

CIVIL JUSTICE COUNCIL

**THE PREDICTABLE COSTS SCHEME FOR ROAD TRAFFIC CASES UNDER
£10,000**

**APIL SUBMISSIONS ON SOME OF THE OUTSTANDING IMPLEMENTATION
ISSUES**

MAY 2003

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1. Implementation Date

The predictable costs scheme should come into force in all cases where the accident occurs after the implementation date (option 2). This would give practitioners time to adjust to the new scheme and would, therefore, be fairer to the profession. If option 1 was adopted and the scheme applied to all cases coming before the court after the implementation date, it would relate to cases in which people had already done a considerable amount of work before January 2003, the date after which the profession was fully aware of the predictable costs scheme. Options 3 and 4 are problematic because they rely upon the date of the solicitor's retainer. There can, however, be more than one retainer in any one case and, in addition, retainers can change. We fear that this could create room for argument – arguments that the predictable costs scheme is designed to avoid. Insurers and their representatives could, for example, request to see retainers to establish whether the case in question falls within the predictable costs regime. APIL supports option 2 because it believes that it is unambiguous and would provide claimants, the legal profession and insurance industry with certainty.

2. The Threshold for Escape

It is recognised that a predictable costs scheme operates on a swings and roundabouts basis and that it is important to have a deterrent built into the system to prevent practitioners from “gambling on the assessment procedure”, as stated in the consultation paper. There should, however, be a threshold for escape and APIL believes the threshold should be predictable costs plus 20 per cent (option 1). Option 2, predictable costs plus 50 per cent, is unrealistically high. Option 2 implies that some cases could be dealt with in half the time allowed under the scheme to balance out those cases that take half as much time again. This is not realistic and would impede the operation of the swings and roundabouts principle.

3. London Weighting

3(a) A Single Rate of London Weighting

APIL supports the introduction of a single London weighting in accordance with the Supreme Court Costs Office figure of 25 per cent (option 1), provided this is applied to the total scale costs recovered. We expand upon this below. We can see no reason for departing from the SCCO's recommendation of 25 per cent.

3(b) How a Percentage Rate for London Weighting Should be Applied

As noted above, APIL believes that the London weighting of 25 per cent should be applied to the total scale cost recovered (option 2). It would be unfair to apply the weighting against basic recoverable costs only. Predictable costs reflect the amount of time spent on a case. Hourly rates in London are higher because expenses are higher and this applies to all costs, not just basic recoverable costs.

3(c) A Geographical Barrier for Firms Attracting London Weighting

APIL agrees that, in the interests of certainty, a clear boundary should be defined to determine which firms attract London weighting. APIL does not believe it can comment, however, on the appropriate geographical boundary. We believe that the Civil Justice Council should be led by the views of individual practitioners on this point.

3(d) A Mechanism to Avoid ‘Post-Boxing’

APIL agrees that it would be sensible to limit London weighting to cases that relate to accidents that occurred in London or which involved people resident in London (option 1). We further believe, however, that London weighting should also apply to those that work in London. People who work in London may reasonably prefer to consult a London-based solicitor, than a solicitor based in his home town or city.