

TFF Replacement Modelling

Scheme overview

- The Scheme replaces the current TFF scheme for all cases starting on or after 1 October 2007. It covers the following categories: Actions Against Police, Community Care, Consumer and General Contract, Debt, Education, Employment, Housing, Clinical Negligence, Miscellaneous, Personal Injury, Public Law and Welfare Benefits.
- The new fee rates apply to both solicitors and Not-for-Profit providers in line with the Unified Contract proposals.
- There are separate fees for work done under New Matter Starts allocation and work done under tolerance.
- The fixed fee rate applies to all claims where hourly rates cost up to the threshold of three times the fixed fee. Claims above the threshold are remunerated at their hourly-rates cost (though they may be subject to file assessment).
- Disbursements are outside of the fixed fee and are remunerated at cost subject to monitoring.

How the fees were calculated

Actual claims from 2005/06 were used as a starting point as only recent data is likely to be reflective of the current and future underlying costs and case mix.

- 1. Solicitors' claims: actual valuation of claims under TFF used as budget**
 - a) Solicitors' claims for legal help are reported at hourly rates ('CMRF value') and then valued according to the rules of the TFF scheme ('TFF value'). The 'TFF value' is the claim valued at the provider's TFF rate or, under certain circumstances (eg. under the 'mandatory scheme' for a provider's claims for work starting before 1 April 2005) at the hourly-rates CMRF cost.
 - b) Disbursements were paid for as part of the fee under the TFF scheme, but in the new scheme they are not part of the fixed fee and will be remunerated separately. Therefore, they have been excluded or 'factored out' of the modelling where appropriate, as they will now be remunerated at cost under the new scheme.
 - c) For 2005/06, the 'CMRF value' (profit costs + counsel cost) for all 12 categories covered by the TFF Replacement Scheme was approximately £27,104,900 including VAT. Once the cost of disbursements had been

deducted from the total figure, the 'TFF value', was £28,576,200 including VAT.

- d) It is this 'TFF value', approximately 5.4% more than total 'CMRF value', which has been used as the subsequent budget for modelling.

2. Tolerance: separate fees

- a) Consultation responses supported the concept of a differential fee for work done under 'tolerance' by providers for whom that category was not a specialism.
- b) The modelling has therefore separated out the work done by providers for whom operating in that category of law is tolerance work. Modelling budgets have been split into 'allowed (non-tolerance)' budget and 'tolerance' budget.
- c) For solicitors' claims, the work done in 2005/06 differentiates between 'allowed (non-tolerance)' and 'tolerance' work in the following way:

allowed (non-tolerance) cases		
category	solicitors CMRF profit + counsel	solicitors value under TFF - disbs
AAP	1,168,039	1,018,461
COM	1,044,074	1,025,932
CON	143,933	140,490
DEB	1,586,191	1,726,968
EDU	860,170	943,214
EMP	1,405,136	1,455,370
HOU	10,049,796	11,000,803
MED	837,642	794,311
MSC	1,060,375	1,073,797
PI	944,476	833,849
PUB	454,870	442,287
WB	3,873,259	4,207,029
total	23,427,962	24,662,510

tolerance cases		
category	solicitors CMRF profit + counsel	solicitors value under TFF - disbs
AAP	208,480	213,599
COM	83,995	91,620
CON	573,485	572,604
DEB	779,243	827,098
EDU	85,974	100,471
EMP	415,084	481,292
HOU	1,021,924	1,060,131
MED		
MSC		
PI		
PUB	134,510	149,019
WB	374,285	417,841
total	3,676,981	3,913,674

(all prices are including VAT)

3. Solicitor's claims: budget reallocation where 'TFF value' is lower than 'CMRF value'

- a) As noted above, across all 12 categories in the scheme, the 'TFF value' of solicitors' claims is approximately 5.4% higher than the 'CMRF value' of claims. However, in certain categories the total 'TFF value' is lower than the 'CMRF value'.
- b) To strictly use the 'TFF value' in each category as the 'budget' for that category would therefore have the following effects:
- It would formalise into new fee rates the disadvantage being suffered by solicitors working in those categories where the valuation of their claims under TFF was less than the hourly-rates value.

- In some categories it would make setting a fee based on that 'budget' under the current methodology impossible: under the three times fixed fee threshold for exceptional cases' methodology (more detail below), the cost of the cases in some categories would not be covered by the 'TFF value' budget.
- c) Therefore, the solicitor budget has been reallocated between categories so that in all categories the 'budget' is a consistent 'increment' above the CMRF hourly-rates total. With allowed and tolerance cases separated, the increment figure is slightly different for each body of cases: for allowed (non-tolerance) cases, the increment is roughly 5.3% above CMRF hourly-rates category totals, for tolerance cases it is approximately 6.4% above.
- d) The final solicitor budgets for each category are shown below:

allowed (non-tolerance) cases				tolerance cases			
cat	solicitors CMRF profit + counsel	solicitors value under TFF - disbs	solicitor budget after reallocation	cat	solicitors CMRF profit + counsel	solicitors value under TFF - disbs	solicitor budget after reallocation
AAP	1,168,039	1,018,461	1,229,590	AAP	208,480	213,599	221,900
COM	1,044,074	1,025,932	1,099,092	COM	83,995	91,620	89,402
CON	143,933	140,490	151,517	CON	573,485	572,604	610,402
DEB	1,586,191	1,726,968	1,669,776	DEB	779,243	827,098	829,404
EDU	860,170	943,214	905,497	EDU	85,974	100,471	91,509
EMP	1,405,136	1,455,370	1,479,180	EMP	415,084	481,292	441,804
HOU	10,049,796	11,000,803	10,579,375	HOU	1,021,924	1,060,131	1,087,707
MED	837,642	794,311	881,782	MED			
MSC	1,060,375	1,073,797	1,116,252	MSC			
PI	944,476	833,849	994,246	PI			
PUB	454,870	442,287	478,840	PUB	134,510	149,019	143,169
WB	3,873,259	4,207,029	4,077,363	WB	374,285	417,841	398,379
total	23,427,962	24,662,510	24,662,510	total	3,676,981	3,913,674	3,913,674

(all prices are including VAT)

4. NfP claims: how the case costs were calculated

NfP case costs (covering, for NfPs, the same things as we paid to solicitors in profit costs) were calculated as follows:

- a) An hourly rate was calculated for each provider in each category by dividing the total allocated money (minus the amount allocated for disbursements, which leaves the amount allocated for activities equating to solicitors' profit costs) by the number of hours allocated. This produces an hourly rate for the profit and counsel costs of the agency.
- b) For each provider in each category the hourly rate was multiplied by the number of hours reported as "Advice Time" on the CMRF. The Advice Time covers the time spent on activities equating to solicitors' profit costs.

- c) This produced an amount for NfP profit costs, even though the reported times on the CMRF do not cover the same things for solicitors and NfPs. They do not include counsel costs, however – these were discounted as the average counsel cost in the relevant categories was found to be less than £1.

5. Total budgets: solicitor and NfP combined

- a) In order to be consistent with solicitor pricing, for modelling purposes NfP valuations (which were net of VAT) had VAT added for all cases. This was then removed again when modelling was completed and the final figures were expressed net of VAT.
- b) The table below shows the total budgets for modelling (including VAT):

allowed (non-tolerance) cases				tolerance cases			
cat	solicitor budget	NfP budget	total budget	cat	solicitor budget	NfP budget	total budget
AAP	1,229,590		1,229,590	AAP	221,900		221,900
COM	1,099,092	145,428	1,244,520	COM	89,402	40,263	129,665
CON	151,517		151,517	CON	610,402		610,402
DEB	1,669,776	13,973,131	15,642,907	DEB	829,404	216,318	1,045,722
EDU	905,497	178,712	1,084,209	EDU	91,509	2,499	94,008
EMP	1,479,180	1,731,253	3,210,433	EMP	441,804	71,868	513,672
HOU	10,579,375	7,561,889	18,141,263	HOU	1,087,707	197,124	1,284,832
MED	881,782		881,782	MED			
MSC	1,116,252		1,116,252	MSC			
PI	994,246		994,246	PI			
PUB	478,840	1,168	480,008	PUB	143,169	4,670	147,839
WB	4,077,363	13,153,126	17,230,489	WB	398,379	217,404	615,782
total	24,662,510	36,744,707	61,407,217	total	3,913,674	750,146	4,663,821

- c) Fee modelling was based on the combined NfP and solicitor values.

6. Payment mechanism: fixed fee, plus exceptional cases escape

- a) The category budget is distributed between the claims in the model according to a fixed fee + exceptional cases escape mechanism. Exceptional cases (above three times the fixed fee) are paid as claimed, and the remainder of the budget is split as a standard fee amongst the other cases.

7. Volumes

- a) Total volumes used in modelling are as follows:

category	solicitor	NfP	total
AAP	4,072		4,072
COM	3,210	417	3,627
CON	3,731		3,731
DEB	15,534	47,914	63,448
EDU	2,249	386	2,635

EMP	5,513	4,444	9,957
HOU	55,289	35,516	90,805
MED	3,255		3,255
MSC	9,152		9,152
PI	3,501		3,501
PUB	1,507	30	1,537
WB	23,573	55,178	78,751
total	130,586	143,885	274,471

8. Notes:

- a) 'Zero cases' were excluded from modelling as they will have no impact if treated as under TFF (i.e. zero-valued).
- b) This modelling does not address the issue of 'CCA audit adjustments' or 'exceptional cases uplift':
 - Cost Compliance Audit reductions to a total of approximately £1.2m were applied to solicitor's non-immigration claims in 2005/06. However, this amount may relate to adjustments to claims for prior years.
 - Some of the amount may relate to Family or Mental Health work, which is not included in this scheme.
 - Similarly, exceptional cases uplift for 2005/06 has not yet been finalised with providers, and no breakdown between categories is available.