

Navigating The Fixed Recoverable Costs Regime

A comprehensive guide to the new costs framework for civil litigation practitioners

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When Does the Regime Apply?



Commencement Date

Most civil cases issued on or after
1st October 2023 where the value of
the claim does not exceed **£100,000**.



Personal Injury Claims

Determined by reference to date of
injury, not date of issue, meaning
some PI claims will now fall within
the regime.



Multi-Track Cases

Claims valued above £100,000
remain on the multi-track where the
previous rules continue to apply
unchanged.

Key Exemptions to the Regime



Part 8 Claims

Alternative procedure claims are explicitly excluded from the Fixed Recoverable Costs (FRC) regime.



Technology and Construction Court

Claims handled by the TCC will continue to operate under their existing specific costs rules, not FRC.



Protected Parties

Cases involving individuals designated as protected parties are fully excluded from the FRC regime.



Judicial Review Cases

Public law proceedings, such as those challenging government decisions, remain outside the FRC framework.



Residential Housing Matters

Application of the FRC regime to residential housing matters has been delayed until October 2028.

Relevant Civil Procedure Rules

CPR Part 26

Governs case management and allocation to the appropriate track based on value, complexity, and other relevant factors.

CPR Part 28

Establishes the framework and procedures for managing cases on the fast track and the new intermediate track.

CPR Part 45

Comprehensive recast of fixed costs provisions, setting out the detailed costs grids and calculation methodology.

Understanding the Three-Stage Framework

1

Track Allocation

Allocate the matter to the appropriate procedural track—either fast track or intermediate track—based on value and complexity.

2

Complexity Band Assignment

Assign the case to one of four complexity bands (Band 1 to Band 4) reflecting the difficulty and nature of the issues involved.

3

Apply Costs Grid

Each track has corresponding costs grids dependent on: (a) the assigned complexity band; and (b) the stage reached in proceedings.

 **Important:** Figures for stages are cumulative for solicitor costs up to and including that stage. Other allowances—such as specialist legal advice (defined in CPR 45.46) and trial advocacy fees—are freestanding amounts.

Stage 1: Track Allocation Factors

CPR 26.13(1): Matters the Court Shall Consider

- Financial value of the claim (if any)
- Nature of the remedy sought
- Likely complexity of facts, law or evidence
- Number of parties or likely parties
- Value of counterclaims or additional claims and their complexity
- Amount of evidence which may be required
- Importance of the claim to non-parties
- Views expressed by the parties
- Circumstances of the parties

CPR 26.13(2): Court Shall Disregard

- Amounts not in dispute
- Interest
- Costs
- Contributory negligence
- Non-monetary relief

The Fast Track

1

Financial Limit

Claims up to £25,000 (CPR 26.9(5)(b))

2

Trial Duration

Trial lasting no longer than one day (CPR 26.9(6)(a))

3

Expert Evidence

Oral expert evidence limited to: (i) one expert per party; and (ii) expert evidence in two fields only (CPR 26.9(6)(b))

4

Interests of Justice

Court must be satisfied it is in the interests of justice to allocate to the fast track (CPR 26.9(5)(cc))



Fast Track Complexity Bands and Fixed Costs

Assignment of Complexity Bands

Cases are assigned to one of four complexity bands under CPR 26.15, Table 1, based on the nature and difficulty of the issues in dispute.



Fixed Costs Framework: CPR 45.44

- **Table 12** sets out the fixed costs recoverable at each stage
- Stages A to C are **cumulative**
- Stage D (advocacy fees) are **separate sums** where claim disposed of at trial—CPR 45.45(1)(b) and (c)
- **Table 13** covers specialist legal advice post-issue, whether in writing, conference, or drafting statements of case for Band 4 cases
- Disbursements are recoverable under CPR 45.59
- VAT is added to fixed costs—CPR 45.2

The Intermediate Track

A new procedural track positioned between the fast track and multi-track, designed for moderately complex cases requiring greater flexibility.

Value and Duration

- Claim not more than **£100,000** (CPR 26.9(7)(b))
- Trial lasting no more than **three days** (CPR 26.9(7)(c)(i))

Expert Evidence

Oral expert evidence limited to **two experts per party** (CPR 26.9(7)(c)(ii))

Party Configuration

Claim brought by one claimant against one or two defendants, or two claimants against one defendant (CPR 26.9(7)(d))

 **Key Requirements:** The claim must be justly and appropriately managed under Part 28 (CPR 26.9(7)(c)(iii)), with no additional factors making intermediate track allocation inappropriate (CPR 26.9(7)(c)(iv)). For non-monetary relief, allocation is only appropriate in the interests of justice (CPR 26.9(8)). The court retains overall discretion to allocate more complicated cases to the multi-track.

Fixed Costs on the Intermediate Track

CPR 45.50: Cost Structure

Cumulative Stages

Costs for **Stages 1, 3, 4, 5, and 6** are cumulative, building as the case progresses through litigation.



Table 14

Outlines the fixed costs recoverable at each stage.



VAT

Added under CPR 45.2.

Separate Stages

Costs for **Stages 2, 7, and 9 to 15** are separate sums, recoverable only if those specific steps are carried out.



Disbursements

Recoverable under CPR 45.60.



Pre-Action and Interim Applications



Fixed Costs Apply

Pre-action costs and interim applications are subject to fixed costs under CPR 45.8.



Table 1

Refer to Table 1 for the applicable fixed costs amounts for pre-action work and interim applications.



Court Fees

Any applicable court fee is recoverable in addition to the fixed costs specified in Table 1.

Deviations from Fixed Recoverable Costs



Disbursements and VAT

CPR 45.57, 45.59 (fast track), and 45.60 (intermediate track) permit recovery of any disbursement which has been reasonably incurred.

Vulnerability Exception: CPR 45.10

The court may consider costs exceeding FRC where:

- A party or witness is **vulnerable**
- That vulnerability required **additional work**
- The claim is for at least **20% greater** than FRC by reason of that additional work alone

If criteria are met, the court may summarily assess costs or order detailed assessment.

Vulnerability and Exceptional Circumstances

1

CPR 45.11: Failure to Meet Threshold

If the vulnerable party fails to recover more than 20% above FRC, that party receives the lesser of: (a) the FRC; or (b) the assessed costs. **Example:** Fixed costs £10,000, costs assessed at £9,000—recovery limited to £9,000.

2

CPR 45.12: Costs Sanctions

Where criteria are not satisfied, the court may order the claimant to pay some or all of the costs of the proceedings or detailed assessment.

3

Practical Risks

Unless vulnerability is unarguable and further costs significant, the risk of receiving less than FRC is considerable. Potential uncertainty exists if a party is unaware their opponent or opponent's witness is vulnerable.

Unreasonable Behaviour: CPR 45.13

Receiving party's costs can be reduced by 50%, or paying party ordered to pay 50% increase for *"conduct for which there is no reasonable explanation"*.

Exceptional Circumstances: CPR 45.9

Court may summarily assess or order detailed assessment where *"exceptional circumstances making it appropriate to do so"* exist.

❏ **Contracting Out:** Parties can contract out of the FRC regime under CPR 45.1(3). This may be unlikely unless both sides are represented and confident of success—otherwise the risk may outweigh potential benefit.



Part 36 Offers: Acceptance Within Relevant Period

CPR 36.22–36.24: Costs Consequences



Claimant Accepts Offer Within Relevant Period

Claimant entitled to FRC up to the stage reached when offer is accepted, calculated by reference to the **amount of the offer accepted**—not the sum originally claimed.



Claimant Accepts After Relevant Period

Claimant entitled to FRC determined as at date of expiry of relevant period. Claimant is liable for defendant's FRC less the FRC to which claimant is entitled.

 **Example:** If an offer expired during Stage 3 but claimant accepts during Stage 4, claimant would receive Stage 3 costs; defendant would receive Stage 4 costs less claimant's costs.

Part 36: Costs Consequences Following Judgment

Claimant Fails to Beat Defendant's Offer

- Claimant entitled to fixed costs to date of expiry of relevant period
- Claimant liable for defendant's costs less those costs
- Potentially worse outcome depending on when offer was made

Claimant Beats Own Offer

Where claimant obtains judgment at least as advantageous as claimant's Part 36 offer, claimant is entitled to:

- Fixed costs up to stage applicable at date of judgment
- Interest on any sum awarded at a rate not exceeding 10% above base rate from expiry of relevant period
- An amount equivalent to **35% of the difference** between FRC for the stage when relevant period expires and stage at judgment (instead of former indemnity costs)
- Interest on costs at a rate not exceeding 10% above base rate
- Additional amount of damages not exceeding £75,000, calculated at 10% of first £500,000 and 5% of any amount above

When Should Solicitors Advise Clients?



Initial Advice Stage

Inform clients about the FRC regime when giving initial advice as to the merits of their case.



Before Issuing Proceedings

Ideally, ensure clients fully understand the costs framework before proceedings are issued.



Commercial Clients

Advise all commercial clients whether they should revise their Terms and Conditions and Service Level Agreements to contract out of the FRC regime under CPR 44.5. Query potential UCTA consequences.



Other Strategic Considerations



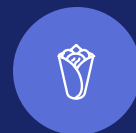
Mandatory ADR Overlap

Greater costs risk exists. Failure to undertake ADR may be considered *"conduct for which there is no reasonable explanation"* under CPR 45.13.



Specialist Legal Advice

Additional costs for specialist legal advice (CPR 45.46) can be utilised strategically to facilitate early settlement discussions.



Adequacy of Fixed Costs

In many cases, the FRC will not fully account for the work involved, requiring careful case management and client expectation management.

The Tables: Assignment Within Fast Track

CPR 26.15 – Table 1

This table sets out how cases are assigned to complexity bands within the fast track. The appropriate band depends on the nature and complexity of the issues, evidence, and legal questions involved.

 Refer to CPR 26.15 and Table 1 for the detailed criteria governing assignment to Bands 1 through 4 on the fast track.

Table 1

Complexity band 1	Complexity band 2	Complexity band 3	Complexity band 4
(a) road traffic accident related, non-personal injury claims; and	(a) road traffic accident related, personal injury claims which are or should have been started under the RTA Protocol; and	(a) road traffic accident related, personal injury claims to which the RTA Protocol does not apply;	(a) employer's liability disease claims (other than a claim for noise induced hearing loss);
(b) defended debt claims	(b) personal injury claims to which the Pre-action Protocol for Resolution of Package Travel Claims apply	(b) employer's liability (accident) and public liability personal injury claims;	(b) complex possession and housing disrepair claims;
		(c) possession claims;	(c) property and building disputes;
		(d) housing disrepair claims; and	(d) professional negligence claims; and
		(e) other claims for a sum of money, whether the sum is specified or unspecified, except claims that fall under complexity band 1(b)	(e) any claim which would normally be allocated to the fast track, but is nonetheless complex

Table 2

Complexity band 1	Complexity band 2	Complexity band 3	Complexity band 4
Any claim where — (a) only one issue is in dispute; and	Any less complex claim where more than one issue is in dispute, including personal injury accident claims where liability and quantum are in dispute.	Any more complex claim where more than one issue is in dispute, but which is unsuitable for assignment to complexity band 2, including noise induced hearing loss and other employer’s liability disease claims.	Any claim which would normally be allocated to the intermediate track, but which is unsuitable for assignment to complexity bands 1 to 3, including any personal injury claim where there are serious issues of fact or law.
(b) the trial is not expected to last longer than one day, including—			
(i) personal injury claims where liability or quantum is in dispute;			
(ii) road traffic accident related, non-personal injury claims; and			
(iii) defended debt claims			

The Tables: Assignment Within Intermediate Track

CPR 26.16 – Table 2

Table 2 governs the assignment of cases to complexity bands within the intermediate track, reflecting the greater sophistication and scope of cases allocated to this track.



Refer to CPR 26.16 and Table 2 for the detailed criteria governing assignment to complexity bands on the intermediate track.



Civil Procedure Rules

England

The Tables: Fixed Costs Amounts

CPR 45 Practice Direction – Tables 1, 12 and 13

Table 1: Rule 45.8

Pre-action and interim applications—sets out fixed costs recoverable for work undertaken before proceedings are issued and for interim applications.

Table 12: Rule 45.44

Amount of fixed costs in the fast track—provides the cumulative fixed costs recoverable at Stages A to C, plus separate advocacy fees at Stage D.

Table 13: Rule 45.46

Specialist legal advice—sets out additional recoverable costs for specialist advice post-issue, whether in writing, conference, or drafting statements of case for Band 4 cases.

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The Tables: Intermediate Track Fixed Costs

Table 14: Rule 45.50

This table sets out the amount of fixed costs recoverable in the intermediate track. Remember that costs for Stages 1, 3, 4, 5, and 6 are cumulative, whilst costs for Stages 2, 7, and 9 to 15 are separate sums recoverable only if those steps are undertaken.

Refer to CPR 45.50 and Table 14 for the full breakdown of fixed costs applicable to each stage of intermediate track proceedings, including the distinction between cumulative and separate stages.