



JUDICIARY OF  
ENGLAND AND WALES

**FIXED COSTS – THE TIME HAS COME**

**IPA ANNUAL LECTURE**

**BY LORD JUSTICE JACKSON**

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1. INTRODUCTION

1.1 This lecture.<sup>1</sup> The purpose of this lecture is to argue that we should now introduce an extensive regime of fixed costs for civil litigation as proposed in chapters 15 and 16 of the Review of Civil Litigation Costs Final Report. In the light of recent developments the time is now ripe to take this substantial step.

1.2 Abbreviations. I shall use the following abbreviations:

‘ATE’ means after-the-event insurance.

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<sup>1</sup> I am grateful to the Senior Costs Judge and also to my judicial assistant, Stephen Clark, for their considerable assistance during the preparation of this paper. I am also grateful to the Master of the Rolls, Professor Adrian Zuckerman, Professor Dame Hazel Genn, Andrew Higgins (Associate Editor of Civil Procedure at Oxford) and Peter Farr for reading and commenting on earlier drafts of this paper. I alone am responsible for the final text.

‘CFA’ means conditional fee agreement.

‘CJC’ means Civil Justice Council.

‘CPR’ means the Civil Procedure Rules 1998, as amended from time to time.

‘DBA’ means damages-based agreement, sometimes known as contingency fees.

‘England’ is used as shorthand for England and Wales (in the same way that ‘English common law’ generally means English and Welsh common law).

‘Final Report’ or ‘FR’ means the Review of Civil Litigation Costs Final Report.

‘Fixed costs’ is used in this lecture as an abbreviation for a regime of scale or fixed costs, under which the amount recoverable is prescribed by the rules or can be calculated arithmetically in accordance with the rules.

‘IP’ means intellectual property.

‘IP Enterprise Court’ means Intellectual Property Enterprise Court

‘Preliminary Report’ or ‘PR’ means Review of Civil Litigation Costs Preliminary Report.

‘RTA’ means road traffic accident.

## 2. THE CASE FOR MOVING TO FIXED COSTS

2.1 The problem. High litigation costs inhibit access to justice. They are a problem not only for individual litigants, but also for public justice generally. If people cannot afford to use the courts, they may go elsewhere with possibly dubious results. If costs prevent access to justice, this undermines the rule of law.

2.2 The genesis of the problem. The present level of costs and complexity of civil litigation has evolved over time under the influence of costs shifting and the system of ‘hourly rate’ remuneration. Remuneration on a time basis rewards inefficiency. Unrestrained costs shifting drives parties to leave no stone unturned: the more costs mount up, the more determined each party becomes to ensure that the other party pays them. The result is inevitable - a civil justice system which is exorbitantly expensive. I readily accept that the complexity of law and procedure contribute to high costs. But complexity is inherent in every modern legal system, as so many well intentioned law reformers have ruefully discovered. There are other jurisdictions with complex laws and procedural rules where litigation costs are significantly lower than here.

2.3 Improvements achieved in recent years. Until recently recoverable CFA success fees and recoverable ATE premiums were a massive driver of high costs and inefficiency. The ending of this regime in April 2013 has cut out one layer of excessive costs. Costs management, when done properly by competent practitioners and judges, has done much to control the level of costs.<sup>2</sup> CPR Part 44 has been amended, so that a court assessing costs on the standard basis will only allow proportionate costs. Rule 44.3 (5) adopts the definition of “proportionate costs” which I recommended in FR chapter 3, paragraph 5.15. Many other recent civil justice reforms have reduced the level of litigation costs. I refer in particular to the introduction of fixed costs for fast track personal injury cases. That has led to the resolution of hundreds of thousands of personal injury cases per year at proportionate cost.<sup>3</sup>

2.4 The reform of civil litigation costs is still work in progress. Despite the foregoing, the implementation of the FR reforms is still incomplete, as Lord Justice Briggs noted in his Interim Report on the Civil Courts Structure.<sup>4</sup> In particular, there is a need to extend the fixed costs regime. The Lord Chief Justice stated this in his 2015 Annual Report (see page 10) and I said so in my Final Report.

2.5 Recommendations in the Final Report for fixing fast track costs. Chapter 15 of the FR recommended that the costs of all litigation in the fast track be fixed. The chapter set out suggested matrices and figures, based upon empirical evidence and analysis. Section 5 of that chapter set out proposals in respect of personal injury claims. Section 6 set out proposals in respect of non-personal injury claims.

2.6 Recommendations in the Final Report for fixing costs above the fast track. Chapter 24 of the FR recommended that there should be fixed costs in the Patents County Court (now the IP Enterprise Court) for IP claims up to £500,000. Chapter 16 of the FR recommended that once fixed costs had been established for the fast track and (outside the fast track) for IP claims up to £500,000, serious consideration should be given to

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<sup>2</sup> See the Harbour Lecture on 13<sup>th</sup> May 2015 <https://www.judiciary.gov.uk/announcements/harbour-lecture-by-lord-justice-jackson-confronting-costs-management/>

<sup>3</sup> Last year (January to December 2015) 230,496 RTA, employers’ liability and public liability cases were settled through the Portal. A substantial number of other cases were concluded (whether by trial or settlement) outside the Portal, but in accordance with the fixed costs regime in CPR Part 45, section IIIA. I have not been able to pin down the latter figure.

<sup>4</sup> January 2016: <http://www.judiciary.gov.uk/wp-content/uploads/2016/01/CCSR-interim-report-dec-15-final-31.pdf>

developing a general scheme for fixed costs across the lower reaches of the multi-track.

2.7 OK, but how much of all that has actually been implemented? Fixed costs have now been introduced for personal injury cases in the fast track, as noted above. The costs of medical reports for soft tissue injuries in fast track RTA claims have also been fixed. Fixed costs have been introduced for IP claims in the IP Enterprise Court up to £500,000. The figures for those fixed costs were set after careful consultation with court users and IP practitioners.

2.8 An omission. One important omission is the fixing of costs for non-personal injury fast track claims. There are a large number of cases in the fast track not involving personal injury. Litigants in these cases need access to justice at proportionate cost, just as much as personal injury claimants and defendants. We must therefore establish a fixed costs regime for all non-personal injury cases in the fast track. I understand informally that the MoJ is supportive of the proposal. Whilst acknowledging the pressure on resources, surely this task should now be prioritised? The figures proposed in FR chapter 15, section 6, suitably adjusted for inflation, would be a good starting point.

2.9 Avoid lop-sided reform. It would be illogical to fix the costs of clinical negligence claims in the multi-track (as the Government is now proposing) without sorting out the fast track at the same time.

2.10 Growing acceptance of fixed costs by practitioners and litigants. My impression is that the profession is now more willing to accept fixed costs than it was in the past. This is for two main reasons. First, such a regime would dispense with the need for costs budgeting, which not everyone enjoys. Secondly, experience of the fixed costs regimes introduced in recent years has been satisfactory for both practitioners and litigants. In particular:

- (i) The fixed costs regime for fast track personal injury cases is working reasonably well. This is evidenced by (a) the high number of personal injury claims in the fast track which are still being pursued and (b) the widespread advertising for claimants, which continues to appear.
- (ii) The fixed costs regime in the IP Enterprise Court is also working satisfactorily.

Indeed it has attracted more cases into the court. The number of new cases in that court approximately doubled in the two years after the reforms.<sup>5</sup> A recent Freedom of Information request has elicited that the figures over the last five years are as follows:

<b>Time Period</b>	<b>Small Claims Track</b>	<b>Multi Track Claims</b>
1 January – 31 December 2011	0	116
1 January – 31 December 2012	2	186
1 January – 31 December 2013	61	226
1 January – 31 December 2014	113	195
1 January – 6 August 2015	50	133

2.11 A shift of political and judicial opinion. The view that we should move towards fixed costs is steadily gaining ground. This is evidenced by recent speeches or reports by the Lord Chief Justice, the Master of the Rolls, Flaux J (then the Judge in Charge of the Commercial Court) and Lord Faulks (Minister for Civil Justice). When I consulted the Association of HM District Judges on this issue in September 2014 the President’s response was:

“There is overwhelming support for fixed costs both in the fast track, and in the lower value multi-track cases. This would save time and costs. I have not heard a voice which dissents from this view.”

A recent report published by the Bingham Centre for the Rule of Law in conjunction with JUSTICE and the Public Law Project, entitled “Judicial Review and the Rule of Law”<sup>6</sup> proposes a fixed costs regime for judicial review claims: see chapter 5. The authors see the introduction of fixed costs as promoting the rule of law and enabling individuals to hold the Government or public authorities to account.

2.12 Fixed costs and proportionality. Fixing costs is an effective way of ensuring that a party’s recoverable costs and its adverse costs risk are proportionate to the subject matter of the litigation (depending, of course, upon the figures which are chosen). I accept that this makes an inroad into the traditional costs shifting regime. On the other hand the

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<sup>5</sup> See para 3.7 of Mr Justice Arnold’s lecture “Intellectual Property Litigation: Implementation of the Jackson Report’s Recommendations”, seventeenth lecture in the implementation programme. 12<sup>th</sup> February 2013.

<sup>6</sup> ISBN: 978-1-905221-62-2. September 2015

traditional costs shifting regime tends to drive up the incurred costs of both parties: see the academic research summarised in PR chapter 9. Also that regime leads to disproportionate costs recovery.

2.13 Fixed costs and certainty. A fixed costs regime provides certainty and predictability. This is something which most litigants desire and some litigants desperately need. A fixed costs regime is easier for solicitors to explain to clients than the current costs rules. Also a fixed costs regime dispenses with the need for costs budgeting and costs assessment. This will achieve (a) a substantial saving of costs for the parties and (b) a substantial reduction in the demands made upon the resources of the court.

2.14 The present position. We now have enough experience (including that gained from costs budgeting and the existing fixed costs regimes) to devise a coherent scheme of fixed costs for the whole of the fast track and for the lower reaches of the multi-track. The time for doing that has now come.

2.15 Take account of overseas experience. Before sketching out a suggested way forward, I should first look at the regimes in two overseas jurisdictions with fixed costs.

### 3. GERMANY

3.1 Preliminary Report, chapter 55. PR chapter 55 sets out a summary of the German civil justice system and costs regime, as they were in 2009. I have been asked to update that summary. Unsurprisingly the figures have changed since the publication of the Preliminary Report. In essence, the German scheme of fixed recoverable costs prescribes a statutory fee for lawyers on the basis of the value of the claim. This gives the base fee to which a number of multipliers, changing according to the stage of proceedings reached and the nature of the instructions, can be applied to give the fixed costs figure.

3.2 Base fee. Section 13 of the Law on the Remuneration of Lawyers (“RVG”) provides that when the value of the claim is less than €500, the fee shall be €45. For claims above €500, the fee increases from €45 in accordance with the table below:

Value of the claim is up to €...	... for each additional amount of €... or part thereof	the total fee shall increase by €...
2,000	500	35
10,000	1,000	51
25,000	3,000	46
50,000	5,000	75
200,000	15,000	85
500,000	30,000	120
more than 500,000	50,000	150

For example, assume the value of the claim is €1,500. Since that is two increments of €500, you would add on two increments of €35 to €45 and arrive at a base fee of €115. For ease of reference, the RVG has a table of worked out fees for all the increments between €500 and €500,000 attached at Annexe 2.

3.3 The multipliers. Annex 1 to the RVG provides a full and comprehensive list of legal fees. The schedules in annex 1 cover everything from initial appointment as the client's attorney through to an appeal to the Federal Court of Justice (*Bundesgerichtshof*).

3.4 Non-litigation. The amounts in annex 1 can be either a specific payment range (for example, €50.00 to €640.00 for an attorney instructed in a social security law matter), a single multiplier (0.3 for an attorney instructed only to draft simple documents) or a multiplier range (0.5 to 2.5, depending on complexity, for an attorney instructed generally).

3.5 Litigation. An attorney's fee for litigation is in two parts. First, the *Verfahrensgebühr* covers out-of-court work, which attracts a multiplier of 1.3. Secondly, the *Terminsgebühr* covers the hearing and meetings with the opposing party's lawyer. This has a multiplier of 1.2. A lawyer who performs both roles can claim a multiplier of 2.5 (in addition to any other work done and disbursements).

3.6 Calculating the cost. Suppose there was a case of clinical negligence where the damages claim was for €500,000. The base fee would be €3,213. For the purposes of simple calculation, we will assume that the lawyer was only instructed to appear at the

trial hearing and to attend meetings with the other side. His fixed fee would be €3,213 multiplied by 1.2 to give a final figure of €3,855.60. This is the sum which he would be able to recover from the other side if the claimant was 100% successful in their claim. He would only be able to recover a proportion of that if the damages award was lower than that claimed (for example, a recovery rate of 70% of €3,855.60 if the damages award was €350,000). If the claimant loses, he pays costs to the defendant calculated by reference to the amount claimed.

3.7 Different context. When examining the German costs regime, it is important to remember the different context. Under German civil procedure,<sup>7</sup> disclosure of documents is strictly limited. The court establishes the facts using the ‘Relationsmethode’. Under this procedure the judge does some of the work which in England is undertaken by the parties.<sup>8</sup> The German courts make much greater use of court appointed experts than we do. There is far less oral evidence. Litigation is quicker and hearings are shorter than in England. The German costs rules are instructive, but they cannot be transplanted to England without appropriate modification.

#### 4. NEW ZEALAND

4.1 Preliminary Report, chapter 59. PR chapter 59 sets out a summary of the New Zealand costs regime, as they were in 2009. I have been asked to update that summary. Unsurprisingly the figures have changed since the publication of the Preliminary Report. In essence, a successful litigant cannot expect to recover his actual or even a proportion of his actual costs. Instead, the fixed costs regime allows him to recover 2/3rds of the costs that are *deemed* to be reasonable with reference to the complexity of the issues and the time it would be reasonable to take on the tasks. The Scheme was implemented on 1 January 2000.

4.2 The ABC/123 scheme. The fixed costs scheme is the expression of that general rule. In order to calculate what costs would be recoverable, a lawyer must go through two steps – firstly, asking what level of complexity the case is (the 1, 2, 3 categories) and secondly, asking how much time would be reasonable in the circumstances for a

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<sup>7</sup> For a fuller account, see chapter 55 of the Preliminary Report, section 4.

<sup>8</sup> Zuckerman and Coester-Waltjen, ‘The role of lawyers in German civil litigation’ (1999) CJK 291-310



particular litigation task (the A, B, C bands). Once these two steps have been taken, the resulting figures are multiplied together to give the recoverable costs figure.

4.3 The scheme operates in the same way for both the High Court and District Court (equivalent to our County Court), albeit with differences in the daily recovery rate (the District Court rate is set at 80% of the High Court rate) and time allocations. The details given below are for the High Court.

4.4 Complexity and the daily recovery rate. The complexity of the case determines what the appropriate daily recovery rate (“the recovery rate”) will be. This is the figure which a lawyer would be able to recover for one day’s worth of work in the proceedings. There are three numbered categories for complexity in the scale. The most recent version of the recovery rates are given below.

<b>Category</b>	<b>Description</b>	<b>Appropriate Daily Recovery Rate</b>
1	Proceedings of a straightforward nature able to be conducted by counsel considered junior in the High Court	NZ\$1,480/day
2	Proceedings of average complexity requiring counsel of skill and experience considered average in the High Court	NZ\$2,230/day
3	Proceedings that because of their complexity or significance require counsel to have special skill and experience in the High Court	NZ\$3,300/day

4.5 Reasonable time allowances. The reasonable time bands affect how many allocated days or part days will be allowed for each litigation step and, accordingly, how many hours’ work will be recoverable. Individual litigation steps for general civil proceedings are set out in Schedule 3 to the High Court Rules and then a different time allocation for each band is given next to them.

<b>Band</b>	<b>Description</b>
A	A comparatively small amount of time is considered reasonable
B	A normal amount of time is considered reasonable
C	A comparatively large amount of time for the particular step is considered reasonable.

To take an example from towards the beginning of litigation, preparation for the first case management conference is allocated 0.2 days for Band A, 0.4 days for Band B and 1 day for Band C. These are the figures which will be multiplied with the recovery rates for the recoverable cost.

4.6 Calculating the recoverable cost. To give a brief example: suppose that a clinical negligence case had been allocated to Category 2 and the first case management conference was a fairly typical one, so it was deemed to be Band B. The recoverable rate in respect of that litigation task would be NZ\$2,230 x 0.4 which equals NZ\$892. In order to work out the total recoverable costs, the litigator would repeat this for all of the tasks undertaken in the proceedings in order to reach a global sum.

4.7 Updating the scheme. Responsibility for oversight of the fixed costs scheme lies with the Rules Committee, which is broadly equivalent to our Civil Procedure Rule Committee. They consult with the New Zealand Bar Association (“NZBA”) and New Zealand Law Society to keep the recovery rates updated as well as reviewing time allocations for particular litigation tasks. They have, so far, updated the recovery rates on four occasions – in 2004, 2006, 2011 and 2015.

4.8 The scheme in practice. Allocation to a complexity category is done at an early stage by an associate judge (equivalent to a High Court master). Once this is done, it cannot be changed without special reasons.

4.9 There is more scope for flexibility with the reasonable time bands. Disposition of the costs allocation is usually dealt with in one paragraph at the end of the judgment. Most commonly, this will be something to the effect of ‘[the successful party] is entitled to costs on a 2B basis and reasonable disbursements as fixed by the Registrar.’ A party could then argue before the Registrar that, while most litigation tasks were Band B, one

aspect of the case was Band A (the counter-claim, for example) and the recoverable costs should be reduced accordingly.

4.10 Disputes of such a nature either do not arise or are dealt with expeditiously as a matter of practice. The scheme militates towards predictability and certainty, so parties will have calculated their likely liability for costs long beforehand and will be more aggrieved by losing the substantive case than by the costs. Furthermore, the disparity in the global figure for being allocated to Category 2 rather than 3 or B rather than C is (relatively) limited for the majority of trials because the recovery rates and time allocations are reasonably close together. It only has a significant impact in lengthy commercial trials. For the majority of trials, seriously disputing the matter would cost more than would be gained on a successful application.

4.11 In 2011, the NZBA expressed a concern that Category 2 was being applied as a default for the sake of expediency. However, since Category 2 was intended to be the average case, it is unsurprising that most cases end up in this category. The Rules Committee rejected that concern as ‘misguided’.

## 5. WHERE NEXT FOR ENGLAND AND WALES?

5.1 The first question. The first question is whether we should be fixing costs for all civil cases (like Germany and New Zealand) or just for the fast track and the lower reaches of the multi-track. This is a policy decision for others. I would favour the latter course (as recommended in my Final Report), but I acknowledge that some favour the former course. There are two particular reasons why I favour adopting the latter course:

(i) Switching to a totally fixed costs regime for all claims, however large, would be too great a change for the profession to accept, certainly in the short term. The justice system only functions because of the high level of support which the profession provides.

(ii) Reform is best done incrementally, so that we can see how it is working out. That is why (in FR chapter 16) I recommended deferring consideration of fixed costs in the multi-track until after the implementation of the fast track and IP Enterprise Court reforms. Those reforms are now largely in place and they are successful. It is therefore

appropriate to move on to fixing costs in the lower reaches of the multi-track. Once that regime is in place, people can see how it works and consider whether to introduce a universal fixed costs regime.

5.2 What should be done about the fast track? The costs for personal injury cases are now fixed. In relation to non-personal injury cases, we must now move to a fixed costs regime, as previously recommended: see paragraph 2.8 above. In future years many of the current fast track cases may proceed in the Online Court (proposed by Briggs LJ in his recent report) and be subject to a completely different regime.

5.3 What would be a sensible way forward if we are fixing costs for the lower reaches of the multi-track? We now have a guide for setting fixed costs, which was not available before April 2013. That is contained in the new rules 44.3 (2) and (5). Only “proportionate” costs can be recovered, regardless of how much more it was reasonable and necessary to spend on conducting the case. In determining what costs are proportionate, one looks first at the amount of money (or the value of the property or rights) at stake. One also takes into account the other factors identified in rule 44.3 (5). Bearing that guidance in mind, I invite consideration of a grid of fixed costs along the lines set out below. In preparing this grid I have drawn on the combined experience of the costs judges. I have also taken into account what I have learnt from discussing costs issues with practitioners over the years. It should be noted that the recoverable costs suggested below are distinctly higher than those allowed in the fixed costs regime of the IP Enterprise Court: see CPR rule 45.31. As noted in paragraph 2.9 above, that regime has proved popular with both court users and practitioners.

5.4 The grid. In this grid band 1 is for claims where the sum in issue or the value of the property or rights claimed is between £25,000 and £50,000. This encompasses a large number of multi-track claims. Bands 2, 3 and 4 are for larger claims up to a ceiling of £250,000. The suggested figures in the grid include counsel, but exclude other disbursements, the costs of enforcing any order and VAT. The costs of claims above £250,000 can be controlled by means of costs management.

	<b>BAND 1</b> <b>£25,000 –</b> <b>£50,000</b>	<b>BAND 2</b> <b>£50,001-</b> <b>£100,000</b>	<b>BAND 3</b> <b>£100,001 -</b> <b>£175,000</b>	<b>BAND 4</b> <b>£175,001 -</b> <b>£250,000</b>
Pre action	3250	5250	8750	12000
Issue/statements of case (add 25% if counterclaim)	1400	2250	3750	5750
CMC	950	1500	1500	1750
Disclosure	1875	3000	3500	5000
Witness statements (add 10% per witness approved by the court over 3)	1875	3000	5000	7500
Expert reports (add 10% per expert approved by the court over 2)	1400	2250	3750	5500
PTR	950	1500	1500	1750
Trial Preparation (add 5% per day for the 6 <sup>th</sup> and subsequent days if trial fixed for more than 5 days)	1900	3000	5000	7500
Trial (add 5% per day for the 6 <sup>th</sup> and subsequent days if trial lasts for more than 5 days)	3750	6000	11000	18000
Negotiations/ADR	1400	2250	3750	5500
<b>TOTAL</b>	<b>18750</b>	<b>30000</b>	<b>47500</b>	<b>70250</b>

## Rules

1. If the claimant wins, the band is determined by the sum or the value of the property recovered. If the defendant wins, the band is determined by the sum or the value of the property claimed.
2. The fixed cost is payable only if a work stage is completed. 50% of the fixed cost is payable if proceedings have been issued and the work stage has been substantially started.
3. Add 15% if the work needs to be done in London.
4. Fixed costs will not apply in respect of any stage in respect of which the court has awarded indemnity costs.
5. The court may add a percentage uplift to fixed costs for part or all of the case, if it considers (1) that the claim involved exceptional complexity or (2) substantial additional work was caused by the conduct of the other party.

5.5 The ten stages in the grid. The ten stages in the above grid follow the ten stages in precedent H. Practitioners are now familiar with this structure and reasonably comfortable with it. Although 'boundary disputes' are inevitable in any structure, they will be reduced if we stick to the now established division of tasks.

5.6 Dispensing with costs management in the lower reaches of the multi-track. One advantage of this approach is that parties would no longer have to prepare, agree and/or argue about budgets in claims up to £250,000. This will save both time and costs.

5.7 Categories of work requiring an additional percentage. Consideration must be given to the question whether any specific categories of work (for example defamation, clinical negligence or construction disputes) require a percentage uplift on the basic figures. Such an uplift will only be appropriate if *most* cases in a particular category are of such complexity as to warrant additional costs

5.8 Avoid Balkanisation. If we are moving to a fixed costs regime for the lower reaches of the multi-track, it is essential that we create a coherent structure. **What we do not want to have is a series of separate grids for different types of cases. There should be single fixed costs grid for all multi-track cases up to £250,000.** In so far as particular areas of work merit additional costs, the rules can provide percentage uplifts

for specified types of case. I am aware that the Department of Health is proposing to introduce a scheme of fixed costs for clinical negligence claims. That would start to take us down the Balkanisation route. I suggest that a better approach would be to include clinical negligence claims in an all embracing fixed costs regime, as proposed above.

5.9 What would be a sensible way forward if we are moving to a totally fixed costs regime for all cases, however large? This is not the course which I recommend.

Nevertheless it would be possible to develop a scheme based on either the New Zealand model or the German model. If we follow Germany, it is essential to make allowance for the greater burden imposed upon English practitioners than upon German practitioners, by reason of our rules of civil procedure. My own preference would be to make the recoverable costs a percentage of the sum (or value of the property/rights) in issue, but subject to a number of variable factors or adjustments. That would not be illogical, now that we have DBAs. If we go down this route the recoverable percentage would have to be on a sliding scale. Otherwise the costs recoverable on, say, a £20 billion claim would be ludicrously high.

5.10 What should happen next?

*First stage:* I suggest that the Government (after consulting appropriately) should take the axial decision whether to have a totally fixed costs regime or – at least at this stage – merely to fix costs for the lower reaches of the multi-track. That is a political decision, which must take into account the views court users, practitioners, judges and all other stakeholders.

*Second stage:* Once the Government has taken that axial decision, the next stage will be to draw up the details of the new fixed costs regime. If the Government does not wish to pursue this reform as a priority or if for reasons of resources it cannot do so, then I suggest that a senior judge who doesn't mind being pilloried (preferably not me again) should actually draw up the scheme. That judge would consult widely. She/he would be aided by assessors, but not bound by any of their (inevitably conflicting) views. The assessors should include practitioners, court users and an economist. Obviously the judge's recommendations would then fall to be considered by the Government and the Rule Committee, in the usual way.

5.11 Facilitative meetings organised by the Civil Justice Council. During 2009 at my request the CJC kindly organised a series of facilitative meetings attended by liability insurers, claimant solicitors and other stakeholder groups. The purpose of these meetings was to discuss appropriate fixed costs for fast track cases. The meetings did not result in agreed figures, but they did expose the issues and the competing views as to what the costs levels should be. On the basis of those facilitative meetings I prepared the matrices of fixed costs set out in appendix 5 to my Final Report. Those matrices of fixed costs were subsequently adopted (with some adjustments) as the fixed costs regime for fast track personal injury cases: see CPR Part 45. Now, seven years on, one possible way forward would be for the CJC to organise a similar set of facilitative meetings to debate fixed costs figures for multi-track claims up to £250,000.

5.12 Time scale. If the political will is there, this whole project could be accomplished during the course of this year.

5.13 Need for regular reviews. If and when a fixed costs regime is introduced for multi-track cases, there must be regular reviews of the figures. Possibly the figures could be index linked. Alternatively, a review of the fixed costs might become an annual item on the Rule Committee's agenda. The committee would require proper evidence for that purpose.

5.14 Linked lecture on Tuesday 2<sup>nd</sup> February. Next Tuesday I shall be delivering a lecture at the Annual Solicitors' Costs Conference. That lecture will set out the case for developing a Contingent Legal Aid Fund ("CLAF"), as proposed by JUSTICE in 1978 and by countless other bodies since then. If we have an extended fixed costs regime, that will make it much easier to achieve the elusive goal of a CLAF.

Rupert Jackson

28<sup>th</sup> January 2016

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