Police Action Lawyers Group (PALG)

Response to consultation by Ministry of Justice on "Fixed Recoverable Costs (FRC) Interim Implementation Stocktake

09 January 2026

Section 1. Respondent details

Q1. Which of the following best describes your sector/profession?

1. The Police Action Lawyers Group ("PALG") is a national organisation comprised of lawyers 1 who represent complainants against the police. Due to our large and varied membership, the collective experience of PALG is considerable. We include lawyers who act on behalf of victims of misconduct by police officers from virtually every force in England and Wales. Our work also includes claims against other state authorities, particularly those with the power to detain and use force, including in the prison setting, immigration detention and mental health settings.

2. Our members are concerned first and foremost with the principal objectives of the complainants we represent: to ensure that detaining authorities are held accountable for their conduct through all available avenues, including the police complaints system, inquests, applications for judicial review and civil claims for compensation. In many circumstances, litigation through the civil courts can be the only means by which complainants are able to enjoy any access to justice and thereby defend their civil liberties in the face of malpractice by officers of the state. PALG members hope that by upholding our clients' rights against detaining authorities, both locally and nationally, we are enabling them to hold the state to account and contributing to improving the conduct of public authorities

3. PALG members have been involved with numerous civil claims and public inquiries. These cases typically include allegations of false imprisonment, assault and battery, misfeasance in public office and malicious prosecution (often aggravated by discrimination), as well as breaches of the Human Rights Act 1998 and Equality Act 2010. Some of the most distressing cases we deal with are on behalf of families whose relatives have died in state custody and on behalf of victims of crime failed by the state's investigatory and prosecuting authorities.

4. Our clients are disproportionately from vulnerable and socio-economically disadvantaged groups. For those who are ineligible for legal aid as a result of means,

[1] Our membership covers all branches of the legal professions, including paralegals, and levels of seniority

they will very rarely have the resources to afford the costs of litigation.. Many of them will have suffered psychiatric injury as a result of their maltreatment and great care will be required to avoid re-traumatising them.

5. Our clients are primarily motivated by a desire to seek accountability for an abuse of power, to understand why they suffered misconduct and who is responsible, to ensure that the detaining authority's unlawful conduct is exposed to judicial and public scrutiny in the hope that other citizens do not suffer what they have endured. In short, our clients do not enter into litigation as a 'commercial activity' and often seek a non-financial remedy. This may be an apology, or other statement vindicating the Claimant's rights and/or reputation such as a declaration under the Human Rights Act or Equality Act. A just resolution to civil litigation can provide a therapeutic benefit to a claimant who has suffered psychiatric injury.

6. It can also involve seeking a change in existing policies or the introduction of new policies, in order to put structures in place to protect other members of the public from the abuse of power.

7. Remedies sought will often include the erasure or amendment of damaging and/or inaccurate records, which is usually dependent upon establishing the illegality of the action leading to the recording. Such records, including data concerning an arrest that does not lead to a prosecution, can be disclosed to third parties and can have far reaching effects on important aspects of life such as securing employment or decisions by other state bodies, for example on access to children.

Question 2. Do you have direct experience of handling or advising on claims to which FRC apply? If so, how many cases have you seen (an approximate answer can be given)?

8. As we are sure the FRC Consultation team will be aware, PALG has been corresponding with the Civil Procedure Rules Committee and the Ministry of Justice for some time regarding the proposed new rules governing Fixed Recoverable Costs ('FRC'), in particular as they relate to claims against public authorities concerning fundamental rights. PALG provided a response to the 2017 consultation by Sir Rupert Jackson and the 2019 consultation by the Ministry of Justice. PALG has subsequently made submissions to the Civil Procedure Rules Committee regarding the implementation of Sir Jackson's recommendations, as well as responding to the 2023 consultation on issues relating to the new regime.

9. PALG anonymously surveyed members on a range of FRC issues for the purposes of the present 'stocktake' consultation. 24 responses across 18 PALG member firms were received. Responses are summarised below as they relate to specific questions in this consultation.

Sections 2. to 5.

Questions 3. to 15.

10. We have nothing to add under these sections other than what is said in response to other sections.

Section 6. 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.

11. The foundational principle behind Sir Jackson's recommendations on fixed recoverable costs was that the "only way to control costs effectively is to do so in advance"[2] and before substantial costs have been incurred. This, however, requires an important corollary: that parties understand in advance whether or not they are subject to the FRC regime and can tailor their conduct accordingly. Otherwise, the advantage of costs control is lost: it becomes an issue of unattractive satellite litigation which can significantly escalate costs and delay settlement.

12. Unfortunately, that is PALG's experience of the current operation of some of the FRC exemptions.

A claim against a public authority for trespass to the person, unless, having regard to the matters mentioned in rule 26.13(1), the court considers that it would not be in the interests of justice to do so.

13. In particular, that is PALG's experience of the current operation of the FRC exemption at CPR 26.9(10)(f) due to the discretionary exclusion to that rule introduced by the wording "*unless…the court considers that it would not be in the interests of justice to do so*".

14. By contrast, the exemption for actions against the police – captured in CPR r.26.9(10)(e) and clarified by r.26.9(11) – is generally working effectively because it has a clear definition of which torts are covered and without any permissive case-by-case exceptions to the general rule. The absence of equivalent language for equivalent claims against other state bodies is the major driver of the issues set out below.

15. The uncertainty created by the wording is having a significant chilling effect on the ability of PALG members to take on otherwise meritorious, and constitutionally important, cases in a range of areas. Defendant public authorities (and the Ministry of

[2] Sir Rupert Jackson, *Review of Civil Litigation Costs: Supplemental Report*, Ch.2 at [2.19]

Justice in particular) are routinely arguing that claims should be allocated outside the Multi Track in the interests of justice despite those including a claim for trespass to the person. This is generating, and will continue to generate, significant amounts of satellite litigation.

16. Our experience is that Defendants pursue that argument (that the "interests of justice" exception in r.26.9(10)(f) applies) regardless of value, vulnerability of the client, the impact of the false imprisonment/unlawful detention or assault/battery, or the remedies sought, including non-monetary relief under the Human Rights Act 1998. This will inevitably lead to a range of satellite litigation on different facts before the exemption can be applied with any level of predictability or clarity.

17. Our experience of judicial decision making on "interests of justice" arguments is that it is unpredictable with apparently like cases being approached variably at allocation stage. Where the matter settles pre-allocation, this results in substantial additional litigation through detailed assessment proceedings, necessitating a convoluted exercise of pre-supposing what might have happened if the matter had been issued and reached allocation.

18. As a result, PALG members report that the uncertainty over whether these cases would be allocated or not to the Multi Track at the outset of the litigation, or indeed whether Defendants will raise it the costs stage, has had a significant chilling effect on their ability to take on cases in this category.

Claims concerning the "harm, abuse or neglect of or by children or vulnerable adults"

19. There is significant uncertainty over the scope and application of this rule which, again, is generating substantial satellite litigation and a chilling effect on access to justice.

20. The definition of "vulnerable" is provided at paragraph 3 of CPR Practice Direction 1A, which states that:

> "*A person should be considered as vulnerable when a factor – which could be personal or situational, permanent or temporary – may adversely affect their participation in proceedings or the giving of evidence*."

21. There is a dearth of direct authority on the definition of a "vulnerable adult" and the scope of this exemption. In the experience of PALG's members, some Defendants are contesting whether an individual is a "vulnerable adult" for the purposes of the CPR, both in relation to this exemption and the provisions directly touching on vulnerability in the FRC scheme (see the response to Section 13 below).

22. As a result, Claimants are routinely left with significant uncertainty at the outset of these claims as to whether they fall within or without the FRC scheme.

23. It is worth re-emphasising Sir Jackson's conclusions when reviewing PALG's approved costs budgets at the time of the Supplemental Review. They applied to all detaining bodies, including claims against the NHS. On analysing those cases, he said at Chapter 3, paragraph [2.16] that costs were high and bore no relationship to damages. He went on to comment that "*This picture is not altogether surprising: quite apart from the complexity and importance of the issues raised in cases of this kind, time costs tend to be high, as claimants are frequently vulnerable and in need of extra assistance*".

24. This was one of the reasons that he proposed exempting those claims from the new intermediate track in their entirety: "*It is for this reason that civil actions against public authorities will generally be excluded from the fixed costs regime proposed below*".

25. When he revisited the issue at paragraph [4.24] with illustrative case studies as to why it would be inappropriate to include such cases in FRC, he did not just refer to police claims. One of his examples was a post-inquest claim under the Human Rights Act 1998 against an NHS Trust for failing to safeguard the life of someone admitted to a psychiatric ward.

26. At that stage, costs budgeting was relatively new (particularly for our cases, as the pace of litigation against public authorities is relatively slow), which limited the available data to a small pool of cases.

The impact of lack of clarity

27. As set out above, one unwelcome consequence of any lack of clarity in the rules is that it will produce satellite litigation.

28. Respondents to our survey described the potential for "*[h]uge amounts of satellite litigation at allocation stage*" and that this means it is a "*[n]ightmare to sort out costs if offers are made before allocation*".

29. Another important consequence which is already being directly observed and reported by our members is the impact on access to justice. The mismatch between the gravamen of these claims and the significant amount of time and costs required to properly bring them on the one hand, and the ambiguity over whether the claim properly falls within FRC (rendering them uncommercial or unviable to conduct on behalf of victims), is already having and will continue to have a significant, extensive chilling effect on access to justice.

30. The submissions below regarding access to justice, which relate to those cases against (non-police) public authorities that currently benefit from no exemption at all (because they do not include a claim for trespass to the person), apply to an extent here too. Put simply, our members report that cases which are subject to FRC are not commercially viable to conduct. While the negative impact will be the most obvious for cases falling outside any exemption at all, this impact is felt too in cases where it may be unclear if FRC will or will not apply, as members cannot afford to take the risk.

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

31. We have addressed in response to Question 16 the lack of clarity of the existing exemptions at CPR 26.9(10)**.** If those concerns are to be addressed, PALG proposes at the very least amending CPR 26.9(10)(f) so that the "interests of justice" discretionary exception to the exemption is removed.

32. However, this is secondary to our primary position that the exemption at CPR 26.9(10)(f) would, even with this clarifying amendment, still remain insufficient to implement Sir Jackson's recommendation and to provide appropriate access to justice for claims against the State/public authorities which are not only of grave importance to the victims of state injustice we represent but also of wider public interest.

33. PALG cases have a significance beyond the interests of the parties to the action. Our clients are primarily motivated by a desire to seek accountability for an abuse of State power, to understand why they suffered misconduct and who is responsible, to ensure that the responsible public authority's unlawful conduct is exposed to judicial and public scrutiny in the hope that other citizens do not suffer what they have endured.

34. PALG cases highlight poor practice by public authorities and can be an impetus for change in existing policies or the introduction of new policies, in order to put structures in place to protect other members of the public from the abuse of power, and prevent a recurrence of the same patterns in similar, or even more serious, future cases.

35. For these reasons, there is a public good in ensuring that these cases can be brought, in order to seek public accountability and to encourage best practice. However, financial barriers to litigation will continue to prevent these cases from being taken on and pursued.

36. Our clients are disproportionately from vulnerable and socio-economically disadvantaged groups. For those who are ineligible for legal aid as a result of means, they will very rarely have the resources to afford the costs of litigation.

37. The cases brought by PALG's clients are almost wholly dependent on two types of funding: legal aid and CFAs with a zero percent success fee. In order to maintain a successful and commercially viable practice in this area of work, the business model of PALG members relies on cross-subsidisation by way of recover of inter partes costs at or close to their full commercial rates. Without the availability of inter partes costs recovery it would be impossible to offer CFAs to clients who are not eligible for legal aid (as the damages awards in such cases do not allow for CFA success fees to be recovered from the client). And, given the history of legal aid cuts over the last two decades, it is not commercially viable to run a practice of PALG casework on legal aid funding alone.

38. The removal or reduced likelihood of recovering inter partes costs by way of the introduction of FRC has had a negative impact on the commercial viability of taking on cases.

39. The full effects of the implementation of the FRC regime in October 2023 are yet to be felt, given the inevitable delays between events giving rise to a potential civil claim and that claim being litigated to conclusion. However, a survey of PALG members indicated that the extension of the FRC has already had an impact on the types of cases that members are able to take on.

40. Survey responses indicate that 78% of PALG members now consider whether FRC would be likely to apply to a case before agreeing to take it on. Of those who now consider FRC as part of their new enquiry process, 80% responded that their ability to take on the case is negatively impacted by the likely application of FRC.

41. Survey respondents explained that their reasons for not taking on FRC cases included *"concern[s] about taking on a case where FRC applies for reasons of commercial viability"* and that *"We would need to balance those loss-making cases carefully in order to remain commercially viable as a team."*

42. Where firms do take on cases where FRC is likely to apply, respondents noted concerns that the economics of FRC cases impacted their ability to deliver a good service to the client. This is particularly concerning in cases involving vulnerable clients, as one respondent noted:

> *"Long-term will affect the economic reality of face to face engagement issues with clients as the travel time to see them won't be justified. It is difficult because clients are often vulnerable, and there are key times such as a particulars of claim where face to face instruction can be important".*

43. Survey respondents were asked which of their cases are affected by the new rules and provided the following examples:
    - Claims arising from deaths caused by public authorities other than police
    - Claims against the Ministry of Justice arising out of delayed release and prisoner on prisoner assault claims
    - Privacy / data cases
    - Discrimination cases involving public authorities other than the police (prisons, local authorities, NHS trusts)
    - Human Rights Act claims for bodies other than the police (e.g. prisons, the Home Office, local authorities, NHS trusts)

44. On 19 February 2025 PALG provided submissions to the Call for Evidence regarding 'Costs protection for discrimination claims'.[3] The Ministry of Justice was looking to understand further (1) Whether stakeholders consider there are any obstacles to bringing discrimination claims (2) If so, whether this is related to adverse costs and (3) If so (in respect of both issues (i) and (ii)), what the most appropriate response would be, and how this might be implemented.

45. The very same cases included in those PALG submissions which, in our submission, are in need of costs protection, would also be cases that may not now be taken on by firms due to the risk of FRC. The following case studies were provided:

    1. The Claimant was an elderly prisoner who required a number of disability aids and physical features in his prison cell to meet disability related needs. He brought a claim against the Ministry of Justice for failure to make reasonable adjustments. Failure to provide access to required aids and physical features meant that for the number of months, the Claimant was unable to use the toilet in his cell and was (with the knowledge of the prison) lying on his bed on top of a plastic bag in order to pass stools, and then cleaning that up himself. He frequently fell and would have no reliable means of calling for help, so would spend long periods alone on the floor of his cell. This continued for many months.

    2. The Claimant was a double amputee prisoner who required a number of disability aids and adjustments to his cell to meet his disability-related needs. He brought a disability discrimination claim against the Ministry of Justice. Failure to provide the same meant that the Claimant spent his two-year imprisonment completely bed bound, unable to transfer into his wheelchair to use the toilet or the shower or participate in the prison regime. He frequently

[3] https://www.gov.uk/government/calls-for-evidence/costs-protection-for-discrimination-claims/costs-protection-for-discrimination-claims-call-for-evidence

soiled himself and was left for periods without any care/support to maintain his personal hygiene. He was also restricted from participating in the wider prison regime, reliant on workbooks and in-cell activities.

3. A disability discrimination claim for a wheelchair user in prison who was placed on an inappropriate wing due to lack of accessible cell, and was also subject to poor adaptations within the only available cell, lack of access routes, lack of access to gym.

4. A disability discrimination claim for a deaf prisoner with no access to an interpreter for key sentence planning meetings, or adaptations for rehabilitation work or education courses / work placements.

5. The Claimant, a HIV+ man, brough a discrimination claim against a healthcare provider. The Claimant was charged an additional £1,000 for elective surgery after disclosing his HIV status during a routine pre-op consultation. There was no rational basis for this - the provider argued that additional precautions were needed, which if true suggest that their standard precautions are inadequate as surgeons cannot rely on self-reporting to minimise the risks of blood-borne viruses, not least because not everyone with HIV knows that they have it. NAT report that several of their service users have been discriminated against by this same clinic, who bring defamation claims if adverse reviews are posted, so are effectively getting away with unlawfully discriminating due to the risks involved in litigating.

6. The Claimant, a HIV+ man, brought a discrimination claim against a housing provider. The Claimant was evicted from temporary accommodation for recovering substance abusers run by a private provider, in which he had been placed by the local authority when homeless. He was evicted after the provider discovered his HIV status, informed the other occupants at a group therapy session, and the occupants objected to sharing bathroom facilities with him. He had to sleep in his car in sub-zero temperatures. The Claimant's representatives sent a letter of claim and Part 36 offer, but the opponent did not engage.

7. The Claimant, who was a visually impaired prisoner, brought a claim against the Ministry of Justice for failure to make reasonable adjustments.

46. The Ministry of Justice is on the one hand considering bringing those claims within QOCs protection and on the other has introduced an FRC regime which will be a perhaps greater prohibitive factor in access to justice. Discrimination claims against public authorities are complex claims requiring specialist lawyers. Without these cases being commercially viable these lawyers will not exist. Access to justice will be denied,

or the high costs involved will only be passed on to the courts and Defendants through an increase in victims litigating as litigants in person.

47. The other categories of case identified are in need of and deserving of legal representation. Claims arising from deaths in custody are defended by specialist lawyers paid by public authority defendants with access to significant resources. Claims which highlight and address serious wrongdoing within the prison service improve that service and provide an opportunity to learn and prevent future recurrence with similar, or potentially more serious, consequences. Claims brought to enforce privacy rights build trust between the public and the state.

48. In PALG submission, a wider exemption is required for claims against (non-police) public authorities, not limited to trespass to the person claims.

49. Claims against public authorities can then be effectively managed in the Multi Track through costs budgeting, which provides a suitable level of predictability for public authority defendants, and the proportionality criteria under CPR 44, which effectively control costs in claims according to their financial value and public importance (both factors to be considered under CPR 44.3(5)).

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

50. PALG can work with the Ministry of Justice to suggest a suitable amendment at this current stage to address the existing issues above. Alternatively, in our submission there does need to be a review of the exemption at CPR 26.9(10)(f) in particular. With a suitable broadening of that exemption and the removal of the "interests of justice" caveat, a review of CPR 26.9(10)(e) may not be necessary.

Sections 7. to 8.

Questions 19. to 20.

51. We have nothing to add under these sections other than what is said in response to specific sections below.

Section 9. Unreasonable Behaviour

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?

52. Of those members which responded to the PALG survey 65% said that they had experienced unreasonable behaviour by a defendant which increased costs, but only

28% had made an application under CPR 45.13. Only one of the members who responded had been a respondent to an application under CPR 45.13.

53. There are features inherent in PALG cases which drive up costs but which are not captured by CPR 45.13.

54. Neither claimants nor defendants in PALG cases approach litigation on a purely 'commercial' basis. Our clients are primarily motivated by a desire to seek accountability for an abuse of power, to understand why they suffered misconduct and who is responsible, to ensure that unlawful conduct is exposed to scrutiny in the public interest, and to seek improvements to policies and procedures which may prevent a recurrence of state abuse. Cases are litigated robustly by defendants due to the wider implications of an admission of wrongdoing or an adverse judgment.

55. In his 2017 Supplemental Report on FRC Sir Jackson reviewed the costs budgets from 59 civil actions against the police or other public authorities provided by PALG (2.5) and described those cases as *"typically hotly disputed on the facts"* (2.16 (i)). This, in the context of those claims frequently involving issues of *"great complexity or wider public importance"* led Sir Jackson to the conclusion that it was *"not altogether surprising"* that costs in the area were very high, and bore no real resemblance to the amount of damages claimed (2.16 (i)).

56. The following are just some of the ways in which defendant behaviour will drive up costs in PALG cases.

57. In our cases admissions of liability are rare. This means that these claims, which Sir Jackson described as *"wide-ranging in their subject-matter"* with various causes of action, remain wholly in dispute on all matters pertaining to liability and quantum until settlement or trial. There is a limited narrowing of the issues on an open basis during the course of litigation.

58. In the absence of admissions of liability, PALG clients often face litigation with multiple defendants. The powers and responsibilities of the state are shared between a range of separate authorities. Police forces, prisons, government departments, NHS Trusts, and private companies act together to produce decisions, or create systems, which impact our clients. When abuse or failure is investigated through complaints or pre-action correspondence, different authorities seek separate representation and provide their independent denials of liability. The same set of facts can give rise to multiple claims being pursued.

59. The challenges faced in PALG cases include the disparity of access to information between the parties and disputes over disclosure. A difficulty our members and clients

face in many cases is seeking to ensure defendants comply with their disclosure obligations which can reveal case critical information. Disputes arise over the requirement to disclose, for example: key internal policies; internal documents evidencing decision-making and rationale by public authorities; disciplinary records for staff or officers which may show a pattern of behaviour.

60. Disputes over case management directions frequently arise. While PALG clients aim to expose the issues arising in their cases to the fullest level of judicial and public scrutiny, public authority defendants are concerned with preserving the business of policing, detaining, prosecuting and governing with limited interference, cost, and change. This gives rise to differing approaches to how cases should be managed and listed which themselves become satellite disputes within the litigation. Disputes arise in the run up to CCMC and PTR *inter alia* over: length of trial; the requirement for and identity of assessors in discrimination claims; the right to and need for a jury; the need for and identity of experts.

61. These are just some examples of the drivers of increased costs in PALG cases. In other types of claim these behaviours – a lack of admission of liability, a delay in providing disclosure, a delay in ADR, or a protracted dispute over case management – might properly be considered a conduct matter or unreasonable behaviour which would sound in costs consequences. However, in the context of public interest litigation that is pursued and contested for reasons which are not purely financial or commercial, the question as to whether these will be deemed "unreasonable behaviour" or "conduct matters" is more difficult.

62. The above are pervasive cultural features of our work which are not addressed by CPR 45.13. It is in part for that reason that Sir Jackson recommended in 2017 that "*…civil actions against public authorities will generally be excluded from the fixed costs regime proposed below*". , finding them "*unsuitable for a constrained procedure*". The FRC regime, even with the inclusion of CPR 45.13, is a "constrained" procedure, as even the uplift available for unreasonable behaviour is fixed.

63. As set out above, Sir Jackson's recommendation was not implemented in full by the current rules.

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

64. PALG's primary submission is that Sir Jackson's recommendation should be implemented, and PALG cases excluded effectively (see above in response to section 6).

65. In the absence of this, amendment and/or guidance which explains more clearly what would be deemed "unreasonable behaviour", particularly in the context of public

interest litigation, is needed so that the parties and costs judges are able to approach this in a predictable way in assessments.

66. Further, as the particular defendant behaviours in our cases drive costs up by far more than 50% of the current FRC amounts, an amendment is required which provides for costs to be subject to detailed assessment if "unreasonable behaviour" is established.

Section 10. Inflation

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

67. A significant issue with the operation of the New Zealand fixed recoverable costs scheme is the gap between reviews for uprating.

68. The scheme was first put in place in 2000. Since then, the NZ Rules Committee has uprated the daily rates in their fixed recoverable costs scheme in 2004 (a 4 year gap), 2006 (2 years), 2011 (5 years), 2015 (4 years), 2018 (3 years) and then 2025 (7 years).

69. The most recent review, as a result, led to a 37.8% uplift in rates – following the Producer Price Index for Legal Services.[4] As the New Zealand Law Society Te Kāhui Ture o Aotearoa observed when making submissions to the NZ Rules Committee, there is significant merit in carrying out more regular reviews. Doing so "*will avoid the potential for backlash to a headline increase in rates of about 40 per cent, and assist in responding to concerns that rates have become divorced. Reviews being undertaken … could balance avoiding burdening the Committee with maintaining relevance*." The NZ Rules Committee agreed that reviews should be carried out more regularly.

70. Although FRC was uprated for Services Producer Price Index in January 2023, there has been significant inflationary pressure in the 3 year period since.

71. It is important that FRC levels continue to enable claims to be brought properly and fairly. The Ministry of Justice should not be consulting on carrying out a review, but committing to an increase in line with the Services Producer Price Index unless there was good reason to depart from.

72. Furthermore, PALG's position is that it should be for the Civil Procedure Rules Committee – not the Ministry of Justice – to reviewing the figures going forward on an annual basis. The same approach has been taken for the Guideline Hourly Rates with annual revisions in each of the years since the updated guidelines were introduced in January 2024.

[4] See *The Rules Committee, Minutes of Meeting of 6 October 2025, Circular 40 of 2025*

73. Given the way in which FRC operates and the impact on firms, it is critical that they are kept in line with the existing figures and not allowed to erode as a result of inflation. Firms need commercial predictability given the restrictive nature of the FRC regime and the necessity that they retain their value, given the already low figures entailed within them.

Sections 11. to 12.

Questions 24. to 27.

74. We have nothing to add under these sections other than what is said in response to specific sections below.

Section 13. Vulnerability

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

75. Client vulnerability necessitates additional work in cases PALG members handle in this area. The nature of the claims and the psychological impact on clients mean that engagement difficulties, emotional overwhelm and trauma-related responses are common. As a result, it is routine for PALG members to spend substantially more time obtaining instructions, providing repeated explanations, managing disengagement, and preparing evidence than would be required in cases involving non-vulnerable clients. It is therefore uncommon for vulnerability not to generate additional work.

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.

76. PALG clients' vulnerabilities require a trauma-informed and heavily supportive approach. For many vulnerable clients the time spent on engagement, instructions and statement-taking is significantly higher than in non-vulnerable cases, often requiring multiple hours of additional solicitor time spread across repeated attempts to obtain information that would ordinarily be gathered in a single call or meeting. The additional work is case-specific and difficult to quantify precisely, but in our experience, client vulnerability consistently results in a substantial increase in time spent on:

    a. Loss of Contact: Managing missed or cancelled appointments arising from mental health episodes or custodial restrictions, requiring increased administrative time; making repeated attempts to re-establish contact where clients disengage due to distress or mistrust; and coordinating with family members or

other intermediaries where necessary to support the client's engagement.

b. Additional time required for evidence and instructions: Undertaking slower, more iterative witness statement drafting across multiple sessions due to fragmented recall or distress; carefully managing the pace of discussions to avoid re-traumatisation; and conducting long or repeated telephone calls where clients struggle to remain regulated or able to engage in a single session.
c. Pre- and post-instruction support: Preparing trauma-informed explanations for documents that would not ordinarily require such detail; providing preparatory calls to minimise triggering reactions and ensure understanding; allowing additional time for clients to regulate emotionally before addressing the core issues; and conducting follow-up calls when discussions are cut short due to emotional overwhelm or custodial communication limits.
d. Additional barriers for clients in custody: Where clients are in prison or immigration detention, the custodial environment often intensifies the vulnerabilities identified in PD 1A, such as mental health difficulties, trauma-related symptoms, communication impairments, and reduced capacity to participate effectively in proceedings. Custodial communication barriers, including restricted and time-limited telephone access, capped call credit, delays in correspondence and limited opportunities for legal visits can heighten distress and hinder engagement. These constraints compound the client's vulnerability and significantly increase the time required to maintain contact, provide reassurance and obtain coherent instructions.

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

77. As set out above Sir Jackson's conclusions when reviewing PALG's submissions and approved costs budgets at the time of the Supplemental Review was that claims against public authorities should be excluded. One of the reasons was that "*claimants are frequently vulnerable and in need of extra assistance*".

78. The requirement in CPR 45.10(1)(c) that vulnerability-related work "alone" must produce a 20% uplift is extremely difficult to satisfy and does not reflect the nature of vulnerability as contemplated by Practice Direction 1A. In practice, vulnerability rarely operates in such a compartmentalised way. For many PALG clients,

vulnerability permeates the entire conduct of the litigation: trauma, mental health difficulties, cognitive limitations, social instability or custodial constraints affect every stage of the solicitor-client relationship, from initial instructions through to evidence preparation, case management and trial. The additional work required is therefore holistic and continuous, rather than attributable to particular time recorded entries. Vulnerability affects the overall manner in which the case is conducted, rather than generating a discrete or quantifiable tranche of extra work. Given the already tight margins under fixed recoverable costs, this high threshold risks discouraging firms from taking on cases involving significant vulnerability, which would be contrary to the interests of justice. Furthermore, an assessment of whether the work was increased by reason of the vulnerability is likely to be disputed by each side in turn increasing costs and satellite litigation.

Section 14. Conclusion

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

79. The answers to the above questions serve to illustrate the wide-ranging impact of the new FRC regime on PALG work already seen by our members. Due to the pace of litigation in this area, the implementation of FRC is, relatively speaking, at an early stage, and the full effects of such sweeping reforms will not yet have emerged. We welcome the stocktake but seek a further similar opportunity for reflection in 12 – 24 months.