the Judiciary have made several minor concessions on the original terms of FRCs, including a three-year delay in applying FRCs to legally aided defendants in possession proceedings, and applying uplifts in the cases of vulnerable litigants or where the court orders repair works to be made. These do not materially alter the gravity of the introduction of FRCs: the legal aid delay is only a short-term reprieve, whereas the vulnerability uplift is meant to be applied late in the case, leaving providers in the dark about the costs they are likely to recover and impairing their ability to assess the risks of taking on a case.

Civil legal aid (non-family) rates were first separated from market *inter partes* rates in 1994, but providers have continued to be able to recover costs at *inter partes* rates, in a way that also limited the draw on the legal aid fund. Over nearly 30 years since, the real-terms value of legal aid rates has fallen significantly; in 2014, the National Audit Office estimated the depreciation at 34%. A 10% cut imposed on all civil legal aid fees in October 2011 has further

damaged the viability of this work. In this time, the dwindling ranks of legal aid providers have increasingly come to rely on *inter partes* costs to support their continued work. To introduce FRCs now, especially without conducting and publishing a prior assessment of their impact on legal aid work and providers, would be catastrophic.

The worst affected by FRCs would of course be the intended beneficiaries of legal aid: people living in poverty and disadvantage, who are more exposed to injustices driven by regressive public service cuts, but also those least able to access justice to challenge them and vindicate their rights. Should legal aid providers be further decimated or withdraw from certain areas of work, legal aid's intended beneficiaries would not be able to turn instead to Before- or After-the-Event legal expenses insurance, or to Conditional Fees Agreements, as already most if not all of this work is performed on legal aid basis. A more careful approach to the application of FRCs would make all the difference to whether these vulnerable people get justice at all or not.

4.2. Are there any other costs issues arising from the extension of fixed recoverable costs, including any other areas in which some form of fixed costs or cost capping scheme may be worthy of consideration? If so, please give details.

Our report and submission, referenced above, address several of the costs issues arising.

4.3. Should an extended form of costs capping arrangement be introduced for particular specialist areas (such as patent cases or the Shorter Trials Scheme more generally)? If so, please give details.

No.