

Changes to the fixed recoverable costs regime

24 April 2024

The fixed recoverable costs (FRC) regime, which sets the amount of legal costs the winning party can claim from the losing party in civil litigation, was extended in October 2023. The FRC regime now applies across the fast track and includes a new intermediate track for simpler cases valued up to £100,000.

The FRC regime introduced significant changes and the Civil Procedure Rules Committee together with the Ministry of Justice have made further revisions to those rules (which come into force this month). Anybody providing in-house legal counsel to higher education institutions or involved in civil litigation for their organisation needs to make sure that they understand the FRC regime and these latest changes.

We've set out in the table below the main features of the FRC regime and the further revisions.

FRC regime

Are there any changes to Part 36 offers?	+
Can parties agree to disapply the FRC as part of a settlement?	+
Can the Court order costs that exceed the FRC?	+
Can you recover brief fees in late-settled cases?	+
Does FRC apply to clinical negligence claims?	+
Is there an increase to FRC due to inflation?	+
What are FRC?	+
What are the complexity bands?	+
What happens if a party has behaved unreasonably?	+
What is happening to the fast track?	+

What is the intermediate track?



When does the new FRC regime apply?



The FRC regime will cover a wide range of claims that higher education institutions face including general commercial claims for breach of contract, property claims (including claims for monetary relief such as claims for commercial rent arrears and terminal dilapidations claims), personal injury and discrimination claims.

The FRC regime should give parties much better visibility as to recoverable costs which in turn will inevitably inform decisions about whether to pursue/defend a claim. However, the courts approach to allocation and assignment of a complexity band currently remains a mystery.

Parties will only have visibility once decisions are reported. Once there is enough case law to predict the court's approach then litigants can expect greater certainty around costs, enabling them to carry out a better cost/benefit analysis at the outset.

Practically speaking, when assessing the impact of the new FRC regime, parties should also consider whether to amend their dispute resolution clauses to include any future disputes being expressly referred to arbitration and/or expert determination rather than to court.

Key contacts

Chloe Poskitt

Legal Director

chloe.poskitt@brownejacobson.com

+44 (0)115 934 2058

Leah Jones

Partner

leah.jones@brownejacobson.com

+44 (0)115 976 6550

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