

**MINISTRY OF JUSTICE CONSULTATION**  
**EXTENDING FIXED RECOVERABLE COSTS IN CIVIL CASES**  
**(CONSULTATION 28 MARCH 2019 TO 6 JUNE 2019)**

Response of ACAL to direct questions contained in the consultation document.

**Chapter 3;**

**1. Given the Government's intention to extend FRC to fast track cases, do you agree with these proposals as set out? We seek your views, including any alternatives,**

**(i) the proposals for allocation of cases to Bands (including package holiday sickness);**

*The proposals for allocation of cases to bands, ACAL has no comment.*

**(ii) the proposals for multiple claims arising from the same cause of action;**

*ACAL has no comment.*

**(iii) whether, and how, the rules should be fortified to ensure that (a) unnecessary challenges are avoided, and (b) cases stay within the FRC regime where appropriate; and**

*ACAL has no comment.*

**(iv) Part 36 offers and unreasonable litigation conduct (including, but not limited to, the proposals for an uplift on FRC (35% for the purposes of Part 36, or an unlimited uplift on FRC or indemnity costs for unreasonable litigation conduct), and how to incentivise early settlement.**

*ACAL has no comment.*

**Chapter 4; Noise induced hearing loss**

**2. Given the Government's intention to extend FRC to NIHL cases, do you agree with the proposals as set out? We seek your views, including any alternatives, on:**

**(i) the new pre-litigation process and the contents and clarity of the draft letters of claim (and accompaniments) and response.**

*ACAL has no comment*

**(ii) the contents of the proposed standard directions, and the listing of separate preliminary trials.**

*ACL has no comment*

### **Chapter 5; (Intermediate cases)**

**3. Given the Government's intention to extend FRC to intermediate cases, do you agree with the proposals as set out? We seek your views, including any alternatives, on:**

**(i) the proposed extension of the fast track to cover intermediate cases;**

*ACAL considers that a clarification is required to the definition of "Child Sex Abuse" cases to include "child neglect, child physical abuse and child sexual cases against public or other bodies". If this exception to these cases being designated intermediate cases is clarified, is introduced, ACAL would be content. If these cases were not clarified as being worthy of exception from the costs of intermediate cases and therefore brought into the fixed costs regime, we refer the Minister to the reasons which ACAL raised to Lord Justice Jackson's November 2016 consultation which is attached.*

**(ii) the proposed criteria for allocation as an intermediate case and whether greater certainty is required as to the scope of the track;**

*Subject to clarification of child sexual abuse cases as per the response given to (i) above ACAL has no comment.*

**(iii) how to ensure that cases are correctly allocated, and whether there should be a financial penalty for unsuccessful challenges to allocation;**

*Subject to clarification of child sexual abuse cases as per the response given to (i) above ACAL has no comment.*

**(iv) whether the 4-band structure is appropriate, or whether Bands 2 and 3 should be combined, given the closeness of the proposed figures: if you favour combining the bands, we welcome suggestions as to how this should be done; and**

*Subject to clarification of child sexual abuse cases as per the response given to (i) above ACAL has no comment.*

**(v) whether greater certainty is required regarding which cases are suitable for each band of intermediate cases.**

*Subject to clarification of child sexual abuse cases as per the response given to (i) above ACAL has no comment.*

Chapter 6; Judicial Review

**4. Do you agree with the proposal for costs budgeting in JRs with a criterion of ‘whether the costs of a party are likely to exceed £100,000’? If not, what alternative do you propose?**

*ACAL has no comment.*

**Chapter 8; Next steps**

**5. We seek your views on the proposals in this report otherwise not covered in the previous questions throughout the document**

*ACAL has no comment.*

**Chapter 9; Impact Assessment.**

**6. Do you have any evidence/data to support or disagree with any of the proposals which you would like the government to consider as part of this consultation?**

*Please see ACAL’s response to Lord Justice Jackson’s 2016 consultation. This deals with the importance of ensuring that child abuse cases are funded well and contains data.*

**Chapter 10; Equality Statement**

**7. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform? Please give reasons.**

*ACAL is concerned to protect the rights of a very vulnerable class of individuals who have been subjected to physical abuse, neglect and sexual abuse in childhood. This*

*class of individuals is in exceptional need of protection and for these reasons we consider that their legal rights should be dealt with outside any fixed cost regime.*

**8. Do you agree that we have correctly identified the range of impacts under each of the proposed reforms set out in this consultation paper? Please give reasons.**

*ACAL is concerned to protect the rights of a very vulnerable class of individuals who have been subjected to physical abuse, neglect and sexual abuse in childhood. This class of individuals is in exceptional need of protection and for these reasons we consider that their legal rights should be dealt with outside any fixed cost regime.*

**9. Do you agree that we have correctly identified the extent of the impacts undereach of these proposals? Please give reasons and supply evidence as appropriate**

*ACAL is concerned to protect the rights of a very vulnerable class of individuals who have been subjected to physical abuse, neglect and sexual abuse in childhood. This class of individuals is in exceptional need of protection and for these reasons we consider that their legal rights should be dealt with outside any fixed cost regime.*

**10. Are there forms of mitigation in relation to impacts that we have not considered?**

*ACAL is concerned to protect the rights of a very vulnerable class of individuals who have been subjected to physical abuse, neglect and sexual abuse in childhood. This class of individuals is in exceptional need of protection and for these reasons we consider that their legal rights should be dealt with outside any fixed cost regime.*

David Greenwood  
(ACAL Executive member) on behalf of ACAL  
27.05.19.