

Fixed Recoverable Costs (FRC) Interim Implementation Stocktake

This is an evidence gathering exercise by the Civil Procedure Rule Committee (CPRC) in conjunction with the Ministry of Justice (MoJ)

This exercise begins on 31 October 2025

This exercise closes on 05 January 2026

How to Respond

The CPRC invites written responses from users and potential users of the civil justice system in England and Wales. In particular responses from legal professionals, enforcement agents, businesses, individuals, representative organisations, and advice agencies in England and Wales are welcome.

Email to: CPRCconsultation@justice.gov.uk. Please note "Fixed Recoverable Costs (FRC) Interim Implementation Stocktake" in the subject line of your email.

Post to: Carl Poole, Secretary to the Civil Procedure Rule Committee, Post Point 7.38, Ministry of Justice, 102 Petty France, London SW1H 9AJ

Please Note:

Submission format: If you intend sending a PDF document it would be helpful if you could send a word document as well to assist in analysing the responses. Only the PDF document will be retained as the response document.

Complaints or comments: If you have any complaints or comments about the consultation process you should contact the secretary to the CPRC at the address given above.

Additional copies: Further copies can be obtained from the secretary (details above).

Representative groups: Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality: Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the CPRC. The CPRC will process your personal data in accordance with the DPA and in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties.

The principles that public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492132/20160111_Consultation_principles_final.pdf

Preface

Fixed Recoverable Costs (FRC) are a crucial mechanism in ensuring that the costs of civil litigation are proportionate and predictable. First introduced for low-value personal injury claims in 2010, FRC were extended to apply to most civil cases in the fast and intermediate tracks in 2023. This was also the year that the intermediate track was introduced.

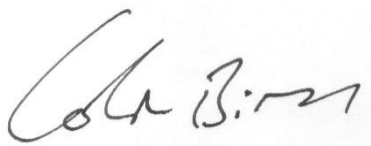
The Civil Procedure Rule Committee is undertaking this evidence gathering exercise with the Ministry of Justice (MoJ) to take stock of how the extension of FRC is working. We hope that this will help uncover any emerging issues with FRC or the intermediate track. We will use this exercise to consider whether we need to make any changes to the Civil Procedure Rules (CPR) in the short to medium term.

This exercise will be followed by the MoJ's full Post Implementation Review into the FRC regime as a whole, which is due to commence in 2026.

We welcome views from anyone who has been involved in affected claims, whether they be court users, solicitors, barristers, judges, administrative staff or members of the public generally.

I would like to thank you for taking the time to participate in this exercise.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Lord Justice Birss', is positioned above a faint, light blue rectangular stamp.

Lord Justice Birss, Deputy Head of Civil Justice

Introduction

Background

One of the core principles in civil litigation in England and Wales is that costs follow the event – meaning that the losing party is generally required to pay the winning party’s legal costs. While this is a critical component of our civil justice system and serves to incentivise early settlement whilst ensuring only meritorious cases come to court, the risk of adverse costs can be a cause of concern for parties before they embark on civil litigation. It is important that the costs payable are proportionate to the value of the claim, and that the costs regime does not in itself undermine access to justice. Ordinary individuals should be able to engage in civil litigation with certainty and without fear of incurring ruinous costs.

Fixed recoverable costs (FRC) prescribe the amount of costs that may be recovered from a losing party in civil litigation. They help to ensure that legal costs remain proportionate and thereby promote access to justice. FRC give both parties certainty as to the maximum amount they may have to pay if unsuccessful. They have been a part of our civil justice system in most low-value personal injury claims since 2010. It is sometimes suggested that FRC favour defendants at the expense of claimants, but it is generally just as much in claimants’ interests to control the costs that they might have to pay. Access to justice is enhanced if claimants can contemplate legal proceedings with an informed assessment of the likely costs, rather than to avoid them altogether due to a fear of a high but uncertain liability.

FRC prescribe the amount that can be recovered by the winning party at set stages of litigation, from pre-issue to the trial itself, with reference to a particular case type and track.

Sir Rupert Jackson conducted a major Review of Civil Litigation costs, published in 2009. He noted in his 2017 Supplemental Report on Fixed Recoverable Costs that:

“... [a]t the heart of both reviews has been the same objective of promoting access to justice. Controlling litigation costs (while ensuring proper remuneration for lawyers) is a vital part of promoting access to justice. If the costs are too high, people cannot afford lawyers. If the costs are too low, there will not be any lawyers doing the work.”¹

Extension of Fixed Recoverable Costs

In his 2017 review, Lord Justice Jackson recommended extending the FRC regime to the vast majority of County Court cases, to ensure that costs are controlled and proportionate to the value of the case. Broadly in line with Jackson’s recommendations, the Government – in conjunction with the Civil Procedure Rule Committee - implemented the extension of the FRC regime in 2023 to most civil cases in the fast and intermediate track, the latter of which was introduced at the

¹ [fixed-recoverable-costs-supplemental-report-online-2-1.pdf](#)

same time. The Government also committed to various reviews of those changes to ensure the effective implementation of the FRC regime².

As part of those commitments, the Government promised to undertake this initial stocktake to identify any emerging issues with the new FRC regime. This evidence gathering exercise covers a wide range of FRC topics to better understand the impact of the extension to the FRC regime and any emerging issues as a result. Responses to this consultation will help to identify, triage and address any issues which have arisen as a consequence of the wide-ranging changes to the FRC regime. This initial stocktake will precede the full post-implementation review in late 2026.

We welcome views from all who have an interest in this area, whilst acknowledging that some stakeholders have specialised areas of knowledge and may want to focus on providing evidence in those areas. Respondents are asked to provide any documentary or other evidence available to support their position in responding to the questions in this Call for Evidence.

² [frc-public-notice-updated.pdf](#)

Consultation

1. Respondent details

- 1. Which of the following best describes your sector/profession?**
 - a. Claimant lawyer**
 - b. Defendant lawyer**
 - c. Insurer**
 - d. Legal support and advice**
 - e. Barrister**
 - f. Professional representative body**
 - g. Other (please state)**
- 2. Do you have direct experience of handling or advising on claims to which FRC apply? If so, how many cases have you seen (an approximate answer can be given)?**

2. General

We would welcome your general observations on how the extension of FRC, and intermediate track has been operating and any issues you may have noticed emerging. This includes in relation to His Majesty's Courts and Tribunal's Service (HMCTS) Digital Services.

- 3. How well has the extension of FRC been operating?**
- 4. How well has the new intermediate track been operating? Has it had an impact on case progression?**
- 5. Do practitioners and court users (including Litigants in Person) have access to sufficient information on FRC and their application?**
- 6. What effect has the extension of the FRC had on cases that use the Online Civil Money Claims and Damages Claims Portal services?**

3. Complexity Bands

The complexity bands were introduced alongside the new intermediate track in 2023 to ensure that FRC more accurately reflect the level of complexity involved in a case.

CPR 26.15 and 26.16 respectively assign civil cases allocated to the fast and intermediate track to a complexity band. There are four complexity bands: bands 1 – 4. Factors that may determine the complexity band a claim is assigned include the type of claim, the number of issues in dispute, and the length of trial.

CPR Practice Direction 45 provides an ascending scale of recoverable costs in line with the complexity band of the claim as well as the value of the claim and the stage the claim reaches in proceedings.

7. Do the complexity bands enable the award of proportionate costs? Is this the case in both the fast and intermediate tracks? Please provide your reasons.

8. To what extent do the complexity bands simplify the costs determination process?

9. Are there any issues to raise in relation to the complexity bands?

4. FRC in Part 36 offers

Part 36 of the CPR aims to encourage parties to settle their claim without going to trial. A Part 36 offer may be used to settle all or part of a dispute. Failure to accept a reasonable Part 36 offer can lead to specific costs consequences for a party, such as requiring the claimant to pay elements of the defendant's costs and interest if they fail to beat the Part 36 offer at trial or requiring the defendant to pay the claimant's costs on an indemnity basis.

In 2023, the CPR were amended to provide that, in cases subject to FRC, the consequences of accepting or refusing a Part 36 offer are to be determined by reference to those costs.

For example, where a Part 36 offer is accepted within the relevant period for acceptance, the claimant is entitled to recover the FRC for the stage the case has reached. Where the offer is accepted outside the relevant period, the claimant can only receive the FRC for the stage reached at the expiry of the relevant period and the defendant is entitled to the FRC for the stage reached at the date of acceptance. If the claimant fails to beat the defendant's offer at trial, they may be ordered to pay the defendant's FRC from the expiry of the relevant period. If the claimant obtains a judgment at least as advantageous as their own Part 36 offer, they will be entitled to their fixed recoverable costs plus additional costs equivalent to 35% of the difference between the fixed costs for the stage applicable when the relevant period expires and the stage applicable at the date of judgment.

10. Are there any issues with the interpretation of CPR 36 as a result of the CPR Part 45 changes?

11. Is it sufficiently clear that additional costs relating to vulnerability or exceptional circumstances would be included in costs consequences under Part 36? If not, please share your reasons and/or suggestions for how this could be clarified.

5. Housing

The Jackson review recommended that FRC should be extended to housing disrepair and possession claims. However, it was decided that housing claims should be exempted, pending a review in 2025. The Government, having conducted this review, has decided to maintain this exemption until 2028. This is due to substantial ongoing change in the housing sector caused by the Renters' Rights Bill, Leasehold and Freehold Reform Act 2024 and Awaab's Law. A delay to the implementation of the extension of FRCs to housing was agreed to allow for the legislation's impact in England to be clearer.

This stocktake is intended to support the collection of data and evidence to improve our understanding of how the housing-related costs regime currently operates. The information gathered will not be used to make decisions at this stage, but it may help inform thinking when the regime is reviewed in 2028.

- 12. In what circumstances will costs be awarded in disrepair and/or possession claims? Where they are, what level of costs are usually awarded? Are there features distinctive to disrepair and/or possession claims which influence this?**
- 13. Are these costs proportionate to the type and complexity of the claim?**
- 14. Please share any initial views you may have about whether and how FRC could work for housing possession and/or disrepair claims.**
- 15. Considering your answer to Question 13, above, can you foresee any issues or risks with extending FRC to housing claims?**

6. Other Exemptions

CPR 26.9(10) provides for several types of claim to be allocated to the multi-track by default, so excluding them from FRC. These include: mesothelioma cases; clinical negligence claims, subject to exceptions; claims for damages in relation to harm, abuse or neglect involving children or vulnerable adults; claims against a public authority for trespass to the person, again subject to exceptions; a claim which the court could order to be tried by jury (such as malicious prosecution or false imprisonment) and claims against the police.

- 16. Are the FRC exemptions under CPR 26.9(10) sufficiently clear to practitioners and claimants? If not, please provide your reasons.**
- 17. Are any amendments required to CPR 26.9(10)? If so, what are these? Please provide your reasons.**
- 18. Do you consider that any of these exemptions should be reviewed? If so, please provide your reasons.**

7. Application of FRC in different types of claims

As part of the extension, the CPR are nuanced and provide for exceptions regarding how FRC should operate in particular types of claims (a-e below). These are summarised in the 2023 public notice on the extension of FRC.³

19. Do you have any observations on how FRC are operating in relation to any of the following types of claims?

- a. Claims for or including non-monetary relief**
- b. Where more than one claimant is represented by the same lawyer**
- c. Counterclaims**
- d. Where there is a preliminary issue trial**
- e. Noise-Induced Hearing Loss**

8. Clinical Negligence

As set out above, clinical negligence claims are usually allocated to the multi track, as per CPR 26.9(10) and are therefore not subject to FRC. However, under certain circumstances, clinical negligence claims may be allocated to the intermediate track and be subject to FRC.

20. If you have experience with clinical negligence claims, what proportion do you see allocated to the intermediate track?

- a. What level of costs are usually awarded in those intermediate track claims?**
- b. Which complexity bands are generally allocated to them?**

9. Unreasonable Behaviour

CPR 45.13 provides that the court may reduce or increase the FRC by 50% if a party has engaged in unreasonable behaviour, which is defined as "*conduct for which there is no reasonable explanation*". The adjustment can reduce the receiving party's costs or increase them, depending on who is at fault.

21. Are you aware of any applications made to decrease and/or increase the FRC payable on the basis of unreasonable behaviour? If so, how well has this worked?

22. Are any amendments required to CPR 45.13? Please provide your reasons.

10. Inflation

³ [frc-public-notice-updated.pdf](#)

The figures of FRC costs in the 2017 Jackson report (which were fixed in July 2016 and on which MoJ consulted in 2019), were uprated for inflation before implementation using the January 2023 Services Producer Price Index (SPPI). The Government has committed to reviewing whether the FRC figures need to be adjusted for inflation in 2026.

23. Are you aware of any reason why any of the FRC figures should be reviewed before 2026?

11. Disbursements

Sections IV and IX of CPR Part 45 cover disbursements that can be recovered, including costs relating to the provision of medical or expert witness reports. CPR 45.62 sets out the fixed disbursement costs for soft tissue and whiplash injury claims. CPR 28.14(3)(c) provides that any expert report submitted in the intermediate track should not exceed 20 pages.

24. Do you have any observations on the recovery of disbursements?

25. How is the 20-page limit for expert reports in intermediate track claims working in practice?

26. Are you aware of any requests to extend the 20-page limit? If so, please share any data or information that you have.

12. Fixed Costs Determination

Section X of Part 45 of the Civil Procedure Rules makes provision for the Fixed Costs Determination (FCD) procedure, which came into effect in October 2024. It provides a streamlined method for resolving disputes about fixed recoverable costs, disbursements and court fees. Under the FCD procedure, a party must file and serve Precedent U, which is an Excel-based form in which both parties set out their respective assessments of the relevant FRC, disbursements and court fees, along with explanations for any differences. A judge will then review the Precedent U and make a paper-based decision. If either party disagrees with the outcome, they may request an oral hearing.

27. Do you find it easy to submit a Precedent U? Is it clear what information should be included? If you answered no to either question, please provide your reasons.

13. Vulnerability

Under CPR 45.10, the court may consider a claim for an amount of costs greater than FRC where a party or their witness is vulnerable, that vulnerability has required

additional work to be undertaken, and by reason of that additional work the claim is for an amount at least 20% greater than the amount of the FRC.

The MoJ has committed to reviewing the vulnerability provisions in 2026. We will consider the issue of vulnerability substantively, and engage fully with stakeholders then, but would welcome any views now which could inform that review.

- 28. Can you provide any evidence or estimates of how often a party or witness' vulnerability necessitates additional work?**
- 29. If so, please provide details of the nature of this vulnerability and additional work, and how much additional time is required to undertake it.**
- 30. Are any amendments required to CPR 45.10? Please provide your reasons.**

14. Conclusion

- 31. Do you have any further information or views to provide which are not covered by Questions 1 – 28?**