

orders exceeds the aggregate amount in money terms of any orders for damages, interest and costs made in favour of the claimant.

12.7 Assessments of costs may be on a standard or indemnity basis and may be subject to a summary or detailed assessment.

## PART 45: FIXED COSTS

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## SECTION I: FIXED COSTS

### 45.1 Scope of this Section

- (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.

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

- (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

### 45.3 When defendant only liable for fixed commencement costs

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.

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

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
Where judgment is given on a claim for delivery of goods under a regulated agreement within the meaning of the Consumer Credit Act 1974 and no other entry in this table applies	£60	£85

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

- (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 – <ul style="list-style-type: none"> <li>the claim form is served personally by the claimant; and</li> <li>there is only one defendant</li> </ul>	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

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

- (1) Where—
- the claimant has claimed fixed commencement costs under rule 45.5; and
  - 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—
    - the fixed commencement costs; and
    - 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—
- the claim form;
  - the documents that accompany the claim form; and
  - the request for possession,
- is £79.50.

#### 45.7 Miscellaneous fixed costs

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

Table 4

Miscellaneous Fixed Costs	
For service by a party of any document 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

#### 45.8 Fixed enforcement costs

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 solicitor	for each half hour or part, £15.00 (When the questioning takes place before a judge, he may summarily assess any costs allowed.)
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 73.10(6A)(a), 73.10(7)(a) or 73.10A(3)(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 the Civil Jurisdiction and Judgments Act 1982, the costs of registration	£39.00
Where permission is given under rule 83.13 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 control as defined in rule 83.1(2)(k) is issued against any party	£51.75
Where a writ of execution as defined in rule 83.1(2)(l) is issued against any party	£51.75
Where a request is filed for the issue of a warrant of control under rule 83.15 for a sum exceeding £25	£2.25
Where a request is filed for the issue of a warrant of delivery under rule 83.15 for a sum exceeding £25	£2.25
Where an application for an attachment of earnings order is made and costs are allowed under rule 89.10 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

### 45.9 Scope and interpretation

(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 or Section IIIA 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;

“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.

### 45.10 Application of fixed recoverable costs

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.)

### 45.11 Amount of fixed recoverable costs

(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.

#### **45.12 Disbursements**

- (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.

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

- (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.

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

- (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.

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

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: THE PRE-ACTION PROTOCOLS FOR LOW VALUE PERSONAL INJURY CLAIMS IN ROAD TRAFFIC ACCIDENTS AND LOW VALUE PERSONAL INJURY (EMPLOYERS’ LIABILITY AND PUBLIC LIABILITY) CLAIMS**

**45.16 Scope and interpretation**

- (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 relevant Protocol rule 45.24 will apply. The “relevant Protocol” means—
- (a) the Pre-Action Protocol for Personal Injury Claims in Road Traffic Accidents (“the RTA Protocol”); or
  - (b) the Pre-action Protocol for Low Value Personal Injury Claims (Employers’ Liability and Public Liability) Claims (“the EL/PL Protocol”).
- (3) A reference to “Claim Notification Form” or Court Proceedings Pack is a reference to the form used in the relevant Protocol.

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

The only costs allowed are—

- (a) fixed costs in rule 45.18; and
- (b) disbursements in accordance with rule 45.19; and
- (c) where applicable, fixed costs in accordance with rule 45.23A or 45.23B.

**45.18 Amount of fixed costs**

- (1) Subject to paragraph (4), the amount of fixed costs is set out in Tables 6 and 6A.
- (2) In Tables 6 and 6A—
- “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 Tables 6 and 6A.
- (5) 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 costs will include, in addition to the costs set out in Tables 6 and 6A, an amount equal to 12.5% of the Stage 1 and 2 and Stage 3 Type A fixed costs.
- (6) Where appropriate, 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					
Where the value of the claim for damages is not more than £10,000			Where the value of the claim for damages is more than £10,000		
Stage 1 fixed costs		£200	Stage 1 fixed costs		£200
Stage 2 fixed costs		£300	Stage 2 fixed costs		£600
Stage 3	Type A fixed costs	£250	Stage 3	Type A fixed costs	£250
	Type B fixed costs	£250		Type B fixed costs	£250
	Type C fixed costs	£150		Type C fixed costs	£150

Table 6A

Fixed costs in relation to the EL/PL Protocol					
Where the value of the claim for damages is not more than £10,000			Where the value of the claim for damages is more than £10,000		
Stage 1 fixed costs		£300	Stage 1 fixed costs		£300
Stage 2 fixed costs		£600	Stage 2 fixed costs		£1300
Stage 3	Type A fixed costs	£250	Stage 3	Type A fixed costs	£250
	Type B fixed costs	£250		Type B fixed costs	£250
	Type C fixed costs	£150		Type C fixed costs	£150

The reduction in Stage 1 and 2 Fixed Costs from £400 to £200 and £800 to £300 in the Table above apply only to a claim where the Claim Notification Form is sent in accordance with the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents on or after 30th April 2013.

#### 45.19 Disbursements

(1) Subject to paragraphs (2A) to (2E), the court—

- (a) may allow a claim for a disbursement of a type mentioned in paragraphs (2) or (3); but
- (b) will not allow a claim for any other type of disbursement.

(2) In a claim to which either the RTA Protocol or EL/PL Protocol applies, the disbursements referred to in paragraph (1) are—

- (a) the cost of obtaining—
  - (i) medical records;
  - (ii) a medical report or reports or non-medical expert reports as provided for in the relevant Protocol;
- (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.

(2A) In a soft tissue injury claim, or a claim which consists of, or includes, a claim for a whiplash injury, to which the RTA Protocol applies, the only sums (exclusive of VAT) that are recoverable in respect of the cost of obtaining a fixed cost medical report or medical records are as follows—

- (a) obtaining the first report from an accredited medical expert selected via the MedCo Portal: £180;
- (b) obtaining a further report where justified from an expert from one of the following disciplines—
  - (i) Consultant Orthopaedic Surgeon (inclusive of a review of medical records where applicable): £420;
  - (ii) Consultant in Accident and Emergency Medicine: £360;
  - (iii) General Practitioner registered with the General Medical Council: £180; or
  - (iv) Physiotherapist registered with the Health and Care Professions Council: £180;
- (c) obtaining medical records: no more than £30 plus the direct cost from the holder of the records, and limited to £80 in total for each set of records required. Where relevant records are required from more than one holder of records, the fixed fee applies to each set of records required;
- (d) addendum report on medical records (except by Consultant Orthopaedic Surgeon): £50; and
- (e) answer to questions under Part 35: £80.

(2B) Save in exceptional circumstances, no fee may be allowed for the cost of obtaining a report to which paragraph (2A) applies where the medical expert—

- (a) has provided treatment to the claimant;
- (b) is associated with any person who has provided treatment; or
- (c) proposes or recommends treatment that they or an associate then provide.

- (2C) The cost of obtaining a further report from an expert not listed in paragraph (2A)(b) is not fixed, but the use of that expert and the cost must be justified.
- (2D) Where appropriate, VAT may be recovered in addition to the cost of obtaining a fixed cost medical report or medical records.
- (2E) In this rule, ‘accredited medical expert’, ‘associate’, ‘associated with’, ‘fixed cost medical report’ ‘MedCo’, ‘soft tissue injury claim’ and ‘whiplash injury’ have the same meaning as in paragraph 1.1(A1), (1A), (10A), (12A), (16A) and (20), respectively, of the RTA Protocol.
- (3) In a claim to which the RTA Protocol applies, the disbursements referred to in paragraph (1) are also the cost of—
- (a) an engineer’s report; and
  - (b) a search of the records of the—
    - (i) Driver Vehicle Licensing Authority; and
    - (ii) Motor Insurance Database.

#### **45.20 Where the claimant obtains judgment for an amount more than the defendant’s relevant Protocol offer**

Where rule 36.29(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.

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

- (1) This rule applies where—
- (a) the claimant is a child;
  - (b) there is a settlement at Stage 2 of the relevant 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.

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

- (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 relevant 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.

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

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.

**45.23A Settlement before proceedings are issued under Stage 3**

Where—

- (a) there is a settlement after the Court Proceedings Pack has been sent to the defendant but before proceedings are issued under Stage 3; and
  - (b) the settlement is more than the defendant's relevant Protocol offer,
- the fixed costs will include an additional amount equivalent to the Stage 3 Type A fixed costs.

**45.23B Additional advice on the value of the claim**

Where—

- (a) the value of the claim for damages is more than £10,000;

- (b) an additional advice has been obtained from a specialist solicitor or from counsel;
  - (c) that advice is reasonably required to value the claim,
- the fixed costs may include an additional amount equivalent to the Stage 3 Type C fixed costs.

#### **45.24 Failure to comply or electing not to continue with the relevant Protocol – costs consequences**

- (1) This rule applies where the claimant—
- (a) does not comply with the process set out in the relevant Protocol; or
  - (b) elects not to continue with that process,
- and starts proceedings under Part 7.
- (2) Subject to paragraph (2A), 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 relevant 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 relevant Protocol and starting proceedings under Part 7;
    - (ii) by valuing the claim at more than £25,000, 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 relevant Protocol to be discontinued; or
  - (c) the claimant did not comply with the relevant Protocol at all despite the claim falling within the scope of the relevant 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.
- (2A) Where a judgment is given in favour of the claimant but the claimant did not comply with the process in paragraph 6.3A(2) of the RTA Protocol, the court may not order the defendant to pay the claimant's costs and disbursements save in exceptional circumstances.
- (3) Where the claimant starts proceedings under paragraph 7.28 of the RTA Protocol or paragraph 7.26 of the EL/PL 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 the RTA Protocol or paragraph 7.17(2) or (3) of the EL/PL 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.

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

- (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 relevant 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 relevant 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.

#### **45.26 Where the claimant obtains judgment for an amount equal to or less than the defendant's relevant Protocol offer**

Where rule 36.29(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.

#### **45.27 Adjournment**

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.

#### **45.28 Account of payment of Stage 1 and Stage 2 fixed costs**

Where a claim no longer continues under the relevant Protocol the court will, when making any order as to costs including an order for fixed recoverable costs under Section II or Section IIIA of this Part, take into account the Stage 1 and Stage 2 fixed costs that have been paid by the defendant.

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

(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 IIIA: CLAIMS WHICH NO LONGER CONTINUE UNDER THE RTA OR EL/PL PRE-ACTION PROTOCOLS AND CLAIMS TO WHICH THE PRE-ACTION PROTOCOL FOR RESOLUTION OF PACKAGE TRAVEL CLAIMS APPLIES – FIXED RECOVERABLE COSTS**

#### **45.29A Scope and interpretation**

(1) Subject to paragraph (3), this section applies—

- (a) to a claim started under—  
 (i) the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents ('the RTA Protocol'); or  
 (ii) the Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims ('the EL/PL Protocol'),  
 where such a claim no longer continues under the relevant Protocol or the Stage 3 Procedure in Practice Direction 8B; and

(b) to a claim to which the Pre-Action Protocol for Resolution of Package Travel Claims applies.

(2) This section does not apply to a disease claim which is started under the EL/PL Protocol.

(3) Nothing in this section shall prevent the court making an order under rule 45.24.

#### **45.29B Application of fixed costs and disbursements – RTA Protocol**

Subject to rules 45.29F, 45.29G, 45.29H and 45.29J, and for as long as the case is not allocated to the multi-track, if, in a claim started under the RTA Protocol, the Claim Notification Form is submitted on or after 31st July 2013, the only costs allowed are—

- (a) the fixed costs in rule 45.29C;  
 (b) disbursements in accordance with rule 45.29I.

#### **45.29C Amount of fixed costs – RTA Protocol**

(1) Subject to paragraph (2), the amount of fixed costs is set out in Table 6B.

(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 costs will include, in addition to the costs set out in Table 6B, an amount equal to 12.5% of the costs allowable under paragraph (1) and set out in Table 6B.

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

(4) In Table 6B—

(a) in Part B, “on or after” means the period beginning on the date on which the court respectively—

- (i) issues the claim;
- (ii) allocates the claim under Part 26; or
- (iii) lists the claim for trial; and

(b) unless stated otherwise, a reference to “damages” means agreed damages; and

(c) a reference to “trial” is a reference to the final contested hearing.

**Table 6B**

Fixed costs where a claim no longer continues under the RTA Protocol				
<b>A. If Parties reach a settlement prior to the claimant issuing proceedings under Part 7</b>				
Agreed damages		At least £1,000, but not more than £5,000	More than £5,000, but not more than £10,000	More than £10,000
Fixed costs		The greater of— (a) £550; or (b) the total of— (i) £100; and (ii) 20% of the damages	The total of— (a) £1,100; and (b) 15% of damages over £5,000	The total of— (a) £1,930; and (b) 10% of damages over £10,000
<b>B. If proceedings are issued under Part 7, but the case settles before trial</b>				
Stage at which case is settled		On or after the date of issue, but prior to the date of allocation under Part 26	On or after the date of allocation under Part 26, but prior to the date of listing	On or after the date of listing but prior to the date of trial
Fixed costs		The total of— (a) £1,160; and (b) 20% of the damages	The total of— (a) £1,880; and (b) 20% of the damages	The total of— (a) £2,655; and (b) 20% of the damages
<b>C. If the claim is disposed of at trial</b>				
Fixed costs		The total of— (a) £2,655; and (b) 20% of the damages agreed or awarded; and (c) the relevant trial advocacy fee		
<b>D. Trial advocacy fees</b>				
Damages agreed or awarded	Not more than £3,000	More than £3,000, but not more than £10,000	More than £10,000, but not more than £15,000	More than £15,000
Trial advocacy fee	£500	£710	£1,070	£1,705

#### 45.29D Application of fixed costs and disbursements – EL/PL Protocol and Pre-Action Protocol for Resolution of Package Travel Claims

Subject to rules 45.29F, 45.29H and 45.29J, and for as long as the case is not allocated to the multi-track, in a claim started under the EL/PL Protocol or in a claim to which the Pre-Action Protocol for Resolution of Package Travel Claims applies, the only costs allowed are—

- (a) fixed costs in rule 45.29E; and
- (b) disbursements in accordance with rule 45.29I.

#### 45.29E Amount of fixed costs – EL/PL Protocol and Pre-Action Protocol for Resolution of Package Travel Claims

(1) Subject to paragraph (2), the amount of fixed costs is set out—

- (a) in respect of employers' liability claims, in Table 6C; and
- (b) in respect of public liability claims and claims to which the Pre-Action Protocol for Resolution of Package Travel Claims applies, in Table 6D.

(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 costs will include, in addition to the costs set out in Tables 6C and 6D, an amount equal to 12.5% of the costs allowable under paragraph (1) and set out in table 6C and 6D.

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

(4) In Tables 6C and 6D—

- (a) in Part B, “on or after” means the period beginning on the date on which the court respectively—
  - (i) issues the claim;
  - (ii) allocates the claim under Part 26; or
  - (iii) lists the claim for trial; and
- (b) unless stated otherwise, a reference to “damages” means agreed damages; and
- (c) a reference to “trial” is a reference to the final contested hearing.

**Table 6C**

Fixed costs where a claim no longer continues under the EL/PL Protocol – employers' liability claims			
A. If Parties reach a settlement prior to the claimant issuing proceedings under Part 7			
Agreed damages	At least £1,000, but not more than £5,000	More than £5,000, but not more than £10,000	More than £10,000
Fixed costs	The total of— (a) £950; and (b) 17.5% of the damages	The total of— (a) £1,855; and (b) 12.5% of damages over £5,000	The total of— (a) £2,500; and (b) 10% of damages over £10,000
B. If proceedings are issued under Part 7, but the case settles before trial			
Stage at which case is settled	On or after the date of issue, but prior to the date of allocation under Part 26	On or after the date of allocation under Part 26, but prior to the date of listing	On or after the date of listing but prior to the date of trial
Fixed costs	The total of— (a) £2,630; and (b) 20% of the damages	The total of— (a) £3,350; and (b) 25% of the damages	The total of— (a) £4,280; and (b) 30% of the damages

<b>C. If the claim is disposed of at trial</b>				
Fixed costs		The total of— (a) £4,280; (b) 30% of the damages agreed or awarded; and (c) the relevant trial advocacy fee		
<b>D. Trial advocacy fees</b>				
Damages agreed or awarded	Not more than £3,000	More than £3,000, but not more than £10,000	More than £10,000, but not more than £15,000	More than £15,000
Trial advocacy fee	£500	£710	£1,070	£1,705

**Table 6D**

<b>Fixed costs where a claim no longer continues under the EL/PL Protocol – public liability claims</b>				
<b>A. If Parties reach a settlement prior to the claimant issuing proceedings under Part 7</b>				
Agreed damages		At least £1,000, but not more than £5,000	More than £5,000, but not more than £10,000	More than £10,000
Fixed costs		The total of— (a) £950; and (b) 17.5% of the damages	The total of— (a) £1,855; and (b) 10% of damages over £5,000	The total of— (a) £2,370; and (b) 10% of damages over £10,000
<b>B. If proceedings are issued under Part 7, but the case settles before trial</b>				
Stage at which case is settled		On or after the date of issue, but prior to the date of allocation under Part 26	On or after the date of allocation under Part 26, but prior to the date of listing	On or after the date of listing but prior to the date of trial
Fixed costs damages		The total of— (a) £2,450; and (b) 17.5% of the damages	The total of— (a) £3,065; and (b) 22.5% of the damages	The total of— (a) £3,790; and (b) 27.5% of the damages
<b>C. If the claim is disposed of at trial</b>				
Fixed costs		The total of— (a) £3,790; (b) 27.5% of the damages agreed or awarded; and (c) the relevant trial advocacy fee		
<b>D. Trial advocacy fees</b>				
Damages agreed or awarded	Not more than £3,000	More than £3,000, but not more than £10,000	More than £10,000, but not more than £15,000	More than £15,000
Trial advocacy fee	£500	£710	£1,070	£1,705

**45.29F Defendants' costs**

(1) *In this rule—*

- (a) paragraphs (8) and (9) apply to assessments of defendants' costs under Part 36;
  - (b) paragraph (10) applies to assessments to which the exclusions from qualified one way costs shifting in rules 44.15 and 44.16 apply; and
  - (c) paragraphs (2) to (7) apply to all other cases under this Section in which a defendant's costs are assessed.
- (2) If, in any case to which this Section applies, the court makes an order for costs in favour of the defendant—
- (a) the court will have regard to; and
  - (b) the amount of costs order to be paid shall not exceed,
- the amount which would have been payable by the defendant if an order for costs had been made in favour of the claimant at the same stage of the proceedings.
- (3) For the purpose of assessing the costs payable to the defendant by reference to the fixed costs in Table 6, Table 6A, Table 6B, Table 6C and Table 6D, "value of the claim for damages" and "damages" shall be treated as references to the value of the claim.
- (4) For the purposes of paragraph (3), "the value of the claim" is—
- (a) the amount specified in the claim form, excluding—
    - (i) any amount not in dispute;
    - (ii) in a claim started under the RTA Protocol, any claim for vehicle related damages;
    - (iii) interest;
    - (iv) costs; and
    - (v) any contributory negligence;
  - (b) if no amount is specified in the claim form, 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
  - (c) £25,000, if the claim form states that the claimant cannot reasonably say how much is likely to be recovered.
- (5) Where the defendant—
- (a) lives, works or carries on business in an area set out in Practice Direction 45; and
  - (b) instructs a legal representative who practises in that area,
- the costs will include, in addition to the costs allowable under paragraph (2), an amount equal to 12.5% of those costs.
- (6) Where an order for costs is made pursuant to this rule, the defendant is entitled to disbursements in accordance with rule 45.29I
- (7) Where appropriate, VAT may be recovered in addition to the amount of any costs allowable under this rule.
- (8) Where, in a case to which this Section applies, a Part 36 offer is accepted, rule 36.20 will apply instead of this rule.
- (9) Where, in a case to which this Section applies, upon judgment being entered, the claimant fails to obtain a judgment more advantageous than the defendant's Part 36 offer, rule 36.21 will apply instead of this rule.
- (10) Where, in a case to which this Section applies, any of the exceptions to qualified one way costs shifting in rules 44.15 and 44.16 is established, the court will assess the defendant's costs without reference to this rule.

#### **45.29G Counterclaims under the RTA Protocol**

- (1) If in any case to which this Section applies—
- (a) the defendant brings a counterclaim which includes a claim for personal injuries to which the RTA Protocol applies;
  - (b) the counterclaim succeeds; and
  - (c) the court makes an order for the costs of the counterclaim,
- rules 45.29B, 45.29C, 45.29I, 45.29J, 45.29K and 45.29L shall apply.
- (2) Where a successful counterclaim does not include a claim for personal injuries—
- (a) the order for costs of the counterclaim shall be for a sum equivalent to one half of the applicable Type A and Type B costs in Table 6;
  - (b) where the defendant—
    - (i) lives, works, or carries on business in an area set out in Practice Direction 45; and
    - (ii) instructs a legal representative who practises in that area,

- the costs will include, in addition to the costs allowable under paragraph (a), an amount equal to 12.5% of those costs;
- (c) if an order for costs is made pursuant to this rule, the defendant is entitled to disbursements in accordance with rule 45.29I; and
- (d) where appropriate, VAT may be recovered in addition to the amount of any costs allowable under this rule.

#### **45.29H Interim applications**

- (1) Where the court makes an order for costs of an interim application to be paid by one party in a case to which this Section applies, the order shall be for a sum equivalent to one half of the applicable Type A and Type B costs in Table 6 or 6A.
- (1A) Where the order for costs is made in a claim to which the Pre-Action Protocol for Resolution of Package Travel Claims applies, the order shall be for a sum equivalent to one half of the applicable Type A and Type B costs in Table 6A.
- (2) Where the party in whose favour the order for costs is made—
- (a) lives, works or carries on business in an area set out in Practice Direction 45; and
  - (b) instructs a legal representative who practises in that area,
- the costs will include, in addition to the costs allowable under paragraph (1), an amount equal to 12.5% of those costs.
- (3) If an order for costs is made pursuant to this rule, the party in whose favour the order is made is entitled to disbursements in accordance with rule 45.29I.
- (4) Where appropriate, VAT may be recovered in addition to the amount of any costs allowable under this rule.

#### **45.29I Disbursements**

- (1) Subject to paragraphs (2A) to (2E), the court—
- (a) may allow a claim for a disbursement of a type mentioned in paragraphs (2) or (3); but
  - (b) will not allow a claim for any other type of disbursement.
- (2) In a claim started under the RTA Protocol, the EL/PL Protocol or the Pre-Action Protocol for Resolution of Package Travel Claims, the disbursements referred to in paragraph (1) are—
- (a) the cost of obtaining medical records and expert medical reports as provided for in the relevant Protocol;
  - (b) the cost of any non-medical expert reports as provided for in the relevant Protocol;
  - (c) the cost of any advice from a specialist solicitor or counsel as provided for in the relevant Protocol;
  - (d) court fees;
  - (e) any expert's fee for attending the trial where the court has given permission for the expert to attend;
  - (f) expenses which a party or witness has reasonably incurred in travelling to and from a hearing or in staying away from home for the purposes of attending a hearing;
  - (g) a sum not exceeding the amount specified in Practice Direction 45 for any loss of earnings or loss of leave by a party or witness due to attending a hearing or to staying away from home for the purpose of attending a hearing; and
  - (h) any other disbursement reasonably incurred due to a particular feature of the dispute.
- (2A) In a soft tissue injury claim, or a claim which consists of, or includes, a claim for a whiplash injury, started under the RTA Protocol, the only sums (exclusive of VAT) that are recoverable in respect of the cost of obtaining a fixed cost medical report or medical records are as follows—
- (a) obtaining the first report from an accredited medical expert selected via the MedCo Portal: £180;
  - (b) obtaining a further report where justified from an expert from one of the following disciplines—
    - (i) Consultant Orthopaedic Surgeon (inclusive of a review of medical records where applicable): £420;
    - (ii) Consultant in Accident and Emergency Medicine: £360;
    - (iii) General Practitioner registered with the General Medical Council: £180; or
    - (iv) Physiotherapist registered with the Health and Care Professions Council: £180;
  - (c) obtaining medical records: no more than £30 plus the direct cost from the holder of the records, and limited to £80 in total for each set of records required. Where relevant records are required from more than one holder of records, the fixed fee applies to each set of records required;
  - (d) addendum report on medical records (except by Consultant Orthopaedic Surgeon): £50; and
  - (e) answer to questions under Part 35: £80.

- (2B) Save in exceptional circumstances, no fee may be allowed for the cost of obtaining a report to which paragraph (2A) applies where the medical expert—
- (a) has provided treatment to the claimant;
  - (b) is associated with any person who has provided treatment; or
  - (c) proposes or recommends treatment that they or an associate then provide.
- (2C) The cost of obtaining a further report from an expert not listed in paragraph (2A)(b) is not fixed, but the use of that expert and the cost must be justified.
- (2D) Where appropriate, VAT may be recovered in addition to the cost of obtaining a fixed cost medical report or medical records.
- (2E) In this rule, ‘accredited medical expert’, ‘associate’, ‘associated with’, ‘fixed cost medical report’ ‘MedCo’, ‘soft tissue injury claim’ and ‘whiplash injury’ have the same meaning as in paragraph 1.1(A1), (1A), (10A), (12A), (16A) and (20), respectively, of the RTA Protocol.
- (3) In a claim started under the RTA Protocol only, the disbursements referred to in paragraph (1) are also the cost of—
- (a) an engineer’s report; and
  - (b) a search of the records of the—
    - (i) Driver Vehicle Licensing Authority; and
    - (ii) Motor Insurance Database.

#### **45.29J Claims for an amount of costs exceeding fixed recoverable costs**

- (1) If it considers that there are exceptional circumstances making it appropriate to do so, the court will consider a claim for an amount of costs (excluding disbursements) which is greater than the fixed recoverable costs referred to in rules 45.29B to 45.29H.
- (2) If the court considers such a claim to be 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 to be appropriate, it will make an order—
  - (a) if the claim is made by the claimant, for the fixed recoverable costs; or
  - (b) if the claim is made by the defendant, for a sum which has regard to, but which does not exceed the fixed recoverable costs,
 and any permitted disbursements only.

#### **45.29K Failure to achieve costs greater than fixed recoverable costs**

- (1) This rule applies where—
  - (a) costs are assessed in accordance with rule 45.29J(2); and
  - (b) the court assesses the costs (excluding any VAT) as being an amount which is in a sum less than 20% greater than the amount of the fixed recoverable costs.
- (2) The court will make an order for the party who made the claim to be paid the lesser of—
  - (a) the fixed recoverable costs; and
  - (b) the assessed costs.

#### **45.29L Costs of the costs-only proceedings or the detailed assessment**

- (1) Where—
  - (a) the court makes an order for costs in accordance with rule 45.29J(3); or
  - (b) rule 45.29K applies,
 the court may—
  - (i) decide not to award the party making the claim the costs of the costs only proceedings or detailed assessment; and
  - (ii) make orders in relation to costs that may include an order that the party making the claim pay the costs of the party defending those proceedings or that assessment.

## **SECTION IIIB: PRE-ACTION PROTOCOL FOR PERSONAL INJURY CLAIMS BELOW THE SMALL CLAIMS LIMIT IN ROAD TRAFFIC ACCIDENTS**

### **45.29M Failure to comply with, or continue under, the RTA Small Claims Protocol**

- (1) This rule applies where the claimant—
- (a) does not comply with the process set out in the Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents (“the RTA Small Claims Protocol”); or
  - (b) either—
    - (i) elects not to continue with that process;
    - (ii) elects not to proceed with that process having been notified by the defendant pursuant to paragraph 6.15(4)(b) of the RTA Protocol that if proceedings were issued, the small claims track would be the normal track for that claim, and starts proceedings under Part 7 which are not allocated to the small claims track.
- (2) Where a judgment is given in favour of the claimant, but—
- (a) the court considers that the claimant acted unreasonably—
    - (i) by valuing the overall claim at more than £10,000 or the claim for damages for injury at more than £5,000, so that the claimant did not need to comply with the RTA Small Claims Protocol;
    - (ii) by electing not to proceed under the RTA Small Claims Protocol, following notification pursuant to paragraph 6.15(4)(b) of the RTA Protocol; or
    - (iii) in any other way that caused the process in the RTA Small Claims Protocol to be discontinued; or
  - (b) the claimant did not comply with the RTA Small Claims Protocol at all despite the claim falling within the scope of the Protocol,
- the court may order the defendant to pay no more than the fixed costs together with disbursements allowed in accordance with paragraphs 1.13 and 1.14 of Practice Direction 27B.

### **45.29N Claims which do not continue under the RTA Small Claims Protocol**

- (1) This rule applies where—
- (a) a claim has been started under the RTA Small Claims Protocol, but no longer continues under that Protocol; and
  - (b) the claim has not subsequently proceeded under the RTA Protocol.
- (2) Where this rule applies, Section IIIA will apply as though the claim had started under the RTA Protocol, except where—
- (a) the court makes an order under rule 45.29M;
  - (b) the claim no longer continues under the RTA Small Claims Protocol because either the claimant or defendant becomes a protected party as defined in rule 21.2(2).

## **SECTION IV: SCALE COSTS FOR CLAIMS IN THE INTELLECTUAL PROPERTY ENTERPRISE COURT**

### **45.30 Scope and interpretation**

- (1) Subject to paragraph (2), this Section applies to proceedings in the Intellectual Property Enterprise 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 or by the Comptroller-General of Patents, Designs and Trade Marks 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.

### **45.31 Amount of scale costs**

- (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.
- (4A) Subject to assessment where appropriate, the following may be recovered in addition to the amount of the scale costs set out in Practice Direction 45 – Fixed Costs—
- (a) court fees;
  - (b) costs relating to the enforcement of any court order; and
  - (c) wasted costs.
- (5) Where appropriate, 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.

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

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**

#### **45.33 Scope, interpretation and application**

- (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 and authorised to conduct county court proceedings for recovery of debt under section 25(1A) 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.

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

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*

<b>Fixed costs on commencement of a County Court claim conducted by an HMRC Officer</b>	
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
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

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

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

#### 45.36 When the defendant is only liable for fixed commencement costs

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

#### 45.37 Scope of this Section

- (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.

#### 45.38 Amount of fast track trial costs

- (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; and
  - (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.

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

- (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.

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

- (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

### 45.41 Scope and interpretation

- (1) This section provides for the costs which are to be recoverable between the parties in Aarhus Convention claims.
- (2) In this Section—
- (a) “Aarhus Convention claim” means a claim brought by one or more members of the public by judicial review or review under statute which challenges the legality of any decision, act or omission of a body exercising public functions, and which is within the scope of Article 9(1), 9(2) or 9(3) 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 (“the Aarhus Convention”);
  - (b) references to a member or members of the public are to be construed in accordance with the Aarhus Convention.
- (3) This Section does not apply to appeals other than appeals brought under section 289(1) of the Town and Country Planning Act 1990 or section 65(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which are for the purposes of this Section to be treated as reviews under statute.

(Rule 52.19A makes provision in relation to costs of an appeal.)

The Aarhus Convention is available on the UNECE website at <https://www.unece.org/env/pp/welcome.html>.)

### 45.42 Opting out, and other cases where rules 45.43 to 45.45 do not apply to a claimant

- (1) Subject to paragraph (2), rules 45.43 to 45.45 apply where a claimant who is a member of the public has—
- (a) stated in the claim form that the claim is an Aarhus Convention claim; and
  - (b) filed and served with the claim form a schedule of the claimant’s financial resources which takes into account any financial support which any person has provided or is likely to provide to the claimant and which is verified by a statement of truth.
- (2) Subject to paragraph (3), rules 45.43 to 45.45 do not apply where the claimant has stated in the claim form that although the claim is an Aarhus Convention claim, the claimant does not wish those rules to apply.
- (3) If there is more than one claimant, rules 45.43 to 45.45 do not apply in relation to the costs payable by or to any claimant who has not acted as set out in paragraph (1), or who has acted as set out in paragraph (2), or who is not a member of the public.

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

- (1) Subject to rules 45.42 and 45.45, a claimant or defendant in an Aarhus Convention claim may not be ordered to pay costs exceeding the amounts in paragraph (2) or (3) or as varied in accordance with rule 45.44.
- (2) For a claimant the amount is—
- (a) £5,000 where the claimant is claiming only as an individual and not as, or on behalf of, a business or other legal person;
  - (b) £10,000 in all other cases.
- (3) For a defendant the amount is £35,000.
- (4) In an Aarhus Convention claim with multiple claimants or multiple defendants, the amounts in paragraphs (2) and (3) (subject to any direction of the court under rule 45.44) apply in relation to each such claimant or defendant individually and may not be exceeded, irrespective of the number of receiving parties.

### 45.44 Varying the limit on costs recoverable from a party in an Aarhus Convention claim

- (1) The court may vary the amounts in rule 45.43 or may remove altogether the limits on the maximum costs liability of any party in an Aarhus Convention claim.
- (2) The court may vary such an amount or remove such a limit only if satisfied that—

- (a) to do so would not make the costs of the proceedings prohibitively expensive for the claimant; and
  - (b) in the case of a variation which would reduce a claimant's maximum costs liability or increase that of a defendant, without the variation the costs of the proceedings would be prohibitively expensive for the claimant.
- (3) Proceedings are to be considered prohibitively expensive for the purpose of this rule if their likely costs (including any court fees which are payable by the claimant) either—
- (a) exceed the financial resources of the claimant; or
  - (b) are objectively unreasonable having regard to—
    - (i) the situation of the parties;
    - (ii) whether the claimant has a reasonable prospect of success;
    - (iii) the importance of what is at stake for the claimant;
    - (iv) the importance of what is at stake for the environment;
    - (v) the complexity of the relevant law and procedure; and
    - (vi) whether the claim is frivolous.
- (4) When the court considers the financial resources of the claimant for the purposes of this rule, it must have regard to any financial support which any person has provided or is likely to provide to the claimant.
- (Rule 39.2(3)(c) makes provision for a hearing (or any part of it) to be in private if it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality.)

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

- (1) Where a claimant has complied with rule 45.42(1), and subject to rule 45.42(2) and (3), rule 45.43 will apply unless—
- (a) the defendant has in the acknowledgment of service—
    - (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 denies that the claim is an Aarhus Convention claim, the court must 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 to be assessed on the standard basis, and that order may be enforced even if this would increase the costs payable by the defendant beyond the amount stated in rule 45.43(3) or any variation of that amount.

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## **PRACTICE DIRECTION 45: FIXED COSTS**

*This Practice Direction supplements Part 45*

<b>Contents of this Practice Direction</b>	
<b>Title</b>	<b>Number</b>
<i>Section I of Part 45 – Fixed Costs</i>	
Fixed costs in small claims	Para 1.1–1.2
Claims to which Part 45 does not apply	Para 1.3
<i>Section II of Part 45 – Road Traffic Accidents: Fixed Recoverable Costs in Costs-only Proceedings</i>	

Scope	Para 2.1–2.4
Fixed recoverable costs formula	Para 2.5
Additional costs for work in specified areas	Para 2.6
Multiple claimants	Para 2.7
Information to be included in the claim form	Para 2.8–2.9
Disbursements	Para 2.10
<i>Section IV of Part 45 – Scale Costs for Proceedings in a Patents County Court</i>	
Tables A and B	Para 3
<i>Section VI of Part 45 – Fast Track Trial Costs</i>	
<i>Section VII of Part 45 – Costs Limits in Aarhus Convention Claims</i>	
Limit on costs recoverable from a party in an Aarhus Convention claim: rule 45.43	Para 5

## SECTION I OF PART 45 – FIXED COSTS

### Fixed costs in small claims

1.1 Under Rule 27.14 the costs which can be awarded to a claimant in a small claim include the fixed costs payable under Part 45 attributable to issuing the claim.

1.2 Those fixed costs are the sum of—

- (a) the fixed commencement costs calculated in accordance with Table 1 of Rule 45.2;
- (b) the appropriate court fee or fees paid by the claimant.

### Claims to which Part 45 does not apply

1.3 In a claim to which Part 45 does not apply, no amount shall be entered on the claim form for the charges of the claimant’s legal representative, but the words “to be assessed” shall be inserted.

## SECTION II OF PART 45 – ROAD TRAFFIC ACCIDENTS: FIXED RECOVERABLE COSTS IN COSTS-ONLY PROCEEDINGS

### Scope

2.1 Section II of Part 45 (‘the Section’) provides for certain fixed costs to be recoverable between parties in respect of costs incurred in disputes which are settled prior to proceedings being issued. The Section applies to road traffic accident disputes as defined in rule 45.9(4)(a), where the accident which gave rise to the dispute occurred on or after 6th October 2003.

2.2 The Section does not apply to disputes where the total agreed value of the damages is within the small claims limit or exceeds £10,000. Rule 26.8(2) sets out how the financial value of a claim is assessed for the purposes of allocation to track.

2.3 Fixed recoverable costs are to be calculated by reference to the amount of agreed damages which are payable to the receiving party. In calculating the amount of these damages—

- (a) account must be taken of both general and special damages and interest;
- (b) any interim payments made must be included;
- (c) where the parties have agreed an element of contributory negligence, the amount of damages attributed to that negligence must be deducted;
- (d) any amount required by statute to be paid by the compensating party directly to a third party (such as sums paid by way of compensation recovery payments and National Health Service expenses) must not be included.

2.4 The Section applies to cases which fall within the scope of the Uninsured Drivers Agreement dated 13 August 1999. The section does not apply to cases which fall within the scope of the Untraced Drivers Agreement dated 14 February 2003.

### Fixed recoverable costs formula

2.5 The amount of fixed costs recoverable is the sum of—

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

(c) 15% of the agreed damages between £5,000 and £10,000.

For example, agreed damages of £7,523 would result in recoverable costs of £2,178.45 i.e. £800 + (20% of £5,000) + (15% of £2,523).

### **Additional costs for work in specified areas**

2.6 The area referred to in rules 45.11(2) and 45.18(5) consists of (within London) the county court districts of Barnet, Bow, Brentford, Central London, Clerkenwell and Shoreditch, Edmonton, Ilford, Lambeth, Mayors and City of London, Romford, Wandsworth, West London, Willesden and Woolwich and (outside London) the county court districts of Bromley, Croydon, Dartford, Gravesend and Uxbridge.

### **Multiple claimants**

2.7 Where two or more potential claimants instruct the same legal representative, the provisions of the section apply in respect of each claimant.

### **Information to be included in the claim form**

2.8 Costs only proceedings are commenced using the procedure set out in rule 46.14. A claim form should be issued in accordance with Part 8. Where the claimant is claiming an amount of costs which exceed the amount of the fixed recoverable costs the claim form must give details of the exceptional circumstances to justify the additional costs.

2.9 The claimant must also include on the claim form details of any disbursements. The disbursements that may be claimed are set out in rule 45.12(1). If the disbursement falls within 45.12(2)(c) (disbursements that have arisen due to a particular feature of the dispute) the claimant must give details of the particular feature of the dispute that made the disbursement necessary.

### **Disbursements**

2.10 If the parties agree the amount of the fixed recoverable costs and the only dispute is as to the payment of, or amount of, a disbursement, then proceedings should be issued under rule 46.14.

## **SECTION IV OF PART 45 – SCALE COSTS FOR PROCEEDINGS IN A PATENTS COUNTY COURT**

### **Tables A and B**

3.1 Tables A and B set out the maximum amount of scale costs which the court will award for each stage of a claim in a patents county court.

3.2 Table A sets out the scale costs for each stage of a claim up to determination of liability.

3.3 Table B sets out the scale costs for each stage of an inquiry as to damages or account of profits.

#### *Table A*

Stage of a claim	Maximum amount of costs
Particulars of claim	£6,125
Defence and counterclaim	£6,125
Reply and defence to counterclaim	£6,125
Reply to defence to counterclaim	£3,000
Attendance at a case management conference	£2,500
Making or responding to an application	£2,500
Providing or inspecting disclosure or product/process description	£5,000
Performing or inspecting experiments	£2,500
Preparing witness statements	£5,000
Preparing experts' report	£7,500
Preparing for and attending trial and judgment	£15,000
Preparing for determination on the papers	£5,000

Table B

Stage of a claim	Maximum amount of costs
Points of claim	£2,500
Points of defence	£2,500
Attendance at a case management conference	£2,500
Making or responding to an application	£2,500
Providing or inspecting disclosure	£2,500
Preparing witness statements	£5,000
Preparing experts' report	£5,000
Preparing for and attending trial and judgment	£7,500
Preparing for determination on the papers	£2,500

### SECTION VI OF PART 45 – FAST TRACK TRIAL COSTS

#### Scope

4.1 Section VI of Part 45 applies to the costs of an advocate for preparing for and appearing at the trial of a claim in the fast track.

4.2 It applies only where, at the date of the trial, the claim is allocated to the fast track. It does not apply in any other case, irrespective of the final value of the claim.

4.3 In particular it does not apply to a disposal hearing at which the amount to be paid under a judgment or order is decided by the court (see paragraph 12.4 of Practice Direction 26)).

### SECTION VII OF PART 45 – COSTS LIMITS IN AARHUS CONVENTION CLAIMS

#### Limit on costs recoverable from a party in an Aarhus Convention claim: rule 45.43

5.1 Where a claimant is ordered to pay costs, the amount specified for the purpose of rule 45.43(1) is—

- (a) £5,000 where the claimant is claiming only as an individual and not as, or on behalf of, a business or other legal person;
- (b) in all other cases, £10,000.

5.2 Where a defendant is ordered to pay costs, the amount specified for the purpose of rule 45.43(1) is £35,000.

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## PART 46: COSTS – SPECIAL CASES

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## SECTION I: COSTS PAYABLE BY OR TO PARTICULAR PERSONS

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

- (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.

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

- (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).

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

- (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.

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

- (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 45
    - (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 paragraph (5) or 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.)
- (5) Where the costs payable comprise only the success fee claimed by the child's or protected party's legal representative under a conditional fee agreement or the balance of any payment under a damages based agreement, the court may direct that—
- (a) the assessment procedure referred to in rule 46.10 and paragraph 6 of Practice Direction 46 shall not apply; and
  - (b) such costs be assessed summarily.

### **46.5 Litigants in person**

- (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; or
    - (v) a person who, for the purposes of the 2007 Act, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act).

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

- (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 a group litigant who is the paying party will, in addition to any liability to pay the receiving party, be liable for—
- (a) the individual costs of that group litigant's 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.)

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

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

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

- (1) This rule applies where the court is considering whether to make an order under section 51(6) of the Senior Courts Act 1981 (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.

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

- (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 or the Access to Justice Act 1999.
- (2) Section 74(3) of the Solicitors Act 1974 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.

#### **46.10 Assessment procedure**

- (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**

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

- (1) Part 27 (small claims) and Part 45 Section VI (fast track trial costs) contain special rules about—
  - (a) liability for costs;
  - (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.

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

- (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.

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

- (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**

### **46.14 Costs-only proceedings**

- (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.
- (1A) This rule does not apply to a dispute to which the procedure under section 10 of Practice Direction 27B applies.
- (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.

## **SECTION V: COSTS IN CLAIMS FOR JUDICIAL REVIEW**

### **46.15 Claims for judicial review: costs against interveners**

- (1) In this rule the terms “intervener” and “relevant party” have the same meaning as in section 87 of the Criminal Justice and Courts Act 2015 (“the 2015 Act”).
- (2) A relevant party may apply to the court for an order for an intervener to pay costs in accordance with section 87 of the 2015 Act.

(Section 87 of the 2015 Act applies to judicial review proceedings in the High Court and Court of Appeal.)

(Rule 54.17 makes provision for any person to be able to apply for permission to file evidence or make representations at the hearing of a judicial review.)

## **SECTION VI: JUDICIAL REVIEW COSTS CAPPING ORDERS UNDER PART 4 OF THE CRIMINAL JUSTICE AND COURTS ACT 2015**

### **46.16 Judicial review costs capping orders – general**

- (1) For the purposes of this Section—
- (a) “judicial review costs capping order” means a costs capping order made by the High Court or the Court of Appeal in accordance with sections 88, 89 and 90 of the 2015 Act; and

(b) “the 2015 Act” means the Criminal Justice and Courts Act 2015.

(2) This Section does not apply to a costs capping order under rule 3.19.

(Rule 3.19 makes provision for orders limiting the amount of future costs (including disbursements) which a party may recover pursuant to an order for costs subsequently made.)

#### **46.17 Applications for judicial review costs capping orders**

(1) An application for a judicial review costs capping order must—

(a) be made on notice and, subject to paragraphs (2) and (3), in accordance with Part 23; and

(b) be supported by evidence setting out—

(i) why a judicial review costs capping order should be made, having regard, in particular, to the matters at sub-sections (6) to (8) of section 88 of the 2015 Act and sub-section (1) of section 89 of that Act;

(ii) a summary of the applicant’s financial resources;

(iii) the costs (and disbursements) which the applicant considers the parties are likely to incur in the future conduct of the proceedings; and

(iv) if the applicant is a body corporate, whether it is able to demonstrate that it is likely to have financial resources available to meet liabilities arising in connection with the proceedings.

(2) Subject to paragraph (3), the applicant must serve a copy of the application notice and copies of the supporting documents on every other party.

(3) On application by the applicant, the court may dispense with the need for the applicant to serve the evidence setting out a summary of the applicant’s financial resources on one or more of the parties.

(4) The court may direct the applicant to provide additional information or evidence to support its application.

#### **46.18 Court to consider making directions**

If the applicant is a body corporate, and the evidence supporting its application in accordance with rule 46.17(1)(b)(iv) sets out that it is unable to demonstrate that it is likely to have financial resources available to meet liabilities arising in connection with the proceedings, the court must consider giving directions for the provision of information about the applicant’s members and their ability to provide financial support for the purposes of the proceedings.

#### **46.19 Applications to vary judicial review costs capping orders**

(1) An application to vary a judicial review costs capping order must be made on notice and, subject to paragraphs (2) and (3), in accordance with Part 23.

(2) Subject to paragraph (3), the applicant must serve a copy of the application notice and copies of any supporting documents on every other party.

(3) If the application is supported by evidence setting out a summary of the applicant’s financial resources, the court may, on application by the applicant, dispense with the need for the applicant to serve such evidence on one or more of the parties.

## **PRACTICE DIRECTION 46: COSTS SPECIAL CASES**

*This Practice Direction supplements Part 46*

<b>Contents of this Practice Direction</b>	
<b>Title</b>	<b>Number</b>
Awards of costs in favour of a trustee or personal representative: rule 46.3	Para 1
Costs where money is payable by or to a child or protected party: rule 46.4	Para 2
Litigants in person: rule 46.5	Para 3
Orders in respect of pro bono representation: rule 46.7	Para 4