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The Intermediate Track and Fixed Costs

Christopher Moss
Samuel Moss





INTRODUCTION

A new track introduced as part of the Civil Procedure (Amendment No. 2) Rules 2023.

- Bridges the gap between the fast track and the multi track.
- Intended to promote more efficient case management
- Extends the fixed recoverable costs regime, providing greater costs certainty and proportionality

WHEN WILL THE NEW RULES APPLY?

The new rules came into effect on 1st October 2023 and apply to cases as follows:

Type of Case	Point from which new Rules apply
Claims for personal injuries, other than a disease claim	Where the cause of action accrues on or after 1st October 2023
Claims for personal injuries which include a disease claim	Where no letter of claim has been sent before 1st October 2023
All other claims	Where proceedings are issued on or after 1st October 2023



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The Intermediate Track

CASES THAT CANNOT BE ALLOCATED TO INTERMEDIATE TRACK

- CPR 26.9(10): The following must be allocated to the multi-track
  - (a) Mesothelioma/asbestos lung disease
  - (b) Clinical negligence unless the claim is one which would normally be allocated to the intermediate track and liability admitted (breach, causation and loss – including injury in pre-action letter) at a pre-action stage and no limitation argument
  - (c) Claims for harm, abuse or neglect of or by children or vulnerable adults
  - (d) Claims which could be heard by a jury
  - (e) Claims against the police for an intentional or reckless tort OR for breaches of HRA 1998
  - (f) A claim against a public authority for trespass against the person unless it would not be in the interests of justice

ALLOCATION STEP 1 – WHICH TRACK?

- CPR 26.9(7) - The intermediate track applies where:
  - Not suitable for small claims track or fast track, and there are no additional factors which would make the claim inappropriate for the intermediate track
  - The claim includes a claim for monetary relief, the value of which is no more than £100,000 (where there is non-monetary relief, the court must consider allocation to IT to be in interests of justice)
  - Trial no longer than 3 days, limited oral expert evidence to 2 experts per party
  - Claim brought by 1 claimant against either 1 or 2 defendants, OR brought by 2 claimants against 1 defendant
- Unreported – *Holland v Zurich Insurance Company UK Ltd* 2025

ALLOCATION STEP 2 – WHICH COMPLEXITY BAND?

- The complexity bands are defined in a way that is "*intended to provide helpful clarity without being overly prescriptive*" - Civil Procedure Rules Committee May 2023.
- This means that there is likely to be room for debate on the banding of a case.
- Different band = potentially very different costs recovery. So, ensure early preparation to support your arguments on track and band allocation. This may include:
  - Early and detailed client statement and document gathering
  - Clear liability and quantum analysis pre-allocation
  - Engage experts early

BAND 1	BAND 2	BAND 3	BAND 4

• 1 issue in dispute
• 1 day (expected) trial
• Types of claims:
  • PI claim where only liability OR quantum in dispute
  • RTA related non-PI claims
  • Defended debt claims
	• Less complex
	• More than one issue in dispute
	• Including PI accident claims with liability AND quantum in dispute
		• More complex claim
		• More than one issue in dispute
		• Unsuitable for band 2
		• Including noise induced hearing loss and other employer's liability disease claims
			• Any claim which would normally be allocated to the intermediate track
			• Unsuitable for band 2 or 3
			• Including any personal injury claim where there are serious issues of fact or law

CAN ALLOCATION CHANGE?

- Court CAN reallocate to a different track or band but:
  - Can only reallocate from Intermediate Track where there are exceptional reasons CPR 26.18(2).
  - May only reassign complexity band where a change of circumstances justifies this - CPR 26.18(3).
- The need to apply early – *Tibbles v SIG PLC* [2012] EWCA Civ 518.
- CPR 45.14(1) – costs are then assessed as if the claim had been allocated to that track/band at the outset.

TRIAL DATE

- After Allocation Directions, the trial date is set (unless an optional CMC is fixed) - CPR 28.2

- Postponement of trial is a last resort (PD 28 5.4)

- Permission is required to vary any order/date if doing so would impact on the case management conference, pre-trial checklists, pre-trial review or trial.

- Only in exceptional cases will non-compliance permit postponement of a trial. And where there is "*no option*" but to postpone, the court will do so "*for the shortest possible time*"

DIRECTIONS

- Directions hearings only happen where court considers it *"necessary or desirable".* If required due to party default the court "*will usually impose a sanction*" - PD28 2.2

- Beforehand, parties must consider all directions required and make other applications in advance - PD28 2.4.

- Where a party needs to apply for a direction which is not included in the timetable, "*they must do so as soon as possible so as to minimise the need to change that timetable."* PD28 2.6.

- PD28 3.2 - Directions will be tailored to the needs of the case and the extent to which case preparation has already taken place, having particular regard to pre-action compliance.

TAILORED DIRECTIONS AND DISCLOSURE

- Standard disclosure for PI Intermediate Track Claims

- CPR 31.5(7) – for non-PI Intermediate Track claims, the court should consider the disclosure 'menu':
  a) an order **dispensing with disclosure**;
  b) an order that a party disclose the documents **on which it relies**, and at the same time request any specific disclosure it requires from any other party;
  c) an order that directs, where practicable, the disclosure to be given by each party on an **issue-by-issue basis**;
  d) an order that each party disclose any documents which it is reasonable to suppose may contain information which enables that party to **advance its own case or to damage that of any other party**, or which leads to an enquiry which has either of those consequences;
  e) an order that a party give **standard disclosure**;
  f) any other order in relation to disclosure that the **court considers appropriate**.

LIMITS ON EXPERT AND WITNESS EVIDENCE

CPR 28.14(3): Limits on evidence specific to the intermediate track:

EXPERTS

- No more than 20 pages (including descriptions of opinion and issues, but excluding CV, photos, plans and academic/technical articles).

WITNESSES

- No more than 30 pages for all permitted witness statements and summaries of a party.

TO REMEMBER

- Include submissions on complexity band in the DQ.
- Every step you take to progress the litigation, consider the cost consequences.
- Don't forget the court's power to consider preliminary issues and order split trials under CPR 3.1. May mitigate any preparation / cost recovery difficulties, particularly in more complicated cases.
- Remember the need for early ADR consideration and keep written evidence of ADR offers.



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Fixed Costs Regime

APPLICATION OF FRC

- CPR Part 45 Section VII

- Base position is that FRC applies to all Intermediate Track claims.

- <u>Two Exceptions:</u>
  - CPR 45.1(4)– FRC do not apply to a claim or counterclaim which relates, in whole or in part, to a claim or counterclaim for possession, disrepair or unlawful eviction related to a residential property – save where the claim or counterclaim in respect of the residential property or dwelling arises from a boundary dispute.

  - CPR 45.1(6)– FRC do not apply where a party is a protected party

NAVIGATING PART 45 – SECTION VII: INTERMEDIATE TRACK FIXED COSTS

- PD45, Table 14 sets out the fixed costs
- Costs awarded per each stage (1-15), determined by reference to complexity bands
- CPR 45.60 - Disbursements in Section VII: any disbursement "reasonably incurred", provided not already covered in fixed costs
- Costs are cumulative, but not all are automatic: CPR 45.50(4) – S2, S7 and S14 only permitted where legal advice or drafting obtained from specialist legal rep / trial advocate and their use is justified

COMPLEXITY BAND				
STAGE	**1**	**2**	**3**	**4**
S1				
From pre-issue up to and including the date of service of the defence	£1,652 + an amount equivalent to 3% of the damages	£5,162 + an amount equivalent to 6% of the damages	£6,607 + an amount equivalent to 6% of the damages	£9,601 + an amount equivalent to 8% of the damages
S2				
Specialist legal representative providing post-issue advice in writing or in conference or drafting a statement of case	£2,065	£2,065	(a) £2,374; or (b) £3,613 if counsel is also instructed to draft a defence to a counterclaim	(a) £2,374; or (b) £3,613 if counsel is also instructed to draft a defence to a counterclaim
S3				
From the date of service of the defence up to the earlier of the date set for CMC or the order giving directions under 28.2	£4,129+ an amount equivalent to 10% of the damages	£7,949 + an amount equivalent to 12% of the damages	£9,394 + an amount equivalent to 12% of the damages	£13,420 + an amount equivalent to 14% of the damages
S4				
From the end of Stage 3 up to and including the date set by the court for inspection of documents	£4,749 + an amount equivalent to 12% of the damages	£9,704 + an amount equivalent to 14% of the damages	£11,365 + an amount equivalent to 14% of the damages	£16,517 + an amount equivalent to 16% of the damages

COMPLEXITY BAND				
STAGE	**1**	**2**	**3**	**4**
S5				
From the end of Stage 4 up to and including the later of the dates set by the court for service of witness statements or expert reports	£5,368 + an amount equivalent to 12% of the damages	£11,365 + an amount equivalent to 16% of the damages	£12,388 + an amount equivalent to 16% of the damages	£20,647 + an amount equivalent to 18% of the damages
S6				
From the end of Stage 5 up to and including the date set for the pre-trial review or up to 14 days before the trial date, whichever is earlier	£6,091 + an amount equivalent to 15% of the damages	£15,485 + an amount equivalent to 16% of the damages	£16,517 + an amount equivalent to 16% of the damages	£24,776 + an amount equivalent to 18% of the damages
S7				
Specialist legal representative advising in writing or in conference following the filing of a defence	£1,445	£1,755	£2,374	£2,994

COMPLEXITY BAND				
STAGE	**1**	**2**	**3**	**4**
S8				
From the end of Stage 6 up to the date of trial	£6,813 + an amount equivalent to 15% of the damages, less £599 if that party did not prepare the trial bundle	£17,550 + an amount equivalent to 20% of the damages, less £898 if that party did not prepare the trial bundle	£19,614 + an amount equivalent to 20% of the damages, less £1,239 if that party did not prepare the trial bundle	£29,938 + an amount equivalent to 22% of the damages, less £1,445 if that party did not prepare the trial bundle
S9				
Attendance of a legal representative (other than the trial advocate) at trial per day, less an amount equivalent to 50% per day where, on any day, the trial lasts no more than half a day	£599	£898	£1,239	£1,445
S10				
Advocacy fee: day 1	£3,303	£3,613	£4,129	£5,988
S11				
Advocacy fees for subsequent days, less an amount equivalent to 50% per day where, on any subsequent day, the trial lasts no more than half a day	£1,445	£1,755	£2,065	£2,994

COMPLEXITY BAND				
STAGE	**1**	**2**	**3**	**4**
S12				
Handing down of a reserved judgment and consequential matters, where dealt with separately from the trial	£599	£599	£599	£599
S13				
Alternative Dispute Resolution: additional fee payable once only where a mediation or joint settlement meeting takes place	£1,239	£1,239	£1,239	£1,239
S14				
Alternative Dispute Resolution: additional fee payable once only for specialist legal representative attendance at a mediation or joint settlement meeting covered by S13	£1,445	£1,755	£2,065	£2,374
S15				
Approval of settlement for child, unless the settlement is approved at trial	£1,239	£1,445	£1,755	£2,065

TWEAKS TO AMOUNTS OF FIXED COSTS

- CPR 45.3 – London Weighting
  - 12.5% uplift on fixed costs, excluding disbursements, if the Claimant lives, works or carries on business in the areas on 45PD.17 and instructs a legal representative with conduct of the litigation who practices in any of those areas
  - Familiar to Fast Track users – example of fast track 'plus' nature of Intermediate Track
- CPR 45.4 – Litigants in person
  - Entitled to costs for their work not exceeding 2/3^{rds} of the relevant FRC – other than disbursements
  - Costs are to be calculated with reference to CPR46.5 – if they can prove financial loss, the sum for the time reasonably spent doing the work, if not, the rate at PD46 3.4 - (currently £24p/h).
  - Also note – 46.5(5) – LiP not entitled to witness allowance in addition to their costs
- CPR 45.5 – Costs where there is more than one claimant

GETTING THE MOST OUT OF FIXED COSTS MULTIPLE CLAIMANTS

- CPR 45.5 – Costs where there is more than one claimant
  - Where multiple claimants have the same legal representative with conduct of the litigation: FRC for C1 as usual, for C2 onwards you get 25% of the allowable FRC for each claimant
  - Legal representative – r2.3(1)
  - Multiple legal representatives = multiple FRCs?
  - Key question do they each have "conduct of the litigation"

GETTING THE MOST OUT OF FIXED COSTS
INQUEST COSTS

- In cases to which fixed costs do not apply, the recoverability of inquests as part of the costs of the civil claim is possible, subject to considerations of whether the costs were relevant to the civil claim, and were reasonably and proportionately incurred – *Fullick v Commissioner of Police for the Metropolis* [2019] EWHC 1941 (QB)

- CPR 45.1(10) FRC does not apply to costs incurred in or in connection with inquest proceedings

- CPR 45.15A – Fixed costs and disbursements per Table 15A (inclusive of advocate's costs) for restoration proceedings

GETTING THE MOST OUT OF FIXED COSTS – PART 36

- CPR 36.24 - No longer entitled to indemnity costs from the end of the relevant period

- CPR 36.24(5): the Claimant is entitled to an amount equivalent to 35% of the difference between the fixed costs for
    - (a) the stage applicable when the relevant period expires; and
    - (b) the stage applicable at the date of judgment

- Relevance of *Attersley v UK Insurance Limited* [2026] EWCA Civ 217?

GETTING ~~THE MOST~~ OUT OF FIXED COSTS

- CPR 45.9(1) – "Exceptional circumstances"
- CPR 45.10 – Vulnerability
  - BUT – CPR 45.11 - If criteria in 45.9 or 45.10 are met but the assessed costs are less than 20% greater than the amount of FRC then you recover the lesser of the FRC or the assessed costs. May also be penalised in costs of the costs – 45.12
- CPR 45.13(1) – unreasonable behaviour – 50% reduction / uplift
  - CPR 45.13(3)(b) – reduction/uplift just to the FRC, not to VAT, Part 36 uplifts, or disbursements

GETTING ~~THE MOST~~ OUT OF FIXED COSTS

- CPR 45.1(3)(b)– Parties can expressly agree rule 45 (fixed costs) does not apply – preserving position from *Doyle v M&D Foundations & Building Services Limited* [2022] EWCA CIV 927

- In *Doyle,* sufficient that Order stated the Defendant was to pay the Claimant's costs "such costs to be the subject of the detailed assessment if not agreed"
  - Also note: *Executors of the Estate of Kenneth Collins v Chief Constable of Thames Valley Police* [2026] EWHC 117 (SCCO)

- CPR 45.1(3)(b) requires the parties to "have each expressly agreed that [Part 45] should not apply"

TO REMEMBER

- Know your entitlements and aim to get as many uplifts without deductions or removals
- Take the time to create a spreadsheet for costs recovery
- The old rules have been removed from Gov.UK – you can, either:
  - Access the pre-1st October 2023 rules using the WayBack Machine
  - Download some of the old rules from the White Book – the old Part 45 is available as a discrete option
- Also note CPR rr45.63-66 – disputes on amounts of fixed costs – cost for a hearing on this is as set out in Table 1 + court fee

THE END



Christopher.Moss@39essex.com

Samuel.Moss@39essex.com

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