

Title: Extending Fixed Recoverable Costs (FRC) in Civil Cases IA No: MoJ013/2021 RPC Reference No: N/A Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies: N/A	Impact Assessment (IA)			
	Date: 01 September 2021			
	Stage: Final Stage			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
	Contact for enquiries: FRCconsultation@justice.gov.uk			
Summary: Intervention and Options				RPC Opinion: Not Applicable

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
N/A	N/A	N/A	Not a regulatory provision

What is the problem under consideration? Why is government action or intervention necessary?

In England and Wales, the winning party in civil litigation is generally entitled to recover its costs from the losing party. This can, however, create an incentive for both sides in a dispute to over-invest in legal advice and may explain why the costs of litigation in the UK are disproportionately high compared to other jurisdictions. One way of controlling the costs of litigation is to fix in advance the amount that the winning side can recover from the losing party before the parties have run up excessive bills. Fixed recoverable costs (FRC) do this, and also provide both sides with greater certainty as to the costs of a case. The MoJ consulted on extending FRC across civil cases in 2019 and has set out the way forward. This Impact Assessment (IA) has been revised in light of responses to the consultation and other developments since.

What are the policy objectives of the action or intervention and the intended effects?

The policy objective is to make legal costs more proportionate in low-value civil litigation (simpler cases up to £100,000 damages, and all cases up to £25,000 damages, subject to specified exceptions). As Sir Rupert Jackson says in Chapter 1 of his supplementary 2017 report on FRC, “the holy grail pursued by every civil justice reformer is a system in which the actual costs of each party are a modest fraction of the sum in issue, and the winner recovers those modest costs from the loser.” FRC will ensure that costs are proportionate and predictable, so helping to increase access to justice for all parties as potential litigants will not be prevented from bringing their cases for fear of excessive costs.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The following options are considered in this revised IA:

Option 0: Base case (do nothing). Do not implement the extension of FRC across civil cases.

Option 1: Introduce a package of reforms to extend FRC, including:

- (a) Extending FRC across the fast track (for civil claims in the county court up to £25,000 in damages);¹
- (b) Introducing an uplift to FRC for each additional claimant for claims with multiple claimants arising from a single cause of action;
- (c) Streamlining the litigation process for fast track Noise Induced Hearing Loss (NIHL) claims, alongside the introduction of a bespoke FRC regime;
- (d) Expanding the fast track to include simpler ‘intermediate’ cases with FRC (£25,000-£100,000 in damages);
- (e) Introducing cost budgeting² for “heavy” JR claims;

The Government’s preferred option is Option 1a-e as this best meets the policy objectives.

Will the policy be reviewed? It will be kept under review. If applicable, set review date:

Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Date: 01/09/2021

¹ Please see footnote 14 on page 8.
² Cost budgeting is set out in Part 3 of the Civil Procedure Rules where budgets are agreed ahead of the trial, following budget submissions by both parties.

Summary: Analysis & Evidence

Policy Option 1a-e

Description: Introduce a package of reforms to extend FRC

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Unknown

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	Optional	Optional	Optional

Description and scale of key monetised costs by 'main affected groups'

It has not been possible to monetise the costs of this option, or of the individual elements of which it is comprised, as the total volume of cases where FRC will be applicable is unknown due to data limitations.

Other key non-monetised costs by 'main affected groups'

The overall net non-monetised cost is likely to be a reduction in legal fees per case, which will represent a reduction in income for lawyers. There could be cash flow costs to losing litigants in terms of reduced investment income, as cases may settle more quickly. There may be some implementation costs to HMCTS to expand the fast track to include 'intermediate' cases, and there may be some costs to update to judicial training modules.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	Optional	Optional	Optional

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to monetise the benefits of this option, or of the individual elements of which it is comprised, as the total volume of cases where FRC will be applicable is unknown due to data limitations.

Other key non-monetised benefits by 'main affected groups'

The key benefit of Option 1 is to control legal costs. This will benefit all parties when deciding whether to embark on litigation and should result in fewer claimants being deterred from pursuing a claim.

The overall net non-monetised benefit of Option 1 is likely to be a reduction in legal costs per case. Except for cases subject to Qualified one-way costs shifting (QOCS), this will represent a benefit for the losing party, as the costs of litigation are normally recovered from them. This option should also mean less time and resources will be spent arguing over costs, while encouraging earlier settlement. This option might generate business process efficiencies, and if cases are settled more quickly, lawyers can take on a greater number of cases, potentially offsetting any reductions in income per case.

Key assumptions/sensitivities/risks	Discount rate (%)
<p>A number of assumptions were made to estimate the impacts of Option 1. Of these, the most important are:</p> <ul style="list-style-type: none"> No change in overall claim volumes relative to the base case, and no change in the number of court cases. Claimant lawyers will set their legal fees equal to the FRC being proposed. Claim settlement outcomes will remain the same. Lawyers who lose income as a result of this option will be able to find work of equal or next best economic value. 	

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

Evidence Base

A. Background

1. In England and Wales, the winning party in civil litigation is generally entitled to recover its costs from the losing party. This can, however, create an incentive for both sides in a dispute to over-invest in legal advice and may explain why the costs of litigation in the UK are disproportionately high compared to other jurisdictions. In 2020, on average, lawyer costs accounted for 35% of claim value in the UK, the highest in the G7³, and over three times that of France (10.7%) or Germany (6.6%).
2. The best way to control costs is to do so in advance, which can be done through measures such as costs budgeting or Fixed Recoverable Costs (FRC) which fix in advance the amount that the winning side can recover from the losing party before either side run up excessive costs. FRC therefore provide greater certainty to both parties as to what their costs will be and help ensure access to justice as potential litigants will not be discouraged by uncertainty concerning the costs of litigation.

The 2019 MoJ consultation and 2021 response

3. In 2019, the MoJ consulted on the extension of FRC. FRC are relatively new in England and Wales but are firmly established in other jurisdictions.
4. Extending FRC is an important component of controlling the costs of civil litigation more generally. As Sir Rupert Jackson⁴ says in his July 2017 report⁵, ‘the holy grail pursued by every civil justice reformer is a system in which the actual costs of each party are a modest fraction of the sum in issue, and the winner recovers those modest costs from the loser’.⁵
5. Sir Rupert’s July 2017 report is the culmination of at least 20 years work on controlling the costs of civil litigation. He was an assessor to Lord Woolf’s seminal report, ‘Access to Justice’, published in 1996.⁶ That report recommended significant reforms to the civil justice system to improve access to justice, reduce the costs of litigation, and remove unnecessary complexity. One recommendation, which remains outstanding, was to expand FRC beyond those areas of the civil justice system where FRC are currently used, such as fast track personal injury (PI) (road traffic accident (RTA), employer’s liability accident (ELA), and public liability (PL) cases), and implement a regime of FRC for cases across the fast track.⁷

B. Policy Rationale and Objectives

Economic rationale

6. The conventional economic approaches to Government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or there are strong enough failures in existing Government interventions (e.g. waste generated by misdirected rules) where the proposed new interventions avoid creating a further set of

³ World bank doing business index, cost of enforcing contract – attorney fees (% cost of claim value), available [here](#).

⁴ Sir Rupert retired from the Court of Appeal on 8 March 2018.

⁵ www.judiciary.gov.uk/wp-content/uploads/2017/07/fixed-recoverable-costs-supplemental-report-online-2-1.pdf ⁵ Jackson (2017), chapter 1, 1.2.

⁶ [webarchive.nationalarchives.gov.uk/20060213223540/http://www.dca.gov.uk/civil/final/contents.htm](http://www.webarchive.nationalarchives.gov.uk/20060213223540/http://www.dca.gov.uk/civil/final/contents.htm)

⁷ [webarchive.nationalarchives.gov.uk/20060214041355/http://www.dca.gov.uk/civil/final/sec2b.htm#c4](http://www.webarchive.nationalarchives.gov.uk/20060214041355/http://www.dca.gov.uk/civil/final/sec2b.htm#c4)

disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to more needy groups in society).

7. The options assessed in this revised IA are primarily justified on efficiency grounds: at present the prospect of being able to fully recover the costs of litigation from the other side creates an incentive for both parties to over-invest in legal advice, so raising the overall costs of litigation beyond that actually required by the underlying legal issues.
8. This is because, in addition to securing a favourable judgement, the winning party also benefits from not paying their own costs. As each party to a dispute faces the same incentive, both may take on more legal advice (and therefore higher legal costs) than they otherwise would resulting in cases being more expensive than where each side paid their own costs. This incentive may also explain why the aims of reducing the costs of litigation while ensuring that the losing party pays the costs of the winner have been proven so difficult to achieve in practice. Placing an advance limit on the level of recoverable costs will reduce this incentive, which could lead to a fall in the costs of litigation.
9. The options assessed will also lead to improvements in wider economic efficiency. In particular, fewer resources will be used to achieve equivalent outcomes, freeing up these resources for alternative uses which may generate social and economic benefits.

Policy Objectives

10. One associated policy objective is to increase certainty and reduce the costs of litigation. By extending FRC across the fast track and for 'simpler' intermediate cases, costs should be more certain and predictable, and more proportionate to the sums in dispute. The greater use of FRC should also encourage early settlement and help to streamline proceedings, leading to earlier resolution, thus saving court time and other costs.
11. Another policy objective is to promote access to justice. In order to promote access to justice, the government is committed to ensuring that legal costs are proportionate in civil litigation. To this end, FRC were originally brought in for low-value personal injury cases. Now that those reforms have bedded in and FRC are working well, it is time to consider their extension. This will make legal costs proportionate in a wider range of cases, thereby increasing access to justice by ensuring that potential litigants are not deterred from enforcing their rights due to concerns over the costs they may have to bear.

C. Affected stakeholder groups, organisations and sectors

12. The following groups are expected to be most affected by all or some of the options assessed in this revised IA. In the costs and benefits assessment for each sub-option (section E), if a particular group is considered to be unaffected they have not been included. A brief description is included below outlining the role of each group in this area:
 - Successful litigants – other than those who have a 'no win, no fee agreement' successful litigants are, at present, generally able to fully recover their legal costs from the losing party if they win the case.
 - Losing litigants – other than in cases that are subject to Qualified one-way costs shifting (QOCS) losing litigants have to pay uncertain and unpredictable legal costs.
 - Lawyers – who may undertake additional work whether the case is successful or not, as while legal costs are subject to assessment, there is currently no fixed limit on what can be recovered if the case is won.

- HM Courts and Tribunals Service (HMCTS) – As FRC encourage early settlement and help to streamline proceedings, there should be savings in court time and costs.
- Costs lawyers – as more cases become subject to FRC, there will be a reduction in cases requiring the work of a costs lawyer.

D. Description of options considered

13. To meet the Government’s policy objectives, the following options are considered in this revised IA:

- **Option 0: Base case (do nothing)**; do not implement the extension of FRC across civil cases.
- **Option 1.** Introduce a package of reforms to extend FRC. This option has five components (sub-options):
 - **Option 1a:** Extending FRC to all cases in the fast track⁸ (with damages up to £25,000);
 - **Option 1b:** Introducing an uplift to FRC for each additional claimant for claims with multiple claimants arising from a single cause of action;
 - **Option 1c:** Streamlining the litigation process for fast track Noise Induced Hearing Loss (NIHL) claims, alongside the introduction of a bespoke FRC regime;
 - **Option 1d:** Expanding the fast track to include ‘intermediate’ cases with FRC (simpler cases currently in the multi-track with damages between £25,000 and £100,000);
 - **Option 1e:** Introducing costs budgeting for “heavy” Judicial Review (JR) claims.

14. While Option 1b is dependent on Option 1a and/or Option 1c being implemented, Options 1a, 1c, 1d or 1e are not each dependent on the other options being implemented. The Government’s preferred option is Options 1a-1e, as this is considered most likely to achieve the desired aims of making legal costs proportionate in low-value civil litigation claims.

15. These options will be brought through the Civil Procedure Rule Committee (CPRC) via Statutory Instruments made via the Lord Chancellor.

Option 0: Base case (do nothing)

16. Under the “do nothing” option, the current system would continue to apply. This would mean:

- Recoverable legal costs would remain unfixed for cases such as non-personal injury RTA claims and Employer’s liability disease (ELD) claims in the Fast Track generally worth less than £25,000 in damages;

⁸ All defended cases are allocated to one of three court tracks; Small Claims Track (most claims under £10,000, except for personal injury), Fast Track (claims between £10,000 (except for personal injury) to £25,000 and the Multi Track (claims for over £25,000, or for lesser money sums where the case involves complex points of law and/or evidence).

- Recoverable legal costs would remain unfixed for simpler claims in the multi-track between £25,000-£100,000;
- Recoverable legal costs would remain unfixed for noise-induced hearing loss (NIHL) claims in the fast track;
- There would be no costs budgeting for JR cases with costs above £100,000.

17. Under this option, other than in cases subject to Qualified One-Way Cost Shifting (QOCS), the incentives for both sides to increase their own legal costs so that they win the case and can recover their costs from the other side would remain. Uncontrolled costs would also continue to create an incentive for lawyers to undertake more work, as the cost of this can then be recovered if the case is successful. This could result, as currently is the case, in legal costs that are disproportionate to the value of the claim in dispute.

Option 1

18. Option 1 is composed of five elements. These are described in more detail below.

Option 1a

19. Under Option 1a, FRC will be extended to all county court cases in the fast track, making recoverable legal costs proportionate in cases up to £25,000 damages. The fixed amounts will be those given by Sir Rupert in his report, which stipulates an amount for each stage of litigation. This will provide greater certainty as to the costs of litigation and remove the risk that one or both parties might run up excessive costs.

Option 1b

20. The aim of FRC is to ensure that legal costs are proportionate. When multiple claims arise from the same cause of action, it would not be proportionate to maintain the same FRC for each claim. Having considered respondent views on multiple claims arising from the same cause of action, Option 1b will mean that the FRC for each subsequent claim (after the principal claim) will be 25% of the original FRC (changed after consultation from 10%: see Chapter 5, paragraphs 5.1-2 of our consultation response). This will reflect the limited amount of work that needs to be carried out for each subsequent claim, when those claims arise from the same facts.

Option 1c

21. Sir Rupert supports the Civil Justice Council's (CJC) proposals for NIHL claims.⁹ This option includes a streamlined process, improvement to the process both pre- and post-litigation, and a set of FRC. This option will ensure the costs in NIHL claims are proportionate, and that claims are resolved in a timely manner.

Option 1d

22. It has always been our intention to revisit FRC, once the previous proposals (FRC introduced for most Personal Injury claims) had bedded in. Whilst Sir Rupert suggested in January 2016 that FRC should be implemented for cases up to £250,000 damages, his proposal in his 2017 report is for an intermediate track up to £100,000 damages.

⁹ CJC report on NIHL claims, www.judiciary.uk/wp-content/uploads/2017/09/fixed-costs-in-noise-induced-hearing-loss-claims-20170906.pdf

23. Having considered the issue carefully, not least the implementation aspects, we do not see the need for introducing a new track, with the costs and complexity that would involve. Indeed, there is simplicity and consistency in retaining the existing tracks, while expanding the fast track so that all its cases have FRC. Accordingly, Option 1d will expand the fast track to include the ‘intermediate’ cases that Sir Rupert identified. These intermediate cases will therefore be allocated to an expanded fast track and will be subject to FRC. For the sake of clarity, this IA will refer to ‘intermediate’ cases rather than to the intermediate track.
24. There are some cases that are not suitable for FRC at present, as laid out by Sir Rupert in chapter 7 of his report. We propose in our consultation response to accept the criteria for ‘intermediate’ cases given by Sir Rupert, which are intended to ensure that unsuitable cases are not brought into scope (see Chapter 5, paragraphs 12.1-5).

Option 1e

25. JR cases have been considered inappropriate for FRC due to their special characteristics (explained by Sir Rupert in his 2009 preliminary report, in chapter 5, paragraphs 1.2 – 2.7¹⁰). Instead, under Option 1e, Cost budgeting¹¹ will apply at the discretion of the court, in all ‘heavy’ JR cases with costs of a party above £100,000. This will not affect the costs protection regime in environmental cases under the Aarhus Convention (i.e. claimant liability capped at £5,000 or £10,000, defendant liability capped at £35,000, all subject to variation) that are in place for environmental JR cases.

E. Cost and Benefit Analysis

26. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
27. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in the UK with the aim of understanding what the overall impact on society might be from the options under consideration. These impacts are normally compared to those of the ‘do nothing’ option. As this means that the do nothing/base case option would be compared against itself, its costs and benefits are zero as would be its Net Present Value (NPV).
28. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts that cannot sensibly be monetised. These might be impacts on certain groups of society or some data privacy impacts, both positive or negative.
29. It has not been possible to monetise the overall impact of the options in this IA as the total volume of cases likely to be affected is unknown due to data limitations. Therefore, the cost and benefit analysis provides the known volumes of cases that will be affected, highlights where volume data is missing and, where possible, highlights the potential impact on legal costs for certain case types. The non-monetised costs and benefits are outlined below.

Data

Volumes

30. All civil claims across the fast track (valued under £25,000 in damages) and simpler ‘intermediate’ cases (valued between £25,000-£100,000 in damages), including specified money, unspecified money and non-money claims will be subject to the proposed FRC. In

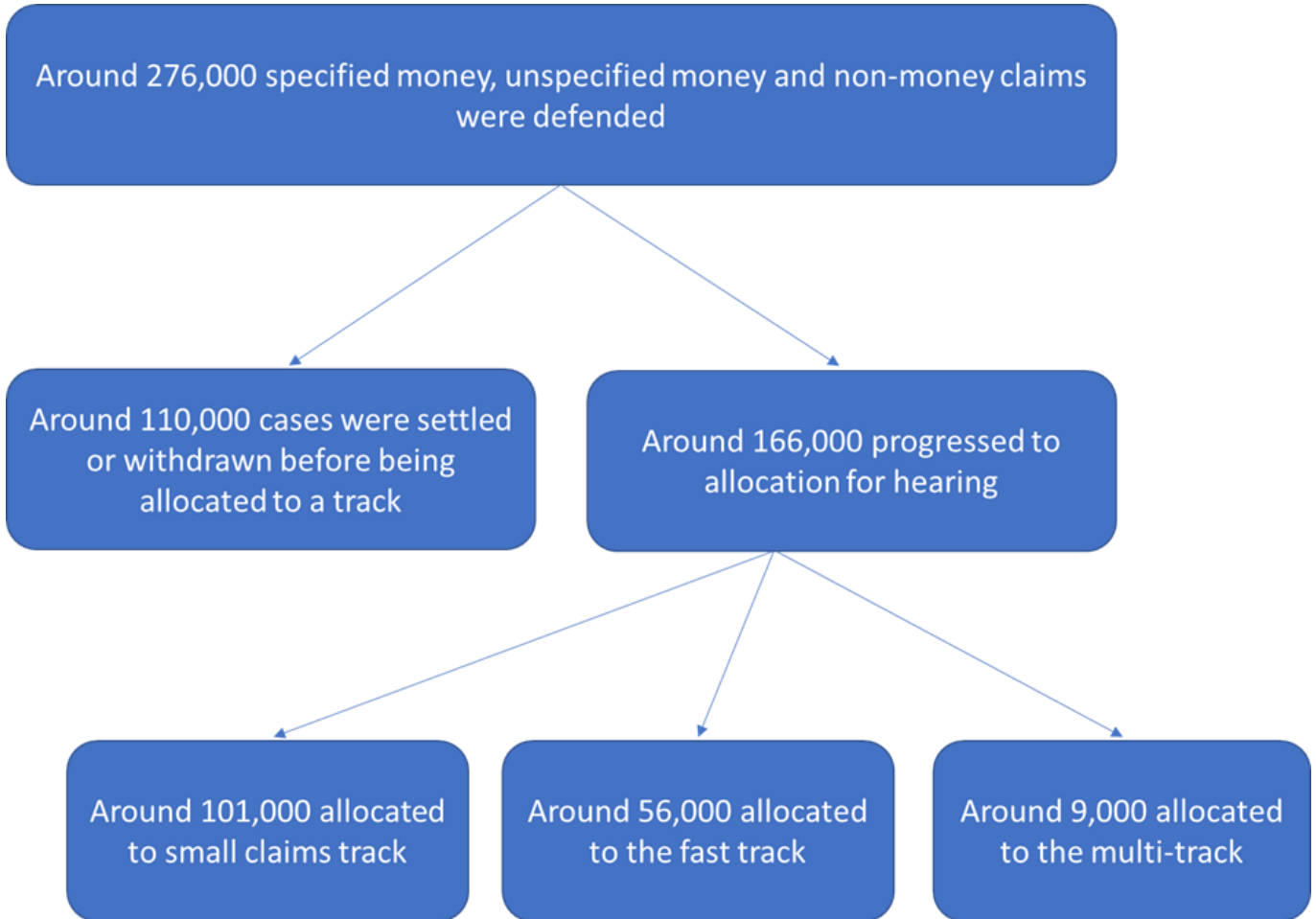
¹⁰ <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/jackson-vol1-low.pdf>

¹¹ Cost budgeting is set out in Part 3 of the Civil Procedure Rules and is a process by which budgets are agreed ahead of the trial, following budget submissions by both parties.

cases which settle out of court or before being allocated to a track, the applicable FRC will be agreed as part of the settlement of the case. In order to assess the impacts of this, data is needed for all in-scope cases across all settlement stages. Where such data is not available, we have tried to estimate the number of affected cases. This is explained in more detail below.

31. Data on the number of claims in the County Court is available from the County Court Case Management System (CaseMan)¹². The flowchart below is based on this data.

32. The diagram below provides details of the volumes of defended cases in the County Court between January 2019 and December 2019:



33. This data has been used to illustrate the potential volume of claims impacted by each sub-option. For claims which drop out between being issued in court and being defended, we have made some assumptions about the number of these cases which would be subject to the proposed FRC. In addition, there are also claims which settle without going to court, which are excluded from this data. All these cases will be subject to FRC, but we have been unable to quantify the volume.

¹² Aggregate data is published in the Civil Justice Quarterly Statistics ([here](#)). However, we requested a more granular breakdown from CaseMan for our analysis. This data is based on case progression, rather than workload, and duplicate cases have been excluded.

Legal costs

34. The analysis below uses data from Taylor Rose TTKW¹³ showing the legal costs for all their costs cases which settled between 1st July 2006 – 1st January 2017. This is the same data that was used by Sir Rupert Jackson and analysed by Professor Fenn in the 2017 report¹⁴.
35. The Taylor Rose TTKW dataset contains 565¹⁵ fast track claims which are non-personal injury RTA claims valued between £10,000-£25,000, and 2,117 fast track ELD claims valued between £1,000-£25,000¹⁶. We are interested in these claims because they are a good proxy for the case types in the fast track which do not currently have FRC. The analysis below on the impact of Option 1a on legal costs for fast track ELD claims has been restricted to cases dating after the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), to match the data Professor Fenn used in his analysis.
36. The Taylor Rose TTKW dataset also contains 1,461 multi track claims which settled after the LASPO Act 2012 was introduced, with damages less than £100,000 and where the claimants had provided no more than three expert reports¹⁷. This data has been used below to estimate the impact of Option 1d on legal costs.
37. Taylor Rose TTKW estimate that they had a 10% market share over the period covered by the data and have no reason to expect the data to be biased when compared to legal costs across the whole market. Although the firm is based in Peterborough their case load is national.

Impact on Volumes

38. The figures below are for, at the latest, the calendar year January to December 2019 as we believe these volumes to be the most representative. We have not used more recent figures, because of the disruption caused by the COVID-19 pandemic on the civil courts.

Option 1a

39. There were around 56,000 cases defended in the County Court fast track over the period January 2019 – December 2019. We estimate that of these, an extra 10,000 cases in the County Court could be subject to FRC under Option 1a.
40. It is assumed that all cases that settle or withdraw before being allocated to a track will agree, as part of the settlement of the case, whether FRC are applicable and if so which FRC apply. Some of these cases will enter the Small Claims Track where FRC do not apply¹⁸ and some will already have FRC¹⁹. If the remaining cases under £25k were allocated to the fast track, an additional 4,000²⁰ cases could be subject to FRC under Option 1a. This is likely to be an underestimate because there are a large number of claims where the claim amount is unknown²¹.

¹³ Solicitors and cost lawyers providing (among other things) costs and advocacy services predominantly to insurers and compensators.

¹⁴ Given that the data was used in the report, we have decided not to try and source anything further. The IA has instead inflated the data to today's prices.

¹⁵ This differs to the 521 figure in Jackson's report, because of a data recording issue which meant some cases with zero general damages were excluded.

¹⁶ Part 8 claims have also been excluded.

¹⁷ Claims without a settlement phase recorded and Part 8 claims were also excluded.

¹⁸ Assuming all PI claims <£1k and all other claims <£10k are allocated to the SCT.

¹⁹ Assuming all PI claims £1k-£25k already have FRC.

²⁰ Based on county court data where there is a valid value for a claim amount.

²¹ There were around 13,000 cases in the County Court between July 2017-June 2018 that settled or withdrew before being allocated to a track, where the claim amount is unknown.

41. It has not been possible to identify the total volume of cases that could be affected by Option 1a because FRC also apply to cases which settle outside of court and there is a lack of data available on the volume of non-PI claims up to £25,000 that settle outside of court²². **14,000 is therefore a lower bound estimate of the number of cases affected by Option 1a.**

Option 1b

42. It has not been possible to identify the total volume of cases that will be affected by Option 1b because there is a lack of data available on the volume of group claims.

43. This option was developed when the process for dealing with group package holiday claims was being considered; these cases can involve multiple claims arising from the same cause of action. According to the Association of British Travel Agents (ABTA), in November 2017 the average number of claimants per Gastric Illness (GI) claim was 2.6. Given that the average claim has more than one claimant, the majority of GI claims will be affected by this proposal to introduce a sliding scale of FRC for all group claims.

Option 1c

44. There is a limited amount of data available on NIHL claims, as they are often not reported to the Compensation Recovery Unit²³. Insurers' market data may also be incomplete and may double count any claimants who present claims to multiple defendants.

45. According to the Civil Justice Council's (CJC) NIHL report published in September 2017²⁴, although there has been a significant rise in the number of NIHL claims over the last decade, there has been a reduction in the number of claims in recent years.

46. The report states that the insurance industry reported around 24,000 claims in 2010 and by the beginning of 2015 this rose to around 87,000 claims per annum recorded by the Institute and Faculty of Actuaries, although this dropped to around 57,000 claims per annum by the end of 2015.

Option 1d

47. There were around 6,000²⁵ specified money, unspecified money and non-money claims in the Multi Track with a value of less than £100,000 defended in the County Court over the period July 2017 to June 2018. All of these cases may be 'intermediate' cases subject to FRC under this option, if they can be tried in three days or less, with no more than two expert witnesses giving oral evidence on each side.

48. It has been assumed that all cases settled or withdrawn before being allocated to a track will agree which FRC are applicable, as part of the settlement of the case. Some of these cases will enter the Small Claims Track where FRC do not apply²⁶ and some will already have FRC²⁷. If the remaining cases between £25k-£100k were allocated to the fast track, an additional 5,000²⁸ cases could be subject to FRC under Option 1d. This is likely to be an

²² PI claims up to £25,000 that settle outside court are already subject to FRC and so would not be affected by this proposal.

²³ The Compensation Recovery Unit recovers social security benefits in certain compensation cases and NHS costs in certain injury cases.

²⁴ Civil Justice Council, 2017. 'Fixed costs in noise induced hearing loss claims', (available [here](#))

²⁵ This excludes duplicates, where there are multiple records per case e.g. because of multiple defendants. This is because cases with multiple defendants would not be suitable as 'intermediate' cases.

²⁶ Assuming all PI claims <£1k and all other claims <£10k are allocated to the SCT.

²⁷ Assuming all PI claims £1k-£25k already have FRC.

²⁸ Based on county court data where there is a valid value for a claim amount.

underestimate because there are a large number of claims where the claim amount is unknown²⁹.

49. It has been assumed that claims currently defended in the High Court with a value of under £100,000 will be too complex to be 'intermediate' cases. Therefore, we are assuming that they will not be affected by this option.
50. It has not been possible to identify the total volume of cases that could be affected by this option because FRC will also apply to cases which settle outside of court and there is a lack of data available on the volume of claims that settle outside of court, that can be broken down by claim amount. **We think the vast majority of cases settle out of court and so the minimum volume affected by Option 1d would be 11,000.**

Option 1e

51. This option applies to 'heavy' JRs with costs of a party above £100,000. The proposed cost management regime will be discretionary and applied at the judge's discretion to appropriate cases. The volume of cases affected is expected to be very small. In 2017/18, there were only 16 JRs with total costs (excluding VAT) exceeding £100k³⁰.

Impact on Legal Costs

Option 1a

Method

52. To estimate the impact on legal costs for the elements of Option 1, the current agreed profit costs using the Taylor Rose TTKW set out in the data section have been compared to the proposed FRC recommended by Sir Rupert Jackson (detailed below). This analysis was done on a case-by case level, where for each case the proposed FRC using Sir Rupert's formula was derived and compared against current legal fees. This was used to calculate an estimate of the average difference in legal fees per case because of this option.
53. As we set out in our consultation response (see Chapter 5, paragraph 20.1), a number of respondents made the point that FRC should be uprated for inflation, a view shared by both Sir Rupert, in Chapter 5, 2.1 of his 2017 report, and the Government. It is the Government's view that the appropriate inflation index for these purposes should consider a range of similar service activities and should not be disproportionately composed of sectors it seeks to capture.
54. The Government has considered all available relevant indices against these criteria and agrees with Sir Rupert's recommendation that an uprating for inflation in FRC should be by reference to the general Service Producer Price Inflation (SPPI)³¹. The SPPI measures the quarterly change in the price received for services provided by UK businesses to other UK businesses and Government, and, as such, captures the expenditure of a range of relevant similar services. In so doing, the SPPI meets the above criteria, in that legal services represent a small component of the services captured by the index, while it is not subject to unexpected market fluctuations in costs from sectors within it. It is the Government's intention that the figures for FRC in Sir Rupert's report, on which we consulted, will therefore be uprated in line with the SPPI.

²⁹ There were around 13,000 cases in the County Court between July 2017-June 2018 that settled or withdrew before being allocated to a track, where the claim amount is unknown.

³⁰ This figure is based on the overall costs charged to the client, which is not necessarily what would be claimed (as some costs are not claimable).

³¹ ONS produced inflation index, methodology can be found [here](#), underlying data can be found [here](#).

55. The proposed FRC for fast track claims recommended by Sir Rupert Jackson³² are set out in table 1 below. These figures, and those in the other tables below, have been updated from the consultation proposals by SPPI from Quarter 1 2017 to Quarter 1 2021:

Table 1: Proposed FRC for Fast Track Claims

Stage (pre-issue split by damage amount):	Complexity Band			
	1	2	3	4
Pre-issue £1,001 - £5,000		The greater of £609 or £111 + 20% of damages	£1,053 + 17.5% of damages	£2,397 + 15% of damages + £469 per extra defendant
Pre-issue £5,001 - £10,000		£1,219 + 15% of damages over £5,000	£2,055 + 12.5% of damages over £5,000	
Pre-issue £10,001 - £25,000	£533	£2,138 + 10% of damages over £10,000	£2,770 + 10% of damages over £10,000	
Post-issue, pre-allocation	£1,971	£1,285 + 20% of damages	£2,914 + 20% of damages	£2,743 + 40% of damages + £703 per extra defendant
Post-allocation, pre-listing	£2,344	£2,083 + 20% of damages	£3,712 + 25% of damages	£5,886 + 40% of damages + £703 per extra defendant
Post-listing, pre-trial	£3,462	£2,941 + 20% of damages	£4,742 + 30% of damages	£7,244 + 40% of damages + £703 per extra defendant
Trial advocacy fee	a. £533 b. £756 c. £1,140 d. £1,816	a. £533 b. £756 c. £1,140 d. £1,816	a. £533 b. £756 c. £1,140 d. £1,816	a. £1,470 b. £1,470 c. £1,918 d. £2,663

Figures rounded to the nearest £.

- Complexity band 1 does not currently have FRC. Non-personal injury (PI) road traffic accident (RTA) claims (popularly known as 'bent metal' claims) are a good proxy for this band.

³² Lord Justice Jackson, 2017. 'Review of Civil Litigation Costs: Supplemental Report Fixed Recoverable Costs', Table 5.2, page 82 (available [here](#))

- Complexity bands 2 and 3 are the existing FRC in the Fast Track for RTA Personal Injury claims, and Employer Liability and Public Liability accident claims respectively.
- Complexity band 4 does not currently have FRC. Employer’s liability disease (ELD) claims are a good proxy for this band and the figures are based on an analysis of Taylor Rose TTKW data, recording the claimants’ costs agreed in a large volume of fast track ELD claims.

56. The data provided by Taylor Rose TTKW includes the current agreed profit costs paid for Fast Track non-PI RTA claims³³ between £10,000-£25,000 (which correspond with complexity band 1 in table 5.2 of Jackson’s report) and Fast Track ELD claims between £1,000-£25,000 (which correspond with complexity band 4 in table 5.2 of Jackson’s report). The agreed profit costs are the legal fees received by solicitors for their work, whether calculated on an hourly rate and time spent basis or with a fixed costs formula (where the figure will usually include all legal representatives’ fees). It does not include disbursements, interest on costs or fees which cannot be recovered from the losing party e.g. success fees and ATE premiums.

57. We have assumed claimant lawyers will set their legal fees equal to the FRC being proposed for each case type. Therefore, the current agreed profit costs have been compared to the proposed FRC to calculate an estimate of the average difference in legal fees per case as a result of this option. The results are shown in table 2 below:

Table 2: Difference between Fast Track proposed FRC and current legal fees³⁴

Stage	Average (mean) difference in legal fees per case (and current average legal fees in brackets)			
	Fast Track Non-PI RTA (£10,000 - £25,000)		Fast Track ELD (£1,000 - £25,000)	
Pre-issue	-£1,747 (£2,280)	n = 108	-£927 (£4,709)	n = 121
Post-issue, pre-allocation	-£1,257 (£3,228)	n = 226	-£1,033 (£7,191)	n = 119
Post allocation, prelisting	-£1,012 (£3,356)	n = 116	-£1,918 (£11,612)	n = 49
Post listing	-£938 (£4,400)	n = 115	-£874 (£11,549)	n = 48

Figures have been rounded to the nearest £.

58. A negative number in table 2 means the proposed FRC are, on average, lower than current legal fees. The table above therefore shows that the proposed FRC are on average lower than the current legal fees at all settlement stages for non-PI RTA and ELD claims in the Fast Track. Legal fees for bands 1 and 4 are therefore likely to be reduced under this option.

59. As the FRC for bands 2 and 3 are simply inflation-adjusted versions of the current FRC, the legal fees for these bands will remain the same in real terms.

³³ Based on claims with zero general damages and positive special damages.

³⁴ Difference relative to Taylor Rose TTKW dataset, prices have been inflated using SPPI to Q1-2021 prices

Option 1b

60. This option proposes that in group claims the FRC for each additional claimant should be set at 10% of that for the principal claimant. Therefore, assuming claimant lawyers set their legal fees equal to the FRC being proposed, the legal fees for each additional claimant could be up to 90% lower than they currently are.

Option 1c

61. It has not been possible to get data on the legal fees currently paid for NIHL cases³⁵, so we are unable to assess the impact of this proposal on legal fees.

Option 1d

62. The method used to estimate impact on legal fees is the same as that used for Option 1a.

63. The proposed FRC for 'intermediate' cases recommended by Sir Rupert Jackson (in table 7.1 of the report, on page 106), are set out in table 3 below:

Table 3: Proposed FRC for 'Intermediate' Cases³⁶

Stage (S)	Band 1	Band 2	Band 3	Band 4
S1 Pre-issue or pre-defence investigations	£1,492 + 3% of damages	£4,634 + 6% of damages	£5,913 + 6% of damages	£8,523 + 8% of damages
S2 Council/ special lawyer drafting statements of case and/or advising (if instructed)	£1,864	£1,864	£2,131	£2,131
S3 Up to and including CMC	£3,729 + 10% of damages	£7,085 + 12% of damages	£8,363 + 12% of damages	£11,719 + 14% of damages
S4 Up to the end of disclosure and inspection	£4,261 + 12% of damages	£8,629 + 14% of damages	£9,908 + 14% of damages	£15,128 + 16% of damages
S5 Up to service of witness statements and expert reports	£4,794 + 12% of damages	£10,121 + 16% of damages	£11,399 + 16% of damages	£18,537 + 18% of damages
S6 Up to PTR, alternatively 14 days before trial	£5,433 + 15% of damages	£13,583 + 16% of damages	£14,862 + 16% of damages	£22,426 + 18% of damages
S7 Counsel/ specialist lawyer advising in writing or in conference (if instructed)	£1,332	£1,598	£2,131	£2,663
S8 Up to trial	£6,073 + 15% of damages	£15,980 + 20% of damages	£17,259 + 20% of damages	£26,315 + 22% of damages

³⁵ it is not possible to separately identify NIHL cases in the Taylor Rose TTKW data.

³⁶ Difference relative to Taylor Rose TTKW dataset, prices have been inflated using SPPI to Q1-2021 prices

S9 Attendance of solicitor at trial per day	£533	£799	£1,065	£1,332
S10 Advocacy fee: day 1	£2,930	£3,196	£3,729	£5,327
S11 Advocacy fee: subsequent days	£1,332	£1,598	£1,864	£2,663
S12 Hand down of judgment and consequential matters	£533	£533	£533	£533
S13 ADR: counsel/specialist lawyer at mediation or JSM (if instructed)	£1,278	£1,598	£1,864	£2,131
S14 ADR: solicitor at JSM or mediation	£1,065	£1,065	£1,065	£1,065
S15 Approval of settlement for child or protected party	£1,065	£1,332	£1,598	£1,864
Total: (a) £30,000 (b) £50,000 (c) £100,000 damages	a. £20,402 b. £23,598 c. £31,588	a. £35,423 b. £39,685 c. £50,339	a. £42,029 b. £46,290 c. £56,944	a. £56,518 b. £61,205 c. £72,924

- Non-personal injury (PI) road traffic accident (RTA) claims (popularly known as ‘bent metal’ claims) are a good proxy for complexity band 1
- PI RTA, employer liability and public liability claims are a good proxy for complexity band 2
- ELD claims are a good proxy for complexity band 3.
- Complexity band 4 is for the most complex ‘intermediate’ cases, for example, a business dispute, or an employer’s liability disease claim where there are serious issues of fact/law and the trial is likely to last 3 days.

64. The figures in table 4 were derived by Sir Rupert based on (a) the data supplied by Taylor Rose TTKW, (b) discussion with his assessors, (c) consideration of his budget exercise, the submission and data received and (d) his view of how CPR rule 44.3(5) should be applied to ‘intermediate’ cases. Sir Rupert’s report provides a full explanation of how he has derived the proposed FRC for each settlement stage (paragraph 5.5 in chapters 5 and 7).

65. The FRC for stages 1, 3, 5 and 6 of bands 2 and 3 were derived solely from the Taylor Rose TTKW data³⁷. The proposed FRC for the other bands and stages were influenced by Sir Rupert’s and co-assessors’ interpretation of other available evidence. This suggests the Taylor Rose TTKW data for these other bands and stages was not considered representative in light of all the information Sir Rupert and his co-assessors had available to them.

³⁷ Regression analysis was used in order to derive a formula for FRC based on damages

66. Given the concerns about how representative the data is for some case types, we have only used the Taylor Rose data for those bands and settlement phases where the proposed FRC were derived solely from the data. In order, to estimate the impact of this option, we have compared the agreed profit costs (i.e. legal fees) currently paid to the proposed FRC.

Table 4: Difference between Intermediate Track proposed FRC and current legal fees

Stage	Average (mean) difference in legal fees per case (and current average legal fees in brackets)			
	Band 2 - Multi-track PI RTA, EL & PL (<£100,000)		Band 3 - Multi-track ELD (<£100,000)	
S1 Pre-issue or pre-defence investigations	£53 (£7,095)	n = 338	<i>Sample size too small</i>	
S3 Up to and including CMC	£181 (£11,453)	n = 453	-£1,396 (£11,953)	n = 68
S5 Up to service of witness statements and expert reports	-£266 (£16,939)	n = 224	£1,779 (£12,720)	n = 64
S6 Up to PTR, alternatively 14 days before trial	£117 (£19,198)	n = 182	£1,342 (£16,630)	n = 58

Figures have been rounded to the nearest £. Results have not been included where the sample size is less than 10 claims

67. Table 4 shows that the average differences between the proposed FRC for bands 2 and 3 and the current legal fees are small proportionally in relation to the current legal fees. A positive number in table 4 means the proposed FRC are, on average, higher than current legal fees, and a negative number means the proposed FRC are, on average, lower than current legal fees. The proposed FRC are, on average, higher than the current legal fees for some settlement stages and lower for other settlement stages.

68. Where the proposed FRC are less than the amount claimant lawyers currently charge, legal fees are likely to be reduced under these proposals. Where the proposed FRC are higher than the current legal fees, there is a risk that claimant lawyers will increase their legal fees. As we do not know the number of cases which will settle at each stage, we cannot determine whether the net impact is an increase or a reduction in legal fees for bands 2 and 3 under this option.

69. For the reasons given above, we have not been able to assess the impact of this option on legal fees for cases which settle at stages 2, 4, 7 or 9-15 or for cases in bands 1 and 4.

Option 1e

70. Costs budgeting is set out in Part 3 of the Civil Procedure Rules and is a process by which budgets are agreed ahead of the trial, following budget submissions by both parties. For cases where the costs of a party are likely to exceed £100,000 or the hearing length is likely to exceed two days, the courts have a discretion to make a costs management order at the stage of granting permission.

71. It is not possible to estimate by how much legal costs will change as a result of costs budgeting. The option of extending cost budgeting aims to provide certainty and proportionate legal costs in 'heavy' JRs. It is therefore assumed that the net impact is likely to be a reduction in legal costs for cases subject to costs budgeting, as agreeing budgets at the outset of a JR should prevent legal costs on both sides from escalating.

Option 1: Introduce a package of reforms to extend FRC

72. Below we provide a summary of the costs and benefits of introducing this package of reforms on extending FRC, which comprises Option 1. As described above, Option 1 comprises an interlocking package of reforms, based on the recommendations of Sir Rupert Jackson in his 2017 FRC report. In addition, due to the uncertainties detailed above about providing detailed estimates for each sub-option, and the inter-relations between the sub-options, it is better to summarise the costs and benefits of this reform package as a whole.

Summary Costs of Option 1

Lawyers

73. As explained above, net legal fees are likely to be reduced as a result of Options 1a, 1b, and 1e. Due to a lack of data it is not possible to determine the total costs of Options 1c and 1d, but it is likely there will be an overall net reduction in legal fees when combining all of these options.

74. While the impact will vary depending on their cases and current costs, this option is likely to represent a cost to lawyers from reduced income per case. It may result in lawyers reducing the resource they spend on each case, as any increase in expenditure will reduce their profit margins. However, the benefit section below indicates that cases could potentially be settled quicker so lawyers could do more cases.

75. For the purposes of this IA, as is normally the case for reforms of this nature, we assume that lawyers will find work of similar, or next best, economic value. This is because the income losses to lawyers under this option largely arise from addressing inefficiencies in current legal processes and so do not represent a cost to society.

Costs Lawyers

76. As more cases become subject to FRC, there will be a reduction in cases requiring the work of a costs lawyer. This is because the proposed FRC regimes will provide greater certainty as to the amount of costs that should be awarded, from pre-issue to the trial itself.

Losing Litigants

77. As lawyers may try and reduce the resources they spend on a case, it could mean cases are settled more quickly. This could generate cash flow costs for litigants that lose their case, which may take the form of reduced investment income. The aggregate value of earlier payment has not been monetised. This will depend upon the size of funds which are paid earlier, how much quicker they are paid, and the value of any reduced investment income. However, given current rates of return, these losses are unlikely to be large.

HMCTS

78. There may be implementation costs to HMCTS under Option 1d from applying the proposed FRC to the lower end of the existing multi track, but these are not expected to be substantial.

79. Option 1d and 1e are likely to require an update to judicial training modules, but the costs of this should be minimal.

Summary Benefits of Option 1

Successful and Losing Litigants

80. A key benefit of all the elements of Option 1 is to control legal costs. This is an advantage for all parties when deciding whether to embark on litigation, as they know what costs they would have to pay if they lose.
81. Another key impact of Option 1 will be to fix and reduce the costs recovered by the winning party. This will represent a benefit for the losing party. In cases that are subject to QOCS it will always be the defendant who benefits from reduced legal fees because they cannot recover their legal costs if they win the case.

Lawyers

82. As a consequence of implementing the package of reforms which comprises Option 1, there will be an improvement in access to justice for many potential litigants, including those of more modest means such as individuals and small-and-medium enterprises (SMEs), who would previously have been deterred from litigating due to uncertainty around costs. This is expected to result in a change in the types of cases being brought and in cases being settled more quickly, meaning that lawyers can take on a greater number of cases, so compensating for any reduction in fee income to lawyers resulting from individual cases (see above paragraphs 73-74).
83. In all cases affected by Options 1a to 1d, lawyers will no longer have to maintain documentation required for costs assessment or spend time arguing about costs. Given this, less resource might be devoted to settling costs, generating further savings. The extent of any savings is unclear.
84. All the elements of Option 1 might generate business process efficiencies in the form of reduced management costs or overheads, in order for solicitors to maintain their profit margins, and cases may be settled more quickly which means they can take on more cases.

Successful Litigants

85. All of the options should mean less time is spent arguing over costs, resulting in cases being settled quicker. This will provide successful litigants with cash flow benefits and with increased utility from having earlier access to compensation funds and the services and products these might be used for. Where funds are invested there might be further financial benefits. The aggregate value of earlier payment has not been monetised. This will depend upon the size of funds which are paid earlier, how much more quickly they are paid, and what they will be used for.
86. Option 1e may result in claimants being less likely to be deterred from pursuing JR claims, if costs budgeting is available to reduce the risk of costs escalating.

HMCTS

87. FRC encourage early settlement and help to streamline proceedings, which may lead to earlier resolution, thus saving court time.

F. Risks and assumptions

Assumptions

88. The following assumptions were made to assess the expected impacts of Option 1:

Claimants

- The overall willingness of claimants to bring a claim will remain unchanged.
- There will be no change in the number of litigants in person.

Claimant Lawyers

- There will be no aggregate impact on claimant lawyers' willingness to take on cases. Whilst some claimant lawyers might exit the market it has been assumed that others will enter, or existing providers will expand to meet demand. This is because the proposed FRC are assumed to reflect the amount of work which an efficient and effective provider would undertake.
- Claimant lawyers will set their legal fees equal to the FRC being proposed for each case type. The data from Taylor Rose TTKW supports our assumption that agreed profit costs would equal FRC (this is discussed in more detail under the next heading).

Case Volumes

- There will be no change in overall case volumes relative to the base case. This stems from the above assumptions about claimants and claimant lawyers being as willing in future to pursue cases as they are now. In addition, there is no reason to consider that Option 1 will impact on the underlying volume of personal injury accidents in relation to which claims are made, e.g. as a result of fraud or other claimant behavioural change.
- Claim settlement outcomes will remain the same.
- There will be no change in the number of claims where court proceedings are issued, where cases are allocated to a court track, and where court hearings take place.

Proposed FRC Schedule

- All cases will be allocated to the appropriate FRC regime and band. Any movement between bands³⁸ will be minimal and will not impact the overall costs and benefits.
- The proportion of cases that are subject to the escape clause³⁹ will be very small and would have no significant impact in the overall costs and benefits of the proposals.
- Civil Procedure Rule Part 8 claims⁴⁰ will not be subject to FRC under Option 1⁴¹.
- For Option 1b, all group claims will be subject to the staged FRC and will not be treated as individual claims.

³⁸ The court would have the discretion to move cases between bands depending on the nature of the individual case.

³⁹ The escape clause allows for claims to be made above the FRC regime, however in these cases the successful litigant must recover at least 20% more than the prescribed fixed costs. If they fail to persuade the court to award more than the FRC regime, then they must pay for the unsuccessful litigant's Part 8 costs.

⁴⁰ www.justice.gov.uk/courts/procedure-rules/civil/rules/part08

⁴¹ It has been proposed that Part 8 claims should not be subject to FRC until the proposed reforms have had time to bed in. The question of extending FRC to Part 8 claims would be deferred for future consideration.

- For Option 1c, the majority of NIHL claims will be allocated to the fast track and only in exceptional circumstances, and when appropriate, will a NIHL claim be allocated to the multitrack (where FRC would be avoided).
- For Option 1e, the overall claimant willingness to bring a JR will remain unchanged.

89. Of the assumptions discussed above, the most crucial to the analysis are those around claimants, claimant lawyers, and the proposed FRC schedule. However, due to the uncertainties involved, sensitivity analysis is not really appropriate.

Risks

90. The following risks apply to the assessment of expected costs and benefits of Option 1:

Claimants and Claimant Lawyers

- It has been assumed that claimants and claimant lawyers will be as willing as in the base case to pursue cases in future. There is a risk, however, that some claimant lawyers might be less willing to take on cases which are relatively more expensive to process (see below paragraphs 91-92 for our proposals for 'vulnerable' parties in our consultation response). This might relate to the complexity of the case, including the nature of the claimant, the nature of their injuries, and the ease of establishing liability. It is unclear to what extent claimant lawyers might be able to identify at the outset which individual claims might be cheaper to process. It is also unclear whether there is a significant degree of potential variation in relation to the specific levels of liability and damages which apply to individual cases. However, whilst some claimant lawyers might not be willing to take on some cases, others may enter or existing providers may expand to meet demand. This is because the proposed FRC are considered to reflect the amount of work which an efficient and effective provider would undertake.
- There is a potential risk that the number of litigants-in-person may increase. However, as explained above, we expect there would be enough claimant lawyers to meet demand.
- It has been assumed that claimant settlements remain the same. There is a potential risk that claimant settlements might be lower in future. This risk might materialise if claimant lawyers reduce the time and resource they spend on cases in response to FRC, and if as a result, settlement negotiations lead to worse outcomes for claimants. Whether this risk materialises will depend upon the behaviour of defendants in such settlement negotiations.

Case Volumes

- If the number of cases in court decreases, then there would be a loss in court fee income. However, we may find more defendants challenge claims in court, because their costs to do so would be lower and/ or they are less likely to be deterred due to the cost certainty that FRCs provide. In addition, were the number of cases in court to decrease, HMCTS would be able to reduce the resources devoted to such cases.

Proposed FRC Schedule

- Where the proposed FRC are higher than the current legal fees, there is a risk that lawyers could increase their legal fees.
- As solicitors are likely to recover less money in FRC, there is a risk they may take more of a success fee from the damages (although this will be capped at 25% of certain

damages in personal injury cases). However, this is hard to assess until we can see the reaction of the legal market to these reforms.

- There is a risk that a substantial number of cases will be subject to the escape clause, and therefore the potential benefits of the proposals would be reduced.
- There is a risk that a substantial number of cases will be moved to a different band, at the court's discretion meaning the potential benefits of the proposals could be reduced.
- There is a risk that claimant representatives may seek to allocate a significant number of NIHL to the multi-track, in order to avoid the proposed FRC.
- There is a risk that there could be an increase in the number of professional negligence claims if claimant lawyers reduce the amount of work they are able to complete on each case, as a result of FRC, and claimants are unhappy with the outcome of the case.

Vulnerable Witnesses and Parties

91. Having carefully considered the views raised by respondents to Questions 7-10 in the consultation paper, alongside the recommendations in the CJC report *Vulnerable Witnesses and Parties within Civil Proceedings*, issued in February 2020 after the consultation had concluded, the Government accepts that there are grounds to make limited exceptions in FRC for specific 'vulnerabilities' that may require further costs provisions, rather than more expansive allowances that would be contrary to the objectives of FRC.

92. Specifically, the Government acknowledges that the extension of FRC may have an indirect impact on parties with certain protected characteristics that may render them vulnerable; specifically, those with mental disabilities, who may incur further costs when bringing a civil claim. As we summarise at Chapter 1, 10.1 of the consultation response document, we make the following proposals to mitigate any potential negative equalities impacts:

- We propose that the new fast track FRC regime could cover the specific vulnerabilities set out in the guidance to the legal aid Family Advocacy Scheme (FAS), and that a specified, percentage uplift of FRC (25%, in keeping with the 25% bolt-on that is currently available under FAS to those who '[have] difficulty giving instructions' as a result of a verified mental disability) could be available in respect of parties who meet these criteria, upon judicial certification. We will consider with the Civil Procedure Rule Committee (CPRC) as to how the Directions Questionnaire could be amended to incorporate this percentage uplift.
- We recognise that additional disbursements may be needed for specific vulnerabilities (such as where a party possesses the need for a sign language interpreter). We will consider with the CPRC what arrangements are appropriate for disbursements and consistent with the aims of FRC.
- In drafting the rules for consideration by the CPRC, we will consider whether the arrangements for settlements for protected parties (adults lacking mental capacity and children, as under Road Traffic Accident cases) should be extended to the new FRC regimes.

G. Wider Impacts

Equalities

93. Please see the separate equalities statement for more information.

Competition Assessment

94. The options assessed in this IA should have no influence on competition in the legal sector as they would impact all legal firms that undertake this work.

Family Impact test

95. There would be no impact on strong and stable family relationships as a result of the options assessed in this IA.

Better Regulation

96. This measure is not classed as a regulatory provision under the Small Business Enterprise and Employment Act 2015 and will not score against the department's business impact target.

Small and Micro Business Assessment

97. The options could make small legal firms less able to compete with larger firms that have greater economies of scale and can provide services on mass as cheaply as possible.

Environmental impact

98. No impacts on the environment have been identified with the options assessed in this IA.

H. Monitoring and evaluation

99. These proposals will be kept under review. The evaluation process shall follow appropriate guidelines.

Annex A: Impact Assessment Glossary

The following definitions/abbreviations are used in this document:

CJC	Civil Justice Council
CMC	Case Management Conference
ELA	Employers' Liability Accident
ELD	Employers' Liability Disease
FRC	Fixed Recoverable Costs
JR	Judicial review
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012
NIHL	Noise induced hearing loss
PI	Personal Injury
RTA	Road Traffic Accident