

MASS Response to the Ministry of Justice and Online Civil Procedure Rule Committee on Fixed Recoverable Costs Interim Implementation Stocktake (October 2025)

Respondent Details

Organisation:

The Motor Accident Solicitors Society (MASS) are a membership organisation dedicated to representing the interests of road traffic accident victims and claims experts across the UK. As a non-profit organisation formed in 1991.

Sector/Profession: Professional representative body for the victims of road traffic accidents and their lawyers.

Experience with FRC: MASS is a representative body with our Members having handled thousands of these cases since the implementation date. MASS is widely known as the expert voice on all matters relating to road traffic accident claims and the 60 Member firms of solicitors that we represent act for the majority of victims of motor accidents involving personal injury.

General

Question 2: General observations on how the extension of FRC and intermediate track has been operating, including HMCTS Digital Services

The extension of FRC and the introduction of the intermediate track have created significant uncertainty and inconsistency. The following principal factors have been observed:

1. The divergence in complexity banding between Fast Track and Intermediate Track.
2. Operational inconsistency across courts.
 - a) Order processing and listing procedures vary widely from court to court,
 - b) The mix of online and offline processes adds to unpredictability and delays for practitioners and claimants alike.
3. The lack of unified criteria and practical guidance on banding, especially pre-litigation, has led to confusion and procedural disputes. Legacy cases have sometimes been allocated to the Intermediate Track without a transparent rationale, requiring further time and resources to resolve and contributing to the complexity of case management.
4. Fees for assessment and applications have become unworkable, especially after the Mazur judgment (these being reserved steps), which has further reduced the commercial viability of these cases.

5. This leads to unavoidable increases of the claimants contribution toward the costs of the case in the form of increased success fees and greater shortfalls, all of which ultimately is penalising the victim.
6. Banding divergence and differing criteria and timing between tracks continue to create disputes: Intermediate Track stages run from the date the defense is filed, not the date of issue, adding unpredictability.
7. Case assignment is determined by the number of issues in the Intermediate Track, while it is based on the type of case in the Fast Track, resulting in further inconsistency.

To address these challenges, HMCTS Digital Services would benefit from integrated digital prompts that collect banding rationale, vulnerability, and exemptions data at the point of issue or allocation. This would help reduce later contention and procedural disputes, streamline case processing, and improve transparency throughout the lifecycle of FRC and intermediate track cases.

Question 3: How well has the extension of FRC been operating?

For straightforward claims, the FRC regime is generally workable. However, for complex cases such as fatal accidents, dependency claims, and those with late-crystallising liability issues - the regime fails to reflect the true complexity and work required.

Example: Coroners maintain control of evidence during the investigation, which is frequently devolved to the police/HSE. It is not at all unusual for the investigative phase to last over 12 months, often more than 24 months, and until inquests are completed potential parties are seldom able to reach an informed conclusion on liability.

The absence of clear guidance on defining 'issues' and the timing of complexity decisions (fixed on the issues at the point of allocation vs. issues materialising over the claim lifecycle) leads to unnecessary disputes and undermines proportionality.

It has been noted that there can be a 'default' to the Fast Track in cases that are only just in excess of the claims limit for the Fast Track or on cases where damages are made up of a large proportion of special damages. This can mean that there is a significant issue around costs recoverability and case planning due to the uncertainty created. Whilst it is accepted that value is not the sole determiner, it has to be considered to be an important consideration in cases to give certainty to both parties.

Example: One of our members reports that of their cohort of vehicle damage and hire claims only 30% of cases between £25,000 and £100,000 are allocated to the intermediate track. This demonstrates a general view that there has been slow uptake by the Courts to fully utilise the intermediate track.

Question 4: How well has the new intermediate track been operating? Has it had an impact on case progression?

The intermediate track is intended to accommodate straightforward matters; however, it is only truly suitable for genuinely simple cases. When claims involve witness vulnerability, the need for multiple experts, or require extensive factual reconstruction, the design and operation of the intermediate track are severely strained. Such cases frequently encounter procedural and evidential complexities that the track was not built to manage, leading to inefficiency and increased costs. Moreover, the uncertainty surrounding the recoverability of additional work - such as the extra preparation required to address vulnerability - creates a disincentive for the parties to engage in thorough case preparation. This ambiguity not only distorts the approach practitioners take to preparing cases but also influences settlement pressures, as claimants (i.e. the injured victims) are reluctant to invest in necessary steps that might not be recoverable, and increase their liabilities to pay for shortfalls. The regime, therefore, does not adequately accommodate the needs of accident victims who are further disadvantaged by the inequality of arms, nor does it accommodate complex or fatal accident cases, which often involve numerous parties and a multitude of moving components, further highlighting the limitations of the intermediate track for anything beyond truly simple matters.

Question 5: Do practitioners and court users (including Litigants in Person) have access to sufficient information of FRC and their application?

No. The rules are dense and lack clarity on several key points, including what constitutes an 'issue' for banding, when an issue crystallises to be considered an issue in the case, the process for mid-case reassignment, the interaction of Part 36 with CPR 45.10 vulnerability uplifts, and the recoverability of agency and translation fees in the Intermediate Track. We recommend that the MoJ and CPRC issue detailed guidance with worked examples, decision trees, and templates.

Question 6: What effect has the extension of the FRC had on cases that use the Online Civil Money Claims and Damages Portal services?

While the portals manage volume efficiently, they are not calibrated for the nuances of FRC, particularly where reserved steps are required. The low, fixed allowances, largely unworkable post-Mazur, deter necessary applications and increase the number of contested points, undermining the intended efficiency.

Complexity Bands

Question 7: Do the complexity bands enable the award of proportionate costs? Is this the case in both the fast and intermediate tracks?

While the principle behind complexity bands is to promote proportionality, their practical application reveals significant shortcomings. In the Fast Track, banding is relatively clear and predictable. However, the Intermediate Track is far more interpretive, resulting in inconsistent application, increased cost litigation, and a lack of uniformity across cases. This inconsistency undermines the objective of proportionality and predictability.

A particular concern arises with fatal and dependency claims—especially those lacking traditional personal injury heads of claim (such as bereavement, funeral, or dependency losses) - which are often defaulted to Band 1 in the Fast Track. This is inappropriate, as these claims require intensive work and frequently involve court approval for minors, apportionment of awards among child dependents, warranting a higher banding (Band 3–4) or even exclusion from the Fixed Recoverable Costs (FRC) regime altogether.

There is also a notable cross-track disparity: comparable cases in the Fast Track can end up recovering higher costs than those in the Intermediate Track, due to divergent logics in how each track applies complexity bands. This counterintuitive outcome further highlights the need for reform.

Additionally, the criteria and procedures for mid-case reassignment of bands remain opaque. Decisions on progression or reassignment can sometimes lack clear fault or logic, contributing to uncertainty and unnecessary expenditure.

We recommend excluding fatal claims from FRC or, at a minimum, defaulting them to Band 3–4, and issuing comprehensive guidance to ensure that banding reflects the realities and lifecycle of each claim. Without clear and authoritative guidance, the risk of further costs, delay, and commercial unviability for running these cases remains unacceptably high.

Question 8: To what extent to the complexity bands simplify the costs determination process?

Bands simplify costs determination compared to budgeting, but ambiguity over when banding is fixed (at what point an issue crystallises as an issue in the case relevant to banding) versus revisitable, what constitutes distinct issues, and how to treat abandoned issues generates avoidable disputes. Clearer guidance and criteria are needed.

Example: In a case with liability disputed throughout, extensive work undertaken and then liability conceded at the point of defence lodgment, it is unclear whether liability would remain a relevant issue for assignment. If not, the banding applies from the start of the case and this is clearly unfair given that there has been extensive work done to address issues. This is particularly relevant in pre-assignment cases where there is much more scope for argument between parties.

Question 9: Are there any issues to raise in relation to the complexity bands?

Yes. As stated, the criteria and procedure for reassignment are unclear. There is also a cross-track disparity, where Fast Track cases can attract higher costs than comparable Intermediate Track cases in certain circumstances, which is counterintuitive due to the way in which the two complexity band systems work and consider complexity (issues based versus case type based). The lack of judicially endorsed guidance encourages inconsistent local practice.

Consistency of approach is needed between the tracks and proper time frames should be set out for the concession of 'issues' in the claim so that there is no ambiguity over what is considered a relevant issue and what is not.

Part 36 Offers

Question 10: Are there any issues with the interpretation of CPR 36 as a result of the CPR Part 45 changes?

Yes. The 35% uplift introduces certainty but creates stage-timing traps: accepting outside the relevant period yet within the same stage can result in both parties recovering the same stage's costs, which is anomalous and risk-inflating for Claimants. There is also asymmetry, as Defendants can accept Claimants' offers late without commensurate exposure (for instance right up to the point of the lodging of the defence), while Claimants face severe downside risk for not accepting early pre-medical offers. With Stage 1 being such a lengthy stage, judicial consideration needs to be given to this issue, as Defendants are leveraging rehabilitation documents to make early offers, which Claimant lawyers are unable to properly advise upon due to lack of medical evidence. The rehabilitation code is therefore difficult to endorse for Claimants who can be exposed to early offers, but legitimately wish to undertake rehabilitation. Further, the provision for costs at later stages, where a Claimant accepting out of time but within the same stage as the relevant period expiry, is punitive, with Claimant's not recovering any costs for that phase and the Defendant recovering all of the costs of that phase. This is overly punitive on Claimants and the rationale for change from both parties recovering the costs in the relevant period is not explained.

There remains no consequence to the Defendant accepting an offer out of time, unless there is an applicable judgment. This is a further disparity in the system that should have been addressed.

MASS members report consistent disputes and confusion from Courts and paying parties in relation to set off and the calculation of fixed costs. This is particularly so in the context of late acceptance of a Part 36 offer or failure to beat an offer at trial. Guidance and worked examples would assist practitioners in better understanding the rules which are complex to follow and navigate.

Question 11: Is it sufficiently clear that additional costs in relation to vulnerability or exceptional circumstances would be included in costs consequences under Part 36?

No. CPR 45.10 allows for costs above FRC where vulnerability necessitates additional work, but the interface with Part 36 is unclear. We recommend amending CPR 36 and the Practice Direction to cross-reference CPR 45.10, affirming that additional costs attributable to vulnerability form part of the costs consequences analysis, with worked examples.

Housing Claims

Question 12-15: Housing Disrepair and possession claims – costs practice and potential FRC design

MASS has no comment on these questions as it is outside of our area of expertise.

Other Exemptions

Question 16: Are the FRC exemptions under CPR 26.9(10) sufficiently clear to practitioners and claimants? If not, please provide your reasons.

They are generally clear, but there are gaps where case complexity mirrors excluded categories. More guidance is needed for borderline cases.

Question 17: Are any amendments required to CPR 26.9(10)? If so, what are these? Please provide your reasons

Exclusion logic should be extended to cases with allegations of fraud or fundamental dishonesty, due to the extensive evidence burdens and serious consequences, including custodial sentences. In addition, consideration needs to be given to the treatment of fatal accidents in both the Fast and Intermediate Track, cases with any jurisdictional element and cases involving foreign registered vehicles should also be excluded. Consideration should be given to exclusion for vulnerability beyond language considerations. This would mean that costs could be fairly assessed in all vulnerability cases allowing Claimants to properly engage with the legal process and not restricting representatives on costs recovery or requiring, in the majority of cases, court input on the assessment of costs as negotiation will be possible between parties.

These cases are complex and issues can change very quickly. Service of papers may be difficult, there may be multiple dependants that require liaison and any Claimant who faces arguments of Fundamental Dishonesty should be allowed to address such allegations unfettered by the constraints (both evidentially and cost wise) of the Intermediate Track.

Question 18: Do you consider that any of these exemptions should be reviewed? If so, please provide your reasons.

The current exceptions do not need to be reviewed but need to be added to.

Application of FRC in Different Claim Types

Question 19: Do you have any observations on how FRC are operating in relation to any of the following types of claims?

Non-monetary relief: Often involves urgent and specialist steps not captured by FRC grids and should default to multi-track or have a bespoke schedule. The value is determined by complexity band, but the issue is, of itself, a complex matter going to the heart of the banding assignment.

Multiple claimants with same lawyer: Reasonable uplifts should be permitted to recognise coordination work. What happens to cases with more than two Claimants? These seem to be excluded from the Intermediate Track. The whole premise that there is only a small uplift in work for additional Claimants is wrong. Each Claimant needs their own medical evidence and their own advice on the case, will provide their own statement and will have pleadings relevant to

them. The uplifts allowed are not commensurate to the work undertaken and the rationale to restrict the costs is not made out in reality.

Counterclaims: Stage mapping and grid application need clarification around what can be claimed, when and by whom?

Low value counter claims are also attracting disproportionate costs. One member reports a £500 counter claim attracting a £20,000 costs award. A review of how CPR45.7, 45.49 and 45.50 interact is necessary.

Preliminary issue trials: It is essential to provide add-ons for distinct preparation and hearings, including revisiting certain stages twice (for example, witness statements for liability followed by quantum statements, which the current rules do not accommodate). A separate grid should be established for the costs associated with preliminary issue trails, as the existing system is perplexing. Additionally, the process post-determination of the preliminary issue needs clarification regarding the assignment or reassignment to a band. If the band is amended post-determination, the current rules read as though it should be applied throughout the claim as if the preliminary issue had never needed addressing, impacting the costs of the preliminary issue trial. This should be clearly outlined and thoroughly examined.

Clinical Negligence

Question 20: If you have experiences with clinical negligence claims, what proportion do you see allocated to the intermediate track? What level of costs are usually awarded in those intermediate track claims? Which complexity bands are generally allocated to them?

MASS is not in the position to comment on Clinical Negligence cases and application of FRC.

Unreasonable Behaviour (CPR 45.13)

Question 21: Are you aware of any applications made to decrease and/or increase the FRC payable on the basis of unreasonable behaviour? If so, how well has this worked?

We have not seen any formal applications to date. The threshold ("no reasonable explanation") is under-explained in practice. More examples and quantum guidance are needed.

Question 22: Are any amendments required to CPR 45.13? Please provide your reasons.

Yes. Provide examples of conduct triggering increases/reductions and clarify quantum mechanics when combined with CPR 45.10 and Part 36. Ensure the time/costs of making applications are recoverable at realistic levels.

Inflation

Question 23: Are you aware of any reason why any of the FRC figures should be reviewed before 2026?

Yes. The Mazur judgment has exposed structural under-recovery for reserved steps, requiring immediate correction. The three-year review cycle is inconsistent with annual GHR updates and lags behind CPI and wage growth. We propose annual SPPI-based updates each 1 January, with a transparent formula published in advance.

It should be reiterated that legal fees for claims in the MoJ Portal, which form part of the fixed costs regime, have not been updated since 2013.

Disbursements

Question 24: Do you have any observations on the recovery of disbursements?

Medical Agency fees appear to be permitted in portal and Fast Track cases (required in Medco Reports), however the wording for Intermediate Track cases is such that agency fees may be considered not recoverable (ambiguous wording of CPR 45.61). This creates tension between cases that turn out to be more valuable than initially thought and fees that may not be recoverable that were legitimately incurred.

Disputes on translation costs are being raised regularly due to lack of guidance on vulnerability. Costs for the costs assessment process in FRC cases are so low that they do not adequately compensate for the time and effort spent, even if you win on the point meaning often negotiated outcomes.

Question 25: How is the 20 page limit for expert reports in the intermediate track claims working in practice?

There are some difficulties in certain cases and with certain types of cases. The necessary inclusion of direct quotes from medical records can be problematic as they may need to be extensive. For instance, neuropsychological or neuropsychiatric reports and audio vestibular reports with extensive testing and interpretation may be detailed and long.

It is not clear why the page limit is 20 pages. It is not clear whether this improves any case duration or trial duration.

It is suggested that it would be appropriate that the expert, an officer of the Court, could be allowed to give a reasoning and rationale for their report to exceed 20 pages where necessary, in relevant cases. Artificially shortening reports, making fonts smaller etc, is simply not assistive to the court and lowering the number of pages does not lower the fees for the reports.

Question 26: Are you aware of any requests to extend the 20 page limit? If so, please share any data or information that you have.

Not to date, however there should not be a need to apply to extend. As a Part 35 expert is an officer of the court, it would be most appropriate to allow them to state why they need more pages to prepare a report for the court. An expert justification model makes more sense than an application based model where the lawyer must provide information on why the report is in excess of 20 pages. Clearly this rationale should be provided by the expert.

Question 27: Do you find it easy to submit a Precedent U? Is it clear what information should be included? If you answered no to either question, please provide your reasons.

Precedent U is primarily used as a costs schedule, prepared in advance of hearings to outline the receiving party's claimed costs and the reasons for those claims. Unlike the previous process, where a bill of costs, points of dispute and points of reply, allowed for a more iterative exchange, Precedent U condenses this interaction. The receiving party states their costs and justifications, and the paying party responds with objections, but there is no procedural opportunity for further reply from the receiving party within the document itself. While this streamlined process generally poses few issues due to prior dialogue between parties, it places greater emphasis on the receiving party to comprehensively justify their costs in anticipation of potential objections, especially in cases where the paying party's arguments are not yet fully known.

The standalone costs assessment process and the fixed fees that are recoverable for this are again, not commercially viable and need to be reconsidered as the present level of recoverable fees are such that we are seeing opportunistic disputes on fees in cases where, prior to the rule changes, there would have been none.

Vulnerability

Question 28: Can you provide any evidence or estimates of how often a party of witness' vulnerability necessitates additional work?

Each time a person is considered vulnerable it requires additional work, however the degree of work varies hugely as each situation is unique.

Question 29: If so, please provide details of the nature of this vulnerability and additional work, and how much additional time is required to undertake it.

Estimates upon the additional costs of the extra work, range from 10% up to 60% over the life of the case, depending upon the degree of vulnerability and the situation that we are dealing with.

Question 30: Are any amendments required to CPR 45.10? Please provide your reasons.

Provision should automatically be made for translation costs within the rules. We are seeing disputes as to the necessity of translation costs for individuals. These arguments need to be avoided as, when incurring the fees the Claimant's solicitor has to be able to advise around the likely recoverability. Failure to allow such charges presents an issue with the quality and understanding of advice given by the Claimant lawyers.

As stated above, vulnerability beyond language related vulnerability should exclude a case from fixed recoverable costs. Providing detailed examples and guidance of the degree of vulnerability constitutes sufficient to remove from the process would be advantageous.

Conclusion and Further Views

Question 31: Do you have any further information or views to provide which are not covered by Questions 1-28?

Fatal Claims - the current treatment of fatal claims depresses recoverable costs, reduces effective damages, and risks access to justice, particularly for children and low-value statutory-award cases. Exclude such claims from FRC or default them to Band 3–4.

Foreign registered vehicles – often difficulties identifying and liaising with insurers, substantial delays can be experienced and difficulties in serving court papers that may have jurisdictional elements. Any case of this nature, or with jurisdictional elements should be excluded as they are too complex for the Intermediate Track.

Unify banding logic across tracks - define 'issues,' and when issues crystallise to allow transparent reassignment, and fix the issue–vs–work mismatch.

FRC Fees - urgently uprate all fees post-Mazur in all tracks and the MOJ portal as fees are presently unworkable.

Inflation - Move to annual SPPI-anchored updates for all fixed fees (Portal, Fast Track and Intermediate Track).

Application Fee - Allow a properly split fee for application fee, advocate fee and application fee for interlocutory and pre-action applications. These are reserved steps and are commercially unviable at the present time.

Cost Assessments - The fees recoverable for costs assessment do not encourage parties to negotiate. The fees recoverable for assessment of costs and the lack of any significant penalty to raising hopeful / spurious arguments, is insufficient to deter bad behaviour, particularly regarding disbursement disputes. Opportunistic disputes are often received knowing that parties will likely negotiate given that the assessment process takes a substantial time and is not commercially viable.

Part 36 - Rebalance Part 36 to address asymmetry and timing anomalies; cross-reference CPR 45.10.

Timetabling - Guidance is needed on what happens if the Defendant misses the date for a stage (for instance the date for lodging a defence passes). Does the stage increase at all before judgment is granted? If so, is it from the date that a defence should have been filed?

Application of FRC - The inconsistencies and uncertainty arising from the decision of *Asmat BI v Tesco Underwriting Ltd* need to be addressed. This concerns the recoverability or otherwise of fixed costs where a claim settles prior to proceedings being issued. If a claim is not issued, do fixed costs apply? (see page 605 of the *White Book supplement 'costs and funding following the civil justice reforms; questions and answers 11th Edition*).

Fee Recoverability - Codify translation/interpreting and medical agency fee recoverability.

Fraud - Extend exemptions to fraud/fundamental dishonesty cases.

Precedent U - usability needs improvement and guidance to reduce friction.

Vulnerability – any vulnerability other than not having English as a first language, should be excluded from the FRC, with detailed guidance and examples provided by the Courts as to how this would be interpreted and applied.

Payments for minors and approval (PP's being excluded from FRC) - Whilst there is provision at stage 15 for this if not conducted at trial, it is not clear if stage 15 applies to approval of an interim payment; if it can be claimed twice or if any specialist advice is recoverable on top. We need specifically recoverable fees for the advocate attendance, the advice provision by a specialist legal representative and confirmation that the fee can be claimed multiple times if necessary, to ensure that the rules are properly clear on this point.