

25 May 2019

FAO: Jake Exton (**by email and post**)  
Ministry of Justice  
102 Petty France  
London  
SW1H 9AJ

### **Consultation: Fixed Recoverable Costs (FRC)**

Dear Sirs,

We write further to the consultation paper issued by the MoJ on FRC. The CLSB issued an impact survey to the 688 Costs Lawyers it currently authorises and regulates. The outcome, based on responses received, is set out in this response.

The expected loss of costs law work will likely impact on the future viability of the CLSB and Costs Lawyer profession for reasons set out herein.

#### **Impact survey outcome**

##### **(i) Expected loss of work: Extending FRC to most fast-track cases including NIHL**

<b>% Expected loss of work</b>	<b>Lowest</b>	<b>Highest</b>	<b>Average</b>
Sole practitioner	Nil	10%	<b>1.6%</b>
Working for Costs law firm	Nil	95%	<b>15.62%</b>
Working for firm of Solicitors	Nil	50%	<b>7.63%</b>
		<b>Total average</b>	<b>8.28%</b>

**(ii) Expected loss of work: Assigning intermediate cases worth between £25,000 and £100,000 to an extended fast-track and applying FRC to those cases**

<b>% Expected loss of work</b>	<b>Lowest</b>	<b>Highest</b>	<b>Average</b>
Sole practitioner	Nil	80%	<b>30.84%</b>
Working for Costs law firm	20%	95%	<b>60.45%</b>
Working for firm of Solicitors	Nil	85%	<b>28.10%</b>
		<b>Total average</b>	<b>39.80%</b>

Based on the outcome of this survey, if proposals (i) and (ii) above were both brought in, it is estimated that 48% costs law work will be lost to the Costs Lawyer profession.

**(iii) Overall impact on work**

<b>Overall loss of work</b>	<b>% of respondents</b>
0 to 10%	20%
11 to 20%	2%
21 to 30%	11%
31 to 40%	9%
41 to 50%	9%
51 to 60%	7%
61 to 70%	9%
71 to 80%	13%
81 to 90%	9%
91 to 100%	11%

Based on the outcome of this survey, if proposals (i) and (ii) above were both brought in, 49% of current Costs Lawyers will lose 51% or more of their current work.

**(iv) Regulatory objectives threatened by the proposals**

We record below concerns raised in relation to regulatory objectives by the CLSB and the Costs Lawyer profession (in italics).

Protecting and promoting the public interest

A perfect storm has been created for the profession of the Costs Lawyer.

As identified above, the proposals would lead to a significant reduction of work for Costs Lawyers which will inevitably lead to a decrease in Costs Lawyer jobs and regulated Costs Lawyer numbers.

The ACL has estimated there are approx. 4,000 Law Costs Draftsmen, however there are only currently 688 qualified and CLSB regulated Costs Lawyers. Due to the small number looking to qualify as a Costs Lawyer in recent years, in October 2017 ACL Training advised the three-year qualification had become financially unviable. New entrance was therefore

suspended in November 2017. The CLSB invested two years' work in identifying a more flexible and cost-effective means of qualifying as a Costs Lawyer (Costs Lawyer Competence Assessment (CLCA)) that would be more attractive to Law Costs Draftsman. However, the LSB has issued a warning letter indicating it is not minded to approve that new means of entry.

The FRC proposals will impact those currently in the Costs Lawyer profession. With less job opportunity, it would also discourage new entrants. This will exacerbate the problem of identifying a financially viable means of entry which the LSB would approve. Based on the number who left the profession in 2016, 2017 and 2018, with no means of replacing those leavers going forward and the impact of the proposed FRC changes, this does not bode well for the longevity of the CLSB or the profession it regulates.

Comments from the profession include:

- *“The costs market will contract meaning there is less competition (and therefore a likely drop in standards) and regulation/training will become more expensive and either difficult or impossible.”*
- *“Solicitors may reject work as not being economically viable.”*
- *“The burden of costs will be pushed onto the client which will make people think twice before proceeding to litigation.”*
- *“Risk of claimants losing and element of their damages and risk that Solicitors will not do the work if uneconomic to do so.”*
- *“Certain claimants will not proceed with valid claims.”*
- *“Access to justice may be impacted negatively.”*
- *“Higher contribution to fees resulting in lower recovery of damages.”*
- *“Damages will be reduced as Solicitors take more.”*
- *“Cases will be delegated to woefully inexperienced fee earners with priorities other than the consumer.”*
- *“Some firms will take a costs neutral position, but it will mean a low-quality service.”*
- *“The reforms will encourage “factory firms” who will aim to get the job done in the quickest possible time.”*
- *“Many firms (already said this to me) will not do work under £100k.”*
- *“Public interest cases will not be viable on a fixed costs regime.”*
- *“The losing party has to pay the full costs of the winning party and not just low fixed costs.”*
- *“If clients have to pay a large chunk of damages to which they are entitled to solicitors then this isn't in the public interest. The less money Solicitors are paid for this work, the more likely it is more junior fee earners will run cases and the less likely the quality of service will be on the same level.”*
- *“More solicitors will probably exit the PI field due to insufficient revenue streams. The entire reforms stink of summary justice and a lack of appetite to treat each and every dispute with sufficient degree of care and attention. The entire proposals want to rush claims through a process in a summary fashion and treat peoples disputes as*

*statistics on a spreadsheet rather than real issues effecting real lives which require real time and attention to deal with."*

- *"Less local solicitors, damages for injuries diverted to lawyers' costs."*

#### Supporting the constitutional principle of the rule of law

- *"If valid claims are not pursued by a claimant or not pursued diligently by a Solicitor, then justice is not being served."*
- *"The law will fall into disrepute when persons who have suffered serious injury receive little or no compensation because their damages have been used to pay legal fees."*
- *"Pendulum swinging too far to wealthy defendants."*

#### Improving access to justice

Fewer Costs Lawyers and firms will be offering costs law services.

Comments from the profession included:

- *"Less Solicitors will take on cases if there are fixed costs."*
- *"The effect will be to stifle access to justice."*
- *"Solicitors will be less likely to take on a matter which comes under FRC and if they do so, clients will be unlikely to receive the service which one requires when instructing a Solicitor."*
- *"Consumers will be pushed to select purely on price rather than quality."*
- *"There will be more pressure not to pursue claims due to the costs of doing so."*
- *"It will have a massive impact on the right to justice Insurance companies will have a huge advantage over members of the public yet again. Nobody has seen a penny reduction their car insurance despite the massive savings in costs of insurance companies, they make more profit at the expense of the general public. Right to Justice will be non-existent if we allow this to continue."*
- *"The consumer will find it increasingly difficult to identify suitable costs lawyers for instruction."*
- *"Claims farms will rise with unqualified case workers acting for clients instead of suitable experienced qualified Solicitors."*
- *"If the winning party's costs are limited, less firms will want to deal with claims."*
- *"The market will contract and the choices will diminish."*

#### Protecting and promoting the interests of consumers

With less work there will be less choice of Costs Lawyer.

Comments from the profession included:

- *"Restricting the amount recoverable inter-parties will potentially increase the shortfall in costs to be deducted from damages (depending on the retainer)."*
- *"In order to maximise the benefit of staged costs recoverable there is the potential for under settling claims."*
- *"More smaller firms will not be able to operate."*

- *“Will lead to fewer firms doing the work.”*
- *“Less time will be spent on these matters.”*
- *“The consumer will suffer financially.”*
- *“A “race to the bottom” will result in a smaller number of competitors.”*
- *“Shortfalls paid to claimants, poorer service as a result of overloading.”*
- *“The reduction of work in the industry initially will result in greater competition. However, the reduction is likely to be so significant that few will survive and competition will die off.”*

#### Promoting competition in the provision of services within subsection (2)

The proposal would lead to less work, and fewer Costs Lawyers to compete for work.

Comments from the profession:

- *“Solicitors will move to taking money from damages in these claims and they will all charge the full amount. They will not compete on price as Jackson intended.”*
- *“Smaller law firms without the economies of scale will be left unable to compete.”*
- *“Solicitors will be more reluctant to undertake the work.”*
- *“Firms will not have to compete if all costs awards would be the same and fixed.”*
- *“It will drive efficiencies but concern is whether this will be at the expense of quality.”*
- *“Less choice as more local firms fail.”*

#### Encouraging an independent, strong, diverse and effective legal profession

The proposals would have a major impact on the workstream for Costs Lawyers thus weakening the profession in all aspects. There will be less work to compete for, less employment for Costs Lawyers, fewer costs law firms. Further, the future of regulation under the CLSB is threatened.

Comments of the profession include:

- *“More unqualified individuals will be undertaking the work.”*
- *“Morale etc. will be low, and the area will lose good practitioners.”*
- *“Lawyers will be seen as money grabbing parasites, taking damages from seriously injured clients.”*
- *“All we will be left with for cases up to £100k will be “claims factories.””*
- *“Financial restraints will lead to qualified Solicitors moving into other areas or leaving the profession.”*
- *“There would be less costs firms and the costs recovery system would be in favour of the losing party.”*
- *“This is already a concern. Removing much of the lower value work, especially advocacy, makes breaking into the profession much more difficult.”*
- *“Too many large machine firms with fast track work/profit models involving unqualified staff under “technical” supervision.”*

### Increasing public understanding of the citizens legal rights and duties

Comments of the profession include:

- *“Consumers are already confused on the deductions structure re success fees and premiums and tend to just agree with what they are being told.”*
- *“Less access, less understanding.”*

### Promoting and maintaining adherence to the professional principles

Comments of the profession include:

- *“The effort applied by Solicitors may be more limited.”*
- *“Less work will mean less income and a temptation to cut costs which may lead to a threat to the professional principles.”*
- *“A decrease in profitability in the profession will discourage candidates from entering the profession.”*
- *“It is possible standards will slip as law firms will have to balance providing a good service to the client and making business profit in order to survive.”*
- *“Less time to spend on cases and the cases could be conducted by fee earners of lesser experience and skill.”*
- *“There may be a tendency for lawyers to rack up legal fees in the knowledge that their fees will be paid by the losing party or out of the clients damages.”*
- *“The conflict between fees and client needs will certainly increase, typically in cases involving the most vulnerable or complex (but not high value) claims.”*
- *“More unqualified staff are likely to be hired as firms have done with portal cases.”*
- *“Possible negative as standards drop in place of perceived efficiencies.”*
- *“Will increase moves to use unqualified staff both in the legal case and costs resolution at the end.”*
- *“Solicitors will take short cuts and not give sufficient attention to detail because of the lack of sufficient remuneration.”*

We hope this information assists the MoJ in making an informed decision.

Yours sincerely,

Lynn Plumbley  
Chief Executive