

**2013 No. XXX (L.XXX)**

**SENIOR COURTS OF ENGLAND AND WALES**

**COUNTY COURTS, ENGLAND AND WALES**

**The Civil Procedure (Amendment) Rules 2013**

*Made* - - - - - \*\*\*

*Laid before Parliament* \*\*\*

*Coming into force* - - - \*\*\*

The Civil Procedure Rule Committee, having power under section 2 of the Civil Procedure Act 1997(a) to make rules of court under section 1 of that Act, after consulting in accordance with section 2(6)(a) of that Act, having power under section 58AA(6A) of the Courts and Legal Services Act 1990(b) and having power under section 55 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(c) makes the following Rules:

**Citation, commencement and interpretation**

1. These Rules may be cited as the Civil Procedure (Amendment) Rules 2013.
2. These Rules shall come into force on 1st April 2013.
3. In these Rules—
  - (a) a reference to a Part or rule by number alone means the Part or rule so numbered in the Civil Procedure Rules 1998(d);
  - (b) a reference to an Order by number and prefixed by “RSC” means the RSC Order so numbered in Schedule 1 to those Rules; and
  - (c) a reference to an Order by number and prefixed by “CCR” means the CCR Order so numbered in Schedule 2 to those Rules.

---

(a) 1997 c.12. Section 2(1) was substituted by the Constitutional Reform Act 2005 (c.4), section 15 and Schedule 4 Part 1. Section 1 was substituted by section 82(1) of the Courts Act 2003 (c.39) and further amended by the Constitutional Reform Act 2005 section 15, 146, Schedule 4 Part 1 paragraphs 261 and 262 and Schedule 18 paragraph 2.

(b) 1990 c.41. Section 58AA(6A) was inserted by section 45(8) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) and is relevant in relation to the provision made by rule 44.18 in the Schedule to these Rules (award of costs where there is a damages-based agreement).

(c) 2012 c.10. Section 55 of the Act is relevant in relation to the amendment made by rule 13(c) of these Rules (amendment to Part 36 of the Civil Procedure Rules – Offers to Settle. The Offers to Settle in Civil Proceedings Order 2013 (SI 2013/93) is also relevant.

(d) S.I. 1998/3132. There are relevant amendments in S.I. 2000/2092, r.4 and 22 and Schedule; S.I. 2001/4015, r.19; S.I. 2002/2058, r.3; S.I. 2003/2113 r.12(a), Schedule 2 Part 1; S.I. 2005/ 2292, r. 1(c), 6, 31(c); S.I. 2006/1689, r.5(e); S.I. 2006/3435, r.7(1) and Schedule; S.I. 2007/ 3543, r. 3(a) and 4(a); S.I. 2008/3327, r. 7(a) and 7(b); S.I. 2009/2092, r. 5(e), 5(f) and 12 and Schedule; S.I. 2011/3103, r.9(c) and 9(d); S.I. 2012/2208, r.2, 3 and 10(c).

**Amendments to the Civil Procedure Rules 1998**

**4. In rule 1.1—**

- (a) In paragraph (1), after “justly” insert “and at proportionate cost”; and
- (b) In paragraph (2)—
  - (i) after “justly” insert “and at proportionate cost”;
  - (ii) at the end of sub-paragraph (d), omit “and”;
  - (iii) at the end of sub-paragraph (e), for “.” substitute “; and”; and
  - (iv) after sub-paragraph (e) insert the following sub-paragraph—
    - “(f) enforcing compliance with rules, practice directions and orders.”.

**5. In Part 3—**

- (a) in the heading to the Part, after “CASE” insert “AND COSTS”;
- (b) in the Table of Contents of the Part—
  - (i) before the entry for rule 3.1, insert the Section heading—

“SECTION I – CASE MANAGEMENT”
-------------------------------

- (ii) after the entry for rule 3.10, insert the following entry—

“Power of the court to make civil restraint orders	Rule 3.11”
--	------------

; and

- (iii) after the entry for rule 3.11, insert the following Section headings and rules—

“SECTION II – COSTS MANAGEMENT	
Application of this Section and the purpose of costs management	Rule 3.12
Filing and exchanging budgets	Rule 3.13
Failure to file a budget	Rule 3.14
Costs management orders	Rule 3.15
Costs management conferences	Rule 3.16
Court to have regard to budgets and to take account of costs	Rule 3.17
Assessing costs on the standard basis where a costs management order has been made	Rule 3.18
SECTION III – COSTS CAPPING	
Costs capping orders - General	Rule 3.19
Application for a costs capping order	Rule 3.20
Application to vary a costs capping order	Rule 3.21”

- (c) before the heading for rule 3.1, insert the Section heading—

“SECTION I  
*Case Management*”;

- (d) after rule 3.1(7), insert—

“(8) The court may contact the parties from time to time in order to monitor compliance with directions. The parties must respond promptly to any such enquiries from the court.”;

- (e) in—

- (i) rule 3.7(1) and the words in the first set of parentheses that follow it; and
- (ii) rule 3.7A(1)(b),

for “an allocation”, in each place that those words occur, substitute “a directions”;

- (f) in rule 3.8, in the parentheses that follow paragraph (1), for “may” substitute “will”;

(g) for rule 3.9(1), substitute—

“(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need—

- (a) for litigation to be conducted efficiently and at proportionate cost; and
- (b) to enforce compliance with rules, practice directions and orders.”; and

(h) after rule 3.11, insert—

“SECTION II  
*Costs Management*”

**Application of this Section and the purpose of costs management**

**3.12.**—(1) This Section and Practice Direction 3E apply to all multi-track cases commenced on or after 1<sup>st</sup> April 2013 in—

- (a) a county court; or
- (b) the Chancery Division or Queen’s Bench Division of the High Court (except the Admiralty and Commercial Courts),

unless the proceedings are the subject of fixed costs or scale costs or the court otherwise orders. This Section and Practice Direction 3E shall apply to any other proceedings (including applications) where the court so orders.

(2) The purpose of costs management is that the court should manage both the steps to be taken and the costs to be incurred by the parties to any proceedings so as to further the overriding objective.

**Filing and exchanging budgets**

**3.13.** Unless the court otherwise orders, all parties except litigants in person must file and exchange budgets as required by the rules or as the court otherwise directs. Each party must do so by the date specified in the notice served under rule 26.3(1) or, if no such date is specified, seven days before the first case management conference.

**Failure to file a budget**

**3.14.** Unless the court otherwise orders, any party which fails to file a budget despite being required to do so will be treated as having filed a budget comprising only the applicable court fees.

**Costs management orders**

**3.15.**—(1) In addition to exercising its other powers, the court may manage the costs to be incurred by any party in any proceedings.

(2) The court may at any time make a “costs management order”. By such order the court will—

- (a) record the extent to which the budgets are agreed between the parties;
- (b) in respect of budgets or parts of budgets which are not agreed, record the court’s approval after making appropriate revisions.

(3) If a costs management order has been made, the court will thereafter control the parties’ budgets in respect of recoverable costs.

### **Costs management conferences**

**3.16.**—(1) Any hearing which is convened solely for the purpose of costs management (for example, to approve a revised budget) is referred to as a “costs management conference”.

(2) Where practicable, costs management conferences should be conducted by telephone or in writing.

### **Court to have regard to budgets and to take account of costs**

**3.17.**—(1) When making any case management decision, the court will have regard to any available budgets of the parties and will take into account the costs involved in each procedural step.

(2) Paragraph (1) applies whether or not the court has made a costs management order.

### **Assessing costs on the standard basis where a costs management order has been made**

**3.18.** In any case where a costs management order has been made, when assessing costs on the standard basis, the court will—

- (a) have regard to the receiving party’s last approved or agreed budget for each phase of the proceedings; and
- (b) not depart from such approved or agreed budget unless satisfied that there is good reason to do so.

(Attention is drawn to rule 44.3(2)(a) and rule 44.3(5), which concern proportionality of costs.)

## **SECTION III**

### *Costs Capping*

#### **Costs capping orders – General**

**3.19.**—(1) A costs capping order is an order limiting the amount of future costs (including disbursements) which a party may recover pursuant to an order for costs subsequently made.

(2) In this rule, “future costs” means costs incurred in respect of work done after the date of the costs capping order but excluding the amount of any additional liability.

(3) This rule does not apply to protective costs orders.

(4) A costs capping order may be in respect of –

- (a) the whole litigation; or
- (b) any issues which are ordered to be tried separately.

(5) The court may at any stage of proceedings make a costs capping order against all or any of the parties, if—

- (a) it is in the interests of justice to do so;
- (b) there is a substantial risk that without such an order costs will be disproportionately incurred; and
- (c) it is not satisfied that the risk in subparagraph (b) can be adequately controlled by—
  - (i) case management directions or orders made under this Part; and
  - (ii) detailed assessment of costs.

(6) In considering whether to exercise its discretion under this rule, the court will consider all the circumstances of the case, including—

- (a) whether there is a substantial imbalance between the financial position of the parties;

- (b) whether the costs of determining the amount of the cap are likely to be proportionate to the overall costs of the litigation;
- (c) the stage which the proceedings have reached; and
- (d) the costs which have been incurred to date and the future costs.

(7) A costs capping order, once made, will limit the costs recoverable by the party subject to the order unless a party successfully applies to vary the order. No such variation will be made unless—

- (a) there has been a material and substantial change of circumstances since the date when the order was made; or
- (b) there is some other compelling reason why a variation should be made.

### **Application for a costs capping order**

**3.20.**—(1) An application for a costs capping order must be made on notice in accordance with Part 23.

(2) The application notice must –

- (a) set out –
  - (i) whether the costs capping order is in respect of the whole of the litigation or a particular issue which is ordered to be tried separately; and
  - (ii) why a costs capping order should be made; and
- (b) be accompanied by a budget setting out –
  - (i) the costs (and disbursements) incurred by the applicant to date; and
  - (ii) the costs (and disbursements) which the applicant is likely to incur in the future conduct of the proceedings.

(3) The court may give directions for the determination of the application and such directions may –

- (a) direct any party to the proceedings –
  - (i) to file a schedule of costs in the form set out in paragraph 3 of Practice Direction 3F – Costs capping;
  - (ii) to file written submissions on all or any part of the issues arising;
- (b) fix the date and time estimate of the hearing of the application;
- (c) indicate whether the judge hearing the application will sit with an assessor at the hearing of the application; and
- (d) include any further directions as the court sees fit.

### **Application to vary a costs capping order**

**3.21.** An application to vary a costs capping order must be made by application notice pursuant to Part 23.”.

**6.** In rule 16.3, in paragraph (2)(b)(i) and (ii), for “£5,000” substitute “£10,000”.

**7.** In Part 21—

- (a) in rule 21.10—
  - (i) in paragraph (3), for “Section VI” substitute “Section III”; and
  - (ii) in the parentheses after paragraph (3), for “48.5” substitute “46.4”;
- (b) in rule 21.12—
  - (i) in paragraph (2)—

- (aa) in sub-paragraph (a), for “an insurance policy, as defined by rule 43.2(1)(m)”, substitute “a premium in respect of a costs insurance policy (as defined by section 58C(5) of the Courts and Legal Services Act 1990)” ; and
- (bb) in sub-paragraph (b), for “an insurance premium” substitute “a premium in respect of a costs insurance policy”; and
- (ii) in the parentheses after paragraph (3)—
  - (aa) for “43.2(1)(a)” substitute “44.1(1)(a)”; and
  - (bb) for “48.5(2)” substitute “46.4(2)”; and
- (iii) in paragraph (4), for “44.5(3)” substitute “44.4(3)”.

**8. In Part 26—**

- (a) in the Table of Contents of the Part, in the entry for “Allocation questionnaire”, for “Allocation” substitute “Directions”;
- (b) in rule 26.2A—
  - (i) in paragraph (2)—
    - (aa) omit “before the service of a notice by the court under rule 26.3(1A)”; and
    - (bb) after “the preferred court” insert “or the defendant’s home court as appropriate”;
  - (ii) in paragraph (5), for “allocation” substitute “directions”; and
  - (iii) for paragraph (6) substitute—
 

“(6) The relevant time for the purposes of this rule is when—

    - (a) all parties have filed their directions questionnaires;
    - (b) any stay ordered by the court or period to attempt settlement through mediation has expired; or
    - (c) if the claim falls within Practice Direction 7D—
      - (i) the defence is filed; or
      - (ii) enforcement of a default judgment other than by a warrant of execution is requested,
 whichever occurs first.”;
- (c) in rule 26.3—
  - (i) in the heading, for “Allocation”, substitute “Directions”;
  - (ii) for paragraph (1) substitute—
 

“(1) If a defendant files a defence—

    - (a) a court officer will—
      - (i) provisionally decide the track which appears to be most suitable for the claim; and
      - (ii) serve on each party a notice of proposed allocation; and
    - (b) the notice of proposed allocation will—
      - (i) specify any matter to be complied with by the date specified in the notice;
      - (ii) require the parties to file a completed directions questionnaire and serve copies on all other parties;
      - (iii) state the address of the court or the court office to which the directions questionnaire must be returned;
      - (iv) inform the parties how to obtain the directions questionnaire; and
      - (v) if a case appears suitable for allocation to the fast track or multi-track, require the parties to file proposed directions by the date specified in the notice.”;
  - (iii) omit paragraph (1A);

- (iv) in paragraph (1B), for “allocation” substitute “directions”;
- (v) in paragraph (2), for “(1A)” substitute “(1)”;
- (vi) for paragraph (3), substitute—
  - “(3) If proceedings are automatically transferred under rule 26.2 or rule 26.2A the court in which the proceedings have been commenced—
    - (a) will serve the notice of proposed allocation before the proceedings are transferred; and
    - (b) will not transfer the proceedings until all parties have complied with the notice or the time for doing so has expired.”;
- (vii) for paragraph (4), substitute—
  - “(4) If rule 15.10 or rule 14.5 applies, the court will not serve a notice under rule 26.3(1) until the claimant has filed a notice requiring the proceedings to continue.”;
- (viii) omit paragraph (5);
- (ix) for paragraph (6), substitute—
  - “(6) If a notice is served under rule 26.3(1)—
    - (a) each party must file at court, and serve on all other parties, the documents required by the notice by no later than the date specified in it; and
    - (b) the date specified will be—
      - (i) if the notice relates to the small claims track, at least 14 days; or
      - (ii) if the notice relates to the fast track or multi-track, at least 28 days, after the date when it is deemed to be served on the party in question.”;
  - (x) for paragraph (6A), substitute—
    - “(6A) The date for complying with a notice served under rule 26.3(1) may not be varied by agreement between the parties.”;
  - (xi) in paragraph (7), for “an allocation” substitute “a directions”;
  - (xii) after paragraph (7), insert—
    - “(7A) If a claim is a designated money claim and a party does not comply with the notice served under rule 26.3(1) by the date specified—
      - (a) the court will serve a further notice on that party, requiring them to comply within 7 days; and
      - (b) if that party fails to comply with the notice served under subparagraph (a), the party’s statement of case will be struck out without further order of the court.”;
  - (xiii) in paragraph (8), for “Where a party does not file an allocation questionnaire by the date specified” substitute “If a claim is not a designated money claim and a party does not comply with the notice served under rule 26.3(1) by the date specified”;
  - (xiv) omit paragraph (9); and
  - (xv) in paragraph (10)—
    - (aa) for “26.3(8)” substitute “26.3(7A)(b) or 26.3(8)”;
    - (bb) for “any party who was not in default” substitute “any other party”;
- (d) in rule 26.4—
  - (i) in paragraph (1), for “allocation” substitute “directions”; and
  - (ii) for paragraph (2) substitute—
    - “(2) If all parties request a stay the proceedings will be stayed for one month and the court will notify the parties accordingly.
    - (2A) If the court otherwise considers that such a stay would be appropriate, the court will direct that the proceedings, either in whole or in part, be stayed for one month, or for such other period as it considers appropriate.”;

- (e) in rule 26.5—
  - (i) for paragraph (1), substitute—
    - “(1) The court will allocate the claim to a track—
      - (a) when all parties have filed their directions questionnaires; or
      - (b) when giving directions pursuant to rule 26.3(8),
  - unless it has stayed the proceedings under rule 26.4.”; and
  - (ii) omit paragraph (5);
- (f) in rule 26.6, in—
  - (i) paragraph (1)(a)(i); and
  - (ii) paragraph (3),
 for “£5,000” substitute “£10,000”;
- (g) omit rule 26.7(3); and
- (h) in rule 26.9—
  - (i) omit paragraph (2); and
  - (ii) at the end of the rule, in the words in parentheses, for “his” substitute “their”.

**9. In Part 27—**

- (a) in rule 27.1, after paragraph (2), in the words in parentheses, for “£5,000” in each place it occurs, substitute “£10,000”;
- (b) in rule 27.5, for “27.14(3)(d)”, substitute “27.14(2)(f)”;
- (c) in rule 27.14—
  - (i) in paragraph (1) omit “unless paragraph (5) applies”; and
  - (ii) omit paragraphs (5) and (6).

**10. In Part 29—**

- (a) after the parentheses that follow rule 29.1, insert—
  - “(2) When drafting case management directions both the parties and the court should take as their starting point any relevant model directions and standard directions which can be found online at [www.justice.gov.uk/courts/procedure-rules/civil](http://www.justice.gov.uk/courts/procedure-rules/civil) and adapt them as appropriate to the circumstances of the particular case.”;
- (b) at the end of rule 29.2(1)(a), after “or” insert “may”;
- (c) for rule 29.4 substitute—
  - “**29.4.** The parties must endeavour to agree appropriate directions for the management of the proceedings and submit agreed directions, or their respective proposals to the court at least seven days before any case management conference. Where the court approves agreed directions, or issues its own directions, the parties will be so notified by the court and the case management conference will be vacated.”; and
- (d) for rule 29.8(c)(ii), substitute—
  - “(ii) confirm the date for trial or the week within which the trial is to begin; and”.

**11. For rule 31.5, substitute—**

- “**31.5.**—(1) In all claims to which rule 31.5(2) does not apply—
  - (a) an order to give disclosure is an order to give standard disclosure unless the court directs otherwise;
  - (b) the court may dispense with or limit standard disclosure; and
  - (c) the parties may agree in writing to dispense with or to limit standard disclosure.

(2) Unless the court otherwise orders, paragraphs (3) to (8) apply to all multi-track claims, other than those which include a claim for personal injuries.

(3) Not less than 14 days before the first case management conference each party must file and serve a report verified by a statement of truth, which—

- (a) describes briefly what documents exist or may exist that are or may be relevant to the matters in issue in the case;
- (b) describes where and with whom those documents are or may be located;
- (c) in the case of electronic documents, describes how those documents are stored;
- (d) estimates the broad range of costs that could be involved in giving standard disclosure in the case, including the costs of searching for and disclosing any electronically stored documents; and
- (e) states which of the directions under paragraphs (7) or (8) are to be sought.

(4) In cases where the Electronic Documents Questionnaire has been exchanged, the Questionnaire should be filed with the report required by paragraph (3).

(5) Not less than seven days before the first case management conference, and on any other occasion as the court may direct, the parties must, at a meeting or by telephone, discuss and seek to agree a proposal in relation to disclosure that meets the overriding objective.

(6) If—

- (a) the parties agree proposals for the scope of disclosure; and
- (b) the court considers that the proposals are appropriate in all the circumstances,

the court may approve them without a hearing and give directions in the terms proposed.

(7) At the first or any subsequent case management conference, the court will decide, having regard to the overriding objective and the need to limit disclosure to that which is necessary to deal with the case justly, which of the following orders to make in relation to disclosure—

- (a) an order dispensing with disclosure;
- (b) an order that a party disclose the documents on which it relies, and at the same time request any specific disclosure it requires from any other party;
- (c) an order that directs, where practicable, the disclosure to be given by each party on an issue by issue basis;
- (d) an order that each party disclose any documents which it is reasonable to suppose may contain information which enables that party to advance its own case or to damage that of any other party, or which leads to an enquiry which has either of those consequences;
- (e) an order that a party give standard disclosure;
- (f) any other order in relation to disclosure that the court considers appropriate.

(8) The court may at any point give directions as to how disclosure is to be given, and in particular—

- (a) what searches are to be undertaken, of where, for what, in respect of which time periods and by whom and the extent of any search for electronically stored documents;
- (b) whether lists of documents are required;
- (c) how and when the disclosure statement is to be given;
- (d) in what format documents are to be disclosed (and whether any identification is required);
- (e) what is required in relation to documents that once existed but no longer exist; and
- (f) whether disclosure shall take place in stages.

(9) To the extent that the documents to be disclosed are electronic, the provisions of Practice Direction 31B – Disclosure of Electronic Documents will apply in addition to paragraphs (3) to (8).”

12. After rule 32.2(2), insert—

“(3) The court may give directions—

- (a) identifying or limiting the issues to which factual evidence may be directed;
- (b) identifying the witnesses who may be called or whose evidence may be read; or
- (c) limiting the length or format of witness statements.”.

13. In Part 35, in rule 35.4—

- (a) in paragraph (2), after “must” insert “provide an estimate of the costs of the proposed expert evidence and”;
- (b) in paragraph (2)(a), after “required” insert “and the issues which the expert evidence will address”; and
- (c) at the end of paragraph (3), after “paragraph (2).” insert “The order granting permission may specify the issues which the expert evidence should address.”.

14. In Part 36, in rule 36.14(3)—

- (a) in subparagraph (b)—
  - (i) omit “his”; and
  - (ii) at the end, omit “and”;
- (b) in subparagraph (c), for the full stop substitute “; and”; and
- (c) after subparagraph (c), insert—
  - “(d) an additional amount, which shall not exceed £75,000, calculated by applying the prescribed percentage set out below to an amount which is—
    - (i) where the claim is or includes a money claim, the sum awarded to the claimant by the court; or
    - (ii) where the claim is only a non-monetary claim, the sum awarded to the claimant by the court in respect of costs—

<i>Amount awarded by the court</i>	<i>Prescribed percentage</i>
up to £500,000	10% of the amount awarded;
above £500,000 up to £1,000,000	10% of the first £500,000 and 5% of any amount above that figure”

15. Part 43 is revoked.

16. For Parts 44 to 48, substitute Parts 44 to 48 as set out in the Schedule to these Rules.

17. In Part 52—

- (a) in the contents of the Part, after the entry for rule 52.9, insert—

“Orders to limit the recoverable costs of an appeal	Rule 52.9A”
---	-------------

; and

- (b) after rule 52.9, insert—

**“Orders to limit the recoverable costs of an appeal**

**52.9A.**—(1) In any proceedings in which costs recovery is normally limited or excluded at first instance, an appeal court may make an order that the recoverable costs of an appeal will be limited to the extent which the court specifies.

(2) In making such an order the court will have regard to—

- (a) the means of both parties;
- (b) all the circumstances of the case; and
- (c) the need to facilitate access to justice.

(3) If the appeal raises an issue of principle or practice upon which substantial sums may turn, it may not be appropriate to make an order under paragraph (1).

(4) An application for such an order must be made as soon as practicable and will be determined without a hearing unless the court orders otherwise.”.

**18.** In rule 54.6(1)—

- (a) at the end of subparagraph (b), omit “and”;
- (b) in subparagraph (c), for the full stop substitute “; and”; and
- (c) after subparagraph (c) insert—
  - “(d) where appropriate, the grounds on which it is contended that the claim is an Aarhus Convention claim.

(Rules 45.41 to 45.44 make provision about costs in Aarhus Convention claims.)”.

**19.** In Part 63, in rule 63.27(1)(b), for “£5,000” substitute “£10,000”.

**20.** In CCR Order 27, omit rule 7A(3).

**21.** In the Glossary—

- (a) after the entry for “Base rate”, insert—

“Budget	An estimate of the reasonable and proportionate costs (including disbursements) which a party intends to incur in the proceedings.”
---------	---

; and

- (b) after the entry for “Exemplary damages”, insert—

“Damages-based agreement	A damages-based agreement is an agreement which complies with the provisions of the Damages-Based Agreements Regulations 2013.”
--------------------------	---

### **Transitional provisions**

**22.**—(1) The following amendments do not apply where a defence is received before 1 April 2013—

- (a) the amendments made by rules 5(e), 8(a) to (e) and (h) of these Rules; and
- (b) the amendments made by paragraphs 3 and 9(a) to (j) and (m) and (n) of the 60<sup>th</sup> Update - Practice Direction amendments, that amends the Practice Directions supplementing the Civil Procedure Rules.

(2) The amendments made by rule 5(f) and (g) of these Rules do not apply to applications made before 1 April 2013 for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order.

(3) The following amendments do not apply to claims issued before 1 April 2013—

- (a) the amendments made by rules 6, 8(f) and (g), 9(a) and 19 of these Rules; and
- (b) the amendments made by paragraphs 9(k) and (l)(i) and 10(c) of the 60<sup>th</sup> Update - Practice Direction amendments that amends the Practice Directions supplementing the Civil Procedure Rules.

(4) The amendment made by rule 10(c) of these Rules does not apply where any case management conference takes place or is due to take place before 9 April 2013.

(5) The amendment made by rule 11 of these Rules does not apply where the first case management conference takes place or is due to take place before 16 April 2013.

(6) The amendments made by rule 13 of these Rules do not apply in relation to an application for permission made before 1 April 2013.

(7) The amendments made by rule 14 of these Rules do not apply in relation to a claimant's Part 36 offer which was made before 1 April 2013.

(8) The amendments made by rule 18 and the provision made by rules 45.41 to 45.44 in the Schedule (costs limits in Aarhus Convention claims) do not apply in relation to a claim commenced before 1 April 2013.

(9) The provision made by rule 47.14(7) in the Schedule (when time for appealing against assessment starts to run) of these Rules does not apply where the final hearing was concluded before 1 April 2013.

(10) The provision made by rule 47.20(1) to (5) and (7) in the Schedule (liability for costs of detailed assessment proceedings) does not apply to detailed assessments commenced before 1 April 2013 and in relation to such detailed assessments, rules 47.18 and 47.19 as they were in force immediately before 1 April 2013 apply instead.

(11) The amendment made by rule 47.20(6) in the Schedule to these Rules (interest on the costs of detailed assessment proceedings) does not apply where the date of the default, interim or final costs certificate (as the case may be) is before 1 April 2013.

(12) Any defamation proceedings commenced before 1 April 2013 within the scope of the Defamation Proceedings Costs Management Scheme provided for by Practice Direction 51D supporting Part 51 will proceed and be completed in accordance with that scheme.

(13) Any detailed assessment commenced before 1 April 2013 under the County Court Provisional Assessment Pilot Scheme provided for by Practice Direction 51E supporting Part 51 will proceed and be completed in accordance with that scheme.

(14) Any proceedings in the Mercantile Courts and the Construction Courts commenced before 1 April 2013 that are within the scope of the Costs Management in Mercantile Courts and Construction Courts Pilot Scheme provided for by Practice Direction 51G supporting Part 51 will proceed and be completed in accordance with that scheme.

*The Right Honourable Lord Dyson, MR  
Stephen Richards, LJ  
Peter Coulson, J  
Philip Sales, J  
Master Barbara Fontaine  
HHJ Stephen Stewart QC  
District Judge Suzanne Burn  
District Judge Christopher Lethem  
Nicholas Bacon QC  
William Featherby QC  
Professor David Grant  
Edward Pepperall  
Katy Peters  
Qasim Nawaz  
Amanda Stevens*

I allow these Rules  
Signed by authority of the Lord Chancellor

*Name*  
Parliamentary Under Secretary of State

## SCHEDULE

Rule 16

## “PART 44

## General Rules about Costs

**Contents of this Part**

	SECTION I GENERAL
44.1	Interpretation and application
44.2	Court’s discretion as to costs
44.3	Basis of assessment
44.4	Factors to be taken into account in deciding the amount of costs
44.5	Amount of costs where costs are payable under a contract
44.6	Procedure for assessing costs
44.7	Time for complying with an order for costs
44.8	Legal representative’s duty to notify the party
44.9	Cases where costs orders deemed to have been made
44.10	Where the court makes no order for costs
44.11	Court’s powers in relation to misconduct
44.12	Set off
	SECTION II QUALIFIED ONE-WAY COSTS SHIFTING
44.13	Qualified one-way costs shifting: scope and interpretation
44.14	Effect of qualified one-way costs shifting
44.15	Exceptions to qualified one-way costs shifting where permission not required
44.16	Exceptions to qualified one-way costs shifting where permission required
44.17	Transitional provision
	SECTION III DAMAGES-BASED AGREEMENTS
44.18	Award of costs where there is a damages-based agreement

## SECTION I

### *General*

#### **Interpretation and application**

**44.1.**—(1) In Parts 44 to 47, unless the context otherwise requires—

“authorised court officer” means any officer of—

- (i) a county court;
- (ii) a district registry;
- (iii) the Principal Registry of the Family Division; or
- (iv) the Costs Office,

whom the Lord Chancellor has authorised to assess costs;

“conditional fee agreement” means an agreement enforceable under section 58 of the Courts and Legal Services Act 1990(a);

“costs” includes fees, charges, disbursements, expenses, remuneration, reimbursement allowed to a litigant in person under rule 46.5 and any fee or reward charged by a lay representative for acting on behalf of a party in proceedings allocated to the small claims track;

“costs judge” means a taxing master of the Senior Courts;

“Costs Office” means the Senior Courts Costs Office;

“costs officer” means—

- (i) a costs judge;
- (ii) a district judge; or
- (iii) an authorised court officer;

“detailed assessment” means the procedure by which the amount of costs is decided by a costs officer in accordance with Part 47;

“the Director (legal aid)” means the person designated as the Director of Legal Aid Casework pursuant to section 4 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(b), or a person entitled to exercise the functions of the Director;

“fixed costs” means costs the amounts of which are fixed by these rules whether or not the court has a discretion to allow some other or no amount, and include—

- (i) the amounts which are to be allowed in respect of legal representatives’ charges in the circumstances set out in Section I of Part 45;
- (ii) fixed recoverable costs calculated in accordance with rule 45.11;
- (iii) the additional costs allowed by rule 45.18;
- (iv) fixed costs determined under rule 45.21;
- (v) costs fixed by rules 45.37 and 45.38;

“free of charge” has the same meaning as in section 194(10) of the 2007 Act;

“fund” includes any estate or property held for the benefit of any person or class of person and any fund to which a trustee or personal representative is entitled in that capacity;

“HMRC” means HM Revenue and Customs;

“legal aid” means civil legal services made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

---

(a) 1990 c.41. Section 58 was substituted by the Access to Justice Act 1990 section 27(1) and was amended by S.I. 2005/3429 article 8, Schedule paragraph 2 and the Legal Aid, Sentencing and Punishment of Offenders Act section 44(1) and (2).

(b) 2012 c.10.

- “paying party” means a party liable to pay costs;
- “the prescribed charity” has the same meaning as in section 194(8) of the 2007 Act;
- “pro bono representation” means legal representation provided free of charge;
- “receiving party” means a party entitled to be paid costs;
- “summary assessment” means the procedure whereby costs are assessed by the judge who has heard the case or application;
- “VAT” means Value Added Tax;
- “the 2007 Act” means the Legal Services Act 2007(a).

(“Legal representative” has the meaning given in rule 2.3).

(2) The costs to which Parts 44 to 47 apply include—

- (a) the following costs where those costs may be assessed by the court—
  - (i) costs of proceedings before an arbitrator or umpire;
  - (ii) costs of proceedings before a tribunal or other statutory body; and
  - (iii) costs payable by a client to their legal representative; and
- (b) costs which are payable by one party to another party under the terms of a contract, where the court makes an order for an assessment of those costs.

(3) Where advocacy or litigation services are provided to a client under a conditional fee agreement, costs are recoverable under Parts 44 to 47 notwithstanding that the client is liable to pay the legal representative’s fees and expenses only to the extent that sums are recovered in respect of the proceedings, whether by way of costs or otherwise.

#### **Court’s discretion as to costs**

**44.2.**—(1) The court has discretion as to—

- (a) whether costs are payable by one party to another;
- (b) the amount of those costs; and
- (c) when they are to be paid.

(2) If the court decides to make an order about costs—

- (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but
- (b) the court may make a different order.

(3) The general rule does not apply to the following proceedings—

- (a) proceedings in the Court of Appeal on an application or appeal made in connection with proceedings in the Family Division; or
- (b) proceedings in the Court of Appeal from a judgment, direction, decision or order given or made in probate proceedings or family proceedings.

(4) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including—

- (a) the conduct of all the parties;
- (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and
- (c) any admissible offer to settle made by a party which is drawn to the court’s attention, and which is not an offer to which costs consequences under Part 36 apply.

(5) The conduct of the parties includes—

---

(a) 2007 c.29.

- (a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;
  - (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
  - (c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and
  - (d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.
- (6) The orders which the court may make under this rule include an order that a party must pay—
- (a) a proportion of another party’s costs;
  - (b) a stated amount in respect of another party’s costs;
  - (c) costs from or until a certain date only;
  - (d) costs incurred before proceedings have begun;
  - (e) costs relating to particular steps taken in the proceedings;
  - (f) costs relating only to a distinct part of the proceedings; and
  - (g) interest on costs from or until a certain date, including a date before judgment.
- (7) Before the court considers making an order under paragraph (6)(f), it will consider whether it is practicable to make an order under paragraph (6)(a) or (c) instead.
- (8) Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so.

**Basis of assessment**

**44.3.**—(1) Where the court is to assess the amount of costs (whether by summary or detailed assessment) it will assess those costs—

- (a) on the standard basis; or
- (b) on the indemnity basis,

but the court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount.

(Rule 44.5 sets out how the court decides the amount of costs payable under a contract.)

- (2) Where the amount of costs is to be assessed on the standard basis, the court will—
- (a) only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and
  - (b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party.

(Factors which the court may take into account are set out in rule 44.4.)

(3) Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party.

- (4) Where—
- (a) the court makes an order about costs without indicating the basis on which the costs are to be assessed; or

- (b) the court makes an order for costs to be assessed on a basis other than the standard basis or the indemnity basis,

the costs will be assessed on the standard basis.

(5) Costs incurred are proportionate if they bear a reasonable relationship to—

- (a) the sums in issue in the proceedings;
- (b) the value of any non-monetary relief in issue in the proceedings;
- (c) the complexity of the litigation;
- (d) any additional work generated by the conduct of the paying party; and
- (e) any wider factors involved in the proceedings, such as reputation or public importance.

(6) Where the amount of a solicitor's remuneration in respect of non-contentious business is regulated by any general orders made under the Solicitors Act 1974(a), the amount of the costs to be allowed in respect of any such business which falls to be assessed by the court will be decided in accordance with those general orders rather than this rule and rule 44.4.

(7) Paragraphs (2)(a) and (5) do not apply in relation to cases commenced before 1 April 2013 and in relation to such cases, rule 44.4(2)(a) as it was in force immediately before 1 April 2013 will apply instead.

#### **Factors to be taken into account in deciding the amount of costs**

**44.4.**—(1) The court will have regard to all the circumstances in deciding whether costs were—

- (a) if it is assessing costs on the standard basis—
  - (i) proportionately and reasonably incurred; or
  - (ii) proportionate and reasonable in amount, or
- (b) if it is assessing costs on the indemnity basis—
  - (i) unreasonably incurred; or
  - (ii) unreasonable in amount.

(2) In particular, the court will give effect to any orders which have already been made.

(3) The court will also have regard to—

- (a) the conduct of all the parties, including in particular—
  - (i) conduct before, as well as during, the proceedings; and
  - (ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;
- (b) the amount or value of any money or property involved;
- (c) the importance of the matter to all the parties;
- (d) the particular complexity of the matter or the difficulty or novelty of the questions raised;
- (e) the skill, effort, specialised knowledge and responsibility involved;
- (f) the time spent on the case;
- (g) the place where and the circumstances in which work or any part of it was done; and
- (h) the receiving party's last approved or agreed budget.

(Rule 35.4(4) gives the court power to limit the amount that a party may recover with regard to the fees and expenses of an expert.)

---

(a) 1974 c.47.

### **Amount of costs where costs are payable under a contract**

**44.5.**—(1) Subject to paragraphs (2) to (4), where the court assesses (whether by summary or detailed assessment) costs which are payable by the paying party to the receiving party under the terms of a contract, the costs payable under those terms are, unless the contract expressly provides otherwise, to be presumed to be costs which—

- (a) have been reasonably incurred; and
- (b) are reasonable in amount,

and the court will assess them accordingly.

(2) The presumptions in paragraph (1) are rebuttable. Practice Direction 44 – General rules about costs sets out circumstances where the court may order otherwise.

(3) Paragraph (1) does not apply where the contract is between a solicitor and client.

### **Procedure for assessing costs**

**44.6.**—(1) Where the court orders a party to pay costs to another party (other than fixed costs) it may either—

- (a) make a summary assessment of the costs; or
- (b) order detailed assessment of the costs by a costs officer,

unless any rule, practice direction or other enactment provides otherwise.

(Practice Direction 44 – General rules about costs sets out the factors which will affect the court’s decision under paragraph (1).)

(2) A party may recover the fixed costs specified in Part 45 in accordance with that Part.

### **Time for complying with an order for costs**

**44.7.**—(1) A party must comply with an order for the payment of costs within 14 days of—

- (a) the date of the judgment or order if it states the amount of those costs;
- (b) if the amount of those costs (or part of them) is decided later in accordance with Part 47, the date of the certificate which states the amount; or
- (c) in either case, such other date as the court may specify.

(Part 47 sets out the procedure for detailed assessment of costs.)

### **Legal representative’s duty to notify the party**

**44.8.** Where—

- (a) the court makes a costs order against a legally represented party; and
- (b) the party is not present when the order is made,

the party’s legal representative must notify that party in writing of the costs order no later than 7 days after the legal representative receives notice of the order.

(Paragraph 10.1 of Practice Direction 44 defines “party” for the purposes of this rule.)

### **Cases where costs orders deemed to have been made**

**44.9.**—(1) Subject to paragraph (2), where a right to costs arises under—

- (a) rule 3.7 (defendant’s right to costs where claim is struck out for non-payment of fees);

- (b) rule 36.10(1) or (2) (claimant's entitlement to costs where a Part 36 offer is accepted); or
- (c) rule 38.6 (defendant's right to costs where claimant discontinues),

a costs order will be deemed to have been made on the standard basis.

(2) Paragraph 1(b) does not apply where a Part 36 offer is accepted before the commencement of proceedings.

(3) Where such an order is deemed to be made in favour of a party with *pro bono* representation, that party may apply for an order under section 194(3) of the 2007 Act.

(4) Interest payable under section 17 of the Judgments Act 1838(a) or section 74 of the County Courts Act 1984(b) on the costs deemed to have been ordered under paragraph (1) will begin to run from the date on which the event which gave rise to the entitlement to costs occurred.

### Where the court makes no order for costs

**44.10.**—(1) Where the court makes an order which does not mention costs—

- (a) subject to paragraphs (2) and (3), the general rule is that no party is entitled—
  - (i) to costs; or
  - (ii) to seek an order under section 194(3) of the 2007 Act, in relation to that order; but
- (b) this does not affect any entitlement of a party to recover costs out of a fund held by that party as trustee or personal representative, or under any lease, mortgage or other security.

(2) Where the court makes—

- (a) an order granting permission to appeal;
- (b) an order granting permission to apply for judicial review; or
- (c) any other order or direction sought by a party on an application without notice, and its order does not mention costs, it will be deemed to include an order for applicant's costs in the case.

(3) Any party affected by a deemed order for costs under paragraph (2) may apply at any time to vary the order.

(4) The court hearing an appeal may, unless it dismisses the appeal, make orders about the costs of the proceedings giving rise to the appeal as well as the costs of the appeal.

(5) Subject to any order made by the transferring court, where proceedings are transferred from one court to another, the court to which they are transferred may deal with all the costs, including the costs before the transfer.

### Court's powers in relation to misconduct

**44.11.**—(1) The court may make an order under this rule where—

- (a) a party or that party's legal representative, in connection with a summary or detailed assessment, fails to comply with a rule, practice direction or court order; or
- (b) it appears to the court that the conduct of a party or that party's legal representative, before or during the proceedings or in the assessment proceedings, was unreasonable or improper.

---

(a) 1838 c.110. Section 17 was amended by the Civil Procedure Acts Repeal Act 1879 (c.59) section 2, Schedule Part I; Statute Law Revision (no 2) Act 1888 (c. 57); S.I. 1993/564 article 2; S.I. 1998/2940 article 3(a), (c).

(b) 1984 c.28. Section 5A was inserted by the Private International Law (Miscellaneous Provisions) Act 1995 (c.42) section 2.

- (2) Where paragraph (1) applies, the court may—
- (a) disallow all or part of the costs which are being assessed; or
  - (b) order the party at fault or that party’s legal representative to pay costs which that party or legal representative has caused any other party to incur.
- (3) Where—
- (a) the court makes an order under paragraph (2) against a legally represented party; and
  - (b) the party is not present when the order is made,  
the party’s legal representative must notify that party in writing of the order no later than 7 days after the legal representative receives notice of the order.

**Set Off**

- 44.12.**—(1) Where a party entitled to costs is also liable to pay costs, the court may assess the costs which that party is liable to pay and either—
- (a) set off the amount assessed against the amount the party is entitled to be paid and direct that party to pay any balance; or
  - (b) delay the issue of a certificate for the costs to which the party is entitled until the party has paid the amount which that party is liable to pay.

SECTION II

*Qualified One-Way Costs Shifting*

**Qualified one-way costs shifting: scope and interpretation**

- 44.13.**—(1) This Section applies to proceedings which include a claim for damages—
- (a) for personal injuries;
  - (b) under the Fatal Accidents Act 1976(a); or
  - (c) which arises out of death or personal injury and survives for the benefit of an estate by virtue of section 1(1) of the Law Reform (Miscellaneous Provisions) Act 1934(b),

but does not apply to applications pursuant to section 33 of the Senior Courts Act 1981(c) or section 52 of the County Courts Act 1984(d) (applications for pre-action disclosure), or where rule 44.17 applies.

(2) In this Section, “claimant” means a person bringing a claim to which this Section applies or an estate on behalf of which such a claim is brought, and includes a person making a counterclaim or an additional claim.

**Effect of qualified one-way costs shifting**

**44.14.**—(1) Subject to rules 44.15 and 44.16, orders for costs made against a claimant may be enforced without the permission of the court but only to the extent that the aggregate amount in money terms of such orders does not exceed the aggregate amount in money terms of any orders for damages and interest made in favour of the claimant.

---

(a) 1976 c.30. A new section 1 was substituted by the Administration of Justice Act 1982 (c. 53), section 3, and subsequently amended by the Civil Partnership Act 2004 (c. 33), section 83.

(b) 1934 c.41. Section 1(1) was amended by the Law Reform (Miscellaneous Provisions) Act 1970 (c. 33) section 7, Schedule, and by the Administration of Justice Act 1982 (c. 53) section 75, Schedule 9 Part 1

(c) 1981 c.54.

(d) 1984 c. 28. Section 52 was amended by the Civil Procedure Act 1997 (c. 12) section 10, Schedule 2 paragraph 2(2) and by the Courts and Legal Services Act 1990 (c. 41) section 125(3), Schedule 18 paragraph 43

(2) Orders for costs made against a claimant may only be enforced after the proceedings have been concluded and the costs have been assessed or agreed.

(3) An order for costs which is enforced only to the extent permitted by paragraph (1) shall not be treated as an unsatisfied or outstanding judgment for the purposes of any court record.

#### **Exceptions to qualified one-way costs shifting where permission not required**

**44.15.** Orders for costs made against the claimant may be enforced to the full extent of such orders without the permission of the court where the proceedings have been struck out on the grounds that—

- (a) the claimant has disclosed no reasonable grounds for bringing the proceedings;
- (b) the proceedings are an abuse of the court’s process; or
- (c) the conduct of—
  - (i) the claimant; or
  - (ii) a person acting on the claimant’s behalf and with the claimant’s knowledge of such conduct,

is likely to obstruct the just disposal of the proceedings.

#### **Exceptions to qualified one-way costs shifting where permission required**

**44.16.**—(1) Orders for costs made against the claimant may be enforced to the full extent of such orders with the permission of the court where the claim is found on the balance of probabilities to be fundamentally dishonest.

(2) Orders for costs made against the claimant may be enforced up to the full extent of such orders with the permission of the court, and to the extent that it considers just, where—

- (a) the proceedings include a claim which is made for the financial benefit of a person other than the claimant or a dependant within the meaning of section 1(3) of the Fatal Accidents Act 1976 (other than a claim in respect of the gratuitous provision of care, earnings paid by an employer or medical expenses); or
- (b) a claim is made for the benefit of the claimant other than a claim to which this Section applies.

(3) Where paragraph (2)(a) applies, the court may, subject to rule 46.2, make an order for costs against a person, other than the claimant, for whose financial benefit the whole or part of the claim was made.

#### **Transitional provision**

**44.17.** This Section does not apply to proceedings where the claimant has entered into a pre-commencement funding arrangement (as defined in rule 48.2).

### SECTION III

#### *Damages-Based Agreements*

#### **Award of costs where there is a damages-based agreement**

**44.18.**—(1) The fact that a party has entered into a damages-based agreement will not affect the making of any order for costs which otherwise would be made in favour of that party.

(2) Where costs are to be assessed in favour of a party who has entered into a damages-based agreement—

- (a) the party's recoverable costs will be assessed in accordance with rule 44.3; and
- (b) the party may not recover by way of costs more than the total amount payable by that party under the damages-based agreement for legal services provided under that agreement.

**PART 45**  
**FIXED COSTS**

Contents of this Part

Title	Number
<b>I FIXED COSTS</b>	
Scope of this Section	Rule 45.1
Amount of fixed commencement costs in a claim for the recovery of money or goods	Rule 45.2
When defendant only liable for fixed commencement costs	Rule 45.3
Costs on entry of judgment in a claim for the recovery of money or goods	Rule 45.4
Amount of fixed commencement costs in a claim for the recovery of land or a demotion claim	Rule 45.5
Costs on entry of judgment in a claim for the recovery of land or a demotion claim	Rule 45.6
Miscellaneous fixed costs	Rule 45.7
Fixed enforcement costs	Rule 45.8
<b>II ROAD TRAFFIC ACCIDENTS – FIXED RECOVERABLE COSTS</b>	
Scope and interpretation	Rule 45.9
Application of fixed recoverable costs	Rule 45.10
Amount of fixed recoverable costs	Rule 45.11
Disbursements	Rule 45.12
Claims for an amount of costs exceeding fixed recoverable costs	Rule 45.13
Failure to achieve costs greater than fixed recoverable costs	Rule 45.14
Costs of the costs-only proceedings or the detailed assessment	Rule 45.15
<b>III PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY CLAIMS IN ROAD TRAFFIC ACCIDENTS</b>	
Scope and interpretation	Rule 45.16
Application of fixed costs, disbursements	Rule 45.17
Amount of fixed costs	Rule 45.18
Disbursements	Rule 45.19

Contents of this Part

Title	Number
Where the claimant obtains judgment for an amount more than the defendant's RTA Protocol offer	Rule 45.20
Settlement at Stage 2 where the claimant is a child	Rule 45.21
Settlement at Stage 3 where the claimant is a child	Rule 45.22
Where the court orders the claim is not suitable to be determined under the Stage 3 Procedure and the claimant is a child	Rule 45.23
Failure to comply or electing not to continue with the RTA Protocol – costs consequences	Rule 45.24
Where the parties have settled after proceedings have started	Rule 45.25
Where the claimant obtains judgment for an amount equal to or less than the defendant's RTA Protocol offer	Rule 45.26
Adjournment	Rule 45.27
Account of payment of Stage 1 fixed costs	Rule 45.28
Costs-only application after a claim is started under Part 8 in accordance with Practice Direction 8B	Rule 45.29
<b>IV SCALE COSTS FOR CLAIMS IN A PATENTS COUNTY COURT</b>	
Scope and interpretation	Rule 45.30
Amount of scale costs	Rule 45.31
Summary assessment of the costs of an application where a party has behaved unreasonably	Rule 45.32
<b>V FIXED COSTS: HM REVENUE AND CUSTOMS</b>	
Scope, interpretation and application	Rule 45.33
Amount of fixed commencement costs in a county court claim for the recovery of money	Rule 45.34
Costs on entry of judgment in a county court claim for recovery of money	Rule 45.35
When the defendant is only liable for fixed commencement costs	Rule 45.36
<b>VI FAST TRACK TRIAL COSTS</b>	
Scope of this Section	Rule 45.37
Amount of fast track trial costs	Rule 45.38
Power to award more or less than the amount of fast track trial costs	Rule 45.39
Fast track trial costs where there is more than one claimant or defendant	Rule 45.40
<b>VII COSTS LIMITS IN AARHUS CONVENTION CLAIMS</b>	
Scope and interpretation	Rule 45.41

## Contents of this Part

Title	Number
Opting out	Rule 45.42
Limit on costs recoverable from a party in an Aarhus Convention claim	Rule 45.43
Challenging whether the claim is an Aarhus Convention claim	Rule 45.44

## SECTION I

### *Fixed Costs*

#### **Scope of this Section**

**45.1.**—(1) This Section sets out the amounts which, unless the court orders otherwise, are to be allowed in respect of legal representatives' charges.

(2) This Section applies where—

- (a) the only claim is a claim for a specified sum of money where the value of the claim exceeds £25 and—
  - (i) judgment in default is obtained under rule 12.4(1);
  - (ii) judgment on admission is obtained under rule 14.4(3);
  - (iii) judgment on admission on part of the claim is obtained under rule 14.5(6);
  - (iv) summary judgment is given under Part 24;
  - (v) the court has made an order to strike out a defence under rule 3.4(2)(a) as disclosing no reasonable grounds for defending the claim; or
  - (vi) rule 45.4 applies;
- (b) the only claim is a claim where the court gave a fixed date for the hearing when it issued the claim and judgment is given for the delivery of goods, and the value of the claim exceeds £25;
- (c) the claim is for the recovery of land, including a possession claim under Part 55, whether or not the claim includes a claim for a sum of money and the defendant gives up possession, pays the amount claimed, if any, and the fixed commencement costs stated in the claim form;
- (d) the claim is for the recovery of land, including a possession claim under Part 55, where one of the grounds for possession is arrears of rent, for which the court gave a fixed date for the hearing when it issued the claim and judgment is given for the possession of land (whether or not the order for possession is suspended on terms) and the defendant—
  - (i) has neither delivered a defence, or counterclaim, nor otherwise denied liability; or
  - (ii) has delivered a defence which is limited to specifying his proposals for the payment of arrears of rent;
- (e) the claim is a possession claim under Section II of Part 55 (accelerated possession claims of land let on an assured shorthold tenancy) and a possession order is made where the defendant has neither delivered a defence, or counterclaim, nor otherwise denied liability;
- (f) the claim is a demotion claim under Section III of Part 65 or a demotion claim is made in the same claim form in which a claim for possession is made under Part 55 and that demotion claim is successful; or

- (g) a judgment creditor has taken steps under Parts 70 to 73 to enforce a judgment or order.

(Practice Direction 7B sets out the types of case where a court will give a fixed date for a hearing when it issues a claim.)

(3) No sum in respect of legal representatives' charges will be allowed where the only claim is for a sum of money or goods not exceeding £25.

(4) Any appropriate court fee will be allowed in addition to the costs set out in this Section.

(5) The claim form may include a claim for fixed commencement costs.

**Amount of fixed commencement costs in a claim for the recovery of money or goods**

**45.2.**—(1) The amount of fixed commencement costs in a claim to which rule 45.1(2)(a) or (b) applies—

- (a) will be calculated by reference to Table 1; and
- (b) the amount claimed, or the value of the goods claimed if specified, in the claim form is to be used for determining the band in Table 1 that applies to the claim.

(2) The amounts shown in Table 4 are to be allowed in addition, if applicable.

**TABLE 1**

Fixed costs on commencement of a claim for the recovery of money or goods			
Relevant band	Where the claim form is served by the court or by any method other than personal service by the claimant	Where – the claim form is served personally by the claimant; and there is only one defendant	Where there is more than one defendant, for each additional defendant personally served at separate addresses by the claimant
Where— the value of the claim exceeds £25 but does not exceed £500	£50	£60	£15
Where— the value of the claim exceeds £500 but does not exceed £1,000	£70	£80	£15
Where— the value of the claim exceeds £1,000 but does not exceed £5,000; or the only claim is for delivery of goods and no value is specified or stated on the claim form	£80	£90	£15
Where—	£100	£110	£15

Fixed costs on commencement of a claim for the recovery of money or goods			
the value of the claim exceeds £5,000			

**When defendant only liable for fixed commencement costs**

**45.3.** Where—

- (a) the only claim is for a specified sum of money; and
- (b) the defendant pays the money claimed within 14 days after being served with the particulars of claim, together with the fixed commencement costs stated in the claim form,

the defendant is not liable for any further costs unless the court orders otherwise.

**Costs on entry of judgment in a claim for the recovery of money or goods**

**45.4.** Where—

- (a) the claimant has claimed fixed commencement costs under rule 45.2; and
- (b) judgment is entered in a claim to which rule 45.1(2)(a) or (b) applies in the circumstances specified in Table 2, the amount to be included in the judgment for the claimant’s legal representative’s charges is the total of—
  - (i) the fixed commencement costs; and
  - (ii) the relevant amount shown in Table 2.

**TABLE 2**

Fixed Costs on Entry of Judgment in a claim for the recovery of money or goods		
	Where the amount of the judgment exceeds £25 but does not exceed £5,000	Where the amount of the judgment exceeds £5,000
Where judgment in default of an acknowledgment of service is entered under rule 12.4(1) (entry of judgment by request on claim for money only)	£22	£30
Where judgment in default of a defence is entered under rule 12.4(1) (entry of judgment by request on claim for money only)	£25	£35
Where judgment is entered under rule 14.4 (judgment on admission), or rule 14.5 (judgment on admission of part of claim) and claimant accepts the defendant’s proposal as to the manner of payment	£40	£55
Where judgment is entered under rule 14.4 (judgment on admission), or rule 14.5 (judgment on admission of part of claim) and court decides the date or time of payment	£55	£70
Where summary judgment is given under Part 24 or the court strikes out a defence under rule 3.4(2)(a), in either case, on application by a party	£175	£210

Fixed Costs on Entry of Judgment in a claim for the recovery of money or goods		
Where judgment is given on a claim for delivery of goods under a regulated agreement within the meaning of the Consumer Credit Act 1974(a) and no other entry in this table applies	£60	£85

**Amount of fixed commencement costs in a claim for the recovery of land or a demotion claim**

**45.5.**—(1) The amount of fixed commencement costs in a claim to which rule 45.1(2)(c), (d) or (f) applies will be calculated by reference to Table 3.

(2) The amounts shown in Table 4 are to be allowed in addition, if applicable.

**TABLE 3**

Fixed costs on commencement of a claim for the recovery of land or a demotion claim		
Where the claim form is served by the court or by any method other than personal service by the claimant	Where— the claim form is served personally by the claimant; and there is only one defendant	Where there is more than one defendant, for each additional defendant personally served at separate addresses by the claimant
£69.50	£77.00	£15.00

**Costs on entry of judgment in a claim for the recovery of land or a demotion claim**

**45.6.**—(1) Where—

- (a) the claimant has claimed fixed commencement costs under rule 45.5; and
- (b) judgment is entered in a claim to which rule 45.1(2)(d) or (f) applies, the amount to be included in the judgment for the claimant’s legal representative’s charges is the total of—
  - (i) the fixed commencement costs; and
  - (ii) the sum of £57.25.

(2) Where an order for possession is made in a claim to which rule 45.1(2)(e) applies, the amount allowed for the claimant’s legal representative’s charges for preparing and filing—

- (a) the claim form;
- (b) the documents that accompany the claim form; and
- (c) the request for possession,  
is £79.50.

**Miscellaneous fixed costs**

**45.7.** Table 4 shows the amount to be allowed in respect of legal representative’s charges in the circumstances mentioned.

**TABLE 4**

---

(a) 1974 c.39.

Miscellaneous Fixed Costs	
For service by a party of any document other than the claim form required to be served personally including preparing and copying a certificate of service for each individual served	£15.00
Where service by an alternative method or at an alternative place is permitted by an order under rule 6.15 for each individual served	£53.25
Where a document is served out of the jurisdiction –	
(a) in Scotland, Northern Ireland, the Isle of Man or the Channel Islands;	£68.25
(b) in any other place	£77.00

### Fixed enforcement costs

**45.8.** Table 5 shows the amount to be allowed in respect of legal representatives' costs in the circumstances mentioned. The amounts shown in Table 4 are to be allowed in addition, if applicable.

**TABLE 5**

Fixed Enforcement Costs	
For an application under rule 70.5(4) that an award may be enforced as if payable under a court order, where the amount outstanding under the award:	
exceeds £25 but does not exceed £250	£30.75
exceeds £250 but does not exceed £600	£41.00
exceeds £600 but does not exceed £2,000	£69.50
exceeds £2,000	£75.50
On attendance to question a judgment debtor (or officer of a company or other corporation) who has been ordered to attend court under rule 71.2 where the questioning takes place before a court officer, including attendance by a responsible representative of the legal representative	for each half hour or part, £15.00
On the making of a final third party debt order under rule 72.8(6)(a) or an order for the payment to the judgment creditor of money in court under rule 72.10(1)(b):	
if the amount recovered is less than £150	one-half of the amount recovered
otherwise	£98.50
On the making of a final charging order under rule 73.8(2)(a):	£110.00
	The court may also allow reasonable disbursements in respect of search fees and the registration of the order.
Where a certificate is issued and registered under Schedule 6 to	£39.00

Fixed Enforcement Costs	
the Civil Jurisdiction and Judgments Act 1982(a), the costs of registration	
Where permission is given under RSC Order 45, rule 3 to enforce a judgment or order giving possession of land and costs are allowed on the judgment or order, the amount to be added to the judgment or order for costs –	
(a) basic costs	£42.50
(b) where notice of the proceedings is to be to more than one person, for each additional person	£2.75
Where a writ of execution as defined in the RSC Order 46, rule 1, is issued against any party	£51.75
Where a request is filed for the issue of a warrant of execution under CCR Order 26, rule 1, for a sum exceeding £25	£2.25
Where an application for an attachment of earnings order is made and costs are allowed under CCR Order 27, rule 9 or CCR Order 28, rule 10, for each attendance on the hearing of the application	£8.50

## SECTION II

### *Road Traffic Accidents – Fixed Recoverable Costs*

#### **Scope and interpretation**

**45.9.**—(1) Subject to paragraph (3), this Section sets out the costs which are to be allowed in—

- (a) proceedings to which rule 46.14(1) applies (costs-only proceedings); or
- (b) proceedings for approval of a settlement or compromise under rule 21.10(2),

in cases to which this Section applies.

(2) This Section applies where—

- (a) the dispute arises from a road traffic accident occurring on or after 6 October 2003;
- (b) the agreed damages include damages in respect of personal injury, damage to property, or both;
- (c) the total value of the agreed damages does not exceed £10,000; and
- (d) if a claim had been issued for the amount of the agreed damages, the small claims track would not have been the normal track for that claim.

(3) This Section does not apply where—

- (a) the claimant is a litigant in person; or
- (b) Section III of this Part applies.

(4) In this Section—

“road traffic accident” means an accident resulting in bodily injury to any person or damage to property caused by, or arising out of, the use of a motor vehicle on a road or other public place in England and Wales;

---

(a) 1982 c.27.

“motor vehicle” means a mechanically propelled vehicle intended for use on roads; and  
“road” means any highway and any other road to which the public has access and includes bridges over which a road passes.

### **Application of fixed recoverable costs**

**45.10.** Subject to rule 45.13, the only costs which are to be allowed are—

- (a) fixed recoverable costs calculated in accordance with rule 45.11; and
- (b) disbursements allowed in accordance with rule 45.12.

(Rule 45.13 provides for where a party issues a claim for more than the fixed recoverable costs.)

### **Amount of fixed recoverable costs**

**45.11.**—(1) Subject to paragraphs (2) and (3), the amount of fixed recoverable costs is the total of—

- (a) £800;
- (b) 20% of the damages agreed up to £5,000; and
- (c) 15% of the damages agreed between £5,000 and £10,000.

(2) Where the claimant—

- (a) lives or works in an area set out in Practice Direction 45; and
- (b) instructs a legal representative who practises in that area,

the fixed recoverable costs will include, in addition to the costs specified in paragraph (1), an amount equal to 12.5% of the costs allowable under that paragraph.

(3) Where appropriate, VAT may be recovered in addition to the amount of fixed recoverable costs and any reference in this Section to fixed recoverable costs is a reference to those costs net of any such VAT.

### **Disbursements**

**45.12.**—(1) The court—

- (a) may allow a claim for a disbursement of a type mentioned in paragraph (2); but
- (b) will not allow a claim for any other type of disbursement.

(2) The disbursements referred to in paragraph (1) are—

- (a) the cost of obtaining—
  - (i) medical records;
  - (ii) a medical report;
  - (iii) a police report;
  - (iv) an engineer’s report; or
  - (v) a search of the records of the Driver Vehicle Licensing Authority;
- (b) where they are necessarily incurred by reason of one or more of the claimants being a child or protected party as defined in Part 21—
  - (i) fees payable for instructing counsel; or
  - (ii) court fees payable on an application to the court; or
- (c) any other disbursement that has arisen due to a particular feature of the dispute.

### **Claims for an amount of costs exceeding fixed recoverable costs**

**45.13.**—(1) The court will entertain a claim for an amount of costs (excluding any success fee or disbursements) greater than the fixed recoverable costs but only if it considers that there are exceptional circumstances making it appropriate to do so.

(2) If the court considers such a claim appropriate, it may—

- (a) summarily assess the costs; or
- (b) make an order for the costs to be subject to detailed assessment.

(3) If the court does not consider the claim appropriate, it will make an order for fixed recoverable costs (and any permitted disbursements) only.

### **Failure to achieve costs greater than fixed recoverable costs**

**45.14.**—(1) This rule applies where—

- (a) costs are assessed in accordance with rule 45.13(2); and
- (b) the court assesses the costs (excluding any VAT) as being an amount which is less than 20% greater than the amount of the fixed recoverable costs.

(2) The court must order the defendant to pay to the claimant the lesser of—

- (a) the fixed recoverable costs; and
- (b) the assessed costs.

### **Costs of the costs-only proceedings or the detailed assessment**

**45.15.** Where—

- (a) the court makes an order for fixed recoverable costs in accordance with rule 45.13(3); or
- (b) rule 45.14 applies, the court may—
  - (i) decide not to make an award of the payment of the claimant’s costs in bringing the proceedings under rule 46.14; and
  - (ii) make orders in relation to costs that may include an order that the claimant pay the defendant’s costs of defending those proceedings.

## **SECTION III**

### *Pre-Action Protocol For Low Value Personal Injury Claims In Road Traffic Accidents*

### **Scope and interpretation**

**45.16.**—(1) This Section applies to claims that have been or should have been started under Part 8 in accordance with Practice Direction 8B (“the Stage 3 Procedure”).

(2) Where a party has not complied with the RTA Protocol rule 45.24 will apply.

“RTA Protocol” means the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents.

(3) A reference to “Claim Notification Form” is a reference to the form used in the RTA Protocol.

### **Application of fixed costs, and disbursements**

**45.17.** The only costs allowed are—

- (a) fixed costs in rule 45.18; and
- (b) disbursements in accordance with rule 45.19.

### Amount of fixed costs

**45.18.**—(1) Subject to paragraph (4), the amount of fixed costs is set out in Table 6.

(2) In Table 6—

“Type A fixed costs” means the legal representative’s costs;

“Type B fixed costs” means the advocate’s costs; and

“Type C fixed costs” means the costs for the advice on the amount of damages where the claimant is a child.

(3) “Advocate” has the same meaning as in rule 45.37(2)(a).

(4) Subject to rule 45.24(2) the court will not award more or less than the amounts shown in Table 1.

(5) Where the claimant—

(a) lives or works in an area set out in Practice Direction 45; and

(b) instructs a legal representative who practices in that area,

the fixed costs will include, in addition to the costs set out in Table 6, an amount equal to 12.5% of the Stage 1 and 2 and Stage 3 Type A fixed costs.

(6) Where appropriate, value added tax (VAT) may be recovered in addition to the amount of fixed costs and any reference in this Section to fixed costs is a reference to those costs net of any such VAT.

**TABLE 6**

Fixed costs in relation to the RTA Protocol		
Stage 1 fixed costs	£400	
Stage 2 fixed costs	£800	
Stage 3 –	Type A fixed costs	£250
	Type B fixed costs	£250
	Type C fixed costs	£150

### Disbursements

**45.19.**—(1) The court—

(a) may allow a claim for a disbursement of a type mentioned in paragraph (2); but

(b) will not allow a claim for any other type of disbursement.

(2) The disbursements referred to in paragraph (1) are—

(a) the cost of obtaining—

(i) medical records;

(ii) a medical report or reports as provided for in the RTA Protocol;

(iii) an engineer’s report;

(iv) a search of the records of the—

(aa) Driver Vehicle Licensing Authority;

(bb) Motor Insurance Database;

(b) court fees as a result of Part 21 being applicable;

(c) court fees payable where proceedings are started as a result of a limitation period that is about to expire;

- (d) court fees in respect of the Stage 3 Procedure;
- (e) any other disbursement that has arisen due to a particular feature of the dispute.

**Where the claimant obtains judgment for an amount more than the defendant's RTA Protocol offer**

- 45.20.** Where rule 36.21(1)(b) or (c) applies, the court will order the defendant to pay—
- (a) where not already paid by the defendant, the Stage 1 and 2 fixed costs;
  - (b) where the claim is determined—
    - (i) on the papers, Stage 3 Type A fixed costs;
    - (ii) at a Stage 3 hearing, Stage 3 Type A and B fixed costs; or
    - (iii) at a Stage 3 hearing and the claimant is a child, Type A, B and C fixed costs;and
  - (c) disbursements allowed in accordance with rule 45.19.

**Settlement at Stage 2 where the claimant is a child**

- 45.21.**—(1) This rule applies where—
- (a) the claimant is a child;
  - (b) there is a settlement at Stage 2 of the RTA Protocol; and
  - (c) an application is made to the court to approve the settlement.
- (2) Where the court approves the settlement at a settlement hearing it will order the defendant to pay—
- (a) the Stage 1 and 2 fixed costs;
  - (b) the Stage 3 Type A, B and C fixed costs; and
  - (c) disbursements allowed in accordance with rule 45.19.
- (3) Where the court does not approve the settlement at a settlement hearing it will order the defendant to pay the Stage 1 and 2 fixed costs.
- (4) Paragraphs (5) and (6) apply where the court does not approve the settlement at the first settlement hearing but does approve the settlement at a second settlement hearing.
- (5) At the second settlement hearing the court will order the defendant to pay—
- (a) the Stage 3 Type A and C fixed costs for the first settlement hearing;
  - (b) disbursements allowed in accordance with rule 45.19; and
  - (c) the Stage 3 Type B fixed costs for one of the hearings.
- (6) The court in its discretion may also order—
- (a) the defendant to pay an additional amount of either or both the Stage 3—
    - (i) Type A fixed costs;
    - (ii) Type B fixed costs; or
  - (b) the claimant to pay an amount equivalent to either or both the Stage 3—
    - (i) Type A fixed costs;
    - (ii) Type B fixed costs.

**Settlement at Stage 3 where the claimant is a child**

- 45.22.**—(1) This rule applies where—
- (a) the claimant is a child;
  - (b) there is a settlement after proceedings are started under the Stage 3 Procedure;

- (c) the settlement is more than the defendant's RTA Protocol offer; and
  - (d) an application is made to the court to approve the settlement.
- (2) Where the court approves the settlement at the settlement hearing it will order the defendant to pay—
- (a) the Stage 1 and 2 fixed costs;
  - (b) the Stage 3 Type A, B and C fixed costs; and
  - (c) disbursements allowed in accordance with rule 45.19.
- (3) Where the court does not approve the settlement at the settlement hearing it will order the defendant to pay the Stage 1 and 2 fixed costs.
- (4) Paragraphs (5) and (6) apply where the court does not approve the settlement at the first settlement hearing but does approve the settlement at the Stage 3 hearing.
- (5) At the Stage 3 hearing the court will order the defendant to pay—
- (a) the Stage 3 Type A and C fixed costs for the settlement hearing;
  - (b) disbursements allowed in accordance with rule 45.19; and
  - (c) the Stage 3 Type B fixed costs for one of the hearings.
- (6) The court in its discretion may also order—
- (a) the defendant to pay an additional amount of either or both the Stage 3—
    - (i) Type A fixed costs;
    - (ii) Type B fixed costs; or
  - (b) the claimant to pay an amount equivalent to either or both of the Stage 3—
    - (i) Type A fixed costs;
    - (ii) Type B fixed costs.
- (7) Where the settlement is not approved at the Stage 3 hearing the court will order the defendant to pay the Stage 3 Type A fixed costs.

**Where the court orders that the claim is not suitable to be determined under the Stage 3 Procedure and the claimant is a child**

**45.23.** Where—

- (a) the claimant is a child; and
- (b) at a settlement hearing or the Stage 3 hearing the court orders that the claim is not suitable to be determined under the Stage 3 Procedure,

the court will order the defendant to pay—

- (i) the Stage 1 and 2 fixed costs; and
- (ii) the Stage 3 Type A, B and C fixed costs.

**Failure to comply or electing not to continue with the RTA Protocol – costs consequences**

**45.24.—**(1) This rule applies where the claimant—

- (a) does not comply with the process set out in the RTA Protocol; or
- (b) elects not to continue with that process,

and starts proceedings under Part 7.

(2) Where a judgment is given in favour of the claimant but—

- (a) the court determines that the defendant did not proceed with the process set out in the RTA Protocol because the claimant provided insufficient information on the Claim Notification Form;

- (b) the court considers that the claimant acted unreasonably—
  - (i) by discontinuing the process set out in the RTA Protocol and starting proceedings under Part 7;
  - (ii) by valuing the claim at more than £10,000, so that the claimant did not need to comply with the RTA Protocol; or
  - (iii) except for paragraph (2)(a), in any other way that caused the process in the RTA Protocol to be discontinued; or
- (c) the claimant did not comply with the RTA Protocol at all despite the claim falling within the scope of the RTA Protocol,

the court may order the defendant to pay no more than the fixed costs in rule 45.18 together with the disbursements allowed in accordance with rule 45.19.

(3) Where the claimant starts proceedings under paragraph 7.22 of the RTA Protocol and the court orders the defendant to make an interim payment of no more than the interim payment made under paragraph 7.14(2) or (3) of that Protocol the court will, on the final determination of the proceedings, order the defendant to pay no more than—

- (a) the Stage 1 and 2 fixed costs; and
- (b) the disbursements allowed in accordance with rule 45.19.

#### **Where the parties have settled after proceedings have started**

**45.25.**—(1) This rule applies where an application is made under rule 45.29 (costs-only application after a claim is started under Part 8 in accordance with Practice Direction 8B).

(2) Where the settlement is more than the defendant’s RTA Protocol offer the court will order the defendant to pay—

- (a) the Stage 1 and 2 fixed costs where not already paid by the defendant;
- (b) the Stage 3 Type A fixed costs; and
- (c) disbursements allowed in accordance with rule 45.19.

(3) Where the settlement is less than or equal to the defendant’s RTA Protocol offer the court will order the defendant to pay—

- (a) the Stage 1 and 2 fixed costs where not already paid by the defendant; and
- (b) disbursements allowed in accordance with rule 45.19.

(4) The court may, in its discretion, order either party to pay the costs of the application.

#### **Where the claimant obtains judgment for an amount equal to or less than the defendant’s RTA Protocol offer**

**45.26.** Where rule 36.21(1)(a) applies, the court will order the claimant to pay—

- (a) where the claim is determined—
  - (i) on the papers, Stage 3 Type A fixed costs; or
  - (ii) at a hearing, Stage 3 Type A and B fixed costs;
- (b) any Stage 3 disbursements allowed in accordance with rule 45.19.

#### **Adjournment**

**45.27.** Where the court adjourns a settlement hearing or a Stage 3 hearing it may, in its discretion, order a party to pay—

- (a) an additional amount of the Stage 3 Type B fixed costs; and
- (b) any court fee for that adjournment.

### **Account of payment of Stage 1 fixed costs**

**45.28.** Where a claim no longer continues under the RTA Protocol the court will, when making any order as to costs including an order for fixed recoverable costs under Section II of this Part, take into account the Stage 1 fixed costs that have been paid by the defendant.

### **Costs-only application after a claim is started under Part 8 in accordance with Practice Direction 8B**

**45.29.**—(1) This rule sets out the procedure where—

- (a) the parties to a dispute have reached an agreement on all issues (including which party is to pay the costs) which is made or confirmed in writing; but
- (b) they have failed to agree the amount of those costs; and
- (c) proceedings have been started under Part 8 in accordance with Practice Direction 8B.

(2) Either party may make an application for the court to determine the costs.

(3) Where an application is made under this rule the court will assess the costs in accordance with rule 45.22 or rule 45.25.

(4) Rule 44.5 (amount of costs where costs are payable pursuant to a contract) does not apply to an application under this rule.

## SECTION IV

### *Scale Costs For Claims In A Patents County Court*

### **Scope and interpretation**

**45.30.**—(1) Subject to paragraph (2), this Section applies to proceedings in a patents county court.

(2) This Section does not apply where—

- (a) the court considers that a party has behaved in a manner which amounts to an abuse of the court's process; or
- (b) the claim concerns the infringement or revocation of a patent or registered design the validity of which has been certified by a court in earlier proceedings.

(3) The court will make a summary assessment of the costs of the party in whose favour any order for costs is made. Rules 44.2(8), 44.7(b) and Part 47 do not apply to this Section.

(4) "Scale costs" means the costs set out in Table A and Table B of the Practice Direction supplementing this Part.

### **Amount of scale costs**

**45.31.**—(1) Subject to rule 45.32, the court will not order a party to pay total costs of more than—

- (a) £50,000 on the final determination of a claim in relation to liability; and
- (b) £25,000 on an inquiry as to damages or account of profits.

(2) The amounts in paragraph (1) apply after the court has applied the provision on set off in accordance with rule 44.12(a).

(3) The maximum amount of scale costs that the court will award for each stage of the claim is set out in Practice Direction 45.

(4) The amount of the scale costs awarded by the court in accordance with paragraph (3) will depend on the nature and complexity of the claim.

(5) Where appropriate, value added tax (VAT) may be recovered in addition to the amount of the scale costs and any reference in this Section to scale costs is a reference to those costs net of any such VAT.

**Summary assessment of the costs of an application where a party has behaved unreasonably**

**45.32.** Costs awarded to a party under rule 63.26(2) are in addition to the total costs that may be awarded to that party under rule 45.31.

SECTION V

*Fixed Costs: HM Revenue And Customs*

**Scope, interpretation and application**

**45.33.**—(1) This Section sets out the amounts which, unless the court orders otherwise, are to be allowed in respect of HM Revenue and Customs charges in the cases to which this Section applies.

(2) For the purpose of this Section—

- (a) “HMRC Officer” means a person appointed by the Commissioners under section 2 of the Commissioners for Revenue and Customs Act 2005(a) and authorised to conduct county court proceedings for recovery of debt under section 25(1A)(b) of that Act;
- (b) “Commissioners” means commissioners for HMRC appointed under section 1 of the Commissioners for Revenue and Customs Act 2005;
- (c) “debt” means any sum payable to the Commissioners under or by virtue of an enactment or under a contract settlement; and
- (d) “HMRC charges” means the fixed costs set out in Tables 7 and 8 in this Section.

(3) HMRC charges must, for the purpose of this Section, be claimed as “legal representative’s costs” on relevant court forms.

(4) This Section applies where the only claim is a claim conducted by an HMRC Officer in the county court for recovery of a debt and the Commissioners obtain judgment on the claim.

(5) Any appropriate court fee will be allowed in addition to the costs set out in this Section.

(6) The claim form may include a claim for fixed commencement costs.

**Amount of fixed commencement costs in a county court claim for the recovery of money**

**45.34.** The amount of fixed commencement costs in a claim to which rule 45.33 applies—

- (a) will be calculated by reference to Table 7; and
- (b) the amount claimed in the claim form is to be used for determining which claim band in Table 7 applies.

**TABLE 7**

Fixed costs on commencement of a County Court claim conducted by an HMRC Officer

Where the value of the claim does not exceed £25	Nil
Where the value of the claim exceeds £25 but does not exceed £500	£33

(a) 2005 c.11.

(b) 2005 c.11. Section 25(1A) was inserted by the Finance Act 2008 (c.9) section 137(1)(a).

Fixed costs on commencement of a County Court claim conducted by an HMRC Officer

Where the value of the claim exceeds £500 but does not exceed £1,000	£47
Where the value of the claim exceeds £1,000 but does not exceed £5,000	£53
Where the value of the claim exceeds £5,000 but does not exceed £15,000	£67
Where the value of the claim exceeds £15,000 but does not exceed £50,000	£90
Where the value of the claim exceeds £50,000 but does not exceed £100,000	£113
Where the value of the claim exceeds £100,000 but does not exceed £150,000	£127
Where the value of the claim exceeds £150,000 but does not exceed £200,000	£140
Where the value of the claim exceeds £200,000 but does not exceed £250,000	£153
Where the value of the claim exceeds £250,000 but does not exceed £300,000	£167
Where the value of the claim exceeds £300,000	£180

**Costs on entry of judgment in a county court claim for recovery of money**

**45.35.** Where—

- (a) an HMRC Officer has claimed fixed commencement costs under Rule 45.34; and
- (b) judgment is entered in a claim to which rule 45.33 applies,  
the amount to be included in the judgment for HMRC charges is the total of—
  - (i) the fixed commencement costs; and
  - (ii) the amount in Table 8 relevant to the value of the claim.

**TABLE 8**

Fixed costs on entry of judgment in a County Court claim conducted by an HMRC Officer	
Where the value of the claim does not exceed £5,000	£15
Where the value of the claim exceeds £5,000	£20

**When the defendant is only liable for fixed commencement costs**

**45.36.** Where—

- (a) the only claim is for a specified sum of money; and
- (b) the defendant pays the money claimed within 14 days after service of the particulars of claim, together with the fixed commencement costs stated in the claim form,

the defendant is not liable for any further costs unless the court orders otherwise.

SECTION VI

*Fast Track Trial Costs*

**Scope of this Section**

**45.37.**—(1) This Section deals with the amount of costs which the court may award as the costs of an advocate for preparing for and appearing at the trial of a claim in the fast track (referred to in this rule as “fast track trial costs”).

- (2) For the purposes of this Section—

“advocate” means a person exercising a right of audience as a representative of, or on behalf of, a party;

“fast track trial costs” means the costs of a party’s advocate for preparing for and appearing at the trial, but does not include—

- (i) any other disbursements; or
- (ii) any value added tax payable on the fees of a party’s advocate; and

“trial” includes a hearing where the court decides an amount of money or the value of goods following a judgment under Part 12 (default judgment) or Part 14 (admissions) but does not include –

- (i) the hearing of an application for summary judgment under Part 24; or
- (ii) the court’s approval of a settlement or other compromise under rule 21.10.

**Amount of fast track trial costs**

**45.38.**—(1) Table 9 shows the amount of fast track trial costs which the court may award (whether by summary or detailed assessment).

**TABLE 9**

Value of the claim	Amount of fast track trial costs which the court may award
No more than £3,000	£485
More than £3,000 but not more than £10,000	£690
More than £10,000 but not more than £15,000	£1,035
For proceedings issued on or after 6th April 2009, more than £15,000	£1,650

(2) The court may not award more or less than the amount shown in the table except where—

- (a) it decides not to award any fast track trial costs; or
- (b) rule 45.39 applies,  
but the court may apportion the amount awarded between the parties to reflect their respective degrees of success on the issues at trial.

(3) Where the only claim is for the payment of money—

- (a) for the purpose of quantifying fast track trial costs awarded to a claimant, the value of the claim is the total amount of the judgment excluding—
  - (i) interest and costs; and
  - (ii) any reduction made for contributory negligence.
- (b) for the purpose of quantifying fast track trial costs awarded to a defendant, the value of the claim is—
  - (i) the amount specified in the claim form (excluding interest and costs);
  - (ii) if no amount is specified, the maximum amount which the claimant reasonably expected to recover according to the statement of value included in the claim form under rule 16.3; or
  - (iii) more than £15,000, if the claim form states that the claimant cannot reasonably say how much is likely to be recovered.

(4) Where the claim is only for a remedy other than the payment of money, the value of the claim is deemed to be more than £3,000 but not more than £10,000, unless the court orders otherwise.

(5) Where the claim includes both a claim for the payment of money and for a remedy other than the payment of money, the value of the claim is deemed to be the higher of—

- (a) the value of the money claim decided in accordance with paragraph (3); or
- (b) the deemed value of the other remedy decided in accordance with paragraph (4),

unless the court orders otherwise.

(6) Where—

- (a) a defendant has made a counterclaim against the claimant;
- (b) the counterclaim has a higher value than the claim; and
- (c) the claimant succeeds at trial both on the claim and the counterclaim,

for the purpose of quantifying fast track trial costs awarded to the claimant, the value of the claim is the value of the defendant's counterclaim calculated in accordance with this rule.

### **Power to award more or less than the amount of fast track trial costs**

**45.39.**—(1) This rule sets out when a court may award—

- (a) an additional amount to the amount of fast track trial costs shown in Table 9 in rule 45.38(1); or
- (b) less than those amounts.

(2) If—

- (a) in addition to the advocate, a party's legal representative attends the trial;
- (b) the court considers that it was necessary for a legal representative to attend to assist the advocate; and
- (c) the court awards fast track trial costs to that party,

the court may award an additional £345 in respect of the legal representative's attendance at the trial.

(3) If the court considers that it is necessary to direct a separate trial of an issue then the court may award an additional amount in respect of the separate trial but that amount is limited in accordance with paragraph (4) of this rule.

(4) The additional amount the court may award under paragraph (3) will not exceed two-thirds of the amount payable for that claim, subject to a minimum award of £485.

(5) Where the party to whom fast track trial costs are to be awarded is a litigant in person, the court will award—

- (a) if the litigant in person can prove financial loss, two-thirds of the amount that would otherwise be awarded; or
- (b) if the litigant in person fails to prove financial loss, an amount in respect of the time spent reasonably doing the work at the rate specified in Practice Direction 46.

(6) Where a defendant has made a counterclaim against the claimant, and—

- (a) the claimant has succeeded on his claim; and
- (b) the defendant has succeeded on his counterclaim,

the court will quantify the amount of the award of fast track trial costs to which—

- (i) but for the counterclaim, the claimant would be entitled for succeeding on his claim; and
- (ii) but for the claim, the defendant would be entitled for succeeding on his counterclaim,

and make one award of the difference, if any, to the party entitled to the higher award of costs.

(7) Where the court considers that the party to whom fast track trial costs are to be awarded has behaved unreasonably or improperly during the trial, it may award that party an amount less than would otherwise be payable for that claim, as it considers appropriate.

(8) Where the court considers that the party who is to pay the fast track trial costs has behaved improperly during the trial the court may award such additional amount to the other party as it considers appropriate.

#### **Fast track trial costs where there is more than one claimant or defendant**

**45.40.**—(1) Where the same advocate is acting for more than one party—

- (a) the court may make only one award in respect of fast track trial costs payable to that advocate; and
- (b) the parties for whom the advocate is acting are jointly entitled to any fast track trial costs awarded by the court.

(2) Where—

- (a) the same advocate is acting for more than one claimant; and
- (b) each claimant has a separate claim against the defendant,

the value of the claim, for the purpose of quantifying the award in respect of fast track trial costs is to be ascertained in accordance with paragraph (3).

(3) The value of the claim in the circumstances mentioned in paragraph (2) or (5) is—

- (a) where the only claim of each claimant is for the payment of money—
  - (i) if the award of fast track trial costs is in favour of the claimants, the total amount of the judgment made in favour of all the claimants jointly represented; or
  - (ii) if the award is in favour of the defendant, the total amount claimed by the claimants,

and in either case, quantified in accordance with rule 45.38(3);

- (b) where the only claim of each claimant is for a remedy other than the payment of money, deemed to be more than £3,000 but not more than £10,000; and
- (c) where claims of the claimants include both a claim for the payment of money and for a remedy other than the payment of money, deemed to be—
  - (i) more than £3,000 but not more than £10,000; or
  - (ii) if greater, the value of the money claims calculated in accordance with subparagraph (a) above.

(4) Where—

- (a) there is more than one defendant; and
- (b) any or all of the defendants are separately represented,

the court may award fast track trial costs to each party who is separately represented.

(5) Where—

- (a) there is more than one claimant; and
- (b) a single defendant,

the court may make only one award to the defendant of fast track trial costs, for which the claimants are jointly and severally liable.

(6) For the purpose of quantifying the fast track trial costs awarded to the single defendant under paragraph (5), the value of the claim is to be calculated in accordance with paragraph (3) of this rule.

## SECTION VII

### *Costs Limits in Aarhus Convention Claims*

#### **Scope and interpretation**

**45.41.**—(1) This Section provides for the costs which are to be recoverable between the parties in Aarhus Convention claims.

(2) In this Section, “Aarhus Convention claim” means a claim for judicial review of a decision, act or omission all or part of which is subject to the provisions of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark on 25 June 1998, including a claim which proceeds on the basis that the decision, act or omission, or part of it, is so subject.

(Rule 52.9A makes provision in relation to costs of an appeal.)

#### **Opting out**

**45.42.** Rules 45.43 to 45.44 do not apply where the claimant—

- (a) has not stated in the claim form that the claim is an Aarhus Convention claim; or
- (b) has stated in the claim form that—
  - (i) the claim is not an Aarhus Convention claim, or
  - (ii) although the claim is an Aarhus Convention claim, the claimant does not wish those rules to apply.

#### **Limit on costs recoverable from a party in an Aarhus Convention claim**

**45.43.**—(1) Subject to rule 45.44, a party to an Aarhus Convention claim may not be ordered to pay costs exceeding the amount prescribed in Practice Direction 45.

(2) Practice Direction 45 may prescribe a different amount for the purpose of paragraph (1) according to the nature of the claimant.

#### **Challenging whether the claim is an Aarhus Convention claim**

**45.44.**—(1) If the claimant has stated in the claim form that the claim is an Aarhus Convention claim, rule 45.43 will apply unless—

- (a) the defendant has in the acknowledgment of service filed in accordance with rule 54.8—
  - (i) denied that the claim is an Aarhus Convention claim; and
  - (ii) set out the defendant’s grounds for such denial; and
- (b) the court has determined that the claim is not an Aarhus Convention claim.

(2) Where the defendant argues that the claim is not an Aarhus Convention claim, the court will determine that issue at the earliest opportunity.

(3) In any proceedings to determine whether the claim is an Aarhus Convention claim—

- (a) if the court holds that the claim is not an Aarhus Convention claim, it will normally make no order for costs in relation to those proceedings;
- (b) if the court holds that the claim is an Aarhus Convention claim, it will normally order the defendant to pay the claimant’s costs of those proceedings on the indemnity basis, and that order may be enforced notwithstanding that this would increase the costs payable by the defendant beyond the amount prescribed in Practice Direction 45.

PART 46  
COSTS –SPECIAL CASES

**Contents of this Part**

<i>Title</i>	<i>Number</i>
<b>SECTION I – COSTS PAYABLE BY OR TO PARTICULAR PERSONS</b>	
Pre-commencement disclosure and orders for disclosure against a person who is not a party	46.1
Costs orders in favour of or against non-parties	46.2
Limitations on court’s power to award costs in favour of trustee or personal representative	46.3
Costs where money is payable by or to a child or protected party	46.4
Litigants in person	46.5
Costs where the court has made a group litigation order	46.6
Orders in respect of pro bono representation	46.7
<b>SECTION II – COSTS RELATING TO LEGAL REPRESENTATIVES</b>	
Personal liability of legal representative for costs – wasted costs orders	46.8
Basis of detailed assessment of solicitor and client costs	46.9
Assessment procedure	46.10
<b>SECTION III – COSTS ON ALLOCATION AND RE-ALLOCATION</b>	
Costs on the small claims track and fast track	46.11
Limitation on amount court may allow where a claim allocated to the fast track settles before trial	46.12
Costs following allocation, re-allocation and non-allocation	46.13
<b>SECTION IV – COSTS-ONLY PROCEEDINGS</b>	
Costs-only proceedings	46.14

SECTION I

*Costs Payable by or to Particular Persons*

**Pre-commencement disclosure and orders for disclosure against a person who is not a party**

**46.1.**—(1) This paragraph applies where a person applies—

- (a) for an order under—
  - (i) section 33 of the Senior Courts Act 1981; or
  - (ii) section 52 of the County Courts Act 1984,

(which give the court powers exercisable before commencement of proceedings); or

- (b) for an order under—
  - (i) section 34 of the Senior Courts Act 1981; or
  - (ii) section 53 of the County Courts Act 1984,

(which give the court power to make an order against a non-party for disclosure of documents, inspection of property etc.).

(2) The general rule is that the court will award the person against whom the order is sought that person’s costs—

- (a) of the application; and
- (b) of complying with any order made on the application.

(3) The court may however make a different order, having regard to all the circumstances, including—

- (a) the extent to which it was reasonable for the person against whom the order was sought to oppose the application; and
- (b) whether the parties to the application have complied with any relevant pre-action protocol.

#### **Costs orders in favour of or against non-parties**

**46.2.**—(1) Where the court is considering whether to exercise its power under section 51 of the Senior Courts Act 1981 (costs are in the discretion of the court) to make a costs order in favour of or against a person who is not a party to proceedings, that person must—

- (a) be added as a party to the proceedings for the purposes of costs only; and
- (b) be given a reasonable opportunity to attend a hearing at which the court will consider the matter further.

(2) This rule does not apply—

- (a) where the court is considering whether to—
  - (i) make an order against the Lord Chancellor in proceedings in which the Lord Chancellor has provided legal aid to a party to the proceedings;
  - (ii) make a wasted costs order (as defined in rule 46.8); and
- (b) in proceedings to which rule 46.1 applies (pre-commencement disclosure and orders for disclosure against a person who is not a party).

#### **Limitations on court's power to award costs in favour of trustee or personal representative**

**46.3.**—(1) This rule applies where—

- (a) a person is or has been a party to any proceedings in the capacity of trustee or personal representative; and
- (b) rule 44.5 does not apply.

(2) The general rule is that that person is entitled to be paid the costs of those proceedings, insofar as they are not recovered from or paid by any other person, out of the relevant trust fund or estate.

(3) Where that person is entitled to be paid any of those costs out of the fund or estate, those costs will be assessed on the indemnity basis.

#### **Costs where money is payable by or to a child or protected party**

**46.4.**—(1) This rule applies to any proceedings where a party is a child or protected party and—

- (a) money is ordered or agreed to be paid to, or for the benefit of, that party; or
- (b) money is ordered to be paid by that party or on that party's behalf.

("Child" and "protected party" have the same meaning as in rule 21.1(2).)

(2) The general rule is that—

- (a) the court must order a detailed assessment of the costs payable by, or out of money belonging to, any party who is a child or protected party; and
- (b) on an assessment under paragraph (a), the court must also assess any costs payable to that party in the proceedings, unless—
  - (i) the court has issued a default costs certificate in relation to those costs under rule 47.11; or

- (ii) the costs are payable in proceedings to which Section II or Section III of Part 45 applies.

(3) The court need not order detailed assessment of costs in the circumstances set out in Practice Direction 46.

(4) Where—

- (a) a claimant is a child or protected party; and
- (b) a detailed assessment has taken place under paragraph (2)(a),

the only amount payable by the child or protected party is the amount which the court certifies as payable.

(This rule applies to a counterclaim by or on behalf of a child or protected party by virtue of rule 20.3.)

### **Litigants in person**

**46.5.**—(1) This rule applies where the court orders (whether by summary assessment or detailed assessment) that the costs of a litigant in person are to be paid by any other person.

(2) The costs allowed under this rule will not exceed, except in the case of a disbursement, two-thirds of the amount which would have been allowed if the litigant in person had been represented by a legal representative.

(3) The litigant in person shall be allowed—

- (a) costs for the same categories of—
  - (i) work; and
  - (ii) disbursements,

which would have been allowed if the work had been done or the disbursements had been made by a legal representative on the litigant in person's behalf;

- (b) the payments reasonably made by the litigant in person for legal services relating to the conduct of the proceedings; and
- (c) the costs of obtaining expert assistance in assessing the costs claim.

(4) The amount of costs to be allowed to the litigant in person for any item of work claimed will be—

- (a) where the litigant can prove financial loss, the amount that the litigant can prove to have been lost for time reasonably spent on doing the work; or
- (b) where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate set out in Practice Direction 46.

(5) A litigant who is allowed costs for attending at court to conduct the case is not entitled to a witness allowance in respect of such attendance in addition to those costs.

(6) For the purposes of this rule, a litigant in person includes—

- (a) a company or other corporation which is acting without a legal representative; and
- (b) any of the following who acts in person (except where any such person is represented by a firm in which that person is a partner)—
  - (i) a barrister;
  - (ii) a solicitor;
  - (iii) a solicitor's employee;

- (iv) a manager of a body recognised under section 9 of the Administration of Justice Act 1985(a); or
- (v) a person who, for the purposes of the 2007 Act(b), is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act).

### **Costs where the court has made a group litigation order**

**46.6.**—(1) This rule applies where the court has made a Group Litigation Order (“GLO”).

(2) In this rule—

“individual costs” means costs incurred in relation to an individual claim on the group register;

“common costs” means—

- (i) costs incurred in relation to the GLO issues;
- (ii) individual costs incurred in a claim while it is proceeding as a test claim, and
- (iii) costs incurred by the lead legal representative in administering the group litigation; and

‘group litigant’ means a claimant or defendant, as the case may be, whose claim is entered on the group register.

(3) Unless the court orders otherwise, any order for common costs against group litigants imposes on each group litigant several liability for an equal proportion of those common costs.

(4) The general rule is that where a group litigant is the paying party, he will, in addition to any costs he is liable to pay to the receiving party, be liable for—

- (a) the individual costs of his claim; and
- (b) an equal proportion, together with all the other group litigants, of the common costs.

(5) Where the court makes an order about costs in relation to any application or hearing which involved—

- (a) one or more GLO issues; and
- (b) issues relevant only to individual claims,

the court will direct the proportion of the costs that is to relate to common costs and the proportion that is to relate to individual costs.

(6) Where common costs have been incurred before a claim is entered on the group register, the court may order the group litigant to be liable for a proportion of those costs.

(7) Where a claim is removed from the group register, the court may make an order for costs in that claim which includes a proportion of the common costs incurred up to the date on which the claim is removed from the group register.

(Part 19 sets out rules about group litigation.)

### **Orders in respect of pro bono representation**

**46.7.**—(1) Where the court makes an order under section 194(3) of the 2007 Act—

---

(a) 1985 c. 61. Section 9 was amended by the Courts and Legal Services Act 1990, section 125(3), (7), Schedules 18 and 20; the Access to Justice Act 1999 section 106, Schedule 15 Part II; S.I. 2000/1119 regulation 37(3), Schedule 4 paragraph 15; the Legal Services Act 2007, section 177, 210, Schedule 16, Part 2, paragraphs 80 and 81 and Schedule 23; S.I. 2001/1090, regulation 1, 9, Schedule 5 paragraph 12; S.I. 2011/1716 article 4.

(b) 2007 c.29.

- (a) the court may order the payment to the prescribed charity of a sum no greater than the costs specified in Part 45 to which the party with pro bono representation would have been entitled in accordance with that Part and in respect of that representation had it not been provided free of charge; or
- (b) where Part 45 does not apply, the court may determine the amount of the payment (other than a sum equivalent to fixed costs) to be made by the paying party to the prescribed charity by—
  - (i) making a summary assessment; or
  - (ii) making an order for detailed assessment,

of a sum equivalent to all or part of the costs the paying party would have been ordered to pay to the party with pro bono representation in respect of that representation had it not been provided free of charge.

(2) Where the court makes an order under section 194(3) of the 2007 Act, the order must direct that the payment by the paying party be made to the prescribed charity.

(3) The receiving party must send a copy of the order to the prescribed charity within 7 days of receipt of the order.

(4) Where the court considers making or makes an order under section 194(3) of the 2007 Act, Parts 44 to 47 apply, where appropriate, with the following modifications—

- (a) references to “costs orders”, “orders about costs” or “orders for the payment of costs” are to be read, unless otherwise stated, as if they refer to an order under section 194(3);
- (b) references to “costs” are to be read as if they referred to a sum equivalent to the costs that would have been claimed by, incurred by or awarded to the party with pro bono representation in respect of that representation had it not been provided free of charge; and
- (c) references to “receiving party” are to be read, as meaning a party who has pro bono representation and who would have been entitled to be paid costs in respect of that representation had it not been provided free of charge.

## SECTION II

### *Costs relating to Legal Representatives*

#### **Personal liability of legal representative for costs – wasted costs orders**

**46.8.**—(1) This rule applies where the court is considering whether to make an order under section 51(6) of the Senior Courts Act 1981(a) (court’s power to disallow or (as the case may be) order a legal representative to meet, “wasted costs”).

(2) The court will give the legal representative a reasonable opportunity to make written submissions or, if the legal representative prefers, to attend a hearing before it makes such an order.

(3) When the court makes a wasted costs order, it will—

- (a) specify the amount to be disallowed or paid; or
- (b) direct a costs judge or a district judge to decide the amount of costs to be disallowed or paid.

(4) The court may direct that notice must be given to the legal representative’s client, in such manner as the court may direct—

- (a) of any proceedings under this rule; or
- (b) of any order made under it against his legal representative.

---

(a) 1981 c.54.

### **Basis of detailed assessment of solicitor and client costs**

**46.9.**—(1) This rule applies to every assessment of a solicitor’s bill to a client except a bill which is to be paid out of the Community Legal Service Fund under the Legal Aid Act 1988(a) or the Access to Justice Act 1999(b).

(2) Section 74(3) of the Solicitors Act 1974(c) applies unless the solicitor and client have entered into a written agreement which expressly permits payment to the solicitor of an amount of costs greater than that which the client could have recovered from another party to the proceedings.

(3) Subject to paragraph (2), costs are to be assessed on the indemnity basis but are to be presumed—

- (a) to have been reasonably incurred if they were incurred with the express or implied approval of the client;
- (b) to be reasonable in amount if their amount was expressly or impliedly approved by the client;
- (c) to have been unreasonably incurred if—
  - (i) they are of an unusual nature or amount; and
  - (ii) the solicitor did not tell the client that as a result the costs might not be recovered from the other party.

(4) Where the court is considering a percentage increase on the application of the client, the court will have regard to all the relevant factors as they reasonably appeared to the solicitor or counsel when the conditional fee agreement was entered into or varied.

### **Assessment procedure**

**46.10.**—(1) This rule sets out the procedure to be followed where the court has made an order under Part III of the Solicitors Act 1974 for the assessment of costs payable to a solicitor by the solicitor’s client.

(2) The solicitor must serve a breakdown of costs within 28 days of the order for costs to be assessed.

(3) The client must serve points of dispute within 14 days after service on the client of the breakdown of costs.

(4) The solicitor must serve any reply within 14 days of service on the solicitor of the points of dispute.

(5) Either party may file a request for a hearing date—

- (a) after points of dispute have been served; but
- (b) no later than 3 months after the date of the order for the costs to be assessed.

(6) This procedure applies subject to any contrary order made by the court.

### **SECTION III**

#### *Costs on Allocation and Re-Allocation*

### **Costs on the small claims track and fast track**

**46.11.**—(1) Part 27 (small claims) and Part 45 Section VI (fast track trial costs) contain special rules about—

- (a) liability for costs;

---

(a) 1988 c.34.

(b) 1999 c.22.

(c) 1974 c.47. Section 47(3) was amended by the Legal Services Act 2007, section 177, Schedule 16, Part 1, paragraphs 1, 69(b).

- (b) the amount of costs which the court may award; and
- (c) the procedure for assessing costs.

(2) Once a claim is allocated to a particular track, those special rules shall apply to the period before, as well as after, allocation except where the court or a practice direction provides otherwise.

**Limitation on amount court may allow where a claim allocated to the fast track settles before trial**

**46.12.**—(1) Where the court—

- (a) assesses costs in relation to a claim which—
  - (i) has been allocated to the fast track; and
  - (ii) settles before the start of the trial; and
- (b) is considering the amount of costs to be allowed in respect of a party’s advocate for preparing for the trial,

it may not allow, in respect of those advocate’s costs, an amount that exceeds the amount of fast track trial costs which would have been payable in relation to the claim had the trial taken place.

(2) When deciding the amount to be allowed in respect of the advocate’s costs, the court will have regard to—

- (a) when the claim was settled; and
- (b) when the court was notified that the claim had settled.

(3) In this rule, “advocate” and “fast track trial costs” have the meanings given to them by Part 45 Section VI .

**Costs following allocation, re-allocation and non-allocation**

**46.13.**—(1) Any costs orders made before a claim is allocated will not be affected by allocation.

(2) Where—

- (a) claim is allocated to a track; and
- (b) the court subsequently re-allocates that claim to a different track,

then unless the court orders otherwise, any special rules about costs applying—

- (i) to the first track, will apply to the claim up to the date of re-allocation; and
- (ii) to the second track, will apply from the date of re-allocation.

(3) Where the court is assessing costs on the standard basis of a claim which concluded without being allocated to a track, it may restrict those costs to costs that would have been allowed on the track to which the claim would have been allocated if allocation had taken place.

SECTION IV

*Costs-only Proceedings*

**Costs-only proceedings**

**46.14.**—(1) This rule applies where—

- (a) the parties to a dispute have reached an agreement on all issues (including which party is to pay the costs) which is made or confirmed in writing; but
- (b) they have failed to agree the amount of those costs; and
- (c) no proceedings have been started.

- (2) Where this rule applies, the procedure set out in this rule must be followed.
- (3) Proceedings under this rule are commenced by issuing a claim form in accordance with Part 8.
- (4) The claim form must contain or be accompanied by the agreement or confirmation.
- (5) In proceedings to which this rule applies the court may make an order for the payment of costs the amount of which is to be determined by assessment and/or, where appropriate, for the payment of fixed costs.
- (6) Where this rule applies but the procedure set out in this rule has not been followed by a party—
- (a) that party will not be allowed costs greater than those that would have been allowed to that party had the procedure been followed; and
  - (b) the court may award the other party the costs of the proceedings up to the point where an order for the payment of costs is made.
- (7) Rule 44.5 (amount of costs where costs are payable pursuant to a contract) does not apply to claims started under the procedure in this rule.

## PART 47

### PROCEDURE FOR DETAILED ASSESSMENT OF COSTS AND DEFAULT PROVISIONS

#### **Contents of this Part**

<i>Title</i>	<i>Number</i>
<b>SECTION I – GENERAL RULES ABOUT DETAILED ASSESSMENT</b>	
Time when detailed assessment may be carried out	47.1
No stay of detailed assessment where there is an appeal	47.2
Powers of an authorised court officer	47.3
Venue for detailed assessment proceedings	47.4
<b>SECTION II – COSTS PAYABLE BY ONE PARTY TO ANOTHER - COMMENCEMENT OF DETAILED ASSESSMENT PROCEEDINGS</b>	
Application of this Section	47.5
Commencement of detailed assessment proceedings	47.6
Period for commencing detailed assessment proceedings	47.7
Sanction for delay in commencing detailed assessment proceedings	47.8
Points of dispute and consequence of not serving	47.9
Procedure where costs are agreed	47.10
<b>SECTION III – COSTS PAYABLE BY ONE PARTY TO ANOTHER – DEFAULT PROVISIONS</b>	
Default costs certificate	47.11
Setting aside a default costs certificate	47.12
<b>SECTION IV – COSTS PAYABLE BY ONE PARTY TO ANOTHER – PROCEDURE WHERE POINTS OF DISPUTE ARE SERVED</b>	
Optional reply	47.13
Detailed assessment hearing	47.14
Provisional Assessment	47.15
<b>SECTION V – INTERIM COSTS CERTIFICATE AND FINAL COSTS CERTIFICATE</b>	
Power to issue an interim certificate	47.16
Final costs certificate	47.17

SECTION VI – DETAILED ASSESSMENT PROCEDURE FOR COSTS OF A LSC FUNDED CLIENT OR AN ASSISTED PERSON WHERE COSTS ARE PAYABLE OUT OF THE COMMUNITY LEGAL SERVICE FUND

Detailed assessment procedure where costs are payable out of the community legal service fund 47.18

Detailed assessment procedure where costs are payable out of a fund other than the community legal service fund 47.19

SECTION VII – COSTS OF DETAILED ASSESSMENT PROCEEDINGS

Liability for costs of detailed assessment proceedings 47.20

SECTION VIII – APPEALS FROM AUTHORISED COURT OFFICERS IN DETAILED ASSESSMENT PROCEEDINGS

Right to appeal 47.21

Court to hear appeal 47.22

Appeal procedure 47.23

Powers of court on appeal 47.24

---

SECTION I

*General Rules about Detailed Assessment*

**Time when detailed assessment may be carried out**

**47.1.** The general rule is that the costs of any proceedings or any part of the proceedings are not to be assessed by the detailed procedure until the conclusion of the proceedings, but the court may order them to be assessed immediately.

(Practice Direction 47 gives further guidance about when proceedings are concluded for the purpose of this rule.)

**No stay of detailed assessment where there is an appeal**

**47.2.** Detailed assessment is not stayed pending an appeal unless the court so orders.

**Powers of an authorised court officer**

**47.3.—**(1) An authorised court officer has all the powers of the court when making a detailed assessment, except—

- (a) power to make a wasted costs order as defined in rule 46.8;
- (b) power to make an order under—
  - (i) rule 44.11 (powers in relation to misconduct);
  - (ii) rule 47.8 (sanction for delay in commencing detailed assessment proceedings);
  - (iii) paragraph (2) (objection to detailed assessment by authorised court officer);and
- (c) power to make a detailed assessment of costs payable to a solicitor by that solicitor’s client, unless the costs are being assessed under rule 46.4 (costs where money is payable to a child or protected party).

(2) Where a party objects to the detailed assessment of costs being made by an authorised court officer, the court may order it to be made by a costs judge or a district judge.

(Practice Direction 47 sets out the relevant procedure.)

### **Venue for detailed assessment proceedings**

**47.4.**—(1) All applications and requests in detailed assessment proceedings must be made to or filed at the appropriate office.

(Practice Direction 47 sets out the meaning of “appropriate office” in any particular case)

(2) The court may direct that the appropriate office is to be the Costs Office.

(3) A county court may direct that another county court is to be the appropriate office.

(4) A direction under paragraph (3) may be made without proceedings being transferred to that court.

(Rule 30.2 makes provision for any county court to transfer the proceedings to another county court for detailed assessment of costs.)

### **SECTION II**

#### *Costs Payable by one Party to another – Commencement of Detailed Assessment Proceedings*

### **Application of this Section**

**47.5.** This Section of Part 47 applies where a cost officer is to make a detailed assessment of—

- (a) costs which are payable by one party to another; or
- (b) the sum which is payable by one party to the prescribed charity pursuant to an order under section 194(3) of the 2007 Act.

### **Commencement of detailed assessment proceedings**

**47.6.**—(1) Detailed assessment proceedings are commenced by the receiving party serving on the paying party—

- (a) notice of commencement in the relevant practice form; and
- (b) a copy of the bill of costs.

(Rule 47.7 sets out the period for commencing detailed assessment proceedings.)

(2) The receiving party must also serve a copy of the notice of commencement and the bill on any other relevant persons specified in Practice Direction 47.

(3) A person on whom a copy of the notice of commencement is served under paragraph (2) is a party to the detailed assessment proceedings (in addition to the paying party and the receiving party).

( Practice Direction 47 deals with—

other documents which the party must file when requesting detailed assessment;

the court’s powers where it considers that a hearing may be necessary;

the form of a bill; and

the length of notice which will be given if a hearing date is fixed.)

### **Period for commencing detailed assessment proceedings**

**47.7.** The following table shows the period for commencing detailed assessment proceedings.

Source of right to detailed assessment	Time by which detailed assessment proceedings must be commenced
Judgment, direction, order, award or other	3 months after the date of the judgment etc. Where detailed assessment is stayed pending an appeal, 3 months after the date of

Source of right to detailed assessment	Time by which detailed assessment proceedings must be commenced
determination	the order lifting the stay
Discontinuance under Part 38	3 months after the date of service of notice of discontinuance under rule 38.3; or 3 months after the date of the dismissal of application to set the notice of discontinuance aside under rule 38.4
Acceptance of an offer to settle under Part 36	3 months after the date when the right to costs arose

### **Sanction for delay in commencing detailed assessment proceedings**

**47.8.**—(1) Where the receiving party fails to commence detailed assessment proceedings within the period specified—

- (a) in rule 47.7; or
- (b) by any direction of the court,

the paying party may apply for an order requiring the receiving party to commence detailed assessment proceedings within such time as the court may specify.

(2) On an application under paragraph (1), the court may direct that, unless the receiving party commences detailed assessment proceedings within the time specified by the court, all or part of the costs to which the receiving party would otherwise be entitled will be disallowed.

(3) If—

- (a) the paying party has not made an application in accordance with paragraph (1); and
- (b) the receiving party commences the proceedings later than the period specified in rule 47.7,

the court may disallow all or part of the interest otherwise payable to the receiving party under—

- (i) section 17 of the Judgments Act 1838(a); or
- (ii) section 74 of the County Courts Act 1984(b),

but will not impose any other sanction except in accordance with rule 44.11 (powers in relation to misconduct).

(4) Where the costs to be assessed in a detailed assessment are payable out of the Community Legal Service Fund, this rule applies as if the receiving party were the solicitor to whom the costs are payable and the paying party were the Legal Services Commission.

### **Points of dispute and consequence of not serving**

**47.9.**—(1) The paying party and any other party to the detailed assessment proceedings may dispute any item in the bill of costs by serving points of dispute on—

- (a) the receiving party; and
- (b) every other party to the detailed assessment proceedings.

(2) The period for serving points of dispute is 21 days after the date of service of the notice of commencement.

(3) If a party serves points of dispute after the period set out in paragraph (2), that party may not be heard further in the detailed assessment proceedings unless the court gives permission.

(a) 1838 c.110. Section 17 was amended by the Civil Procedure Acts Repeal Act 1879 (c.59) section 2, Schedule Part I; Statute Law Revision (no 2) Act 1888 (c. 57); S.I. 1993/564 article 2; S.I. 1998/2940 article 3(a), (c)

(b) 1984 c.28. Section 5A was inserted by the Private International Law (Miscellaneous Provisions) Act 1995 (c.42) section 2

(Practice Direction 47 sets out requirements about the form of points of dispute.)

- (4) The receiving party may file a request for a default costs certificate if—
- (a) the period set out in paragraph (2) for serving points of dispute has expired; and
  - (b) the receiving party has not been served with any points of dispute.

(5) If any party (including the paying party) serves points of dispute before the issue of a default costs certificate the court may not issue the default costs certificate.

(Section IV of this Part sets out the procedure to be followed after points of dispute have been served.)

### **Procedure where costs are agreed**

**47.10.**—(1) If the paying party and the receiving party agree the amount of costs, either party may apply for a costs certificate (either interim or final) in the amount agreed.

(Rule 47.16 and rule 47.17 contain further provisions about interim and final costs certificates respectively)

(2) An application for a certificate under paragraph (1) must be made to the court which would be the venue for detailed assessment proceedings under rule 47.4.

### SECTION III

#### *Costs payable by one Party to another – Default Provisions*

### **Default costs certificate**

**47.11.**—(1) Where the receiving party is permitted by rule 47.9 to obtain a default costs certificate, that party does so by filing a request in the relevant practice form.

( Practice Direction 47 deals with the procedure by which the receiving party may obtain a default costs certificate.)

(2) A default costs certificate will include an order to pay the costs to which it relates.

(3) Where a receiving party obtains a default costs certificate, the costs payable to that party for the commencement of detailed assessment proceedings will be the sum set out in Practice Direction 47.

(4) A receiving party who obtains a default costs certificate in detailed assessment proceedings pursuant to an order under section 194(3) of the 2007 Act must send a copy of the default costs certificate to the prescribed charity.

### **Setting aside a default costs certificate**

**47.12.**—(1) The court will set aside a default costs certificate if the receiving party was not entitled to it.

(2) In any other case, the court may set aside or vary a default costs certificate if it appears to the court that there is some good reason why the detailed assessment proceedings should continue.

(Practice Direction 47 contains further details about the procedure for setting aside a default costs certificate and the matters which the court must take into account)

(3) Where the court sets aside or varies a default costs certificate in detailed assessment proceedings pursuant to an order under section 194(3) of the Legal Services Act 2007, the receiving party must send a copy of the order setting aside or varying the default costs certificate to the prescribed charity.

## SECTION IV

### *Costs payable by one Party to another – Procedure where Points of Dispute are Served*

#### **Optional Reply**

**47.13.**—(1) Where any party to the detailed assessment proceedings serves points of dispute, the receiving party may serve a reply on the other parties to the assessment proceedings.

(2) The receiving party may do so within 21 days after being served with the points of dispute to which the reply relates.

(Practice Direction 47 sets out the meaning of “reply”.)

#### **Detailed assessment hearing**

**47.14.**—(1) Where points of dispute are served in accordance with this Part, the receiving party must file a request for a detailed assessment hearing within 3 months of the expiry of the period for commencing detailed assessment proceedings as specified—

- (a) in rule 47.7; or
- (b) by any direction of the court.

(2) Where the receiving party fails to file a request in accordance with paragraph (1), the paying party may apply for an order requiring the receiving party to file the request within such time as the court may specify.

(3) On an application under paragraph (2), the court may direct that, unless the receiving party requests a detailed assessment hearing within the time specified by the court, all or part of the costs to which the receiving party would otherwise be entitled will be disallowed.

(4) If—

- (a) the paying party has not made an application in accordance with paragraph (2); and
- (b) the receiving party files a request for a detailed assessment hearing later than the period specified in paragraph (1),

the court may disallow all or part of the interest otherwise payable to the receiving party under—

- (i) section 17 of the Judgments Act 1838; or
- (ii) section 74 of the County Courts Act 1984,

but will not impose any other sanction except in accordance with rule 44.11 (powers in relation to misconduct).

(5) No party other than—

- (a) the receiving party;
- (b) the paying party; and
- (c) any party who has served points of dispute under rule 47.9,

may be heard at the detailed assessment hearing unless the court gives permission.

(6) Only items specified in the points of dispute may be raised at the hearing, unless the court gives permission.

(7) If an assessment is carried out at more than one hearing, then for the purposes of rule 52.4 time for appealing shall not start to run until the conclusion of the final hearing, unless the court orders otherwise.

(Practice Direction 47 specifies other documents which must be filed with the request for hearing and the length of notice which the court will give when it fixes a hearing date.)

## **Provisional Assessment**

**47.15.**—(1) This rule applies to any detailed assessment proceedings commenced in the High Court or a county court on or after 1 April 2013 in which the costs claimed are the amount set out in paragraph 14.1 of the practice direction supplementing this Part, or less.

(2) In proceedings to which this rule applies, the parties must comply with the procedure set out in Part 47 as modified by paragraph 14 Practice Direction 47.

(3) The court will undertake a provisional assessment of the receiving party's costs on receipt of Form N258 and the relevant supporting documents specified in Practice Direction 47.

(4) The provisional assessment will be based on the information contained in the bill and supporting papers and the contentions set out in Precedent G (the points of dispute and any reply).

(5) The court will not award more than £1,500 to any party in respect of the costs of the provisional assessment.

(6) The court may at any time decide that the matter is unsuitable for a provisional assessment and may give directions for the matter to be listed for hearing. The matter will then proceed under rule 47.14 without modification.

(7) When a provisional assessment has been carried out, the court will send a copy of the bill, as provisionally assessed, to each party with a notice stating that any party who wishes to challenge any aspect of the provisional assessment must, within 21 days of the receipt of the notice, file and serve on all other parties a written request for an oral hearing. If no such request is filed and served within that period, the provisional assessment shall be binding upon the parties, save in exceptional circumstances.

(8) The written request referred to in paragraph (7) must—

- (a) identify the item or items in the court's provisional assessment which are sought to be reviewed at the hearing; and
- (b) provide a time estimate for the hearing.

(9) The court then will fix a date for the hearing and give at least 14 days' notice of the time and place of the hearing to all parties.

(10) Any party which has requested an oral hearing, will pay the costs of and incidental to that hearing unless—

- (a) it achieves an adjustment in its own favour by 20% or more of the sum provisionally assessed; or
- (b) the court otherwise orders.

## **SECTION V**

### *Interim Costs Certificate and Final Costs Certificate*

#### **Power to issue an interim certificate**

**47.16.**—(1) The court may at any time after the receiving party has filed a request for a detailed assessment hearing –

- (a) issue an interim costs certificate for such sum as it considers appropriate; or
- (b) amend or cancel an interim certificate.

(2) An interim certificate will include an order to pay the costs to which it relates, unless the court orders otherwise.

(3) The court may order the costs certified in an interim certificate to be paid into court.

(4) Where the court –

- (a) issues an interim costs certificate; or
- (b) amends or cancels an interim certificate,

in detailed assessment proceedings pursuant to an order under section 194(3) of the 2007 Act, the receiving party must send a copy of the interim costs certificate or the order amending or cancelling the interim costs certificate to the prescribed charity.

### **Final costs certificate**

**47.17.**—(1) In this rule a “completed bill” means a bill calculated to show the amount due following the detailed assessment of the costs.

(2) The period for filing the completed bill is 14 days after the end of the detailed assessment hearing.

(3) When a completed bill is filed the court will issue a final costs certificate and serve it on the parties to the detailed assessment proceedings.

(4) Paragraph (3) is subject to any order made by the court that a certificate is not to be issued until other costs have been paid.

(5) A final costs certificate will include an order to pay the costs to which it relates, unless the court orders otherwise.

(Practice Direction 47 deals with the form of a final costs certificate.)

(6) Where the court issues a final costs certificate in detailed assessment proceedings pursuant to an order under section 194(3) of the 2007 Act, the receiving party must send a copy of the final costs certificate to the prescribed charity.

### **SECTION VI**

#### *Detailed Assessment Procedure for Costs of A LSC Funded Client or an Assisted Person where Costs are Payable out of the Community Legal Service Fund*

### **Detailed assessment procedure where costs are payable out of the Community Legal Services Fund**

**47.18.**—(1) Where the court is to assess costs of a LSC funded client or an assisted person which are payable out of the Community Legal Services Fund, that person’s solicitor may commence detailed assessment proceedings by filing a request in the relevant practice form.

(2) A request under paragraph (1) must be filed within 3 months after the date when the right to detailed assessment arose.

(3) The solicitor must also serve a copy of the request for detailed assessment on the LSC funded client or the assisted person, if notice of that person’s interest has been given to the court in accordance with community legal service or legal aid regulations.

(4) Where the solicitor has certified that the LSC funded client or that person wishes to attend an assessment hearing, the court will, on receipt of the request for assessment, fix a date for the assessment hearing.

(5) Where paragraph (3) does not apply, the court will, on receipt of the request for assessment provisionally assess the costs without the attendance of the solicitor, unless it considers that a hearing is necessary.

(6) After the court has provisionally assessed the bill, it will return the bill to the solicitor.

(7) The court will fix a date for an assessment hearing if the solicitor informs the court, within 14 days after receiving the provisionally assessed bill, that the solicitor wants the court to hold such a hearing.

**Detailed assessment procedure where costs are payable out of a fund other than the community legal service fund**

**47.19.**—(1) Where the court is to assess costs which are payable out of a fund other than the Community Legal Service Fund, the receiving party may commence detailed assessment proceedings by filing a request in the relevant practice form.

(2) A request under paragraph (1) must be filed within 3 months after the date when the right to detailed assessment arose.

(3) The court may direct that the party seeking assessment serve a copy of the request on any person who has a financial interest in the outcome of the assessment.

(4) The court will, on receipt of the request for assessment, provisionally assess the costs without the attendance of the receiving party, unless the court considers that a hearing is necessary.

(5) After the court has provisionally assessed the bill, it will return the bill to the receiving party.

(6) The court will fix a date for an assessment hearing if the receiving party informs the court, within 14 days after receiving the provisionally assessed bill, that the receiving party wants the court to hold such a hearing.

SECTION VII

*Costs of Detailed Assessment Proceedings*

**Liability for costs of detailed assessment proceedings**

**47.20.**—(1) The receiving party is entitled to the costs of the detailed assessment proceedings except where—

- (a) the provisions of any Act, any of these Rules or any relevant practice direction provide otherwise; or
- (b) the court makes some other order in relation to all or part of the costs of the detailed assessment proceedings.

(2) Paragraph (1) does not apply where the receiving party has pro bono representation in the detailed assessment proceedings but that party may apply for an order in respect of that representation under section 194(3) of the 2007 Act.

(3) In deciding whether to make some other order, the court must have regard to all the circumstances, including—

- (a) the conduct of all the parties;
- (b) the amount, if any, by which the bill of costs has been reduced; and
- (c) whether it was reasonable for a party to claim the costs of a particular item or to dispute that item.

(4) The provisions of Part 36 apply to the costs of detailed assessment proceedings with the following modifications—

- (a) “claimant” refers to “receiving party” and “defendant” refers to “paying party”;
- (b) “trial” refers to “detailed assessment hearing”;
- (c) in rule 36.9(5), at the end insert “or, where the Part 36 offer is made in respect of the detailed assessment proceedings, after the commencement of the detailed assessment hearing.”;
- (d) for rule 36.11(7) substitute “If the accepted sum is not paid within 14 days or such other period as has been agreed the offeree may apply for a final costs certificate for the unpaid sum.”;
- (e) a reference to “judgment being entered” is to the completion of the detailed assessment, and references to a “judgment” being advantageous or otherwise are to the outcome of the detailed assessment.

(5) The court will usually summarily assess the costs of detailed assessment proceedings at the conclusion of those proceedings.

(6) Unless the court otherwise orders, interest on the costs of detailed assessment proceedings will run from the date of default, interim or final costs certificate, as the case may be.

(7) For the purposes of rule 36.14, detailed assessment proceedings are to be regarded as an independent claim.

## SECTION VIII

### *Appeals from Authorised Court Officers in Detailed Assessment Proceedings*

#### **Right to appeal**

**47.21.** Any party to detailed assessment proceedings may appeal against a decision of an authorised court officer in those proceedings.

#### **Court to hear appeal**

**47.22.** An appeal against a decision of an authorised court officer lies to a costs judge or a district judge of the High Court.

#### **Appeal procedure**

**47.23.—**(1) The appellant must file an appeal notice within 21 days after the date of the decision against which it is sought to appeal.

(2) On receipt of the appeal notice, the court will—

- (a) serve a copy of the notice on the parties to the detailed assessment proceedings; and
- (b) give notice of the appeal hearing to those parties.

#### **Powers of the court on appeal**

**47.24.** On an appeal from an authorised court officer the court will—

- (a) re-hear the proceedings which gave rise to the decision appealed against; and
- (b) make any order and give any directions as it considers appropriate.

## PART 48

### PART 2 OF THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012(a) RELATING TO CIVIL LITIGATION FUNDING AND COSTS: TRANSITIONAL PROVISION IN RELATION TO PRE-COMMENCEMENT FUNDING ARRANGEMENTS

**48.1.—**(1) The provisions of CPR Parts 43 to 48 relating to funding arrangements, and the attendant provisions of the Costs Practice Direction, will apply in relation to a pre-commencement funding arrangement as they were in force immediately before 1 April 2013, with such modifications (if any) as may be made by a practice direction on or after that date.

(2) A reference in rule 48.2 to a rule is to that rule as it was in force immediately before 1 April 2013.

---

(a) 2012 c.10.

- 48.2.**—(1) A pre-commencement funding arrangement is—
- (a) in relation to proceedings other than insolvency-related proceedings, publication and privacy proceedings or a mesothelioma claim—
    - (i) a funding arrangement as defined by rule 43.2(1)(k)(i) where—
      - (aa) the agreement was entered into before 1 April 2013 specifically for the purposes of the provision to the person by whom the success fee is payable of advocacy or litigation services in relation to the matter that is the subject of the proceedings in which the costs order is to be made; or
      - (bb) the agreement was entered into before 1 April 2013 and advocacy or litigation services were provided to that person under the agreement in connection with that matter before 1 April 2013;
    - (ii) a funding arrangement as defined by rule 43.2(1)(k)(ii) where the party seeking to recover the insurance premium took out the insurance policy in relation to the proceedings before 1 April 2013;
    - (iii) a funding arrangement as defined by rule 43.2(1)(k)(iii) where the agreement with the membership organisation to meet the costs was made before 1 April 2013 specifically in respect of the costs of other parties to proceedings relating to the matter which is the subject of the proceedings in which the costs order is to be made;
  - (b) in relation to insolvency-related proceedings, publication and privacy proceedings or a mesothelioma claim—
    - (i) a funding arrangement as defined by rule 43.2(1)(k)(i) where—
      - (aa) the agreement was entered into before the relevant date specifically for the purposes of the provision to the person by whom the success fee is payable of advocacy or litigation services in relation to the matter that is the subject of the proceedings in which the costs order is to be made; or
      - (bb) the agreement was entered into before the relevant date and advocacy or litigation services were provided to that person under the agreement in connection with that matter before the relevant date;
    - (ii) a funding arrangement as defined by rule 43.2(1)(k)(ii) where the party seeking to recover the insurance premium took out the insurance policy in relation to the proceedings before the relevant date.
- (2) In paragraph (1)—
- (a) “insolvency-related proceedings” means any proceedings—
    - (i) in England and Wales brought by a person acting in the capacity of—
      - (aa) a liquidator of a company which is being wound up in England and Wales or Scotland under Parts IV or V of the Insolvency Act 1986<sup>(a)</sup>; or
      - (bb) a trustee of a bankrupt’s estate under Part IX of the Insolvency Act 1986;
    - (ii) brought by a person acting in the capacity of an administrator appointed pursuant to the provisions of Part II of the Insolvency Act 1986;
    - (iii) in England and Wales brought by a company which is being wound up in England and Wales or Scotland under Parts IV or V of the Insolvency Act 1986; or

---

(a) 1986 c.45.

- (iv) brought by a company which has entered administration under Part II of the Insolvency Act 1986;
- (b) “news publisher” means a person who publishes a newspaper, magazine or website containing news or information about or comment on current affairs;
- (c) “publication and privacy proceedings” means proceedings for—
  - (i) defamation;
  - (ii) malicious falsehood;
  - (iii) breach of confidence involving publication to the general public;
  - (iv) misuse of private information; or
  - (v) harassment, where the defendant is a news publisher.
- (d) “a mesothelioma claim” is a claim for damages in respect of diffuse mesothelioma (within the meaning of the Pneumoconiosis etc. (Workers’ Compensation) Act 1979(a)); and
- (e) “the relevant date” is the date on which sections 44 and 46 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force in relation to proceedings of the sort in question. ”

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

These Rules make the following amendments to the Civil Procedure Rules 1998 (CPR) —

A series of amendments to implement recommendations made in the Review of Civil Litigation Costs: Final Report, 21 December 2009 (the Costs Review), in particular—

Amendments in relation to costs management, as follows—

- CPR rule 1.1(1) and (2) are amended to change the overriding objective to include the objective to deal with cases at proportionate cost (rule 4 of these Rules);
- the division of Part 3 of the CPR into Sections, the first containing current rules on case management (CPR rules 3.1 to 3.11) the second containing new rules on costs management (CPR rules 3.12 to 3.18) and the third containing rules on costs capping (CPR rules 3.19 to 3.21) (rule 5(a) to (c) and (h) of these Rules);
- an insertion into the Glossary of the definition of “budget” (rule 21(a) of these Rules);

A new rule 3.1(8) is added, relating to monitoring parties’ compliance with directions (rule 5(d) of these Rules);

Amendments to replace allocation questionnaires with directions questionnaires (rules 5(e), 8(a) to (e) and (h) of these Rules);

A new rule 3.9(1) is substituted for the existing provision, and a consequential amendment is made to rule 3.8 relating to sanctions (rules 5(f) and (g) of these Rules);

An amendment to rule 29.1 in relation to standard directions in the multi-track, to add a provision that the parties and the court should take standard and model directions as a starting point for directions (rule 10(a) of these Rules);

Amendments to rules 29.2, 29.4 and 29.8 in relation to timetabling and the steps following allocation to the multi-track (rule 10(b), (c) and (d) of these Rules);

The replacement of rule 31.5 in relation to disclosure in multi-track cases (rule 11 of these Rules);

---

(a) 1979 c.41.

The insertion of a new paragraph into rule 32.2 in relation to court directions about factual witness statements (rule 12 of these Rules);

Amendments to rule 35.4 in relation to the costs of expert evidence (rule 13 of these Rules);

Amendments to rule 36.14 in relation to Part 36 offers (rule 14 of these Rules);

The revocation of Part 43 and the replacement of Parts 44 to 48 with the following new Parts on costs:

- Part 44 – General rules about costs;
- Part 45 – Fixed costs;
- Part 46 – Costs – special cases;
- Part 47 – Procedure for detailed assessment of costs and default provisions; and
- Part 48 – Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 relating to civil litigation funding and costs: transition provision in relation to pre-commencement funding arrangements (rules 15 and 16 of and the Schedule to these Rules);

Various consequential amendments resulting from the introduction of new Parts 44 to 48 (in particular rule 7 of these Rules);

The introduction of a new rule 52.9A in relation to appeal costs (rule 17 of these Rules); and

An addition of the definition of “damages-based agreement” to the Glossary (rule 21(b) of these Rules); and

—the following amendments which are other than in relation to the Costs Review—

Amendments to increase the small claims track limit from £5,000 to £10,000 (rules 6, 8(f) and (g), 9(a) and (c) and 18 of these Rules);

Amendment to rule 27.5 to correct a cross-reference (rule 9(b) of these Rules);

Amendment to rule 54.6 in relation to Aarhus Convention claims (rule 18 of these Rules); and

The omission of CCR Order 27 rule 7A(3) as a consequence of the introduction of Part 81 of the Civil Procedure Rules (Applications and proceedings in relation to contempt of court) (rule 20 of these Rules).