



Ministry of
JUSTICE

Extension of the Road Traffic Accident Personal Injury Scheme: proposals on fixed recoverable costs

Consultation response 27 February 2013

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Executive summary

1. The Government committed in the response to its consultation on *Solving Disputes in the County Court* to extending the current Road Traffic Accident (RTA) Personal Injury scheme – vertically, to include claims up to £25,000; and horizontally, to incorporate Employers' Liability (EL) and Public Liability (PL) claims. The Government is also committed to reducing the fixed recoverable costs (FRCs) available in relation to the extended RTA scheme, and launched a Call for Evidence in February 2012 seeking views on both the extension of the RTA scheme and on the level of FRCs applicable to it.
2. Further to this, the Government also launched a consultation on 19 November 2012 on specific proposals for the levels of FRCs which should apply for claims within the current and extended RTA Protocols and for claims that exit the current and extended Protocols. The conclusions set out in this Government response have taken into account evidence provided from both the Call for Evidence (the analysis of which was published on 19 October 2012) and from the 19 November consultation.
3. The Government understands the strength and depth of feeling in this area and very strong views have been expressed in response to this consultation. However, one consequence of this is that obtaining data in respect of the costs of litigation has been difficult. The views of claimants and defendants as to the nature of the problem and the proposed solutions are sharply polarised, and therefore the data provided was partial and potentially biased.
4. The consultation letter issued by the Parliamentary Under Secretary of State, Helen Grant MP, on 19 November contained proposals for the appropriate level of FRCs in low value personal injury cases based on the best information that the Government had at the time. Although a high number of responses to the consultation were received, many of these, particularly from claimant lawyers, took the form of 'campaign' letters containing similar text and did not provide detailed evidence as to the appropriate level of costs.
5. Having considered the evidence and arguments contained in both the responses and the earlier Call for Evidence, this response sets out the following conclusions:
 - The Government believes it is reasonable and proportionate to consider referral fees as relevant to the costs and to propose adjustment to FRCs in the light of the forthcoming referral fee ban in April 2013 (see paragraphs 39-43).
 - The Government does not accept claimants' views that the changes will result in limiting access to justice and bring about other undesirable behavioural changes, since lawyers will still be willing to take cases on for these costs (paragraphs 48-50).
 - The Government accepts that for cases above £10,000 the cost of obtaining an opinion on quantum from Counsel or a specialist solicitor should be recoverable as a fixed cost where (like an expert report) it can be justified (paragraph 60).
 - The greater complexity of EL/PL cases and the fact that this is a new regime for such cases merits higher FRCs for these than for RTA cases (paragraph 75).

- Ensuring that costs are controlled outside the protocols is a vital component of the system and in the absence of solid evidence to the contrary (and the difficulties in readily obtaining sufficiently representative and comprehensive evidence in this area), the figures consulted upon are considered to be a sound basis on which to proceed, with the exception of employment law disease claims which should fall out into the current guideline hourly rate system pending further work by the Civil Procedure Rule Committee (CPRC) (paragraphs 93-95).
 - In order to simplify transition and to effect a swift reduction in costs, RTA cases under £10, 000 should be subject to the “new” FRC scheme if notified after the implementation date, even if the accident occurred earlier. This point has been considered by the CPRC which determined that the new FRCs should apply according to the date when the claims notification form is submitted rather than the date of accident to avoid a lengthy overlap with two systems running in parallel.
 - The consultation process has proved again the difficulty in obtaining comprehensive and representative data in this area. The Government is prepared to review and assess the effectiveness of the scheme should evidence be provided to demonstrate that this is necessary. The Government does not, however, wish to commit at this stage to a formal review fixed in 12 months’ time.
 - For similar reasons the Government is not convinced by the argument set out by some respondents, including the Civil Justice Council (CJC), that the Government should wait to see how the range of civil justice reforms currently underway have bedded in, or until further analysis has been completed before proceeding with any reduction in FRCs or extension of the RTA scheme. The Government is not clear what further data or evidence would be available in the near future which would make a sufficiently material difference to the current proposals to justify delaying their implementation.
6. In the light of the conclusions set out above, together with other decisions on timing for extension of the scheme as described in the accompanying letter of 27 February, it is the Government’s intention to ask the CPRC to make rules which will fix recoverable costs in low-value personal injury cases at the levels set out in **Annex A**. As the letter indicates, the Government will ask the CPRC to make rules to the following timescales:
- Amendments in particular to the FRC regime, in respect of the existing scheme (RTA up to £10,000) will commence from the end of April 2013.
 - The new protocols extending the scheme to £25,000 and to EL/PL and the accompanying FRC regime will be implemented from the end of July 2013.
 - A new FRC regime for cases falling out of the extended protocols will also commence in tandem with the extension from the end of July 2013.

7. The difference in timing is due to the fact that we have listened to concerns from representative and expert bodies, as well as from claimant lawyers, as to the additional complexity involved for insurers, claimant lawyers and Claims Portal Ltd (formerly the RTA Portal Company) in implementing the extended scheme.
8. An impact assessment for the FRC proposals is attached at **Annex D**. In summary if cases were resolved more quickly, with equivalent case outcomes, and using fewer overall resources, then there would be a gain in overall economic efficiency.
9. In addition, in line with our responsibilities under the Equalities Act 2010, we undertook an initial equalities assessment which found that speedier payments of compensation were likely to be particularly beneficial to those with low incomes. It also recognised that personal injury claimants are more likely to have a disability when compared with the population as a whole. Further assessment of the potential equalities impacts is set out in paragraphs 45-47.
10. Finally, a number of respondents, including the Access to Justice Action Group (AJAG) and the Association of Personal Injury Lawyers (APIL), expressed concerns about how the introduction of a new fixed cost regime would interact with proposals in the Government's separate consultation on *Reducing the Number and Costs of Whiplash Claims*. These points will be addressed in response to that consultation rather than here.

Consultation response overview

11. The FRC consultation closed on 4 January 2013 and 763 consultation responses were received from the following groups:
 - Claimant law firms and other claimant bodies (729 from 280 firms) (approx 96%)
 - Representative/expert organisations and academics (12) (approx 2%)
 - Insurers and defendant organisations/representatives and law firms (22) (approx 3%)¹
12. The majority of respondents did not address the specific questions raised in the consultation letter, but instead gave general views on the operation of FRCs and the potential impacts of the proposals. In terms of the relative proportions of responses, the fact that there are many more claimant solicitor firms than defendant insurers gives rise to the disparity in the numbers of responses received from each type of organisation.
13. Claimant views and defendant views were clearly polarised. Claimant representative and claimant solicitor concerns included questioning the link between the banning of referral fees and the need to reduce costs; suggestions that the proposed new costs were insufficient to enable them to provide the minimum level of work required by the Solicitors Regulation Authority; suggestions that the proposals would have an impact on access to justice and lead to a reduction in the quality of legal advice; and that the proposals would lead to an increase in fraud or sharp practice.
14. Defendant concerns included questioning whether the Government's proposals are still too generous given the banning of referral fees and a suggestion that the continuation of the uplift for London firms may not be justified and could lead to perverse incentives.
15. Other concerns raised by representative or expert organisations such as the CJC and the Law Society included a concern that we should wait for reforms, such as the Jackson reforms to the costs of civil litigation, to be implemented before proceeding; and a concern that the level of costs suggested may not be sufficient for claimant lawyers to undertake the minimum amount of work required. Conversely, the Association of British Insurers (ABI) felt that a reduction in FRCs was justified through the greater efficiencies of conducting modern litigation, including through the Portal, as well as by the result of the banning of referral fees. The Law Society and others also argued that it was difficult for them to express an informed view in advance of a consultation on the draft RTA and EL/PL protocols (although it should be noted that such a consultation was undertaken by the CPRC).
16. Twenty-four specific proposals were made in relation to the levels of the FRCs themselves and how they might be calculated. Some respondents provided more than one suggestion, and other respondents endorsed proposals made by others. Detail of these specific proposals is provided in **Annex B**.
17. Where specific proposals were received, the numerical evidence that was put forward demonstrated the polarisation of the debate. Claimant solicitors

¹ All percentages are rounded up so do not equal 100%.

suggested that the proposed figures were too low, and indeed opposed the whole principle behind the changes. Defendants and insurers tended to feel that the proposed figures were too high and that in some instances they did not go far enough by, for example, excluding some fast track personal injury cases from the process. None of the evidence provided a compelling case that the Government's figures were not a rational basis on which to proceed. Where respondents proposed an alternative set of figures, these are set out at **Annex B**.

18. This document is divided into the following sections:

- a) RTA claims between £1,000 and £10,000
- b) RTA claims between £10,000 and £25,000
- c) EL and PL claims between £1,000 and £25,000.
- d) Claims that exit the Protocols

19. It summarises the issues raised in response to the specific issues highlighted in the consultation letter; and the detailed responses provided in relation to the calculation of FRCs. It provides an explanation of the Government's proposed FRCs for the purposes of the consultation, and how these figures compare with proposals put forward by respondents. It also sets out the Government's response in relation to the proposals put forward in relation to sections (a) to (d).

20. The full list of respondents is attached at **Annex C**. Individual responses are available upon request.

Fixed recoverable costs for RTA cases below £10,000

Government proposals

21. Lord Justice Jackson's 2009 *Review of Civil Litigation Costs: Final Report* (the Jackson Report) recommended the prohibition of referral fees in personal injury cases, concluding that "referral fees add to the costs of litigation, without adding any real value to it."² Following extensive consultation, the LASPO Act 2012 included a ban on referral fees in personal injury cases which is due to be implemented in April 2013.
22. The Government has for some time been well aware that not everyone accepts the link between referral fees and high litigation costs. In particular, it was aware of the view of the Legal Services Board (LSB), expressed in its September 2010 discussion document³ and its May 2011 decision document⁴, that there was no evidence to substantiate the link. It was also aware of the argument, advanced by the Law Society and others, that FRCs had been set on a basis which did not take into account the cost of referral fees; that not all solicitors currently pay referral fees; and that the abolition of referral fees may cause some solicitors to spend more on advertising as an alternative method of attracting work, or to spend more time on initial case sifting.
23. However, from an early stage, the Government preferred Lord Justice Jackson's view that there was a link between the referral fees paid by many (though not all) solicitors to obtain work and the high costs of litigation. Whatever the method by which current FRCs had been calculated, they were sufficient to enable those solicitors to operate commercially in any environment in which many (though not all) of them paid referral fees. The abolition of these fees would therefore reduce the costs incurred by claimant solicitors to some degree.
24. The Government decided in principle, in the autumn of 2011, that the abolition of referral fees should lead to a reduction in FRCs. On 14 February 2012, following an insurance summit held at No.10 Downing Street, a commitment in principle to reduce FRCs was announced. Further work was then undertaken to gather evidence on the appropriate level of FRCs.
25. A number of sources, including the Jackson Report and the LSB's research, suggest that personal injury referral fees generally cost those solicitors who pay them between £600-£800, implying a cost of around £700 on average for those solicitors. There is no single representative database capturing all such referral fees.
26. If, then, the referral fees paid by solicitors to claims management firms add costs in the way suggested in the referral fee Impact Assessment⁵, it is appropriate that a review of FRCs should consider the effect of reducing those costs to take account of the non-payment of referral fees after LASPO implementation.

² "Review of Civil Litigation Costs: Final Report" – the Right Honourable Lord Justice Jackson – TSO December 2009 p.xvii para. 2.5

³ "Referral fees, referral arrangements and fee sharing" – Discussion Document on the regulatory treatment of referral fees, referral arrangements and fee sharing – Legal Services Board: September 2010

⁴ "Referral fees, referral arrangements and fee sharing" – Decision Document – Legal Services Board: May 2011

⁵ Cumulative Jackson Proposals Impact Assessment – Ministry of Justice: 28 June 2012.

www.justice.gov.uk/legislation/bills-and-acts/acts/legal-aid-and-sentencing-act/laspo-background-information

27. Information obtained from the Call for Evidence suggested that, on average, somewhere between 4 hours and 10 hours legal work might be involved in these types of claim (with defendant representatives suggesting lower figures and claimant groups suggesting higher ones). The legal work involved relates to lower value cases where liability has been admitted and where the value of injuries may be relatively clear and subject to relatively less variation and uncertainty. Fixed costs of £500 for stages 1 plus 2 are equivalent to around 7 to 8 hours work at the civil legal aid hourly rates for county court preparation and attendance. In light of this, the MoJ considered that the figure of £500 was a reasonable basis for consultation (see **Annex B Table 1**).

Consultation responses

Referral fees

28. The majority of claimant respondents were concerned that the Government continues to draw conclusions about the link between referral fees and lawyers' costs which they believe are unsound partly because many firms do not pay referral fees in any event. Respondents argued that marketing costs are a necessary factor in a viable business model and that the proposed reduction in FRCs is likely to hamper firms in attracting business through marketing, as they will not be able to afford to do so.

Minimum amount of work required to process claims

29. Claimant respondents argued that the proposed reforms would not enable lawyers to conduct the minimum amount of work required to take forward any claim. The Solicitors Regulation Authority requires solicitors to know the client; take instructions; investigate funding options; provide advice on funding; and carry out fairly extensive checks in relation to the claim. There is also a duty to manage client expectations and to keep the client updated throughout the life of the claim. All this, it was argued, is necessary work in addition to advising the client on the merits of the claim and the value of the compensation they can expect to receive, and gathering the necessary evidence. Some respondents, including the CJC, argued that the proposed level of FRCs may be unrealistic to enable all this work to be completed to current professional standards.

30. It was also argued that there is a danger that the work will be devolved to personnel who do not have appropriate or sufficient training, thereby leading to an increase in negligence claims.

31. Conversely, defendants and insurers, including the ABI, argued that the current FRCs do not adequately reflect the efficiencies of conducting modern litigation, including the Portal and protocols but also taking into account technology, consolidation of the legal market, off shoring and modern communication methods which reduce the time and cost required as compared with the past.

Access to Justice and reduction in the quality of legal advice

32. Claimant representatives argued that the proposed reforms will result in a reduction in the number of solicitors operating in this area of business and, in consequence, will restrict access to justice for genuine accident victims. It was felt likely that defendant insurers or claims management companies will seek to fill this gap for their own gain (for example by way of “third party capture”, when an insurer deals directly with a person claiming against the insurer’s policy-holder), thereby putting the defendant insurer in a direct conflict of interest by representing both the defendant and claimant in the same case. It was also argued that self-representation is likely to increase dramatically, leading to increased pressures upon the system itself, and particularly the courts.
33. Claimant solicitors were concerned that access to independent legal advice should not be eroded. They argued that it was vital that insurers should not be allowed to settle claims directly and that it could not be in the best interests of injured persons unable to assess what their claim is worth to allow insurers to do so.
34. Concern was also expressed that, because of the pressure created by the reduction in costs, claimant solicitors might have an incentive to settle claims when it was not in clients’ best interests to do so. Conversely, it is possible that when claimant solicitors are working on conditional fee agreements or damages based agreements, they may have some incentive to ensure the damages are as high as possible.

Stage 1 payment

35. Defendants considered sensible the proposed change to the timing of the payment of stage 1 costs (from the defendant response to the claim notification form in stage 1 to the point at which the stage 2 settlement pack is submitted to the defendant) and believed that it would eliminate the practice of claimants taking no further action in claims once the stage 1 FRC has been received.

Alternative cost proposals

36. Six proposals were put forward for higher FRCs than those suggested in the consultation, largely from the claimant side. Their proposals are summarised in **Annex B Table 2**.
37. Eight proposals were put forward by insurers for lower FRCs than those suggested in the consultation. The proposals are summarised in **Annex B Table 3**.
 - The consultation proposed a total FRC of £500 for a claim settling at stage 2.
 - The FRCs proposed in those six proposals suggesting a higher figure ranged from £750–1,650. Two proposals were from representative bodies, and their proposed FRC was an average of £1,250.
 - The FRCs proposed in those eight proposals suggesting a lower figure ranged from £150-£500. Two proposals were put forward by a representative body - of £150 and £350 as an upper cap.

Government response

38. Having considered the evidence provided in consultation responses, the Government believes that the figures on which it consulted are a sound basis on which to proceed, based on the best evidence we have.

Referral fees

39. The Government does not accept the argument advanced by some claimant lawyers that, because the current FRC rates were calculated without any reference to referral or marketing fees, FRCs should not be reduced on account of the referral fee ban.
40. The Government considers that it would have been commercially illogical for claimant lawyers to have negotiated FRC levels which did not enable them to meet their costs (including referral fees). Even if referral fees were not separately identified as a cost during the negotiations, it would be wrong to deduce from this that they were not accounted for at all. The negotiations were conducted on the basis of estimates of the length of time that preparation of a case would take, multiplied by the “guideline hourly rate” or “GHR”. The GHR broadly reflected the true average cost of conducting a case for a claimant solicitor. It had historically been somewhat above the average level of fees charged by defendant lawyers. In their 2010 report, the Advisory Committee on Civil Costs found that the difference between claimant and defendant solicitors’ rates could be accounted for by extra marketing costs or referral fees.⁶
41. In any event, whatever the basis of the negotiations leading to the setting of FRCs at their current level, the FRCs set as a result of those negotiations were evidently set at a level which enabled the average claimant solicitors’ firm to cover its outgoings and operate commercially, even though many of these firms paid referral fees. That being so, it is reasonable to assume that FRCs could now be reduced – whilst still enabling these solicitors’ firms to operate commercially – once referral fees are abolished, unless there was evidence to suggest that the abolition of referral fees would lead to an inevitable and commensurate increase in other costs, such as advertising.
42. Claimant representatives have suggested that those firms which do not pay referral fees may pay up to £500 in marketing costs, the implication being that such a sum should be factored into the revised FRCs (i.e. that they should be increased to reflect the marketing costs which would accrue once referral fees are banned). The Government notes Lord Justice Jackson’s view that *“I accept that solicitors would still pay marketing costs if referral fees were banned, but those marketing costs would no longer be driven upwards by the ratcheting effect of referral fees. I see considerable force in the arguments advanced during Phase 2 that referral fees have driven up normal marketing costs.”*⁷ The Government considers that marketing costs were likely to have been treated in the same way in the original costs negotiations as referral fees.
43. The Government therefore considers that the referral fee ban provides reasonable grounds for considering that current FRCs should be lower in future.

⁶ Advisory Committee on Civil Costs, *“Guideline Hourly Rates – Conclusions”*, March 2010

⁷ *“Review of Civil Litigation Costs: Final Report”* – the Right Honourable Lord Justice Jackson – TSO December 2009 p. 204 para. 4.8

Minimum amount of work

44. Insufficient evidence was provided in consultation responses to suggest that the consultation proposal of fixed costs of £500 for stages 1 plus 2 does not accurately enough reflect the amount and nature of work required to deal with most straightforward, liability admitted claims which are under £10,000 in value for the reasons set out above.

Access to Justice and reduction in the quality of legal advice

45. We have considered the potential equality impacts raised by respondents in relation to the FRC proposals as a whole, specifically in relation to access to justice. Some respondents, including claimant lawyers, the AJAG and others, believed that the proposed reforms will restrict access to justice for genuine accident victims, as the result of a reduction in the number of solicitors operating in this area of business. It should be remembered that when the provisions in Part 2 of the LASPO Act 2012 are enacted, success fees in personal injury case will no longer be limited to 12.5%. Solicitors will be free to negotiate with their client for success fees of up to 25% of damages for pain, suffering and loss of amenity and historic pecuniary loss. There may also be wider use of Damages Based Agreements. The Government believes that this could lead to more competitiveness and flexibility in the market and therefore does not agree that it will be more difficult to obtain legal advice in this field in the future.
46. Some respondents also felt that the proposals were discriminatory as they are likely to restrict access to justice for Black and Minority Ethnic (BME) claimants for whom English is not the primary language and whose claims might therefore take longer to process, because claimant solicitors might be unlikely to be willing to run such cases at a loss, and because it is less likely that such claimants would be able to represent themselves. However, the Government does not accept that such claimants will be at a disadvantage under these proposals. The ability of claimants to negotiate success fees (for which they are liable) as part of arranging their legal advice is in line with the general policy, as advanced by Lord Justice Jackson, that it is right that claimants have an interest in the costs incurred on their behalf. This is absent from the current regime.
47. The Government considers that no evidence was presented to support the suggestion that claimants may feel they cannot pursue a claim unaided and will abandon their claim, or will attempt to represent themselves as litigants in person. Neither was evidence presented to support the premise that a provider could not be found, or that they would be inadequate in future, or not worth engaging.
48. The Government does not accept the argument advanced by claimant lawyers and claimant organisations that reducing FRCs may make it more difficult for a claimant to obtain a lawyer to pursue their claim and therefore may reduce access to justice. The Government considers that claimant lawyers remaining in the market will be likely to take on the cases left by any who have chosen to exit. Nor does the Government agree that claimants might find it harder to find a provider since it considers that, in the likely operation of the market, remaining providers will be no less easy to identify, especially given the nature of modern communications media. In addition, many claimants are likely to have before the event insurance taken out alongside their motor insurance policy. Legal representation should continue to be available as now for such claimants.

49. The Government does not agree that the reforms will lead to a material reduction in the quality of legal advice or in claimant customer service. Professional standards will continue to apply to claimant solicitors and the proposed FRCs are considered to cover the costs of efficient and effective claimant solicitors.
50. The Government does not accept that claimants may feel they cannot pursue a claim unaided and will abandon their claim, or will attempt to represent themselves as litigants in person. The Government considers that there is no particular foundation for this potential behavioural response by claimants.

RTA claims between £10,000 and £25,000

Government proposals

51. The FRC consultation figure of £800 for stages 1 plus 2 for claims between £10,001 and £25,000 was also informed by the Call for Evidence. Those responses that provided figures suggested that it would be reasonable to assume that these higher value RTA claims might involve around two-thirds more work than lower value RTA claims. Costs of £800 for stages 1 plus 2 are equivalent to around 12 to 13 hours work paid at civil legal aid rates for county court preparation and attendance. The Government considered that this was a reasonable basis for consultation.
52. Overall, the FRCs for RTA claims between £10,000 and £25,000 in the consultation were as set out in **Annex B Table 4**.

Consultation response

53. Claimant solicitors and others argued that access to independent advice on quantum must be available from Counsel if required, particularly in relation to claims towards the higher end of the extended scheme. They cited the fact that Professor Fenn's report⁸ on the existing scheme's first year of operation has already demonstrated a reduction in the level of damages awarded.

Stage 1

54. Claimant solicitors pointed out that professional indemnity insurance costs for higher value claims need to be taken into account as such claims involve significant potential risk. They are also more complex and require the solicitor to spend more time with the client on issues such as injuries and quantum, early rehabilitation intervention, care and assistance and transport needs. It is also necessary to factor in time costs relating to, amongst other things, the need for at least one client visit; obtaining evidence from other witnesses; dealing with possible interim payments; and gathering further medical evidence. It was felt that £200 was not a reasonable payment for this, and that £500 would be a more realistic figure.

Stage 2

55. In addition to the points raised in relation to **RTA claims below £10,000** (see above), claimants pointed out that higher value claims would be likely to require more medical evidence and a generally greater need for the client to have closer contact with the solicitor. Claimants suggested a figure of £1,500 for this work, giving a total of £2,000 for stages 1 and 2.

Alternative cost proposals

56. Three proposals, mainly from the claimant side, suggested higher FRCs than those suggested in the consultation. The proposals are summarised in **Annex B Table 5**.

⁸ www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/evaluating-traffic-accident-process.pdf

57. Six proposals were put forward from insurers suggesting lower FRCs than those suggested in the consultation. The proposals are summarised in **Annex B Table 6**.

- The consultation proposed an FRC of £800 for a claim settling at stage 2.
- The FRCs suggested by those three proposals suggesting a higher figure ranged from £1,100-£2,100. One response was from a representative body, which proposed £2,100.
- The FRCs suggested by those six proposals suggesting a lower figure ranged from £425-£800. Two proposals were put forward from a representative body - of £425 and £750 as an upper cap.

Government response

58. Insufficient evidence was provided in consultation responses to suggest that the consultation proposal of fixed costs of £800 for stages 1 plus 2 does not sufficiently accurately reflect the amount and nature of work required to deal with most of these types of cases, and the Government believes that setting costs at this level is a sound basis on which to proceed.

59. The Government does not accept, for the same reasons as set out above, the arguments advanced by claimant lawyers or claimant organisations in relation to access to justice and claimant difficulty in finding a provider.

60. The Government does, however, consider there to be greater force in the argument that some cases in the higher bracket (£10,001 to £25,000) would benefit from an opinion on quantum from Counsel or a specialist solicitor in order to ensure that claimants in these higher value cases have access to independent advice in this area if required. The Government accepts that there will be circumstances in such cases where expert opinion is merited and should be recoverable as a fixed cost where (like an expert report) it can be justified.

Employers' liability and public liability claims: £1,000-£10,000 AND £10,000-£25,000

Government proposals

61. For EL and PL claims, there is a paucity of available information - including from stakeholder engagement activity - on the amount of work that is necessary for these types of claim. For cases between £1,000 and £10,000, costs of £900 for stage 1 plus 2 are equivalent to around 15 hours' work paid at civil legal aid rates for county court preparation and attendance. For cases between £10,000 and £25,000, costs of £1,600 for stage 1 plus 2 are equivalent to around 26 hours' work at civil legal aid rates for county court preparation and attendance. Information on the number of hours worked drew from data provided by a legal costs consultant to the Government as part of the Jackson review. The Government considered that these were a reasonable basis for consultation.
62. The consultation proposals are set out in **Annex B Table 7**.

Consultation response

63. Claimant solicitors acknowledged that there is a qualitative difference between EL/PL claims and RTA claims. However, although they therefore agreed that there should be a differential in the respective FRCs, it was argued that the proposed figures were too low overall. Claimants were concerned about the importance of setting this differential appropriately and felt this could only be properly achieved through an independently mediated, negotiated agreement, as with the existing RTA scheme costs.
64. Moreover, consultation on FRCs was argued to be premature in advance of the publication of the relevant protocols.
65. Claimant solicitors also made the point that, even within a liability admitted scheme, EL/PL cases are likely to be less standardised than RTA claims - involving complex types of injury, more issues of causation, and different heads of special damages.
66. Five respondents put forward proposals for higher FRCs than suggested in the consultation, mainly from the claimant side. The proposals are summarised in **Annex B Table 8** for £1,000-£10,000 and **Annex B Table 9** for £10,000-£25,000. (Differences between EL and PL figures are stated, where applicable).
67. Defendants did not consider there to be a qualitative difference between cases of, for example, £5,000 and £12,500 and therefore considered that there should be no differential in FRCs for RTA and EL/PL at this level. Moreover, they argued that any increase in FRCs for higher value claims should be minimal.
68. Similarly, defendant representatives did not consider the proposed extended timeframes for EL/PL cases to be justified and felt that it would only serve to cause unnecessary delays in the processing and settlement of claims.

Proposed rate for EL/PL claims at stage 3

69. Claimant representatives pointed out that there is no fundamental difference at stage 3 for liability admitted claims in terms of type of case, as the consultation appeared to assume. A difference does arise, however, in terms of value of claim. In cases above £10,000, more evidence will be required, and must be presented to the court when there is an oral hearing. The time taken to conduct this hearing will therefore be longer and the advocacy fee should be adjusted upwards to reflect that.
70. Defendants supported the proposed FRC at stage 3. In any event, they felt that the protocol process should work to encourage a negotiated settlement prior to claims entering stage 3, and believed it was important to avoid the introduction of incentives that could encourage increased litigation rates.

Alternative cost proposals

71. Five respondents put forward proposals for higher FRCs than suggested in the consultation, mainly from the claimant side. Some respondents also gave an indication of estimated hours work. The proposals are summarised in **Annex B Table 8** for £1,000-£10,000 and **Annex B Table 9** for £10,001-£25,000. (Differences between EL and PL figures are stated, where applicable).
72. Eight respondents put forward proposals for lower FRCs. The proposals are summarised in the tables below. **Annex B Table 10** for £1,000-£10,000 and **Annex B Table 11** for £10,001-£25,000. (Differences between EL and PL figures are stated, where applicable).
73. The key points were:
- The consultation proposed an FRC of £900 for an EL or PL claim between £1,000-£10,000 settling at stage 2 in the scheme.
 - For EL/PL claims between £1,000-£10,000, the FRCs put forward in five proposals suggesting a higher figure ranged from £1,600-£2,934 (EL) and £1,600-£3,258 (PL). One response was from a representative body, which proposed £1,900.
 - For EL/PL claims between £1,000-£10,000, the FRCs put forward in eight proposals suggesting a lower figure ranged from £150-£600. Two proposals were put forward from a representative body - of £150 and £350 as an upper cap.
 - The consultation proposed a FRC of £1,600 for an EL or PL claim between £10,001-£25,000 settling at stage 2 in the scheme.
 - For EL/PL claims between £10,001-£25,000, the FRCs put forward in two proposals suggesting a higher figure ranged from £2,100-£3,500. One response was from a representative body, which proposed £3,500.
 - For EL/PL claims between £10,000-£25,000, the FRCs put forward in six proposals suggesting a lower figure ranged from £425-£900. Two proposals were put forward by a representative body - of £425 and £750 as an upper cap.

Government response

74. As can be seen from the annexed tables, the figures on which the Government consulted are within the parameters advanced by the opposing views of claimants and defendants. Very little hard evidence has been provided by either side to persuade the Government that it should depart from the figures consulted upon which it considers represent a sound basis on which to proceed.
75. The Government remains of the view that claims arising out of EL and PL have the potential to be more diverse and of greater complexity than RTA cases and that more work will be required by claimant lawyers, which, in turn, justify a higher level of FRCs in such cases. The Government also recognises that the introduction of a protocol and fixed costs is completely new to this area of work so affected firms may need longer to adjust to the fixed costs regime and therefore require a 'softer landing' on implementation. As a result the Government intends to implement the protocols and accompanying costs in these cases, alongside the extension of the RTA scheme to cases of more than £10,000, in July 2013, rather than in April as with the reduction in FRCs in the existing scheme. This will also give Claims Portal Ltd more time to make the necessary changes.
76. The CPRC decided, on 22 October 2012, to consult on both draft protocols for the extended scheme. This consultation was targeted at those who had responded to the MoJ's earlier Call for Evidence and closed on 23 November 2012. Views received have been taken into account by the CPRC in developing the protocols. It is therefore not accurate to suggest that the FRC consultation took place in isolation from information on the likely content of the protocols.

RTA, EL and PL claims that exit the protocol process

Government proposals

77. For claims that exit the scheme, the Government considered that the approach taken in Appendix 5 to the Jackson Report provided a reasonable basis for the consultation proposals. These 2009 cost figures were adjusted for inflation and were reduced to account for the ban on referral fees which comes into effect in April 2013.
78. The FRCs for RTA claims between £1,000 and £5,000 that settle pre-issue was also modified. This was in order to address a policy objective to ensure that costs outside the protocol should not be lower than inside the scheme and hence that an incentive would not be generated to exit the protocol purely on cost grounds.
79. Based on these updates, the FRCs for claims that exit the protocol process included in the consultation are in **Annex B Table 13**.

Consultation response

80. Claimant solicitors do not consider fixing costs to be the solution to managing costs “outside” the protocols, and argue that this will simply prevent claimants from being able successfully to bring difficult cases. They felt that, where costs are fixed but the process is not defined or predictable, the only cost savings would be those that are driven by claimant lawyers in an attempt to remain profitable. They considered that without ensuring that FRCs are linked to the process, the system will be open to defendant abuse.
81. Claimant solicitors believed that the incentive on the defendant to narrow the issues in the case would be lost where claimant costs are fixed. Compliance by defendants with the existing protocol is already considered to be a problem, and it was argued that if FRCs are introduced, there will be even less of an incentive for defendant insurers to comply.
82. Claimant solicitors argued that it was wrong in principle to fix claimants’ costs without also fixing those of defendants. They pointed out that the proposals are based solely on general claimants’ costs data which excluded certain categories of public liability cases and did not include information on case types and details of claims. In addition, it was argued that the original data produced for the purposes of populating the table in Annex 5 to the Jackson Report did not take into account the work being done on the claims process at that time.
83. As previously noted, claimant solicitors argued that, as the proposed figures were based on those contained in the final Jackson report, they did not take into account the payment or receipt of referral fees. Furthermore, it was argued that there was no evidence of inflation having been taken into account as stated, or of how such an adjustment was calculated.

84. Claimant solicitors also pointed out that the figures in the Jackson Report which formed the basis for the matrix consulted upon did not include EL disease (ELD) claims. Because ELD claims are, with some exceptions, included in the EL/PL protocol, ELD cases which exit the protocol will fall into the matrix of FRC above. Claimant solicitors argued that because of the additional complexity of disease cases as compared to accident cases, the former type falling into a table based on costs derived from cases of the latter type would be unfair.
85. Claimant solicitors felt that the proposed scheme outside the protocols made the assumption that both claimant solicitor and defendant insurer have the choice to exit the protocols. Claimant solicitors considered, however, that it is invariably the defendant insurer's choice to do so.
86. Conversely, claimant solicitors expressed concern at the clear incentive in the proposed FRCs for defendant insurers to keep claims within the protocols. This, it was argued, could lead to inappropriate admissions of liability by insurers, which would in turn drive inappropriate behaviour from opportunistic claimants on the basis that insurers may be making decisions on a commercial, rather than a legal, basis.
87. Respondents were unclear as to whether the proposals are intended to apply to multi-track, as well as fast track, cases between £10,001 and £25,000. There was a clear view (while still arguing that the proposed levels of FRCs were too low in any event) that any proposals should only apply to fast track cases. It has always been the Government's intention that these proposals apply only to cases in the fast track and if a case falling out of the protocols is judicially determined to be suitable for the multi-track, normal multi-track costs rules will apply.
88. Defendants considered that claimants are likely to take claims out of the protocols because of the significant and, in their view, disproportionate disparity between the proposed FRCs inside and outside the process. If, following preliminary investigations, the defendant is unable to admit liability, this is likely to be treated as a catalyst for the issue of proceedings under the Pre-Action Protocol for Personal Injury Claims. In a claim for damages of £2,500, for example, costs would then increase from £500 to £1,660 on issue, notwithstanding the fact that the claim may well settle shortly thereafter and with minimal additional work. It was argued that this disparity would drive behaviours towards litigation. This was also felt to be the case when considering pre and post litigation costs in Annex B to Helen Grant's consultation letter of 19 November 2012 itself where, for example, in an EL claim for damages of £2,500, the costs would increase from £1,387.50 to £3,130 on issue.
89. Defendants expressed the view that it would be better for all fast track claims to be subject to a table of FRCs and that these should be lower than those consulted upon. Defendants pointed out that numbers of ELD cases have risen considerably in recent years. The ABI pointed to data obtained from its members indicating a rise in deafness claims of up to 300% in the past 18 months (prior to submission of its response). Defendants felt that ELD claims falling into the FRC matrix which were regarded as too complex would be able to invoke the escape provisions and, if litigation proceeded, the case should be allocated to the multi-track, and considered that such safeguards allowed for a FRC regime across fast track personal injury claims.

90. More broadly, defendant firms find it uneconomic to handle high volume fast track work in London, so firms with London offices transfer this work to more cost effective centres. However, it was argued that the proposed uplift in FRCs for London firms where cases fall out of the protocol would create an incentive for claimant practitioners to transfer work to London offices deliberately and unnecessarily, thereby undermining the objectives of saving costs and enhancing efficiency. This concern was also expressed by the CJC, who argued that any fee uplift should be limited to those claims which can properly be characterised as London claims.

Alternative cost proposals

91. In general, there were no specific proposals from those supporting higher FRCs for claims that exit the scheme. Several respondents provided figures detailing average current costs at the pre- or post- issue stages, but these did not directly feed into any proposals. One respondent suggested a modified version of Annex B to the 19 November 2012 consultation letter, according to a different inflation rate and lower referral fee reduction (**Annex B Table 13**). Higher trial fees were also suggested. (**Annex B Table 13**).

92. Three defendant-side respondents, including a representative body, provided proposals for claims that exit the scheme, but all involved fixed components for each stage. This contrasts to the proposals included in the consultation where the matrix of FRCs included a fixed fee and a percentage element related to damages. The figures defendants put forward are significantly lower than those included in the consultation (**Annex B Tables 14 and 15**).

Government response

93. The Government is concerned to ensure that costs outside the protocols are controlled as effectively as those within them. Again the views of claimant solicitors and defendants are polarised with claimants generally objecting to the principle of FRCs outside the protocols at all; while defendants believe that the level of FRCs proposed is too high. The Government believes that it is important to introduce a FRC regime for cases exiting the protocols process, since the current system where cases which fall out can achieve costs in line with GHR has led to very high claimant costs. The Government believes that a system of fixed rates needs to be introduced alongside the protocol extensions in order to control claimant costs and the use of an adjusted version of the table in Annex 5 to the Jackson Report is regarded as being a sound basis on which to proceed.

94. In terms of defendant concerns about the London uplift, this provision is a general one in Part 45 of the Civil Procedure Rules and while the Government does not consider that any changes are necessary at this stage, the position will be monitored to see if such behavioural patterns exist or develop in a way that requires that the rule be reconsidered.

95. The Government does recognise the additional complexity of ELD claims. Where such cases remain within the protocol system and liability is admitted, there is no need for a different costs regime than that for other EL/PL cases. However, where ELD cases fall out of the protocol for whatever reason, the Government accepts the need to consider further what the correct costs regime should be. The Government acknowledges that table in Annex 5 to the Jackson Report, which was used as the basis for the figures consulted upon, did not cover costs data from ELD cases. The Government considers that there is a risk that the costs provided for cases falling out of the protocol may not be appropriate for ELD cases and it therefore proposes that disease claims which fall out of the protocol will be dealt with as they are currently, pending further consideration.

ANNEX A

Fixed recoverable costs for claims within the rta and el/pl protocols

	Claims of £1k-£10k			Claims of £10k-£25k		
	Stage 1	Stage 2	Total	Stage 1	Stage 2	Total
RTA claims	£200	£300	£500	£200	£600	£800
EL/PL claims	£300	£600	£900	£300	£1,300	£1,600

Fixed recoverable costs for RTA, EL and PL claims falling out of the RTA and EL/PL protocols

	Pre issue £1,000-£5,000	Pre Issue £5,001-£10,000	Pre Issue £10,001-£25,000	Issued – Post issue Pre Allocation	Issued – Post allocation pre listing	Issued – Post listing pre trial	Trial - Advocacy Fee
	Case Settles before Issue	Case Settles before Issue	Case Settles before Issue				
Road Traffic Accident							
Fixed Costs	Greater of £550 or £100 + 20% of Damages	£1,100 +15% of Damages over £5k	£1,930 + 10% of Damages over £10k	£1,160 + 20% of Damages	£1,880 + 20% of Damages	£2,655 + 20% of Damages	£485 (to £3,000) £690 (£3-10,000) £1,035 (£10-15,000) £1,650 (£15,000+)
Escape	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na
Employers Liability							
Fixed Costs	£950 + 17.5% of Damages	£1,855 +12.5% of Damages over £5k	£2,500 + 10% of Damages over £10k	£2,630 + 20% of Damages	£3,350 + 25% of Damages	£4,280 + 30% of Damages	£485 (to £3,000) £690 (£3-10,000) £1,035 (£10-15,000) £1,650 (£15,000+)
Escape	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na
Public Liability							
Fixed Costs	£950 + 17.5% of Damages	£1,855 +10% of Damages over £5k	£2,370 + 10% of Damages over £10k	£2,450 + 17.5% of Damages	£3,065 + 22.5% of Damages	£3,790 + 27.5% of Damages	£485 (to £3,000) £690 (£3-10,000) £1,035 (£10-15,000) £1,650 (£15,000+)
Escape	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na

ANNEX B

Summary of proposed alternative costs provided in consultation responses

Introduction

This annex provides detail of the specific proposals put forward in responses in relation to: i) what the FRCs should be within or outside of the Protocols, and ii) the average number of hours work required to process a claim through the Protocols.

Some respondents provided more than one proposal, and others endorsed proposals made by other respondents. The purpose of this annex is to illustrate the range of proposals elicited, and as such does not capture each time a proposal was repeated. In light of this, the calculated averages in the tables which follow do not reflect the total number of responses, but rather reflect an average of the different proposals provided.

The information represented in this annex has been interpreted as accurately as possible, however, in some instances, it was necessary to draw a conclusion as to where the proposals best fitted into the framework of this response document. For example, not all information provided mapped exactly into the relevant damages bands and Protocol framework. For this reason, information quoting current costs, as opposed to providing specific proposals, has generally not been included in this annex.

Analysis

Table 1: Government FRCs included in consultation for RTA claims £1k-£10k in the scheme

	Stage 1 ¹	Stage 2 ¹	Stage 1 and 2 TOTAL	Stage 3
RTA claims £1-£10k in scheme	£200	£300	£500	As currently: £250 if paper hearing, £500 if oral hearing.

¹ The proposed split between stage 1 and 2 fees reflects the one-third/two-thirds split currently, although the figures have been rounded.

Table 2: Proposals from those supporting higher FRCs for RTA claims £1k-£10k in the scheme

Respondent	Stage 1 proposed FRC (£)	Stage 2 proposed FRC (£)	TOTAL stage 1 and 2 proposed FRC (£)	Stage 3 proposed FRC (£)	Estimated hours work for stages 1 and 2 (to nearest 30 mins)
Easthams Solicitors	400	800	1,200	n/a	Around 8.5 (based on sum of tasks)
Horwich Farrelly Solicitors	300	450	750	n/a	n/a
MASS	400	800	1,200	n/a	n/a
National Accident Helpline	n/a	n/a	n/a	n/a	9
Law Society	450	850	1,300	275/550	10
Kings Chambers	n/a	n/a	1,650 (up to £5,000)	500/500	10 (up to £5,000)
Leigh Day & Co Solicitors	250	800	1,050	n/a	n/a
APIL	n/a	n/a	n/a	n/a	10
Jefferies Solicitors	n/a	n/a	n/a	n/a	10
Unweighted average (mean)	360	740	1,192	388/525	9.5
Min	250	450	750	275/500	8.5
Max	450	850	1,650	500/550	10
Number of proposals	5	5	6	2	6

Table 3: Proposals from those supporting lower FRCs for RTA claims £1k-£10k in the scheme

Respondent	Stage 1 proposed FRC (£)	Stage 2 proposed FRC (£)	TOTAL stage 1 and 2 proposed FRC (£)	Stage 3 proposed FRC (£)	Estimated hours work for stages 1 and 2 (to nearest 30 mins)
ABI proposed	50	100	150	75/350	3
ABI upper	125	225	350	125/500	n/a
National Farmers Union Insurers	150	250	400	250/500	n/a
AXA Insurance 1	100	200	300	75/250	n/a
AXA Insurance 2	200	300	500	250/500	n/a
Direct Line Insurance 1	75	180	255	175/400	5
Direct Line Insurance 2	50	165	215	175/400	n/a
RSA group	n/a	n/a	n/a	n/a	3
Groupama Insurance	175	225	400	n/a	3
Unweighted average (mean)	116	206	321	161/414	4
Min	50	100	150	75/250	3
Max	200	300	500	250/500	5
Number of proposals	8	8	8	7	4

Table 4: Government FRCs included in consultation for RTA claims £10k-£25k in the scheme

	Stage 1 ¹	Stage 2 ²	Stage 1 and 2 TOTAL	Stage 3
RTA claims £10-£25k in scheme	£200	£600	£800	As currently: £250 if paper hearing, £500 if oral hearing.

¹ There was no a priori reason that the stage 1 costs should be higher than for lower value claims.

² Reflects the derived total minus stage 1 costs

Table 5: Proposals from those supporting higher FRCs for RTA claims £10k-£25k in the scheme

Respondent	Stage 1 proposed FRC (£)	Stage 2 proposed FRC (£)	TOTAL stage 1 and 2 proposed FRC (£)	Stage 3 proposed FRC (£)	Estimated hours work for stages 1 and 2 (to nearest 30 mins)
Horwich Farrelly Solicitors	300	800	1,100	n/a	n/a
Law Society	450	1,650	2,100	275/550	n/a
APIL	n/a	n/a	n/a	n/a	30
Beetenson & Gibbon Solicitors	n/a	n/a	n/a	n/a	48
Leigh Day & Co Solicitors	400	1,200	1,600	n/a	n/a
Unweighted average (mean)	383	1,217	1,600	275/550	39
Min	300	800	1,100	275/550	30
Max	450	1,650	2,100	275/550	48
Number of proposals	3	3	3	1	2

Table 6: Proposals from those supporting lower FRCs for RTA claims £10k-£25k in the scheme

Respondent	Stage 1 proposed FRC (£)	Stage 2 proposed FRC (£)	TOTAL stage 1 and 2 proposed FRC (£)	Stage 3 proposed FRC (£)	Estimated hours work for stages 1 and 2 (to nearest 30 mins)
ABI proposed	75	350	425	150/500	6.5
ABI upper	150	600	750	175/750	n/a
National Farmers Union Insurance	150	450	600	250/500	n/a
AXA Insurance	100	350	450	125/450	n/a
AXA Insurance 2 nd proposal	200	600	800	n/a	n/a
Groupama Insurance	175	600	775	n/a	n/a
Unweighted average (mean)	142	492	633	175/550	6.5
Min	75	350	425	125/500	6.5
Max	200	600	800	250/750	6.5
Number of proposals	6	6	6	4	1

Table 7: Government FRCs included in consultation for EL and PL claims in the scheme

	Stage 1	Stage 2	Stage 1 and 2 TOTAL	Stage 3
EL, PL £1k-£10k	£300 ¹	£600	£900	As currently: £250 if paper hearing, £500 if oral hearing.
EL, PL £10k-£25k	£300 ²	£1,300	£1,600	As currently: £250 if paper hearing, £500 if oral hearing.

¹ The proposed split between stage 1 and 2 fees reflects the one-third/two-thirds split currently

² There was no a priori reason that the stage 1 costs should be higher than for lower value claims

Table 8: Proposals from those supporting higher FRCs for EL/PL claims £1k-£10k in the scheme

Respondent	Stage 1 proposed FRC (£)	Stage 2 proposed FRC (£)	TOTAL stage 1 and 2 proposed FRC (£)	Stage 3 proposed FRC (£)	Estimated hours work for stages 1 and 2 (to nearest 30 mins)
Horwich Farrelly Solicitors	500	1,100	1,600	n/a	n/a
Unison	n/a	n/a	n/a	n/a	18 EL only
Law Society	600	1,300	1,900	275/500	27 EL 27 PL
Beestenson & Gibbon Solicitors	n/a	n/a	n/a	n/a	25 EL 25 PL
Glaisyers Solicitors LLP	n/a	n/a	1,846 / 3,258 (EL / PL)	n/a	n/a
Spencer Solicitors	n/a	n/a	n/a	n/a	30 EL 30 PL
MWR solicitors	n/a	n/a	2,212 (EL)	n/a	n/a
Thompson solicitors	n/a	n/a	2,934 (EL)	n/a	18 EL only
Unweighted average (mean): EL	550	1,200	2,098	275/500	22.8
Unweighted average (mean): PL	550	1,200	2,253	275/500	27
Min	500	1,100	1,600	275/500	18 (EL) 25 (PL)
Max	600	1,300	2,934 (EL) 3,258 (PL)	275/500	30
Number of proposals	2	2	5	1	5

Table 9: Proposals from those supporting higher FRCs for EL/PL claims £10k-£25k in the scheme

Respondent	Stage 1 proposed FRC (£)	Stage 2 proposed FRC (£)	TOTAL stage 1 and 2 proposed FRC (£)	Stage 3 proposed FRC (£)	Estimated hours work for stages 1 and 2 (to nearest 30 mins)
Horwich Farrelly Solicitors	500	1,600	2,100 (EL & PL)	n/a	n/a
Law Society	600	2,900	3,500 (EL & PL)	275/500	27 EL 27 PL
Unweighted average (mean): EL	550	2,250	2,800	275/500	27
Unweighted average (mean): PL	550	2,250	2,800	275/500	27
Min	550	1,600	2,100	275/500	27
Max	600	2,900	3,500	275/500	27
Number of proposals	2	2	2	1	1

Table 10: Proposals from those supporting lower FRCs for EL/PL claims £1k-£10k in the scheme

Respondent	Stage 1 proposed FRC (£) (EL/PL)	Stage 2 proposed FRC (£) (EL/PL)	TOTAL stage 1 and 2 proposed FRC (£) (EL/PL)	Stage 3 proposed FRC (£) (Paper/Hearing) Same for EL and PL	Estimated hours work for stages 1 and 2 (to nearest 30 mins)
RSA Group	n/a	n/a	n/a	n/a	4.5 EL and PL
ABI proposed	50	100	150	75/350	3
ABI upper	125	225	350	125/500	n/a
National Farmers Union insurers	150	350	500	250/500	n/a
AXA Insurance	100	200	300	75/250	n/a
AXA Insurance 2 nd suggestion	300	300	600	n/a	n/a
Direct Line Insurance 1	75	180	255	175/400	5
Direct Line Insurance 2	50	165	215	175/400	n/a
Groupama Insurance	175	225	400	n/a	3.5
Unweighted average (mean): EL	128	218	346	146/400	4
Unweighted average (mean): PL	128	218	346	146/400	4
Min	50	100	150	75/ 250	3
Max	300	350	600	250/500	5
Number of proposals	8	8	8	6	4

Table 11: Proposals from those supporting lower FRCs for EL/PL claims £10k-£25k in the scheme

Respondent	Stage 1 proposed FRC (£)	Stage 2 proposed FRC (£)	TOTAL stage 1 and 2 proposed FRC (£)	Stage 3 proposed FRC (£) (Paper/ Hearing)	Hours / hourly rates (if provided)
ABI proposed	75	350	425	150/500	6.5
ABI upper	150	600	750	175/750	n/a
National Farmers Union insurers	150	600	750	250/500	n/a
AXA Insurance	100	350	450	125/450	n/a
AXA Insurance (2 nd suggestion)	300	600	900	n/a	n/a
Groupama Insurance	175	600	775	n/a	n/a
Unweighted average (mean): EL	158	517	675	175/550	6.5
Unweighted average (mean): PL	158	517	675	175/550	6.5
Min	75	350	425	125/450	6.5
Max	300	600	900	250/750	6.5
Number of proposals	6	6	6	4	1

Table 12: Proposed FRCs included in consultation for claims that exit the scheme

	Pre issue £1,000- £5,000	Pre Issue £5,001- £10,000	Pre Issue £10,001- £25,000	Issued – Post issue Pre Allocation	Issued – Post allocation pre listing	Issued – Post listing pre trial	Trial - Advocacy Fee
	Case Settles before Issue	Case Settles before Issue	Case Settles before Issue				
Road Traffic Accident							
Fixed Costs	Greater of £550 or £100 + 20% of Damages	£1,100 +15% of Damages over £5k	£1,930 + 10% of Damages over £10k	£1,160 + 20% of Damages	£1,880 + 20% of Damages	£2,655 + 20% of Damages	£485 (to £3,000) £690 (£3-10,000) £1,035 (£10- 15,000) £1,650 (£15,000+)
Escape	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na
Employers Liability							
Fixed Costs	£950 + 17.5% of Damages	£1,855 +12.5% of Damages over £5k	£2,500 + 10% of Damages over £10k	£2,630 + 20% of Damages	£3,350 + 25% of Damages	£4,280 + 30% of Damages	£485 (to £3,000) £690 (£3-10,000) £1,035 (£10- 15,000) £1,650 (£15,000+)
Escape	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na
Public Liability							
Fixed Costs	£950 + 17.5% of Damages	£1,855 +10% of Damages over £5k	£2,370 + 10% of Damages over £10k	£2,450 + 17.5% of Damages	£3,065 + 22.5% of Damages	£3,790 + 27.5% of Damages	£485 (to £3,000) £690 (£3-10,000) £1,035 (£10- 15,000) £1,650 (£15,000+)
Escape	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na

Notes:

Base fees - in all cases increased by 12.5% where London firm as per CPR 45

Table 13: Proposals from those supporting higher out of portal costs for claims between £1k - £10k and £10k-£25k

Table 4 – PRE-TRIAL FEES ADJUSTED FOR INFLATION LESS £350 REFERRAL FEE

	Pre issue £1,000- £5,000	Pre Issue £5,001- £10,000	Pre Issue £10,001- £25,000	Issued – Post issue Pre Allocation	Issued – Post allocation pre listing	Issued – Post listing pre trial
	Case Settles before Issue	Case Settles before Issue	Case Settles before Issue			
Fenn Adjusted Fixed Costs (as above)	£900	£2010	£2850	£2010	£2800	£3650
Adjusted FRC taking referral fee into account	£550 or £100 + 20% of damages	£1660	£2500	£1660	£2450	£3300
Referral Fee Reduction	£350	£350	£350	£350	£350	£350
Fenn Adjusted Fixed Costs (as above))	£1790	£2770	£3440	£3580	£4400	£5355
Adjusted FRC taking referral fee into account	£1440	£2420	£3090	£3230	£4050	£5005
Referral Fee Reduction	£350	£350	£350	£350	£350	£350
Fenn Adjusted Fixed Costs (as above)	£1790	£2770	£3300	£3420	£4090	£4830
Adjusted FRC taking referral fee into account	£1440	£2420	£2950	£3070	£3740	£4480
Referral Fee Reduction	£350	£350	£350	£350	£350	£350

	Trial - Advocacy Fee	Proposed Trial - Advocacy Fee
		With inflation at 12% (i.e. Fenn figures + inflation)
Road Traffic Accident		
Fixed Costs	£485 (to £3,000) £890 (£3-10,000) £1,035 (£10- 15,000) £1,650 (£15,000+)	£545 (to £3,000) £775 (£3-10,000) £1160 (£10-15,000) £1850 (£15,000+)
Escape	na	
Employers Liability		
Fixed Costs	£485 (to £3,000) £890 (£3-10,000) £1,035 (£10- 15,000) £1,650 (£15,000+)	£545 (to £3,000) £775 (£3-10,000) £1160 (£10-15,000) £1850 (£15,000+)
Escape	na	
Public Liability		
Fixed Costs	£485 (to £3,000) £890 (£3-10,000) £1,035 (£10- 15,000) £1,650 (£15,000+)	£545 (to £3,000) £775 (£3-10,000) £1160 (£10-15,000) £1850 (£15,000+)
Escape	na	

Table 14: Proposals from those supporting lower RTA out of portal costs for claims between £1k - £10k and £10k-£25k

RTA									
	Pre- Issue		Post - Issue						
Respondent	£1k-£10k	£10k-£25k	Pre-allocation £1k-£10k	Post-allocation pre-listing £1k-£10k	Post-listing, pre trial £1k-£10k	Pre-allocation £10k-£25k	Post-allocation, pre-listing £10k-£25k	Post-listing, pre trial £10k-£25k	Trial Advocacy Fee
ABI	500	800	800	1,200	1,400	1,100	1,400	1,700	Agreed
National Farmers Union insurers	500	700	700	1,100	1,400	900	1,300	1,600	Agreed
AXA Insurance	500	500	800	1,200	1,400				
Insurer unweighted average	500	667	767	1,167	1,400	1,000	1,350	1,650	
Minimum	500	500	700	1,100	1,400	900	1,300	1,600	0
Max	500	800	800	1,200	1,400	1,100	1,400	1,700	0
Number of responses	3	3	3	3	3	2	2	2	0

Table 15: Proposals from those supporting lower EL and PL out of portal costs for claims between £1k - £10k and £10k-£25k.

EL and PL									
	Pre- Issue		Post - Issue						
Company	£1k-£10k	£10k-£25k	Pre-allocation £1k-£10k	Post-allocation, pre-listing £1k-£10k	Post-listing, pre trial £1k-£10k	Pre-allocation £10k-£25k	Post-allocation, pre-listing £10k-£25k	Post-listing, pre trial £10k-£25k	Trial Advocacy Fee
ABI	500	800	800	1,200	1,400	1,100	1,400	1,700	Agreed
National Farmers Union insurers	650	900	850	1,250	1,550	1,100	1,500	1,800	Agreed
AXA Insurance	500	500	800	1,200	1,400				See response
Insurer unweighted average	550	733	817	1,217	1,450	1,100	1,450	1,750	
Minimum	500	500	800	1,200	1,400	1,100	1,400	1,700	0
Max	650	900	850	1,250	1,550	1,100	1,500	1,800	0
Number of responses	3	3	3	3	3	2	2	2	0

ANNEX C

RESPONDENT COMPANIES AND ORGANISATIONS

Accident Advice Solicitors
Active Legal Limited
Adam Law Solicitors
ADF Law Solicitors
Aegis Legal
Aequitas Legal
Ageas Insurance Limited
Alarm UK
Allianz
AMT Lawyers
Andrew and Andrews Solicitors
Anthony Hordari Solicitors
Association of British Insurers
Association of Medical Reporting Organisations
Association of Personal Injury Lawyers
Association of Regulated Claims Management Companies
Association of Medical Reporting Organisations
Arlington Crown Ltd
ASDA
Ashton KCJ Solicitors
Ask Legal Solicitors
Atherton Godfrey Solicitors
Attwaters Solicitors
Aventus Law Solicitors
Aviva Insurance
AXA Insurance
Axiom Solicitors Limited
B.T.W. Solicitors
Baker Rees Injury Lawyers
Bakers Solicitors
Bakers Solicitors
Barcanwoodward Solicitors
Barflour Law
Barker Austin Solicitors
Barr Ellison Solicitors
Bartlett Solicitors
Barwells Solicitors
Beacon Law
Beecham Peacock LLP
Beetenson & Gibbon Solicitors
Benjamin Roberts Solicitors
Beor Wilson Lloyd
BG Solicitors
BGL Group
BGR Bloomers
BHP Law
Birchall Blackburn Solicitors
BL Law
Blackburn & Co Solicitors
Blackhurst Budd LLP Solicitors
BLM Law

BMCF
Bott & Co Solicitors
Boyes Turner Solicitors
BPS Law
Brachers Solicitors
British Vehicle Leasing Association
Browne Jacobson LLP
Canter Law Solicitors
Carbrooke Accident Management
Carpenters Law
Carr and Co Solicitors
CBI
Chadwick Lawrence Solicitors
Channon Solicitors
Chartered Institute of Legal Executives
City Lawyers
Civil Justice Council
Claimant Manager PI Firm
Clarke Willmot Solicitors
Clear Law Solicitors
Clough & Willis Solicitors
Coghlan Solicitors
Colemans-ctts LLP
Coles Miller Solicitors
Colins Solicitors
Complete Costs Limited
Consumer Justice Alliance
Coyne Learmonth LLP
CS Solicitors
Curtis Law Solicitors
Dac Beachcroft Solicitors
DAS Legal Expenses Insurance Company Limited
Davies Gribbin Solicitors
Davis Gregory Solicitors
DBS LAW Limited
DC Solicitors
Delta Legal
DGM Solicitors
Direct Line Group
DJM Law
Donoghue Solicitors
Dorian Solicitors
Douglas Scott Legal Recruitment
Dowse & Co.
Doyle Solicitors
Dunne & Gray LLP
Dutton Law
DWF LLP
EAD Solicitors
Easidrive.com
Easthams Solicitors Ltd
Eaton Smith Solicitors
Elsby Law
Emerald Law Solicitors
Emsleys Solicitors

Esure
Ewart Price Solicitors
Excell Legal
Express Solicitors
FDC Law
Feltchers Solicitors
Fentons Solicitors
Foley Solicitors
Follett Stock.Solicitors
Foot Anstey Solicitors
Ford Simey LLP
Forum of Insurance Lawyers
Foster Dean LLP
Furley Page Solicitors
G Lewis & Co, Solicitors
Gaby Hardwicke Solicitors
Gamlins Solicitors
Garden City Solicitors
Gardner Iliff and Dowding Solicitors
Garvins Solicitors
Garwyn
GDA Solicitors
Glaisyers Solicitors
Goldens Solicitors
Goodmans Law Solicitors
Gordon Dean Solicitors LLP
Gorman Hamilton Solicitors
Graham & Rosen, Solicitors
Graham Coffey & Co
Gray Law
Graysons Solicitors
Grievs Solicitors
Groupama Insurances
GT Law
Hallsalls Solicitors
Halton Solicitors
Handley Law Limited
Hansells Solicitors
Harding Evans
Hattons Law Solicitors
Healys Solicitors
Henmans Freeth LLP
Heslin Henreques Solicitors
Higgins & Sons
Hilary Meredith Solicitors Limited
Hillis Solicitors
Hodge Jones & Allen LLP
Holden & Co. LLP
Hopkins Solicitors LLP
Horwich Farrelly Solicitors
Hugh James Solicitors
Imperium Law
IMS Law
Inesons Solicitors
InjuryLawyers4u

Integrity Claims Management
Inter Resolve
Intergratum Law Solicitors
Irwin Mitchell LLP
Jackson Capstick Solicitors
Jefferies Solicitors
JMW Solicitors LLP
JNP Legal
Keoghs
Keystone Law
King Chambers Solicitors
Kippax Beaumont Lewis Solicitors
Kiteleys Solicitors
KTP Solicitors
KWLC (UK) Ltd
L A Steel Solicitors
Lacey Solicitors
Lamb & Co Solicitors
Lance Mason Solicitors
Law Society
Lees Solicitors
Legal Costs Specialists
Legal Minds
Leigh Day & Co Solicitors
Leo Abse and Cohen Solicitors
Levenes Employment Law
Lime Personal Injury Company
Linder Myers LLP
Liverpool Law Society
Lloyd's Market Association
Longden Walker & Renney Solicitors
Lopian Wagner Solicitors
Lyons Davidson Solicitors
Maddock Clarke Solicitors
Malcolm C Foy & Co, Solicitors
Malcom Foy
Margary & Miller Solicitors
Mark Thompson Law
Marsons Solicitors
Martin Kaye Solicitors
Mason Solicitors
Matrix Solicitors
McDonagh Solicitors
McManus Seddon Runhams Solicitors
Mellor Hargreaves Solicitors
Middelton Solicitors
Minster Law
Mir Solicitors LLP
MJP Personal Injury Ltd Solicitors
MM Solicitors
Mohindra Maini LLP
Mooneerams Solicitors
Moore Blatch
Morgan, Jones & Pett Solicitors
Morrish Solicitors

Motor Accident Solicitors Society
Motor Insurers Bureau
MP Law
MT and Co Solicitors
MTA Solicitors
MWN Law
National Accident Helpline
National Farmers Union Mutual
Nesbit Law Group
Nestor Partnership
New Law Solicitors
National Health Service Litigation Authority
NW Law
OH Parsons Solicitors
Optimum Law
Ormorods Solicitors & Advocates Ltd
Otterburn Legal Consulting LLP
P.R. Scully & Co Solicitors
PA Disputes
Paine-Legal
Pannone Solicitors
Parkerbird-Whiteley Solicitors
Parmar Law
Partner Coyne Learmonth
Pattinson Brewer Solicitors
PHC Law Ltd
Personal Injury Barristers Association
Poole Alcock Solicitors
Price Mears Solicitors
Pritchard Englefield
Proddow Mackay Solicitors LLP
Pro-legal
Pudsey Legal
Quality Solicitors
Raleys Solicitors
Real Law Solicitors
Recovery Assist
Ring Rose Law
Roberts Jackson Solicitors
Roland Robinsons and Fentons LLP
Ross Aldridge LLP
RSA Group
Russell & Russell Solicitors
Scott Rees & Co Solicitors
Self Employed Solicitors
Seth Lovis Solicitors
SGI Legal
Sharp Young and Pearce LLP
Shaw and Company Solicitors Limited
Sheldon Davidson Solicitors
Silks Solicitors
Simpkins & Co Solicitors
Simpson Millar LLP
Simpson Solicitors
Smith Jones Solicitors

Snipe Law
Spencers Solicitors
Steele Ford Newton Solicitors
Stephensons Solicitors
Sterling Solicitors
Tayntons LLP
TBI Law
The Bar Council/PIBA
The Clarke Partnership Solicitors
The Co-operative Banking Group
The Law Society
Thomas Eggar LLP
Thompsons Law
Thorney Crofts Solicitors
Thursfields LLP
Tilly Bailey & Irvine LLP
TM Law Solicitors
Tollers LLP
TPC Solicitors
TUC Union
Unison
Unite the Union
United Solicitors
Unity Street Chambers
Universal Law
United Shop Distributors and Allied Workers
Walker Morris Solicitors
Walker Smith Way Solicitors
Walton Mills Solicitors
Ward & Rider Solicitors
Waring & Co Solicitors
Watkins and Gunn Solicitors
Weightmans Solicitors
White Dalton Solicitors
Whitehead Monckton Solicitors
Williamson Solicitors LLP
Wilsons
Winn Solicitors
Withy King Solicitors
Wixted & Co Solicitors
Wolferstans
Woskow Brown Solicitors
Zurich Insurance

INDIVIDUAL RESPONDENTS

Adam Watkiss	Joanne Whittaker	Sarah Tawse
Adnan Adrees	Judith Copley	Stefan Cross
Adrian Chambers	Karen Burrows	Simon Bellamy
Ali Habib	Karen Walley	Simon Green
Alison Ireland	Katrina Brady	Steve Turner
Amander Hager	Keith Teare	Tasneem Qutbi
Andrea Saul	Kelly Andrea	Titten
Andrea Sellars	Kristina Varley	Tom Bradley
Andrew Moores	Laura Cooper	Toni Holcroft
Ashiq Patel	Laura-Marie Black	Tracey Mold
Barbara Shaw	Lee Stone	Wendy Newby
Billy Green	Louis Georgiou	Yvonne Reid
Carl Lavell	Louise Blondon	
Cathy King	Mandie Hager	
Chris Jones	Mary O'Brien	
Craig Fisher	Melanie Astbury	
Daniel Griffiths	Natalie Harper	
Dave Cain	Natalie Sansom	
David Mennell	Natasha Postma-Tonge	
David Burns	Nick Copley	
Elain Walton	Nick Martin	
Elizabeth Jordan	Nicola Formosa	
Helen Buckley	Parves Anwar	
Helen Gracie	Paul Phizz	
Hollie Morton	Paula Candish	
Joanne Broadhurst	Rachael Burgess	
Joanne Whittaker	Rebecca Bates	
Jonathon Crawford	Richard Andrews	