

Review of Civil Litigation Costs Seminar 26 June 2009

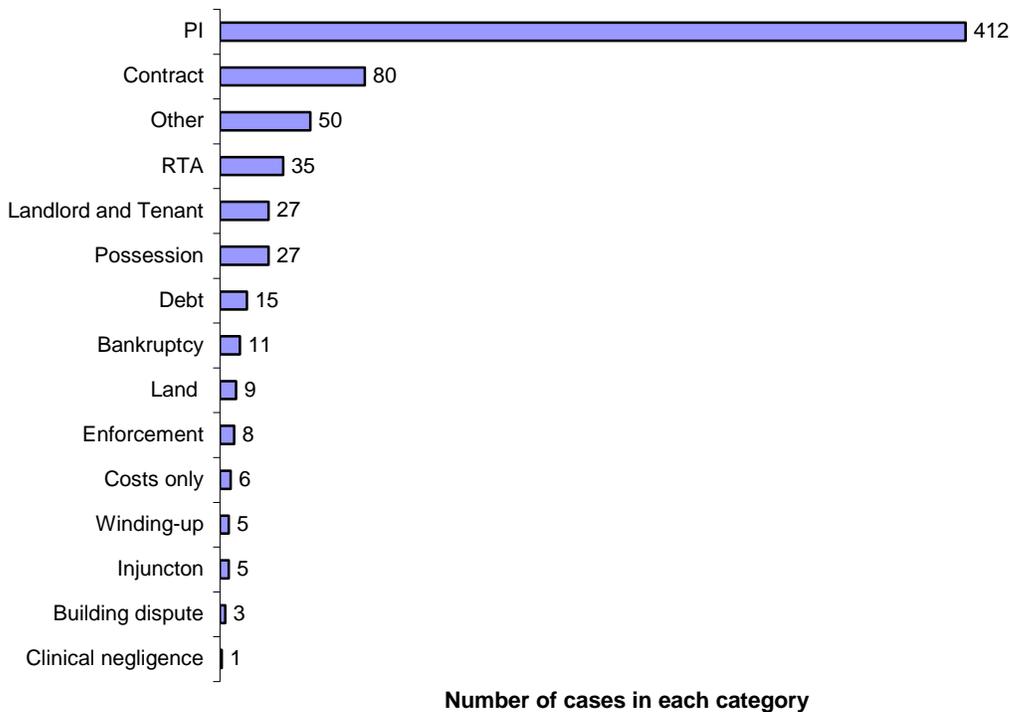
Preliminary Analysis of Costs Data

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PRELIMINARY ANALYSIS OF DJ SURVEY IN APPENDIX 1

1. **Appendix 1 DJ Survey.** This comprises details of around 696 cases dealt with by District Judges and Deputy District Judges between 19 January and 13 February 2009. Judges were asked to provide details of every case in which they made a summary assessment of costs, a detailed assessment of costs or an order for interim payment on account of costs during the survey period.
2. **Limitations of data.** The following analysis must be interpreted in light of the fact that the data contained within the DJ database are not representative of all litigated cases and are not representative of cases that are settled before action. They are a biased subset of litigated cases which represent a thin slice of all civil claims. The majority of civil claims settle either before action or before trial. Those that pass through the hands of the judiciary are, by definition, the most contentious cases either in terms of liability and/or quantum, or in terms of the level of costs. Using these figures to make assumptions about **average** costs is rather like generalizing about war from the details of the most bloody and hard fought battles.
3. **Types of case in the survey.** There were about 694 cases for which full data were made available by DJs. The single largest category of case was PI which amounted to 59% of the cases included in the survey, followed by contract cases which amounted to 11% of all cases. The rest were distributed as shown in Figure 1.

Figure 1. Appendix 1 case type of cases included in DJ survey (n=694)



4. **Average costs.** On the DJ survey as a whole, of the total number of cases (excluding one record involving 10 cases of child abuse), the mean amount **claimed** on the assessment was **£3,476** with a median figure of **£2,793**. The mean amount **allowed** was somewhat lower at **£2,562** with a median allowed figure of **£2,223**.

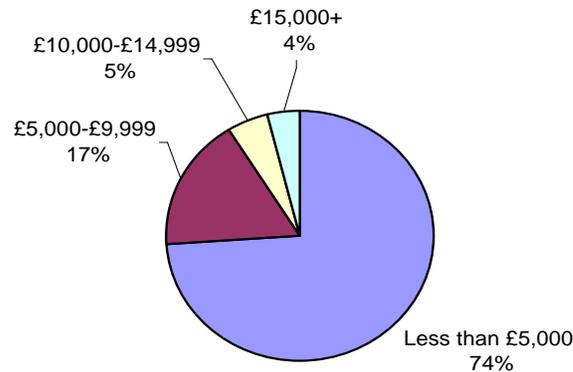
5. Comparing average costs among the largest categories of case types, the mean costs claimed in **contract cases** was **£3,266** (median £1,738), while the mean allowed costs in contract cases was lower at **£2,655** (median allowed £1,187). Among the **landlord and tenant cases** recorded on the database, the mean costs claimed were **£2,029** (median £1,505) and the mean costs allowed were **£1,743** (median £1,487). In possession cases the mean costs claimed was **£2,439** (median £1,281) and the mean costs allowed was **£2,180** (median £1,044). For **debt** cases the mean amount of costs claimed was **£1,966 (median £620)** and the mean amount allowed was **£1,259 (median £500)**. These averages can be compared with **personal injury** figures which are generally higher. Among the 414 PI cases on the DJ database, the mean amount of costs claimed was **£5,674** (median £4,980) while the mean sum allowed was lower at **£4,391** (median allowed £3,748). Relatively high average costs are also found among **RTA cases** where the mean amount claimed was **£4,290** (median £4,519) and the mean amount allowed was **£3,626** (median £3,896).

6. **Uplifts (Appendix 1).** Among the PI cases detailed on Appendix 1, information was provided about percentage uplifts claimed for solicitors and counsel. Of the 140 cases in which a single percentage uplift figure was given, the overwhelming majority indicated an uplift of 100% (92%). In the remainder of the cases the uplifts claimed were 12.5% (6 cases), 27.5% (2 cases), 25%, 40% and 50% (one case in each category). In nine of the 140 cases (6%) uplifts were reduced on assessment. In each of the nine cases where a reduction was made, the uplift claimed was 100% and the substituted uplift ranged from 87% to 27.5%.

Personal injury only database (Appendix 1a)

7. **Value of claim.** Of the 280 cases on Appendix 1a relating only to PI cases recorded by DJs where costs were assessed, **about three quarters involved awards of damages for less than £5,000** (206) (Figure 2). In fact, **about 25% of cases involved damages awards of under £1,800** and a further 25% involved damages of between £1,800 and £3,000. Another quarter of cases were for damages of between £5,000 and 17% (49) £5,000-£9,999. Only a small proportion of cases had damages awarded in excess of £10,000.

Figure 2: Appendix 1a DJ survey of PI costs - breakdown of damages awards (N=280)



8. **Costs and value of claim.** A crude comparison of average damages in relation to average costs for the 280 cases in Appendix 1a (the DJ PI sample) shows that the mean damages award was £4,704 (median £3,035). This can be compared with mean total costs (including uplift and VAT) of £8,445 (median £7,364).

Table 1. Appendix 1a comparison of average damages and total costs (N=280)

	Mean	Median
Damages awarded	£4,704	£3,035
Costs allowed	£5,496	£4,530
Costs+ uplift allowed	£7,495	£6,522
Costs + uplift + VAT	£8,445	£7,364

9. Looking at total costs, including uplift and VAT, in relation to quartiles for damages awarded shows some relationship between costs and the amount at stake, although the average total costs for cases in the second quartile of damages awarded is virtually the same as the average total cost for cases in the next quartile

Table 2. Appendix 1a - average total costs by quartile of damages awarded (N=280)

Damages awarded in quartiles	Average total costs allowed including uplift and VAT
Lowest quartile damages £278-£1,800	£6,475 (med £5,666)
2nd quartile damages £1,800-£2,556	£7,382 (med £7,051)
3rd quartile damages £2,558-£3,306	£7,684 (med £6,882)
4th quartile damages £3,311-£60,000	£12,238 (med £9,282)

10. **Proportionality between costs and damages.** The following figures present data from the DJ PI sample about costs in individual cases in relation to damages awarded. Figures 3 to 5 show that there is considerable variation in costs among cases of similar value, and that for low value claims costs are regularly higher than the amount awarded or agreed in damages. This reflects the fact that the amount of work done on a case is a reflection of many factors and that there appears to be an irreducible minimum amount of work that must be done even to recover damages of £2,000 or less. The lines in Figure 5, however, show that at the higher end of damages awards, the costs of the case less often exceed the damages.

Figure 3: Appendix 1a - total costs in PI cases with damages under £2,000 (n=64)

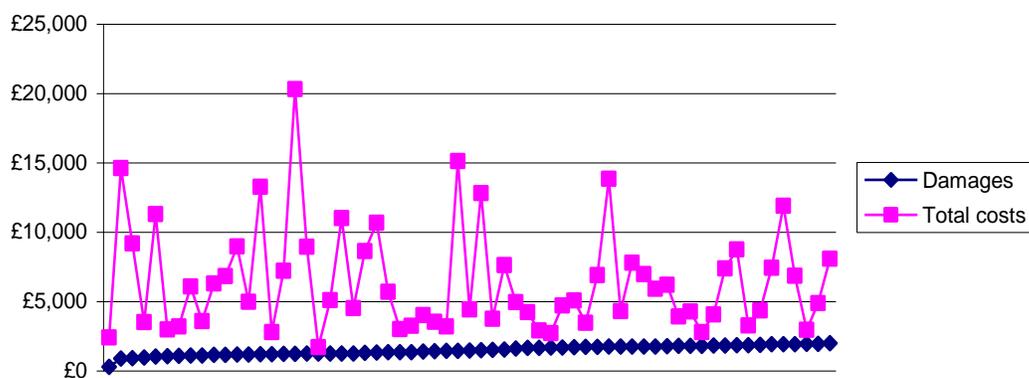


Figure 4: Appendix 1a - total costs in PI cases with damages between £5,000 and £10,000 (n=49)

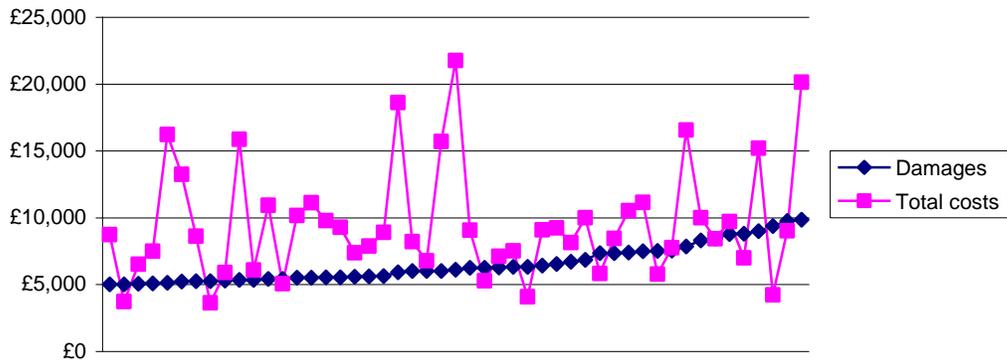


Figure 5: Appendix 1a - total costs in PI cases with damages over £10,000 (n=25)

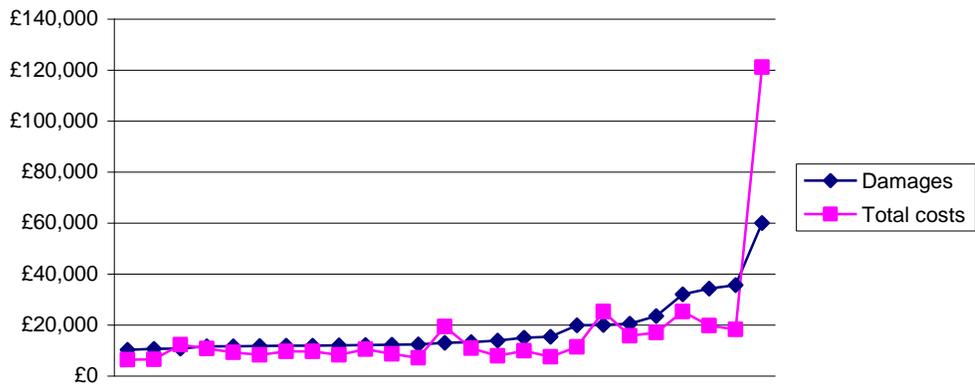
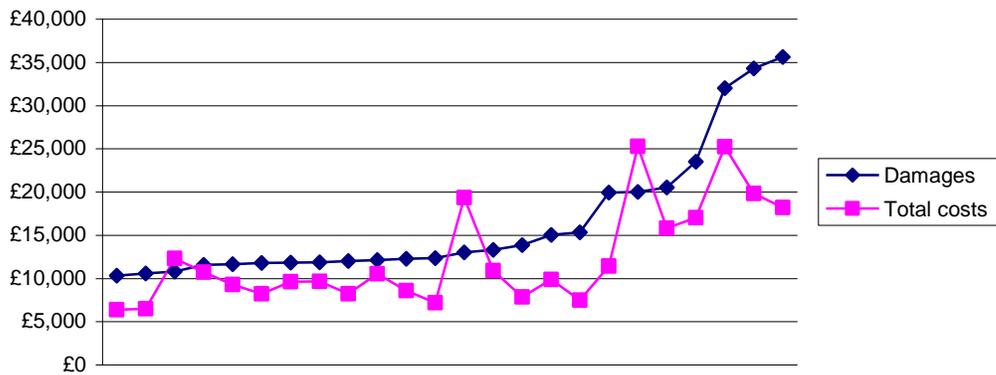


Figure 5a: Appendix 1a - total costs in PI cases with damages over £10,000 excluding one very large case (n=24)



PRELIMINARY ANALYSIS OF INSURANCE COMPANY DATA

11. **Appendix 23.** Data were provided by an insurance company relating to PI claims in 2007 and 2008. During 2007 there were 198 PI cases with information about damages agreed and costs. The range of PI damages payments was from £500 to £160,000. Information was provided about 284 PI cases in 2008 with damages ranging from £250 to £315,880.

12. For 2007 the mean amount of PI damages was £6,971 (median £3,612) while the mean costs agreed were £8,101 (median £5,292). For 2008 the mean amount of PI damages was £10,015 (median £3,986) while the mean costs were £9,908 (median £6,000).

13. Figures 6 to 9 display the relationship between damages and costs for the cases in Appendix 23 divided into quartiles. Again it is clear that there is considerable variation in costs within damages value bands and that as damages rise, so costs reduce as a percentage of the claim value.

Figure 6: Appendix 23 Insurer data 2008 PI agreed costs and damages 1st quartile (n=71)

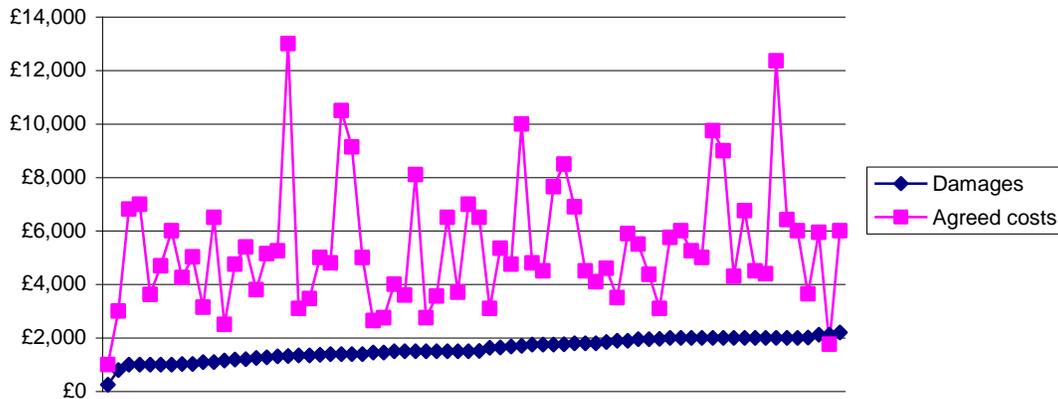


Figure 7: Appendix 23 Insurer PI data 2008 agreed costs and damages 2nd quartile (n=71)

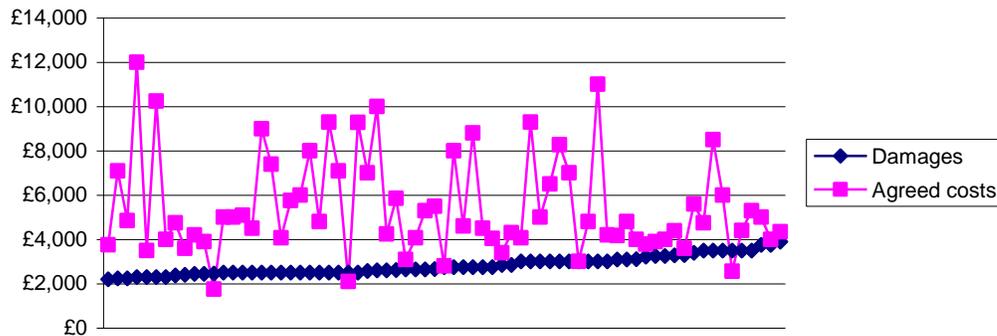


Figure 8 App 23 Insurer PI data 2008 costs and damages 3rd quartile (n=71)

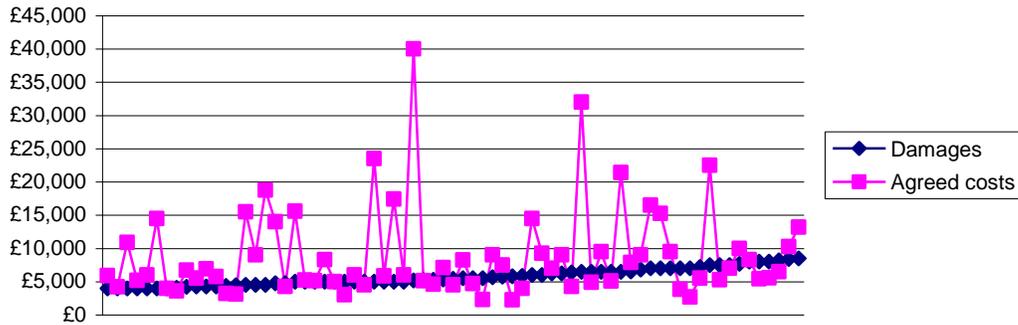
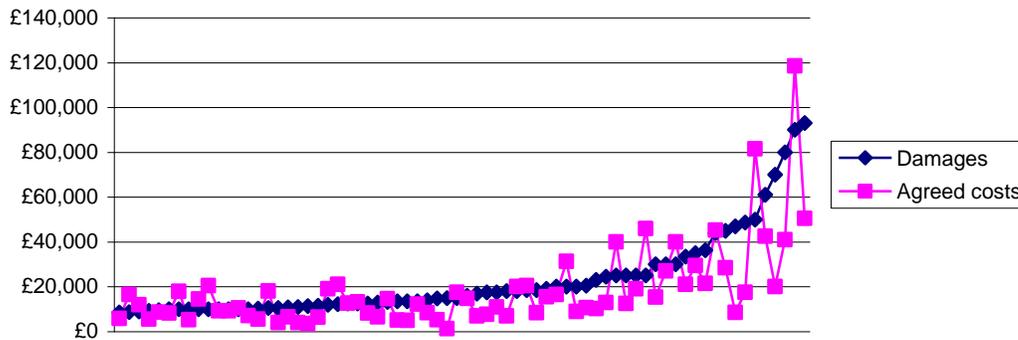


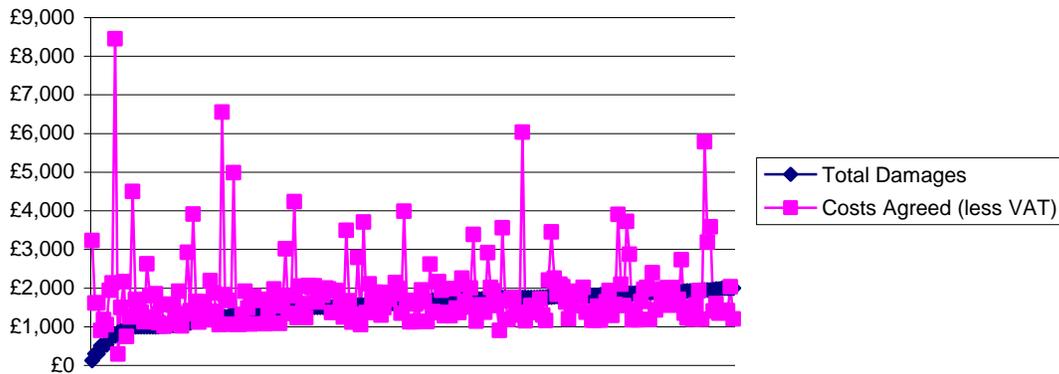
Figure 9: App 23 Insurer PI data 2008 agreed costs and damages 4th quartile excluding 2 very large cases (n=70)



14. **Appendix 18.** The data in this appendix comprise one week's cases of a liability insurer (2-6 February 2009). The 998 cases included on the database are largely personal injury road traffic accident cases, with a few professional negligence and employers' liability cases. Taking all of the cases together, the median amount of damages was **£2,725** (mean £6, 290). The median costs agreed were **£2,024** (mean £3,135).

15. A little under a quarter of cases on this database involved damages of £2,000 or less. Figure 10 presents the costs in relation to damages for the 223 cases with damages in this bracket. In this Figure, the costs are, on average, closer to the value of cases than the data in appendix 23.

Figure 10: Appendix 18. Insurer data Feb 2009 agreed costs for damages of £2,000 or less (n=223)



CIRCUIT JUDGES SURVEY

16. **Appendix 2.** This database contains information about 128 cases dealt with by Circuit Judges during the survey period. There is a wide range of cases in this database and the cases have been categorised differently from the DJ cases. However, among the 128 cases, the mean costs claimed were **£7,429 (median £6,115)** with allowed costs somewhat lower, with a mean of **£5,667 (median £4,665)**. The costs cannot be related to damages or relief because in many cases the information is missing or the relief is something other than damages – for example an injunction. Some 56 of these cases (43%) were fast track and 31 (24%) were multi-track. The remainder were not allocated. About 45% of cases in this sample (57) involved PI of some sort. About 13 were RTA cases and the remainder comprised contract and debt cases and a mixture of applications, appeals and other types of cases.

17. Figure 11 shows the relationship between allowed costs and damages in the 5? Cases in which damages were awarded. The pattern is similar to those in previous figures with costs becoming more proportionate as damages levels rise. Indeed, despite the changing levels of damages, costs appear to be remarkably consistent.

Figure 11: Appendix 2 - CJ data costs in relation to cases where damages awarded (n=51)

