

Subject: CJC Costs Working Group Consultation

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Representation: The CCUA has drawn upon the views of the CCUA membership including those of its Policy and Reform Committee.

The CCUA seeks to work with other stakeholders in a constructive and balanced manner, to achieve an efficient and cost-effective court service for its members which is also fair and proportionate for all court users.

Our members issue around 85% of all money claims in the County Court in England and Wales, as well as being involved in a wide range of other litigation including, for example, repossession and return of goods claims. Our members include businesses operating within the financial services sector, utilities, legal firms, insolvency practitioners, enforcement agents, plus many others.

Overview

We would request that our answers are considered in context. Our members issue a huge amount of claims, but the vast majority are not defended. Of those that are, our members try very hard to avoid drawn out litigation.

On this occasion, our answers may not therefore be based on wide experience of the specific issues and in particular may not be appropriate for more complex cases.

Responses

Costs budgeting

1.1 Is costs budgeting useful?

Yes.

1.2 What if any changes should be made to the existing costs budgeting regime?

We have no suggestions. It seems to work okay for the most part.

1.3 Should costs budgeting be abandoned?

We wouldn't think so.

1.4 If costs budgeting is retained, should it be on a "default on" or "default off" basis?

Default on.

1.4 For cases that continue within the costs budgeting regime, are there any high-level changes to the procedural requirements or general approach that should be made?

Not that we are aware of.

Guideline Hourly Rates

2.1 What is or should be the purpose of GHRs?

They provide consistency and certainty. In our experience they work very well. We understand that this may not be the case as regards more complex litigation.

2.2 Do or should GHRs have a broader role than their current role as a starting point in costs assessments?

They seem to work quite well as they are.

2.3 What would be the wider impact of abandoning GHRs?

Less consistency.

2.4 Should GHRs be adjusted over time and if so how?

We would suggest annual inflationary increases based on one of the indices. Far less often there may be benefit from a review of geographic areas, to see if there is a need for a greater amendment either up or down.

2.5 Are there alternatives to the current GHR methodology?

We have none to suggest.

Costs under pre-action protocols/portals and the digital justice system

3.1 What are the implications for costs associated with civil justice of the digitalization of dispute resolution?

There are concerns with the impact generally, Depending on how accessible the system is and how well it works, it could have a big impact on the amount of costs incurred.

3.2 What is the impact on costs of pre-action-protocols and portals?

We are extremely concerned by the extension of fixed costs to pre-action situations. We see a real risk of parties “accidentally” finding themselves trapped in litigation which they would otherwise have avoided. We understand the logic that sometimes legal claims are issued purely to resolve pre-issue costs entitlement. However, we feel that there is a very real risk that fixed costs will prevent settlements being reached and actually result in a substantial increase in disputes reaching the courts. It risks creating arguments rather than resolving them.

We understand that the decision to introduce fixed costs to pre-action situations has already been taken. However, it is very difficult to come up with constructive ideas when we see the whole basis of the approach as ill advised.

3.3 Is there a need to reform the processes of assessing costs when a claim settles before issue, including both solicitor own client costs, and party and party costs?

As above, the fact that this question is having to be asked should ring alarm bells. We see far greater scope for fixed costs proving to be a block on settlement and far greater numbers of claims needing to be resolved. If so, there may well be a need to reform the process, but we would suggest that it would be far better to avoid this situation in the first place.

3.4 What purpose(s) does the current distinction between contentious business and non-contentious business serve? Should it be retained?

We have no further comment to make beyond the above points.

Consequences of the extension of fixed recoverable costs

4.1 To the extent that you have not already commented on this point, what impact do the changes to fixed recoverable costs have on the issues raised in parts 1 to 3 above?

Where it is possible to genuinely pre-estimate the likely cost to a reasonable accuracy, we see the benefits of fixed recoverable costs. However, there is clearly a limit to that, beyond which it becomes more harmful than beneficial.

Having fixed recoverable costs at the pre-issue stage will create a sense of “entitlement” which may well encourage claims to be issued when otherwise they wouldn’t have been. It will reduce the desirability of outcomes such as drop hands settlements.

4.2 Are there any other costs issues arising from the extension of fixed recoverable costs, including any other areas in which some form of fixed costs or cost capping scheme may be worthy of consideration? If so, please give details.

There are other situations where fixed recoverable costs could be genuinely helpful, such as providing “teeth” to the Civil Procedure Rules. Far too often parties are able to unnecessarily run up costs to the detriment of the other party, effectively rendering the claim or defence uneconomic to continue. Fixed costs could be introduced to penalize those who fail to adhere to the requirements of the CPR, even possibly due for payment immediately. This would also have a beneficial impact on keeping cases moving through the directions timetable.

4.3 Should an extended form of costs capping arrangement be introduced for particular specialist areas (such as patent cases or the Shorter Trials Scheme more generally)? If so, please give details.

We have no comment.

A handwritten signature in black ink, appearing to read 'Rob Thompson', with a long horizontal flourish extending to the right.

Rob Thompson

Chair, Civil Court Users Association

30th September 2022