

Liverpool Civil Law Costs News

The Interim Jackson Report

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The report was published on 8th May and is certainly nothing if not comprehensive, weighing in at over 600 pages. Regrettably, unlike most reports and consultation papers, there is no executive summary of what are, in the main, tentative proposals pending the phase 2 consultation which runs until 31st July and the publication of the final report by 31st December 2009. The report itself is available at www.judiciary.gov.uk.

The report addresses all aspects of funding of civil litigation in terms of both principle and procedure, including a comparative study of other European jurisdictions, including Scotland, Germany, France and the Netherlands. Going further afield there is detailed analysis of the civil costs regimes in Australia, New Zealand, the USA, Canada and perhaps less obviously the Eastern Caribbean, all of which I am sure would make for a good holiday read for the dedicated costs practitioner!

In broad terms the preliminary conclusions are as follows:

- Given the removal of the availability of legal aid for most civil actions, some form of payment by results system of funding i.e. conditional or contingency fees must exist in order to facilitate access to justice. The report does not therefore exclude the introduction of contingency fees.
- The most politically sensitive section of the report deals with court fees and concludes that it is wrong in principle for the system of civil justice to be funded by court fees alone rather than through general taxation.
- The overall thrust of the report assumes the retention of the “loser pays” principle, rejecting as being a step too far the introduction of one-way costs shifting i.e. a successful Claimant recovers their costs whilst a successful Defendant does not.
- There is criticism of the various interest groups and middlemen generally in the civil claims process, and whilst not preferring a specific method by which this could be achieved, advocates that removal of any of these layers of activity may be thought to be in the public interest.

Perhaps of most significant interest to costs practitioners are the relatively detailed proposals for the introduction of fixed profit costs for fast track cases. The proposals encompass road traffic accident, occupational disease, employers and public liability cases.

The scheme envisages a matrix based on Lord Woolf’s final report. Two potential models are provided in the report at pages 205 and 210.

The first, and most detailed matrix provides for base profit costs figures, divided into settlement pre-issue, post-issue but pre-allocation, post-allocation but pre-listing and any resolution of the dispute by settlement or trial thereafter. To those base costs are added a percentage of the damages recovered. A reduction to

those base fees is also suggested where there has been an early admission of liability (defined as being within the pre-action protocol response time of three months).

By way of example, the figures, based on data submitted by Professor Fenn, are as follows for RTA cases involving personal injury and not including additional work factors (those cases where there is a requirement for expert evidence over and above a single medical report):

Pre-issue settlement:

Base fee	£1365
Plus % of damages	12%
Minus early admission	£255

It is illustrative to compare the outcome under that matrix to existing fixed recoverable costs cases:

Damages	£2,000	£5,000	£10,000
Fixed recoverable costs	£1,200	£1,800	£2,550
Matrix with no early admission	£1,605	£1,965	£2,565
Matrix with early admission	£1,350	£1,710	£2,310

If the matrix were to be adopted in its present form, it can readily be seen that costs recovery is comparatively better under the matrix for the lower value cases and worse for the higher value cases, especially where an early admission of liability is made.

The post-issue figures are as follows:

Post-issue but pre-allocation settlement:

Base fee	£1,820
Plus % of damages	23%
Minus early admission	£385

So, costs recovery would be:

Damages	£2,000	£5,000	£10,000
No early admission	£2,280	£2,970	£4,120
Admission	£1,895	£2,585	£3,735

Post-allocation but pre-listing settlement:

Base fee	£2,354
Plus % of damages	23%
Minus early admission	£385

So, costs recovery would be:

Damages	£2,000	£5,000	£10,000
No early admission	£2,814	£3,504	£4,654
Admission	£2,429	£3,119	£4,269

Post-listing:

Base fee	£3,133
Plus % of damages	23%
Minus early admission	£385

So, costs recovery would be:

Damages	£2,000	£5,000	£10,000
No early admission	£3,593	£4,283	£5,433
Admission	£3,208	£3,898	£5,048

It will be noted therefore, that on a pure costs vs damages basis, at lower levels of settlement the costs are still disproportionate even with an early admission of liability.

The proposed system does not take account of Part 36 and does not provide for amounts for disbursements or Counsel (save for the existing fast track advocacy costs). Equally, there is no provision for fixing the costs of successful Defendants. Plainly, much work will have to be carried out to produce a workable scheme in due course.

More anecdotally, RCJ Wallace offered a more succinct solution to the perceived problems of civil costs at the end of a hearing last week. His comment (which was on tape!) was "abolish the indemnity principle, bring in contingency fees and b@#ger it".