

Dispute Resolution Update

The Fixed Recoverable Costs regime has recently been extended, with the changes outlined in this document applying to commercial claims worth £100,000 or less. The key practical points which affect SQE Dispute Resolution are outlined below.

Introduction of the new Intermediate Track

The intermediate track sits between fast track and multi-track cases, applying to claims for both monetary relief, non-monetary relief, and mixed claims. However, a non-monetary relief claim, or one where part of the relief claimed is non-monetary, will only be allocated to the intermediate track if the court deems it to be in the interests of justice.

The intermediate track is applicable to civil cases that meet the following criteria:

- The claim is valued between £25,000 and £100,000.
- The trial is expected to last no more than three days.
- The use of oral expert evidence is likely to be limited to two experts per party.

The intermediate track also has standard directions, set by the court at allocation stage. Cases allocated to the Intermediate Track will follow an expedited procedure:

- Statements of Case are to be no longer than 10 pages;
- Witness statements are limited to 30 pages;
- Only one expert witness per party (two, if reasonably required and proportionate), with each expert report limited to 20 pages;
- Oral evidence to be time-limited and directed to the matters identified at the Case Management Conference; and

It is important to remember that cases of greater complexity will be directed to the multi-track and the fast-track continues to deal with claims up to £25,000.00. The relevance of cases being allocated to the multi-track is that the extended fixed recoverable costs regime will not apply to them, whereas it does to fast and intermediate track claims. The following section sets out what the extended fixed recoverable costs regime means and how it applies.

Extended Fixed Recoverable Costs

Prior to the reforms discussed here, the fixed recoverable costs regime only applied to small claims. The fixed recoverable costs regime has now been extended so it is applicable to cases on the fast track and intermediate track with values of up to £100,000, where proceedings have been issued on or after 1 October 2023. The only exception is personal injury claims, where the rules state that the cause of action must have accrued after 1st October 2023 for the extended fixed recoverable costs regime to apply.

The fixed recoverable costs regime essentially means that the amount of recoverable costs is not dependent upon the work carried out by lawyers but the stage at which the case is finally resolved (trial or settlement) plus a percentage of the claim value.

It is important to note that there are certain types of cases to which the extended fixed recoverable costs regime will not apply. They are as follows:

- Housing Claims
- Mesothelioma and other asbestos related lung disease claims.
- Clinical Negligence claims, unless both breach of duty & causation is admitted.
- Claims for damages in relation to harm, abuse or neglect of or by any children or vulnerable adults
- A claim that the court order to be tried by jury
- Claims against the police involving an intentional or reckless tort, or relief or remedy in relation to the Human Rights Act. The exclusion does not apply to an RTA arising negligent Police driving, an employer's liability claim, or any claim for an accidental fall on Police premises.

The value of the fixed costs which are recoverable in a claim which is allocated to the fast and intermediate track will depend on the 'complexity band' to which the claim applies. Each case must be assigned to both a track and a complexity band. The parties are free to agree on a complexity band prior to any allocation hearing, however it is important to note that the court retains discretion to assign a case to the band it deems appropriate.

There are four complexity bands, numbered 1 – 4, to which a claim can be assigned. The level of fixed recoverable costs which are allowed will depend on the assigned complexity band and the stage the claim has reached. The more complex the claim, the higher the fixed costs, starting with band 1. The table below sets out what each complexity band includes:

<u>Complexity Band</u>	<u>Claims which are covered</u>
1	Any claim where only one issue is in dispute, and the trial is not expected to last longer than one day. It includes: <ul style="list-style-type: none"> • Personal injury claims where liability or quantum is in dispute. • Non-personal injury road traffic claims. • Defended debt claims.
2	Less complex claims where more than one issue is in dispute, including personal injury accident claims where both liability and quantum are in dispute.
3	More complex claims with multiple disputed issues, unsuitable for assignment to complexity band 2. It includes noise-induced hearing loss and other employer's liability disease claims.
4	Any claim that would typically be allocated to the intermediate track but is unsuitable for assignment to complexity bands 1 to 3, such

	as any personal injury claim with serious issues of fact or law.
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The values of recoverable costs can change and update on a regular basis, so please ensure that you look at both CPR 45 and the Practice Direction which accompanies this to review the fixed recoverable costs which are available for each of the complexity bands above.

Factors relevant to assignment

The following factors will be considered when assigning a case to a complexity band within a track:

- the nature of the claim
- the amount of money in dispute
- the complexity of the legal issues involved
- the number of parties involved; and
- the likely length of the litigation process.

Finally, there are sanctions which can be applied where a party has behaved unreasonably. If it is the party to whom costs have been awarded who is deemed to have behaved unreasonably, on application from the paying party the court has the power to reduce the fixed recoverable costs payable to an amount equivalent to 50%. If it is the party against whom costs have been awarded who is deemed to have behaved unreasonably, a Receiving Party can apply to have the fixed recoverable costs uplifted by 50%.

Part 36

There has also been a slight change to the way in which Part 36 CPR offers operate in relation to recovery of fixed recoverable costs in the fast track, intermediate track and for claims involving noise induced hearing loss. Previously, a party could recover their fixed recoverable costs plus an additional 10%. This has been changed slightly for **claimants only**. Under the new rule, where a claimant makes a Part 36 offer which the defendant does not accept and the claimant goes on to equal or better that offer at trial the claimant will be entitled to recover their fixed recoverable costs from the defendant (as before) plus an additional 35%.

Furthermore, Part 45.13 CPR also gives the Court discretion to penalise unreasonable behaviour by parties - where a party has acted unreasonably the court has the power to reduce the fixed costs payable by 50% or have the FRC uplifted by 50%. Hopefully this will act as a good deterrent and encourage better behaviour between the parties. There is also an exceptional circumstances provision (CPR Part 45.9) so that if a receiving party can show that there have been exceptional circumstances to depart from the FRC regime, then at the Court's discretion additional sums can be approved.