

Capped costs pilot in the Business and Property Courts

A voluntary capped costs pilot runs from 14 January 2019 for two years in certain business and property courts for cases valued up to £250,000. This pilot was recommended by Sir Rupert Jackson as part of his July 2017 report on extending fixed recoverable costs in civil cases¹. The pilot will be evaluated to assess whether there is demand for such a scheme and to see how it might be rolled out in practice. The pilot scheme is based on the capped costs regime in the Intellectual Property and Enterprise Court (IPEC). The details are summarised below but are set out in more detail in the Practice Direction 51W.²

Aim of the pilot:

To improve access to the Business and Property Courts of England and Wales, primarily through:

- streamlining the procedures of the pilot courts;
- lowering the costs of litigation;
- increasing the certainty of costs exposure; and
- speeding up the resolution of claims.

Courts and Cases within the pilot:

London Circuit Commercial Court and the three specialist courts in the Manchester District Registry and Leeds District Registry, namely the Circuit Commercial Court, the Technology and Construction Court and the Chancery courts (the 'business and property courts').

Because it is to run only in the High Court, it is in effect a pilot for cases with a monetary value of £100,000 to £250,000. The pilot will be open to any case in the pilot courts, *except* those which:

- have a monetary value in excess of £250,000,
- will require a trial of more than two days after appropriate case management,
- involve allegations of fraud,
- are likely to require extensive disclosure or reliance upon extensive witness or expert evidence, and/or
- involve numerous issues and numerous parties.

Key features of the pilot (full details are set out in the Practice Direction)

The scheme is voluntary. The claimant may start their claim in the Capped Costs List (CCL), or the parties may subsequently agree to transfer to the CCL. Prior to the case management conference (the 'CMC') the defendant may object to the case proceeding as such. Thereafter, the court's permission will be required for a case to leave the CCL.

Statements of case will be limited in length, and must be accompanied by the documents upon which the party proposes to rely. There will be no costs management, nor will there be automatic disclosure, witness statements or expert evidence. At the CMC, the court will consider whether to

¹ www.judiciary.uk/wp-content/uploads/2017/07/fixed-recoverable-costs-supplemental-report-online-3.pdf
See chapter 9, pp 122 – 125.

² www.justice.gov.uk/courts/procedure-rules/civil/rules#part51

make any orders as to disclosure, witness statements or expert evidence which are necessary for the resolution of the identified issues.

Witness statements, if ordered, will be limited in length, will deal only with issues set out in the list of issues, and there will be a general rule that a party may rely on the oral evidence of no more than two witnesses at trial. The general rule is that expert evidence will not be permitted (but may be allowed by the court if it would further the aim of the pilot and the benefits would justify the likely cost – and expert evidence at trial should generally be in the form of a report from a single joint expert).

The trial will be not more than eight months after the CMC, and will last no longer than two days (excluding reading time and judgment).

Not more than 21 days after the conclusion of the trial, the parties will produce a schedule of costs by reference to various stages of the litigation, which will be assessed summarily by the court. A cap applies to each stage, together with an overall cap £80,000 (exclusive of VAT, court fees, wasted costs, and costs of enforcement). The costs are set out in the *Capped Costs Table* at the end of Practice Direction 51W³.

Evaluation

The pilot will be evaluated by Paul McMahon, Assistant Professor at LSE.

Future

Feedback from the pilot will inform any future decisions. Being voluntary the pilot will provide an indication of how many business and property courts users wish to take advantage of the new regime. We will also be able to assess how the rules are work in practice and what amendments are required if before these rules are rolled out more generally.

Further information:

Lead judges:

Mr Justice Waksman – London

HHJ Jonathan Klein – Leeds

HHJ Richard Pearce - Manchester

Email: cappedcostspilot@justice.gov.uk

Ministry of Justice

December 2018

³ www.justice.gov.uk/courts/procedure-rules/civil/rules#part51