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# In with the *in-crowd?*

Might the extension of fixed  
recoverable costs reverse the  
trend towards Costs Lawyers  
working in-house, asks *Simon Gibbs?*



**The March 2019 newsletter from the Costs Lawyer Standards Board advised, in relation to how the Costs Lawyer profession is employed, that “the trend towards working for a firm of solicitors as opposed to a costs law firm continues”. In 2011, 26.5% of the profession reported that they worked for a firm of solicitors. This went up to 41% in 2018.**

Without more information, it is not possible to be certain that this is a direct consequence of more Costs Lawyers making a conscious decision to move away from working as sole practitioners/for costs firms, and moving in-house to work for solicitors. It may be that a number of Costs Lawyers who previously worked as sole practitioners/for costs firms have retired in the interim. Alternatively, perhaps a number of costs draftsmen who have always worked in-house for a firm of solicitors have since qualified as Costs Lawyers.

Nevertheless, since the advent of the Jackson costs reforms, there has certainly been plenty of anecdotal evidence, not least from costs recruitment firms, that an increasing number of Costs Lawyers have been looking to move in-house with a view to greater job security.

### Jackson takes his toll

There is no doubt that the Jackson reforms have taken their toll on some costs firms. Ironically, of the two highest-profile casualties, Just Costs was a firm of solicitors and Costs Advocates an alternative business structure regulated by the Solicitors Regulation Authority.

Regardless, the overall impact of the initial Jackson reforms has certainly led to a perception that working in-house for a firm of solicitors provides greater job security. The speed with which a costs budget often needs to be produced, compared to the leisurely timescale for drafting bills of costs, will also have encouraged many solicitors' firms to create/maintain an in-house costs capability rather than outsource this work and this has

probably led to a higher proportion of costs work being undertaken in-house than was previously the case.

We now appear to be moving inexorably towards the next major step in the Jackson reforms, with proposals for extending fixed recoverable costs (FRC) to the majority of claims worth up to £100,000. For those who believe that the Ministry of Justice has failed to take proper account of the impact of these proposals on the profession, I can provide some comfort. The Ministry of Justice's impact assessment has specifically identified us as being among the “affected stakeholder groups, organisations and sectors”. It said: “Costs lawyers – as more cases become subject to FRC, there would be a reduction in cases requiring the work of a costs lawyer.”

*“Costs firms may survive the coming upheaval in a way that in-house costs departments do not”*

That is the beginning and the end of the government's analysis of the impact on Costs Lawyers. What is interesting from reading the impact assessment as a whole is the extent to which it recognises the difficulty in assessing the overall financial impact of the proposals because “the total volume of cases affected is unknown due to data limitations”.

The impact assessment provides a reasonably robust analysis, with some guesstimates, as to the number of litigated county court claims that settle post-allocation which are now likely to become subject to FRC, with a further guesstimate as to the number of issued claims that settle pre-allocation which will also be impacted. However, it is clear that officials have no data as to the number of claims which settle pre-issue and which would become subject to FRC under these proposals.

### Declining workloads

The limitations of the impact assessment's conclusions do not disguise the fact that there will be a significant downward impact on workloads for many Costs Lawyers. A major extension of FRC will see a corresponding reduction in the number of cases requiring costs budgeting.

For those Costs Lawyers who have moved in-house and are now working for large City firms, none of this will have much of an impact. The vast majority of costs work they undertake will be untouched by these current proposals.

Matters may be very different for those in-house Costs Lawyers who undertake mainly personal injury or lower-value general litigation costs work. Obviously, the combination of a reduction in costs budgeting and the extension of FRC will place a double squeeze on both in-house costs departments and costs firms, but the squeeze may not be symmetrical.

For now, smaller in-house costs departments of three to four fee-earners may remain viable. If these proposals lead to workloads declining by 50% (and that may be a modest estimate for some areas of costs work), those same costs departments may no longer be viable and particularly so once firms factor in the need to make allowance for holiday leave, illness and maternity/paternity leave.

If those in-house costs departments start to close, the remaining 50% of work still needs to be catered for. Costs firms will pick that up. The advantage that costs firms have is their ability to source work from a large number of different solicitors' firms (in addition to insurer work, solicitor/own client disputes etc).

The fact that any given client may not produce enough work to keep even one person busy full-time does not matter if there are many clients each providing a regular flow of work. Costs firms may survive the coming upheaval in a way that in-house costs departments do not.

It will be interesting to see if we begin to witness a reversal of recent employment trends for Costs Lawyers. ■