

Qader incorporated into the CPR

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Matthew White, a member of our Personal Injury team, updates his article "*Qader v Esure Court of Appeal decision:- fixed costs do not apply to ex-protocol cases that are allocated to the multi-track*" in light of subsequent amendments to the CPR.



The [Civil Procedure \(Amendment\) Rules 2017](#) amongst other things (most notably automatic strike out for failure to pay a trial fee) will put the effect of **Qader** into the CPR. Fixed costs will now apply "*for as long as the case is not allocated to the multi-track*".

The amendment to the rules has also removed the "*but not more than £25,000*" part of the tables in CPR45 part III (which made it appear that fixed costs would "top out" at £25k). The consequence of that is that if the case is an ex-portal claim worth over £25k but allocated to the fast track, only *fixed costs* are recoverable, but it is clear that the percentage of damages awarded as costs can exceed the prescribed percentage of £25,000.

The amendments to the CPR have not dealt with the other main problem in the rules addressed in Matthew's article, repeated here for ease of reference:-

Suppose that a claim is in the portal and it becomes apparent relatively early that it will exceed £25,000 in value. It is not hard to imagine a case in which the claimant's solicitor would want/need to spend a reasonable amount pre-issue. What of those costs? Is that solicitor compelled to issue to secure allocation to the multi-track to recover those costs? That will pressure such a claimant solicitor into an unwanted court timetable and into doing more work after the budget is set than claimant solicitors generally like (given the common approach of getting a good part of the preparatory work done before budgeting). Or can that solicitor

expect the court to award pre-allocation costs as though the allocation were to the multi-track (even though the language added to the rules by the Court of Appeal does not seem to suggest that)?

Download the previous article: [Qader v Esure Court of Appeal decision:- fixed costs do not apply to ex-protocol cases that are allocated to the multi-track](#)

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