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## **Disbursements**

Several respondents requested further clarity on whether disbursements would be separately recoverable. The primary concern was that including disbursements within the fixed fees set out in the costs grid would place an extra pressure on costs. Separately, respondents raised concerns about the bolt-on amount for claims involving protected parties and children, stating that, if essential disbursements in these claims (counsel fees and court fees) were to be covered by the bolt-on amount, this would be insufficient, especially given the extra solicitor time needed to cater to protected party clients and to prepare for Part 8 approval hearings. We agree that the wording on disbursements was insufficiently clear in the proposals and that there are a range of views on whether disbursements should be included.

This is an important issue and we want to explore it further and seek views, including in light of the proposed increase to the bolt-on amount for these claims and other changes to strengthen access to justice safeguards. Accordingly, we are conducting a further short consultation on the issue of disbursements under the scheme. It proposes a way forward that takes into account the responses we received in this consultation and that were expressed in the CJC working group process. We invite views from interested parties on that proposal.

## **London weighting**

We will also make provision, in keeping with existing FRC schemes and the latest FRC extension due to come into force in October 2023, set out in CPR Part 45, for these costs to be uplifted by a fixed percentage of 12.5% where the receiving party lives, works or carries on business in, London and instructs a legal representative with conduct of the litigation who practises in London.

## **Defendant's costs**

Under Qualified One-way Cost Shifting rules, defendants in clinical negligence claims are rarely able to recover their own costs from unsuccessful claimants. However, where defendants are able to recover costs, we will set out that costs would be recoverable at a sum equivalent to fixed costs set out in the table of costs for the relevant stages of the process. This includes the fixed cost amounts and any percentage of damages specified in

the table of costs. The amount of damages would be calculated from a) the amount of agreed damages at settlement or following judgment, or b) if there are no damages agreed, the amount of damages specified in the letter of claim in the LVCD protocol.

### Scope of LDFRC scheme– costs and cost scenarios

For details of the scope of fixed costs in the LDFRC scheme and further detail on costs, including various cost scenarios, see Annex C

### Summary government position

Proposed fixed costs are as follows:

Table 1 Standard Track

Stage	Description	Option 1 - Median
1	For work conducted in all steps up to and including Standard Track Stocktake	£5,750 plus 30% of damages agreed
2	For work conducted from Standard Track Stocktake up to completion of LVCD protocol	£1,250

Table 2: Light Track

Stage	Description	Option 1 - Median
1	For work conducted in in all steps up to 21 days after Light Track Letter of Response is due	£1,750 plus 18% of damages agreed
2a	For work conducted from 21 days after Light Track Letter of Response up to and including Light Track Stocktake	£1,000 plus further 2.5% of damages agreed
2b	For work conducted in from Light Track Stocktake up to completion of LVCD protocol	£500

NB. Where “% of damages agreed” appears in Tables 1 & 2 above, this refers and applies to agreed damages before any uplift due to sanctions is applied.

Table 3: Protected party or child claims in standard or light tracks

Stage	Costs	Description of activity
Bolt-on amount (Protected party/child claims only)	£1,800 in addition to above stages	In recognition of extra work required in claims involving protected parties/children. Not applicable to non-protected party/child claims.

## 5.6. Neutral evaluation

### Proposals as consulted on

The position in the consultation was as follows:

If claims are not resolved at the mandatory stocktake stage of the process (or the further evidence stocktake stage in a minority of light track claims) there should be a paper-only evaluation, with the evaluator providing a written opinion on their assessment of the likely outcome on liability, quantum or both aspects of a claim, as needed. In doing so, the evaluator will need to record and analyse the relevant parts of the evidence and to give reasons for their conclusions. This evaluation would then be provided to both parties within a 4-week period.

We proposed setting out, prior to implementation, criteria governing when it would be permitted for evaluators to move beyond the paper-only process and seek clarification from experts, so it is strictly limited to only the most complex of claims.

Evaluation fees to be split evenly between claimant and defendant except in certain circumstances set out in specific sanctions.

Evaluation fees were as follows:

Type	Fee
Liability and quantum	£2,500
Liability only	£1,500
Quantum only	£750

### Consultation question:

Do you agree or disagree with the proposed arrangements for mandatory neutral evaluation, including the costs framework for evaluations and how these are funded?

Total responses to question: 90

Responses	Claimant	Defendant	Unknown	Other	All responses
Agree	6%	17%	6%	11%	39%
Disagree	33%	0%	6%	6%	44%
Don't know	6%	0%	0%	6%	17%
Total	50%	17%	11%	22%	100%

## **The way forward**

Our proposals for neutral evaluation are a key feature in ensuring that claims which have been unable to settle after the initial party exchange and the stocktake phase have a further opportunity to settle and avoid costly litigation where that is possible. The expectation is that few claims would need to go to neutral evaluation as it should be possible for parties to reach resolution in earlier phases.

Some respondents were concerned that the proposed costs were too low for specialist barristers to take on the work. Others saw neutral evaluation as adding delay, complexity and cost to the process.

We believe that the CJC was right to consider how a form of neutral dispute resolution could be incorporated into the streamlined process and that the benefits of doing so, particularly the potential for fewer claims to enter litigation, outweigh the extra costs and time involved. We also believe that the costs proposed by the CJC were reasonable and reflected discussions with the Bar Council. Consultation responses did not adduce evidence of the insufficiency of the costs or the net costs, or time taken for neutral evaluation.

We therefore propose to retain the proposed process around neutral evaluation but with some logistical changes to ensure it does not add unnecessary friction.

### **Evaluator eligibility**

Consultation respondents suggested that evaluators could also be solicitors and other legal professionals who are appropriately skilled in this discipline and have experience of acting for both claimants and defendants. We agree and propose that choice of evaluators is not restricted only to barristers, but open to suitably experienced legal professionals, including solicitors, barristers and others with sufficient impartiality. Experience, expertise and impartiality requirements will be set out in guidance alongside expectations of the role and the evaluation itself.

### **Evaluator selection**

Respondents also asked for further information on how a panel of barristers for this work will be administered, who will be responsible for this cost and how evaluators would be selected for a case.

Our approach to this novel process has been to ensure it is as simple and fair as possible, enabling evaluations to operate smoothly and without adding unnecessary delay to the process.

We propose that evaluators be jointly instructed by both parties.

The party proposing an evaluation (party A) should offer 3 names of potential suitable evaluators to the opposing party (party B) according to the guidance criteria (first offer). Party B should then choose one of these 3.

If all 3 evaluator suggestions are unacceptable to Party B, Party B should propose 3 further names to Party A (counter-offer). Party A should choose one of these 3. If either the first offer choices, or counter-offer choices, are refused, the refusing party must set out the reasons why the suggestions are unacceptable, to avoid parties unreasonably rejecting the other party's proposals.

We also propose nominating a Protocol Referee, whose responsibility it will be to direct the selection of the evaluator, if, having followed the above process, parties do not agree on choice of evaluator.

If parties cannot agree an evaluator, then the evaluator should be selected in such manner as the Protocol Referee considers to be reasonable. This may include the Protocol Referee selecting an evaluator for parties to appoint or suggesting a selection method that is agreeable to all parties.

### **Evaluation cost**

However, we are particularly concerned, especially having heard consultation respondents' concerns on evaluation costs, that the cost of this novel process could represent a significant cost pressure to the claimant without a clear mechanism for claimant legal representatives to cover these costs under ATE insurance arrangements. Without a clear mechanism, there is a risk that claimants themselves (including claimants without means) may have to bear the claimant portion of any evaluation costs directly. We consider this to be an unacceptable cost and access to justice risk for claimants in the scheme.

We have therefore decided that the evaluator's fee will be covered by the defendant. If a claim is not settled following the mandatory stocktake, claimants and defendants should determine whether to settle the claim or go to evaluation. If either party wishes to proceed with evaluation, an evaluation should proceed, funded by the defendant.

### **Refusal to participate**

If one party wishes to proceed and the other party refuses to participate, new sanctions will apply to ensure that the process is appropriately followed. If the claimant unreasonably refuses to engage with an evaluation requested by the defendant, a reduction in recoverable costs of 50% may be applied at the point where costs are agreed. If the defendant refuses to engage with an evaluation requested by the claimant, the protocol is deemed to end and the claimant may issue proceedings. These new arrangements are set out in Section 5.8 below. There will be no sanctions on claimants relating to evaluation



costs, now that claimants will not be liable to pay evaluation costs. The sanction that applies if claimants reject an evaluation outcome on quantum of damages will remain.

If neither party wishes to proceed to evaluation, the claimant should consider whether an offer is appropriate, or may wish to issue proceedings. Where parties decide to proceed with evaluation, in order to encourage and facilitate resolution of claims, we will add a dedicated stage for making and considering offers following the evaluation outcome. This will be called the 'post-evaluation offer period' and will extend for 28 days following receipt of the evaluation outcome.

Agreement not to proceed with evaluation, or when a defendant does not agree to participate with an evaluation, would mark the completion of the process specified for these claims in the LVCD protocol. Otherwise, the LVCD protocol completes at the point when:

- (a) 28 days have passed following receipt of a neutral evaluation outcome (the end of the post evaluation offer period)
- (b) a claim is settled at any time during the LVCD protocol processes
- (c) a claimant confirms that they are discontinuing their claim

## **Summary government position**

If claims are not resolved at the stocktake stage of the process (or the further evidence stocktake stage in a minority of light track claims) there should be a paper-only evaluation, with the evaluator providing a written opinion on their assessment of the likely outcome on liability, quantum or both aspects of a claim, as needed. In doing so, the evaluator will need to record and analyse the relevant parts of the evidence and to give reasons for their conclusions. This evaluation would then be provided to both parties within a 4-week period.

Choice of evaluators is not restricted only to barristers, but open to suitably experienced legal professionals. Experience, expertise and impartiality requirements will be set out in guidance alongside expectations of the role and the evaluation itself, as well as circumstances in which it would be permitted for evaluators to move beyond the paper-only process and seek clarification from the parties on expert evidence.

Evaluators will be jointly instructed by both parties, with the matter referred to a Protocol Referee if the parties cannot agree on an evaluator.

Defendants will be responsible for paying the evaluator's fee. If one party wishes to proceed to evaluation, evaluation should proceed. If neither party wishes to proceed to

evaluation, the claimant should consider whether an offer is appropriate, or may wish to issue proceedings. There will be no sanctions relating to evaluation costs. The sanction that applies if claimants reject an evaluation outcome on quantum of damages will remain. New sanctions will apply if one party proposes evaluation and the other party refuses.

Evaluator fees remain as follows:

Type	Fee
Liability and quantum	£2,500
Liability only	£1,500
Quantum only	£750

As neutral evaluation is a novel process developed for this protocol, we will ensure that this feature of the LDFRC scheme is monitored and reviewed as part of the post implementation review process.

## 5.7. Excluded claims

### Proposals as consulted on

The proposed excluded categories in the consultation were as follows:

- claims requiring more than 2 liability experts
- claims with genuine multiple defendants (where allegations against each defendant are different)
- claims involving stillbirths or neonatal deaths
- claims where limitation is raised by the defendant as an issue

We proposed that all claims on behalf of protected parties or children should remain in the fixed costs scheme with a suggested additional bolt-on amount of £650.

### Consultation question:

Do you agree or disagree with the proposals on claims to be excluded from the FRC scheme and on the approach to protected party claims?

Total responses to question: 90

Responses	Claimant	Defendant	Unknown	Other	All responses
Agree	6%	17%	6%	11%	33%
Disagree	44%	0%	6%	6%	61%
Don't know	0%	0%	0%	6%	6%
Total	50%	17%	11%	22%	100%

### The way forward

The exclusions proposed in the consultation were selected to ensure that claims of particular complexity or sensitivity not suitable for the FRC scheme would not be subject to the process and fixed costs. Complexity and sensitivity remain the guiding principles for inclusion in, or exclusion from, the scheme. We have considered suggestions made by consultation respondents to exclude further categories of claims or modify proposed exclusion categories in light of these principles. We have also considered whether claims may be unsuited to this FRC scheme for other reasons. For the avoidance of doubt, where a claim qualifies for a valid exclusion from the LDFRC scheme, this means it is not subject

to the LVCD protocol, and recoverability of costs is not limited to the fixed costs under the LDFRC scheme.

### **Excluded claims – process and costs**

If a claimant believes that a given claim should be excluded from the LDFRC scheme, the claim will not be subject to the LVCD Protocol and will instead follow the PAPRCD. The claimant will be required to detail any reasons why they believe the claim should not follow the LVCD protocol in the letter of claim required in the PAPRCD. If the claim subsequently proceeds to be issued by the court, the claimant will be required to detail any reasons why the LVCD protocol was not followed, including any applicable specified exclusions.

The fixed costs under the LDFRC scheme will not be applied to claims that qualify for a valid exclusion from the scheme. However, if the court is not satisfied that the claim qualifies for a specified exclusion and the claim has a value at settlement or following judgment in the value range of the LDFRC scheme, then that claim would be subject to fixed costs for the pre issue period. Further information on costs in excluded claims is at Annex C.

### **Stillbirths/neonatal deaths, secondary victims and other fatal claims**

Some respondents argued for all fatal claims to be excluded, arguing that causation issues with fatal claims can be particularly complex and that all fatal claims are sensitive. Others argued that secondary victim claims of neonatal deaths and stillbirths should also be excluded.

While all deaths are distressing for families and loved ones, we remain of the view that stillbirths and neonatal deaths are particularly sensitive. We have not seen evidence, including within the consultation responses, that fatal claims are more complex than other claims in this value range. We are therefore not convinced that fatal claims more widely should be excluded as a category. However, we do think that given the particular sensitivity around neonatal deaths and stillbirths, they should continue to be excluded from the LDFRC scheme. In addition, given there are commonly secondary victims in those claims and the sensitivity principle applies to them, we consider the exclusion should also extend to secondary victims in those claims.

### **Number of experts**

Some respondents argued that many claims, though not intrinsically complex, will require an extra expert on causation, especially where there is an element of psychological injury, and that these claims should not fall out of the scheme as a result. We agree that an extra element on causation is a common feature of clinical negligence claims, including in this value band, and that this does not add undue complexity so should not automatically exclude claims from fixed costs. We have therefore decided to modify the exclusion

requirement on experts to state that claims where the allegations of negligence would require the claimant to adduce medical expert evidence as to breach of duty of care and causation from more than 3 medical experts will be excluded from the LDFRC scheme. This means that claims requiring such evidence from up to and including 3 medical experts will not unnecessarily or inappropriately drop out of the scheme.

### **Protected parties and children**

Some respondents argued that all claims involving protected parties and children should be excluded, particularly because these claims have special requirements (time spent with the claimants, preparation for and application to the court for approval hearings and counsel advice) which mean they would be more complex and costly and should not be restricted to fixed costs. They further argued that the bolt-on amount proposed to fund these claims was insufficient. There were also requests for clarity on whether disbursements for court fees and counsel advice would be included in the fixed costs or separately recoverable. Respondents argued that for these reasons, if protected party claims were not excluded, they would be uneconomical for claimant solicitors who would not take on these clients, which would be an unacceptable access to justice risk.

We acknowledge these concerns. Safeguarding access to justice for claimants is of paramount concern in our scheme and especially for claimants who may have extra needs. We have decided to ensure that claims where the claimant is a protected party, or a child are safeguarded from access to justice risks by increasing the bolt-on amount for these claims (see Section 5.5). In addition, we are conducting a short consultation on arrangements for disbursements in the scheme, which particularly concerns claims where the claimant is a protected party or a child, given the known disbursements involved. With new safeguards in place, and further clarity on disbursement arrangements for all claims to be explored in a further consultation, we believe that claims where the claimant is a protected party or child remain suitable for inclusion in the scheme.

### **Litigants in person (LIPs)**

Some consultation respondents raised concerns about the suitability of the scheme for LIPs, suggesting that the requirements of the protocol would be an unfair burden on these claimants. As discussed in Section 5.1 above, we consider that the process and requirements for conducting clinical negligence claims are unsuitable for claims where the claimant does not have legal representation (an LIP). We will therefore exclude LIPs from the fixed costs and requirements of the LVCD protocol.

### **Limitation**

As set out in Section 5.2 above, the LVCD protocol encourages parties to resolve any limitation issues by agreement but does not alter the statutory time limits for starting court proceedings. If for any reason, proceedings are started to comply with the statutory time

limit before the parties have followed the procedures in the LVCD protocol, the parties should apply to the court for a stay of the proceedings while they comply.

However, a claim will no longer continue under the LVCD protocol and will drop out of the LDFRC scheme if, within 21 days of receipt of the Standard Track Letter of Claim or the Light Track Letter of Claim, the defendant writes to the claimant stating that they consider the claimant's claim may be time-barred under any provision of the Limitation Act 1980.

## **Summary government position**

Excluded categories: The LDFRC scheme will exclude claims:

- (a) where the allegations of negligence would require the claimant to adduce medical expert evidence as to breach of duty of care and causation from more than 3 medical experts
- (b) made against 2 or more defendants, where the allegations of negligence against each defendant are materially different
- (c) arising from a still birth or neonatal death, including claims made by secondary victims
- (d) where limitation is raised by the defendant as an issue

Claims where the claimant is a litigant in person will not be included in the LDFRC scheme.

All claims on behalf of protected parties or children should remain in the fixed costs scheme with an increased bolt-on amount of £1,800.

Where a claim qualifies for a valid exclusion from the LDFRC scheme, this means it is not subject to the LVCD protocol, or the fixed costs under the scheme. However, if the court is not satisfied that a claim qualifies for a specified exclusion and the claim has a value at settlement or following judgment in the value range of the LDFRC scheme, then that claim would be subject to fixed costs for the pre-issue period.

## 5.8. Sanctions

### Proposals as consulted on

The position in the consultation was as follows:

Timely defendant response:

If deadlines are not met by the defendant, a standard track claim would fall out of the clinical negligence FRC scheme and will be processed according to the same arrangements made for clinical negligence claims above the upper limit for the scheme (£25,000). A light track claim will, if the deadlines are not met, recommence in the standard track and costs will be recoverable only for the standard track process.

We will seek to reflect in the Civil Procedure Rules (CPR) that failures to adhere to FRC process deadlines can be considered a conduct issue with potential cost consequences.

The consultation sought views on a proposed 50% reduction to the costs the claimant can recover from the defendant in the case of claimant delays and a 50% uplift to damages in the case of defendant delays.

Evidence quality:

We will seek to reflect in the CPR that failures to provide sufficiently detailed evidence at the outset of the FRC process can be considered a conduct issue with potential cost consequences in terms of limitations to the costs the claimant is able to recover from the defendant. This would mean a 50% reduction to the costs the claimant is able to recover from the defendant.

Neutral Evaluation sanctions:

If the claimant does not accept the evaluation recommendation on liability, proceeds to court and loses, the claimant would be liable to pay for the cost of the evaluation.

If the claimant does not accept the evaluation recommendation on quantum of damages, proceeds to court, and does not beat the recommendation by 20%, the claimant would be liable to pay for the cost of the evaluation.

If the claimant rejects an evaluator's recommendation on issues of quantum of damages and proceeds to court but fails to beat the evaluator's recommendation by 20%, it would be permissible to share the evaluation with the judge at the point when issues of costs are being decided, and the judge will consider whether there will be a 50% reduction.

### Consultation question:

Do you agree or disagree with the proposals on sanctions to be considered and implemented by changes to the Civil Procedure Rules?

Total responses to question: 90

Responses	Claimant	Defendant	Unknown	Other	All responses
Agree	6%	17%	6%	11%	39%
Disagree	44%	6%	6%	6%	61%
Don't know	0%	0%	0%	0%	6%
Total	50%	17%	11%	22%	100%

### The way forward

Respondents raised concerns about the level and nature of financial sanctions. Some respondents thought that the sanctions proposed were insufficient and would not incentivise parties to work constructively in accordance with the rules. Others felt that the costs sanctions were disproportionate to the instances of non-compliance they were intended to address.

In making his recommendation for an FRC scheme for low value clinical negligence claims, Sir Rupert Jackson was clear that “costs and procedure must be linked” and that “one cannot simply impose a grid of FRC and leave all the other rules of procedure as they are.” A critical part of that procedure, highlighted by the CJC report, is the rules that govern adherence to it. We are clear that sanctions are integral to the smooth running of the scheme and that they should be proportionate and targeted to areas where adherence to the procedure may be at risk.

### Evidence quality and defendant deadline

One of those areas of risk is around the initial exchange of evidence. If the claimant does not provide sufficiently detailed evidence at the outset of a claim, the ability of the defendant to provide a full, detailed response within the deadline could be compromised. Claimant legal respondents were concerned that there could be disagreements between the parties about the quality of the evidence provided which could unfairly result in a reduction to recoverable costs.

Our position is that if the defendant considers the quality of evidence set out in an initial Letter of Claim and/or bundle of accompanying evidence is inadequate, and the claimant has failed to respond to requests for better and further clarification, the defendant should



include in their Letter of Response an explanatory statement setting out how any deficiency in the claimant's evidence has hindered a full response. The court may then order a 50% reduction to the fixed costs which the claimant is able to recover from the defendant, and it will be for the court to decide whether the defendant's rationale is reasonable and whether the claimant's behaviour should be seen as a conduct issue.

Correspondingly, if the defendant fails to respond within 6 months of the letter of claim in the standard track, the claim will no longer be subject to the fixed costs or the LVCD protocol in the LDFRC scheme. We would anticipate in such a scenario that claimants may opt to issue proceedings and would be able to recover costs on the standard basis for any pre-issue work. This is intended to serve as an effective sanction whereby the defendant is potentially liable for greater costs.

For the avoidance of doubt, defendants must ensure they respond within the 6-month period, regardless of deficiencies in the claimant's bundle of evidence. If they do not, the claim will fall out of the LDFRC scheme and any sanctions relating to the quality of claimants' evidence will not apply.

We consider these twin sanctions around the initial exchange represents a fair approach to ensuring all parties follow the protocol. It is in the interests of both parties to adhere to evidence requirements and deadlines and to ensure a smooth initial exchange of evidence.

Concerns were also raised that there are no incentives for the defendant to comply with the procedures of light track cases. It was suggested that if a defendant fails to comply with the procedures of a claim in light track or standard track the case should automatically fall out of the FRC scheme.

We agree that there should be an additional incentive for defendants to adhere to the response deadline in the light track. Accordingly, a light track claim will, if the initial 8-week deadline for response to the light track letter of claim is not met, recommence in the standard track (with a standard track letter of claim). In addition, the claimant will be able to recover 5% of light track stage one costs on top of standard track costs in successful claims. We consider that the prospect of higher costs under the standard track and the additional 5% of light track stage one costs is sufficient incentive for the defendant to adhere to the light track response deadline.

### **Other protocol deadlines**

Both claimant and defendant respondents raised concerns around a sanction on deadlines in the process. It was pointed out that there are many factors outside either the claimant or defendant's control that can often result in delays, for example obtaining records, expert

availability, client availability and the extra time needed to prepare reports in non-straightforward cases.

We acknowledge that there will be external factors outside the claimant or defendants' control that could cause delays to deadlines, especially where expert reports are required. For this reason, we consider it sensible to allow for extension of any deadline, excepting the defendant response deadline in the standard and light track processes, if there is mutual agreement between parties to do so (further detail on this is set out at Section 5.3 above).

However, sanctions remain necessary to ensure that parties comply with deadlines in the LVCD protocol. Where there is not agreement to extend and a party fails to adhere to a deadline set out in the LVCD protocol, then sanctions would continue to apply. For breaches by defendants, this would mean a 50% uplift to damages agreed at settlement. For breaches by claimants, the sanction would be a 50% reduction to recoverable costs. This approach aligns with similar arrangements set out in the extension to FRC in civil claims coming into force in October 2023, whereby unreasonable behaviour may prompt a 50% reduction in costs.

We consider that adherence to deadlines is critical to the smooth running of the LVCD protocol and that these sanctions are a fair, proportionate and appropriately targeted solution to address that risk.

### **Neutral evaluation sanctions**

The neutral evaluation stage is a key part of the arrangements in the LVCD protocol to facilitate early resolution and avoid unnecessary litigation where claims have not been resolved at the stocktake stage. Concerns around the evaluation expressed in the consultation focused on the cost of the evaluation itself (and potential access to justice risks for claimants), the eligibility requirements for evaluators and the details of the process, including the selection of the evaluator.

In addressing these points, we have set out, in Section 5.6 above, how the process of initiating an evaluation should proceed and specified that the defendant is liable for the entirety of the evaluation fee.

These arrangements have prompted changes to the sanctions around evaluation.

### **Evaluation fees sanctions**

Now that we have modified the proposals to specify that defendants are liable for the evaluation fee, the proposed sanctions on evaluation fees are redundant and will not form part of the LVCD protocol or the LDFRC scheme.

### **Failure to participate in neutral evaluation**

There may be claims in which parties agree not to proceed with an evaluation. In those claims, the agreement not to proceed will mark the completion of the LVCD protocol process.

However, where an evaluation is deemed appropriate by either party, the evaluation should take place. We consider that non-participation in the evaluation process should therefore be subject to a sanction on either party.

Where the claimant unreasonably refuses to participate in the neutral evaluation process the court may order a 50% reduction to the fixed costs which the claimant is able to recover from the defendant.

Where the defendant refuses to participate in the neutral evaluation process the protocol process will be completed and claimants may decide to issue proceedings.

These sanctions are intended to ensure that where an evaluation may be appropriate, there is sufficient incentive to encourage parties to agree on and participate in the process.

### **Failure to secure a better outcome at trial**

Where the parties do not reach settlement following neutral evaluation and the claimant goes on to issue their claim, if the claimant does not obtain a judgment at a sum at least 20% greater than the amount recommended for settlement by the evaluator, a 50% reduction will apply to the fixed costs which the claimant is able to recover from the defendant.

This sanction is intended to ensure that due consideration is given to the evaluator's recommendations on quantum of damages, and that it facilitates resolution.

### **General note on sanctions**

For the avoidance of doubt, wherever the proposals in this document refer to a sanction on the costs which the claimant can recover from the defendant, this means only the costs relating to the LDFRC scheme, which are pre-issue costs. Any sanction on recoverable claimant costs relates to the total combined costs sought by the claimant.

Sanctions relating to the failure to meet deadlines, including any costs consequences and damages uplifts should be applied automatically at the point at which costs are dealt with. Likewise, the sanction relating to a failure to secure a better outcome at judgment, following an evaluation recommendation, should be applied automatically when costs are dealt with.

However, sanctions relating to deficiencies in the claimant's initial letter of claim and/or bundle of evidence, and sanctions relating to a claimant's unreasonable refusal to

participate in a neutral evaluation will be subject to consideration by the court which may make a determination on whether the sanction should be applied.

### **Note on the effect of damages uplift sanctions**

It should be noted that the application of sanctions here is not intended to render a claim ineligible for fixed costs. Therefore, any determination as to whether a claim is subject to fixed costs based on value at settlement or following judgment will be made before any damages uplift is applied.

Neither is an uplift on damages intended to increase recoverable legal costs under these proposals. Therefore, any percentage of damages calculated as a component of recoverable legal costs for the claimant will be determined with reference to the amount of damages prior to applying any uplift to damages as a result of a sanction.

## **Summary government position**

### **Evidence quality and defendant response deadlines in the light and standard tracks**

Failure by the claimant to provide sufficiently detailed evidence at the outset of the FRC process can be considered a conduct issue with potential cost consequences. The court may apply a 50% reduction to the costs the claimant is able to recover from the defendant.

Failure by the defendant to respond to the claimant letter of claim in the standard track will mean that the claim is no longer subject to the LDFRC scheme, including the fixed costs or the LVCD protocol process requirements.

Failure by the defendant to respond to the claimant letter of claim in the light track will mean that the claim restarts in the standard track and standard track costs apply. An additional 5% of light track stage one costs will be recoverable in addition to standard track costs in successful claims.

### **Other protocol deadlines**

Other than for the defendant response in the light and standard tracks, deadline extensions may be agreed by both parties. However, if there is no mutual agreement to extend a particular deadline specified in the LVCD protocol:

- failure by the defendant to meet the deadline will result in a 50% uplift to damages agreed at settlement or following judgment
- failure by the claimant to meet the deadline will result in a 50% reduction in recoverable costs

### **Failure to participate in neutral evaluation**

Where the claimant unreasonably refuses to participate in the neutral evaluation process the court may order a 50% reduction to the fixed costs which the claimant is able to recover from the defendant.

Where the defendant refuses to participate in the neutral evaluation process the protocol process will complete and claimants may decide to issue proceedings.

### **Failure to secure a better outcome at trial**

Where the parties do not reach settlement following neutral evaluation and the claimant goes on to issue their claim, if the claimant does not obtain judgment at a sum at least 20% greater than the amount recommended for settlement by the evaluator a 50% reduction will apply to the fixed costs which the claimant is able to recover from the defendant.

As part of the monitoring and evaluation of the LDFRC scheme in its first years of operation, we will assess the effectiveness of these sanctions.

## 5.9. Implementation date of scheme

### Proposals as consulted on

The position in the consultation was as follows:

From the date on which the rules come into force, all notified claims will be included and be subject to the new rules. Our guiding principle in considering this issue has been to ensure that the changes we seek to make will lead to greater certainty and smoother implementation and will begin to deliver savings early.

### Consultation question:

Do you agree or disagree that the proposals on FRC should apply to claims where the FRC letter of claim (or FRC claim notification letter) was submitted on or after the implementation date of the scheme?

Total responses to question: 90

Responses	Claimant	Defendant	Unknown	Other	All responses
Agree	11%	17%	6%	11%	44%
Disagree	39%	6%	6%	6%	50%
Don't know	6%	0%	0%	0%	6%
Total	56%	17%	11%	22%	100%

### The way forward

Some respondents said that the FRC scheme should apply to claims where the incident of harm occurred after the implementation date rather than to claims that are notified after implementation. Respondents were concerned to avoid the inclusion of claims where work had already been carried out by a solicitor. Respondents suggested that if the date of letter of claim were to be used, there would need to be a sufficient transitional period for existing claims to be progressed and notified under existing arrangements.

Other respondents agreed with the proposal to include claims notified by a letter of claim or letter of notification. Respondents suggested this would provide clarity on when the scheme would start applying to claims and ensure that there were not 2 different systems operating at the same time.

However, it was pointed out that if there was a single fixed implementation date based on letter of claim, this could lead to a spike in claims before the scheme is introduced.

We acknowledge concerns raised by respondents that the proposed approach could lead to a potential spike in claims and challenges around transition.

However, it is the government's position that, although there may be operational challenges, these are not sufficient reasons for delaying implementation. The outline of these reforms have been previewed for a substantial period of time and there remains a period of 7 months before implementation in April 2024 for claimant and defendant legal representatives to prepare for the change in approach confirmed in this response. We consider this sufficient time for claimant and defendant solicitors to ensure they are ready for the new LDFRC scheme. We also consider that a single process beginning from April 2024 for all new claims is a simpler and more comprehensible solution that will avoid uncertainty.

## **Summary government position**

The new FRC arrangements will apply to claims where the date of notification of the claim falls on or after the date when the new rules come into force.

Leading up to the implementation date (currently intended to be 6 April 2024), notification of claims should take the form of a letter of claim or a letter of notification that complies with the existing PAPRCD. Following implementation, notification of claims eligible for the LVCD protocol should be in the form of a letter of claim in the standard or light track that complies with the requirements of the LVCD protocol.

## 5.10. Post-implementation review

### Proposals as consulted on

The position in the consultation was as follows:

We will review the £25,000 limit either as part of the wider post-implementation review stage or sooner, depending on how rapidly damages inflation has increased, with a view to preserving the proportion of overall claims included. The review would only consider an increase to the limit that reflects the rate of claim value inflation over the period in question. Thereafter, we will review the limit at regular intervals.

### Consultation question:

Do you agree or disagree that the £25,000 upper limit for scheme claims should be reviewed post-implementation, and at regular intervals thereafter, specifically to take account of the effects of claims inflation?

Total responses to question: 90

Responses	Claimant	Defendant	Unknown	Other	All responses
Agree	17%	17%	6%	11%	50%
Disagree	33%	0%	0%	6%	44%
Don't know	0%	0%	0%	0%	6%
Total	50%	17%	11%	22%	100%

### The way forward

Some respondents thought that it was appropriate to review the upper limit of the FRC scheme, with a preference that this review be completed by an independent body. This included that the review should consider inflation to ensure that the proportion of claims falling within the FRC scheme does not decrease over time. Suggestions were made as to the frequency of this review, ranging from every 12 months to every 5 years.

Respondents also recommended that the fixed costs framework is reviewed on a regular basis to ensure it reflects solicitors' costs and wages. It was suggested that a review should take place annually and be indexed to wage or cost of living inflation. Respondents pointed out that if a regular costs review did not take place, it would mean that the



amounts recovered in costs would decrease over time and the work would become less commercially attractive and eventually unsustainable.

The government is committed to evaluating the policies it implements as part of a Post Implementation Review (PIR) not less than 3 years after implementation. We have considered how best to undertake a PIR of this FRC scheme and the appropriate metrics to evaluate its effectiveness in meeting our policy intent.

The evaluation will consider whether:

- the overall aims of the policy have been met
- the policy has been implemented effectively
- any unintended consequences have been identified.

It will also consider the impacts and effectiveness of these proposals with specific reference to groups with protected characteristics under the Equality Act 2010, where it is practical and proportionate to do so

The review is likely to focus on:

- the effect of the scheme on overall legal costs of relevant claims
- the effect on time to resolution for these claims
- impacts on access to justice
- impacts on equalities, including on protected party claimants
- effectiveness of arrangements for neutral evaluation
- effectiveness of sanctions
- use of exclusion categories
- use of disbursements
- the interaction of the LDFRC scheme with other existing FRC schemes
- impact of inflation

We will work closely with NHS Resolution and others to monitor relevant data to address these and other relevant questions and consider where qualitative methods may add value.

We note support from respondents for a review, especially around the impact of inflation on the upper limit of the scheme and the amounts of the fixed costs. The intention is to review the fixed costs post implementation alongside the level of the upper limit of the scheme in light of inflation. The modelling currently assumes a rate of 3.5% per annum for legal costs and in the limits of the damages band in which claims are subject to fixed costs in the LDFRC scheme. We will discuss further with the CPRC how best to take inflation into account as part of any review process.

## **Summary government position**

We will undertake a PIR of the FRC scheme not less than 3 years after implementation. We have considered how best to undertake a PIR of this FRC scheme and the appropriate metrics to evaluate its effectiveness in meeting our policy intent, including how best to take inflation into account.

## 5.11. Business impacts

The consultation requested views on how the proposals in this consultation might impact:

- businesses involved in handling and processing 'lower value' clinical negligence claims
- law firms
- other small or micro businesses involved in supporting the handling or processing of 'lower value' clinical negligence claims

### Summary of business impacts

#### Overall summary of business impacts (impact on firms and small and micro businesses)

Some organisations responded that lower damages claims are as complex as higher value claims, require the same amount of work, and that FRC will be insufficient for the volume of work needed. There were concerns over the loss of revenue for specialist professionals who deal with complex lower damages claims. Some responses argued that this work could become financially unviable for them, leading specialist firms to drop out of the clinical negligence market, and non-specialist companies to move into this field.

A common theme amongst the respondents was that businesses, especially the smaller organisations, could go out of business leading to staff redundancies and increased unemployment.

The Society of Clinical Injury Lawyers conducted a poll of its members which stated that 70% of their specialist claimant firms would withdraw from the market, as the additional work would make it impossible for them to continue under FRC.

Some respondents emphasised the need to control costs for clinical negligence claims and make litigation costs, particularly for lower damages clinical negligence claims, more reasonable.

Other responses stated the potential benefits of the scheme, including greater certainty around how to manage this group of claims, faster processing and quicker resolution of claims.

## **Specific points relating to impact on law firms**

Most concerns were focussed on the profitability impact on legal firms. These concerns included that:

- (a) some law firms could exit the market.
- (b) larger organisations may only take on higher damages claims (over £25K)
- (c) smaller businesses may not see lower damages claims as commercially viable

## **Specific points relating to small and micro businesses**

In addition to the points raised in the above sections a number of respondents indicated concerns over whether ATE insurers will continue to support lower damages claims if FRC is implemented, stating that further clarity was required on this. Organisations reported that ATE is fundamental to claims being made.

The majority of small and micro business respondents believe that the implementation of FRC will impact on the current systematic approach. However, a number of respondents who supported the proposals asserted that the small size of an entity alone would not mean it will necessarily be financially precarious or adversely affected by financial changes, and that small firms could have certain advantages over larger businesses.

## **Government position**

The Government appreciates the concerns raised by respondents about the potential business impacts of these proposals. As set out in the Impact Assessment, the proposals are expected to reduce income from claims for solicitors representing individual claimants and will result in new administrative costs for all parties. The new process is expected to be more efficient, requiring less solicitor time and resource to produce the same outcome for clients. The Impact Assessment sets out 3 scenarios for this. Claimant and defendant solicitors and NHS Resolution will face transitional set-up and familiarisation costs (although these they may be minimal as FRC is already in place for other types of personal injury claims).

As set out in the Impact Assessment, the proposals could make small legal firms less able to compete with larger firms that have greater economies of scale and can provide services 'en-masse' more cheaply. Firms with small, specialised departments are therefore likely to be disproportionately impacted.

We have considered whether it would be possible to exempt small legal firms from these proposals. However, we have concluded that this would be impossible both from a

practical point of view (as claimants, not businesses, are the ones who are directly affected by reform) and because it would reduce the efficacy of the proposals, distort the market and reduce claimant choice.

We also acknowledge concerns that the proposals may result in changes to the way the clinical negligence legal market organises itself and manages claims. However, the proposals are intended to prompt cultural and behavioural shifts in how lower damages clinical negligence claims are handled, and we remain convinced there is a good economic case for making the proposed changes.

The LDFRC scheme will reduce legal costs reimbursed by public defendants, estimated to create £1bn in savings for NHS hospitals in England, and £1.3bn for other healthcare providers in the public and private sector, £2.3bn in total. Claimants and defendants, and their representatives, will also benefit from improved predictability of cash flows.

## 5.12. Equalities impacts, vulnerable people and health disparities

The consultation requested views on:

- how people with protected characteristics, as defined under the Equality Act 2010, may be impacted by the proposals
- how health disparities may be impacted by the proposals
- how vulnerable groups may be impacted by the proposals

### Summary of equalities/disparities/vulnerable group impacts identified

The Secretary of State for Health has legal obligations to consider equalities and health inequalities in taking policy forward, and to consider its potential impact on families. The Public Sector Equality Duty (PSED) places a duty on public bodies and others carrying out public functions. It aims to ensure that public bodies consider the needs of all individuals in their day-to-day work – in shaping policy, in delivering services, and in relation to their own employees. The PSED is set out in section 149 of the Equality Act 2010, and it applies across Great Britain to public bodies listed in Schedule 19 to the Act (and to other organisations when they are carrying out public functions). The Health and Social Care Act 2012 placed a duty on the Secretary of State to have regard to the need to reduce inequalities between the people of England with respect to the benefits that may be obtained by them from the NHS.

Throughout the development of these proposals, we have placed a high importance on taking equalities into consideration, including the impact of these changes on different groups, particularly those with protected characteristics under the Equality Act 2010.

The Department carried out analysis of demographic information relating to groups with protected characteristics under the Equality Act 2010 in relation to the proposals, as well as income, which was set out at Annex B to the consultation. For the characteristics assessed, that analysis concluded that the scheme is unlikely to directly discriminate against any group.

The data suggested that the scheme could have a disproportionate impact on people with certain characteristics, including disability and age, as these groups have more frequent interactions with the healthcare system and, as a result, increased likelihood of experiencing an incident. However, there was no evidence for a negative impact or discrimination. According to the policy intent of the proposals, all groups, including older

people and people with disabilities, should benefit from the faster resolution of claims facilitated by the scheme.

We sought further evidence on potential impacts on groups with protected characteristics through the consultation. Responses argued that protected party claimants may struggle to find firms willing to act for them because in their view, the costs are insufficient for solicitors to take these cases on due to the extra work involved. It was also felt that individuals with protected characteristics are more likely to be low earners and therefore more likely to fall within the scope of FRC. We took this analysis into account when considering whether the FRC scheme had made adequate provision to safeguard access to justice for claimants affected by the scheme and in particular for protected party or child claimants.

### **Any further equalities analysis carried out**

We have carried out further analysis of demographic information relating to groups with protected characteristics, which is set out in the Equality Duty Analysis which accompanies this response. This assessment involved comparing demographic statistics for those who would likely fall within the FRC remit, through being more likely to submit a claim, or having submitted a lower damages claim, with the wider population. It draws on a range of evidence and data including responses to the 2017 and 2022 FRC consultations, an anonymised claims level dataset sample (provided by NHS Resolution), and other published demographic statistics.

Overall, the available evidence suggests no direct discrimination from the proposed FRC scheme against any group with protected characteristics. However, disability (based on pre-existing condition and disability following an adverse event) remains an area where the analysis is inconclusive. Analysis is also inconclusive on employment status.

The available evidence suggests that those with certain characteristics may be disproportionately impacted but not directly or indirectly discriminated. We have not come across any significant new evidence of impacts, including in responses to the consultation, since the previous equalities analysis was carried out for the consultation. As in the previous analysis, disproportionate impacts may fall on older populations and those with pre-existing disabilities, which are populations which we would expect to be in more frequent contact with healthcare settings and therefore have a higher likelihood of experiencing an incident and making a claim when compared to others. Those with lower earnings may also be disproportionately impacted, through their lower earnings making them more likely to fall into a lower compensation band, if loss of earnings is taken into account when agreeing the compensation amount. It is not expected that the introduction of the FRC scheme would directly cause discrimination against these groups and,

according to the policy intent of the proposals, the scheme should have a positive impact for all groups by enabling claimants to reach fair resolution more quickly.

In addition, it was noted by respondents that certain protected parties may require additional support as part of the legal process, and so will incur increased costs. These higher costs may lead to claims from these individuals becoming unviable for solicitors or potentially under-investigated, leading to under-compensation for claimants. To prevent disproportionate financial impacts, an additional 'bolt-on' amount of £1,800 recoverable by the claimant has been proposed for these cases.

Respondents highlighted concerns that this bolt-on amount may not be adequate to cover necessary disbursements for these types of claims, with potential negative impacts falling on protected party or child claimants. We are launching a mini consultation clarifying arrangements for disbursements in the proposed scheme, which will address this issue.

No data or evidence was available to assess impacts on sexual orientation, gender reassignment, religion or belief, or marriage and civil partnership.

We will keep the impacts of the scheme under review and further analysis to assess the impact on protected characteristics will be done at the PIR.

## **Government position**

We recognise concerns raised by respondents and have taken them into account in considering any changes to the consultation proposals.

In particular we have been mindful of vulnerability and the need to preserve access to justice across all claims falling within the LDFRC scheme, and with a particular focus on protected party and child claimants. As a result of this consideration, we have proposed a higher level of base fixed costs that successful claimants will be able to recover. We also propose a substantial increase to the bolt-on amount recoverable for protected party and child claimants in recognition of the extra costs involved in those claims. Finally, we are launching a short consultation on arrangements for disbursements under the LDFRC scheme that proposes a way forward and seek views on disbursements. In doing so, this further consultation will take into account access to justice risks and the views expressed on disbursements in this consultation.



## 6. Next steps

We would like to thank all respondents for their engagement with our proposals to facilitate faster resolution of lower damages clinical negligence claims at proportionate cost through our tailored LDFRC scheme.

As stated above, the next formal step in the process of implementation will be for the government to submit draft rules for consideration by the CPRC. As outlined throughout this government response, we are clear in our objectives as to what we want to achieve through FRC for lower damages clinical negligence claims, but there are a number of issues which will require further consideration, by the government with the CPRC, before the rules are finalised.

We are also launching a short consultation on the issue of disbursements under the scheme, proposing a way forward that takes into account the responses we received in this consultation and inviting views on the proposal.

The intention is that the new rules will come into force on the common commencement date for secondary legislation in April 2024.

# Endnotes

1. 'Lower damages claims' in this consultation response refers to clinical negligence claims with a value at settlement or following judgment from £1,501 to £25,000 inclusive.
2. The period here is 2006 to 2007 – 2021 to 2022. In 2021 to 2022, average claimant legal costs for lower value claims were approximately £23,200, with average damages for these claims at approximately £11,000. Tables 9.A and 11.A.1, NHS Resolution Supplementary Annual Statistics 2021/22. Accessed from: <https://resolution.nhs.uk/resources/annual-report-statistics/>
3. RH Lord Justice Jackson (2010). Review of Civil Litigation Costs: Final Report. HMSO, London. Accessed online at: <https://www.judiciary.uk/guidance-and-resources/review-of-civil-litigation-costs-reports/>
4. RH Lord Justice Jackson (2017). Review of Civil Litigation Costs: Supplemental Report Fixed Recoverable Costs. MoJ, London. Accessed online at: <https://www.judiciary.uk/guidance-and-resources/review-of-civil-litigation-costs-reports/>
5. Ministry of Justice (2023). Extending Fixed Recoverable Costs: a note on the new rules. MoJ, London. Accessed online at: <https://www.gov.uk/government/organisations/civil-procedure-rules-committee/about>
6. Civil Justice Council (2019). Fixed Recoverable Costs in Lower Value Clinical Negligence Claims. Report of the Civil Justice Council Working Group. London, Courts and Tribunals Judiciary. Accessed online at: <https://www.judiciary.uk/related-offices-and-bodies/advisory-bodies/cjc/archive/fixed-recoverable-costs-in-lower-value-clinical-negligence-claims/>.
7. In clinical negligence claims, qualified one-way costs shifting (QOCS) applies. This means, (subject to certain exceptions set out in CPR 44.15 and 44.16) that if the claimant wins their case, or any aspect of it, they can recover costs and enforce costs orders obtained in the usual way. If the claimant loses their case, or any aspect of it, any costs orders against them can only be enforced up to an amount which does not exceed the total amount of damages, costs and interest made in favour of the claimant.
8. Ministry of Justice (2019). Extending Fixed Recoverable Costs in Civil Cases: Implementing Sir Rupert Jackson's proposals - A consultation produced by the Ministry of Justice. MoJ, London. Accessed online at:

<https://consult.justice.gov.uk/digital-communications/fixed-recoverable-costs-consultation/>

9. Ministry of Justice (2021). Extending Fixed Recoverable Costs in Civil Cases: The Government Response. MoJ, London. Accessed online at: <https://consult.justice.gov.uk/digital-communications/fixed-recoverable-costs-consultation/>
10. It should be noted that the Ministry of Justice is consulting between 21 July and 8 September 2023 on tightening the criteria in relation to clinical negligence cases which may be allocated to the new intermediate track to those where admission of breach and causation are admitted in the pre-action letter of response. Update available online at: [www.gov.uk/government/organisations/civil-procedure-rules-committee/about](http://www.gov.uk/government/organisations/civil-procedure-rules-committee/about)
11. Department of Health (2017). Introducing Fixed Recoverable Costs in Lower Value Clinical Negligence Claims. London, DHSC. Accessed online at: <https://www.gov.uk/government/consultations/fixed-recoverable-costs-for-clinical-negligence-claims>; and

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12. RH Lord Justice Jackson (2017). Review of Civil Litigation Costs: Supplemental Report Fixed Recoverable Costs. MoJ, London. Chapter 5. Accessed online at: <https://www.judiciary.uk/guidance-and-resources/review-of-civil-litigation-costs-reports/>
13. Civil Justice Council (2019). Fixed Recoverable Costs in Lower Value Clinical Negligence Claims. Report of the Civil Justice Council Working Group, p.24. London, Courts and Tribunals Judiciary. Accessed online at: <https://www.judiciary.uk/related-offices-and-bodies/advisory-bodies/cjc/previous-work/fixed-recoverable-costs-in-lower-value-clinical-negligence-claims/>
14. NHS Resolution (2022). Annual Statistics (Annual Supplementary Statistics, Tables 5.A and 7.A). Available from: [NHRSR-Supplementary-Account-Stats-2021-22-Revised-For-Publication-V3.xlsx \(live.com\)](#); and

NHS Resolution (2023). Annual Report and Accounts 2022/23. Available from: [NHS Resolution - Annual report and accounts 2022/23 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk). p. 40.

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17. Civil Justice Council (2019). Fixed Recoverable Costs in Lower Value Clinical Negligence Claims. Report of the Civil Justice Council Working Group (Appendix B). London, Courts and Tribunals Judiciary. Accessed online at: <https://www.judiciary.uk/related-offices-and-bodies/advisory-bodies/cjc/previous-work/fixed-recoverable-costs-in-lower-value-clinical-negligence-claims/>

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# Annex A - List of respondents

Table 1: Type of Respondents\*

Type of respondent	Number of responses	% of responses
A Law firm	43	44%
A health care provider	less than 5	less than 5%
Indemnity / insurance provider	5	5%
Representative body - health care	less than 5	less than 5%
Representative body - indemnity / insurance	less than 5	less than 5%
Representative body - claimant legal	less than 5	less than 5%
Representative body - medical experts	less than 5	less than 5%
Representative body - patients	less than 5	less than 5%
Representative body - legal	5	5%
Other	6	6%
Not answered	less than 5	less than 5%
An individual	21	21%
Total	98	100%

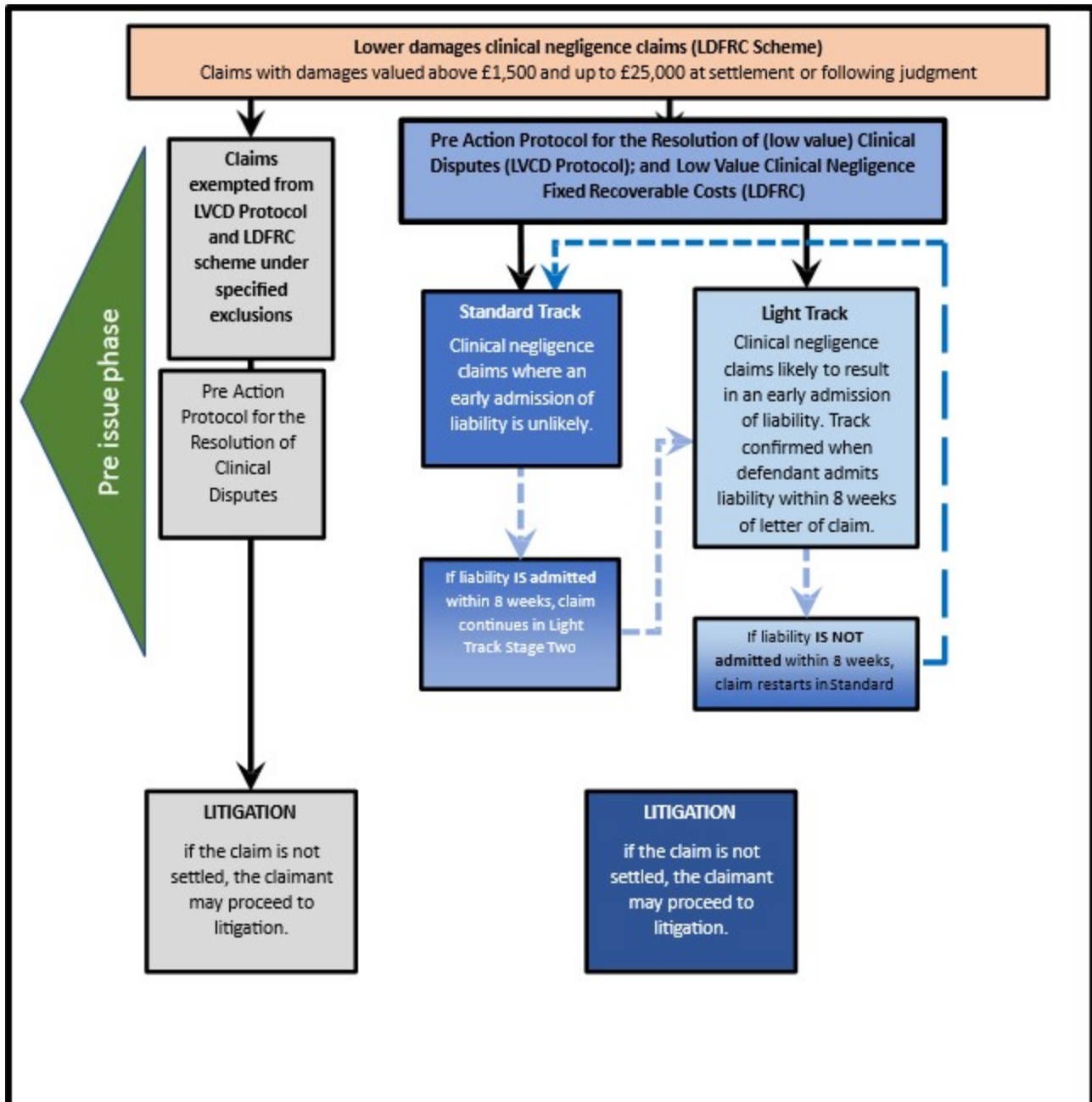
\* Due to small sample sizes for some respondent types, the count for each category with less than 5 responses has been suppressed, to prevent potentially identifying individual respondents.

Table 2: Type of Organisation

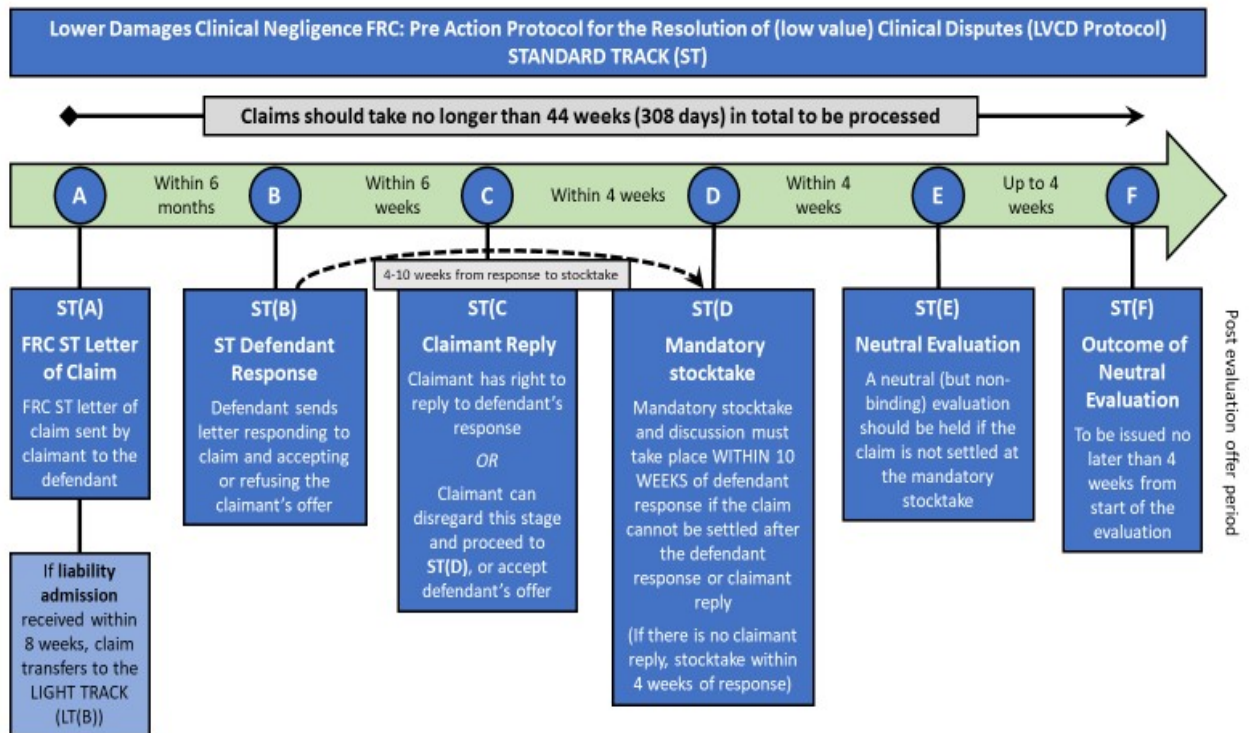
Organisation mainly represents	Number of responses	% of responses
Defendants	17	17%
Claimants	49	50%
Other	21	21%
Unknown	11	11%
Total	98	100%

# Annex B - Process diagrams

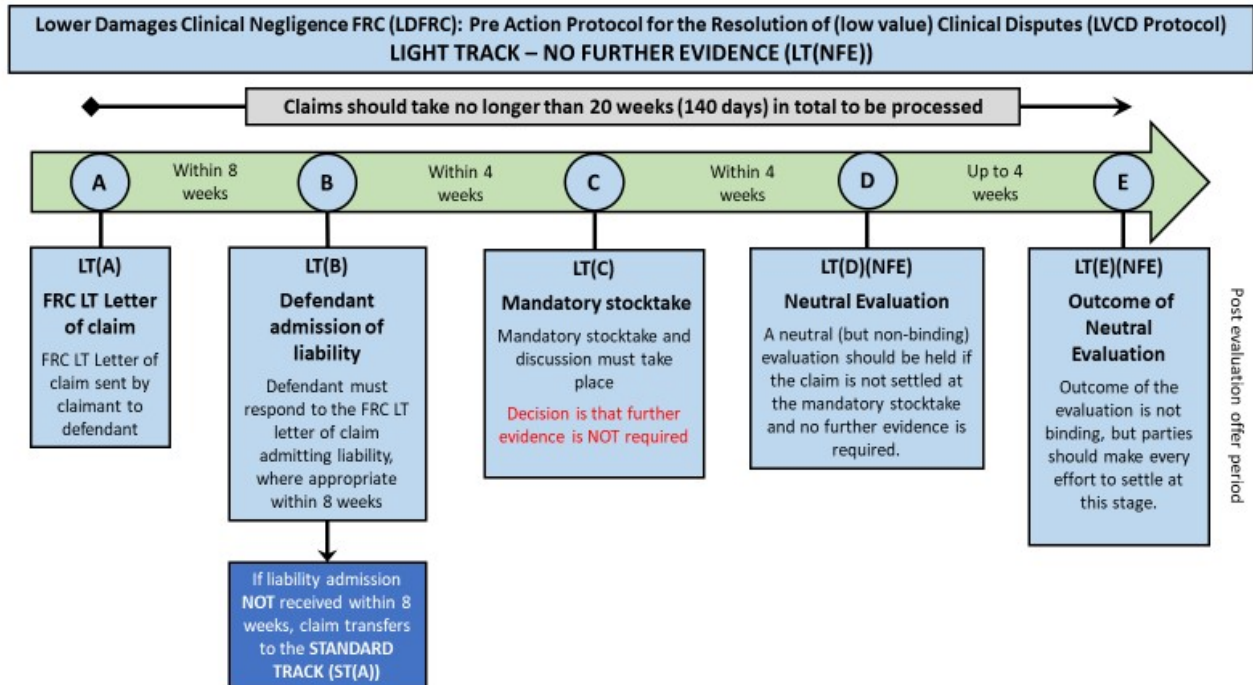
Diagram 1: lower damages clinical negligence claims process



**Diagram 2: LVCD protocol: standard track process**

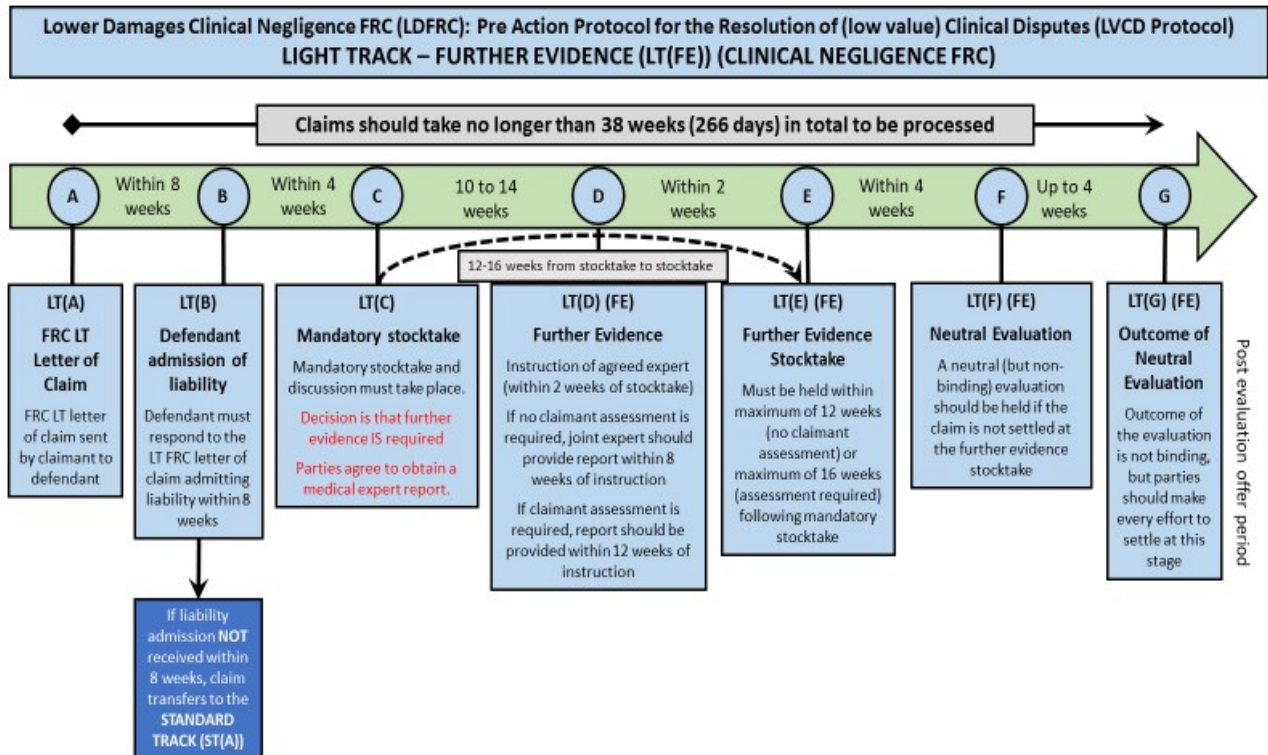


**Diagram 3: LVCD protocol: light track, no further evidence process**





**Diagram 4: LVCD protocol: light track, further evidence process.**



# **Annex C - Scenarios: exiting the scheme, interaction with other schemes, and costs**

The next formal step in the process of implementation will be for the government to submit draft rules for consideration by the CPRC. As outlined throughout this government response, we are clear on what we want to achieve through FRC for lower damages clinical negligence claims, but there are several issues which will require further consideration, by the government with the CPRC, before the rules are finalised.

Our intent is to ensure that our LDFRC scheme works smoothly together with existing FRC schemes and the proposed FRC extension due to come into force in October 2023. In doing so, we want to be as clear as possible about our policy intent for these claims and what parties engaged in conducting clinical negligence claims should expect.

In this Annex, we set out our expectations for which types of claims may exit the LDFRC scheme and how they may interact with litigation, including specific scenarios where there may be interaction with the FRC extension coming into force in October. We also set out scenarios illustrating our expectation for how costs would be dealt with for different types of claims.

## **Claims exiting the LDFRC scheme**

Our LDFRC scheme relates to the pre-issue part of the process only, and parties are not restricted from proceeding to litigation if the claim is not settled once the pre-issue process is completed.

The expectation based on previous data on stage of settlement for claims up to £25,000 is that at least 75% of these claims will settle in the pre-issue phase. We expect our LDFRC scheme to equal or increase that proportion. Additionally, we expect only small numbers of claims should be eligible for specified exclusions from the LDFRC scheme. We therefore expect that only a small number of claims overall will proceed to litigation. A proportion of that number could potentially be affected by the Ministry of Justice's FRC reforms.

We envisage these claims will be limited to the following potential groups:

- (a) claims that have completed the LVCD Protocol and proceedings have been issued
- (b) claims that have qualified for exclusion from the LDFRC scheme under the criteria set out in our proposals (see section 5.7)





















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