



On your marks, get set ...
Fixed recoverable costs and the intermediate track
may be coming to a (property) dispute near you.

The Civil Procedure Rules Committee has published a preview of the (draft) rules and practice directions which are likely to herald a significant expansion of fixed recoverable costs (FRC) in civil litigation.

The new system is multi-layered and contains an elaborate amount of detail. It will certainly need close studying by practitioners.

Selected highlights:

- With certain exceptions (e.g. for housing claims), the new FRC regime will apply from 1 October 2023.
- There will be a new intermediate track, sandwiched between the fast track and the multi-track.
- The intermediate track will be the normal track for claims whose value is between £25,000 and £100,000 and where the trial is likely to last no longer than 3 days and where oral expert evidence will be limited to 2 experts per party. (CPR 26.9(7).)
- The tracks apply both to claims for monetary relief and to claims for non-monetary relief (and to mixed claims), although a claim which includes a claim for non-monetary relief will not be allocated to the intermediate track unless the court considers that it would be the interests of justice to do so. (CPR 26.9(5) and CPR 26.9(8).)
- The fast track and the intermediate track will each have 4 complexity bands. (CPR 26.15 and CPR 26.16.)
- The court must not only allocate a claim to a track but must also assign it to a complexity band. (CPR 26.14.)
- FRC will be extended across the fast track (for claims valued up to £25,000).
- FRC will also apply to the intermediate track (for claims valued up to £100,000).
- The FRC applicable to each track will be set by a grid of costs and will depend on (a) the case's complexity band and (b) the stage the claim has reached.
- There will be no fewer than 15 stages for an intermediate track claim. (PD 45, Table 14.)
- The FRC in table 12 in PD 45 will apply to fast track cases. (CPR 26.14(3) and PD 45.44.)



- The FRC in table 14 in PD 45 will apply to intermediate track cases. (CPR 26.14(3) and PD 45.50.)
- The FRC figures in many of the stages are the *cumulative* totals for the costs incurred up to and including that stage, although some stages are freestanding. (CPR 45.45 & CPR 45.50.)
- Non-monetary relief will be assigned a fixed value for the purposes of FRC, by reference to the case's complexity banding. (CPR 45.45 & CPR 45.50.)

Points to note:

- The breadth of intermediate track (and its associated FRC) may potentially cover a wide range of property claims – including claims for non-monetary relief if judges decide that is in the interests of justice to allocate such claims to that track.
 - Obvious potential candidates within the scope of the intermediate track include: claims for commercial rent arrears, terminal dilapidations claims, boundary disputes (singled out in CPR 45.1(4)) – to name just a few.
 - Claims for possession, disrepair and unlawful eviction in respect of residential properties are excluded from FRC. (CPR 45.1(4).)
 - The complexity bands are defined in a way that is “intended to provide helpful clarity without being overly prescriptive”. This means that there is likely to be room for debate on the banding of a case.
 - Property and building disputes in the fast track will normally be in complexity band 4. (CPR 26.15, Table 1.)
 - However, the complexity banding of property cases in the intermediate track will be more open to argument. (CPR 26.16, Table 2.)
- Judges will retain a discretion to allocate more complicated cases to the multi-track (and to the joys of costs budgeting).
 - The new FRC will apply only to claims issued on or after 1 October 2023 so in some situations there may be an advantage to issuing claims before them.

Conclusion:

- The terminology ‘complexity band’ is surely entirely apt. The proposed new system clearly does not shout ‘simple’!
- How about arbitration instead? Cheaper, quicker, less cumbersome, and a specialist tribunal too? What’s not to like?



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For all the details here.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1151873/extending-fixed-recoverable-costs-note-new-rules.pdf