
STATUTORY INSTRUMENTS

1998 No. 3132

The Civil Procedure Rules 1998

PART 1

OVERRIDING OBJECTIVE

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The overriding objective

1.1.—(1) These Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly.

(2) Dealing with a case justly includes, so far as is practicable—

- (a) ensuring that the parties are on an equal footing;
- (b) saving expense;
- (c) dealing with the case in ways which are proportionate—
 - (i) to the amount of money involved;
 - (ii) to the importance of the case;
 - (iii) to the complexity of the issues; and
 - (iv) to the financial position of each party;
- (d) ensuring that it is dealt with expeditiously and fairly; and
- (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

Application by the court of the overriding objective

1.2 The court must seek to give effect to the overriding objective when it—

- (a) exercises any power given to it by the Rules; or
- (b) interprets any rule.

Duty of the parties

1.3 The parties are required to help the court to further the overriding objective.

Court's duty to manage cases

- 1.4.—(1) The court must further the overriding objective by actively managing cases.
- (2) Active case management includes —
- (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
 - (b) identifying the issues at an early stage;
 - (c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
 - (d) deciding the order in which issues are to be resolved;
 - (e) encouraging the parties to use an alternative dispute resolution^(GL) procedure if the court considers that appropriate and facilitating the use of such procedure;
 - (f) helping the parties to settle the whole or part of the case;
 - (g) fixing timetables or otherwise controlling the progress of the case;
 - (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;
 - (i) dealing with as many aspects of the case as it can on the same occasion;
 - (j) dealing with the case without the parties needing to attend at court;
 - (k) making use of technology; and
 - (l) giving directions to ensure that the trial of a case proceeds quickly and efficiently.

PART 2**APPLICATION AND INTERPRETATION OF THE RULES****Contents of this Part**

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Application of the Rules

2.1.—(1) Subject to paragraph (2), these Rules apply to all proceedings in—

- (a) county courts;
- (b) the High Court; and
- (c) the Civil Division of the Court of Appeal.

(2) These Rules do not apply to proceedings of the kinds specified in the first column of the following Table (proceedings for which rules may be made under the enactments specified in the second column) except to the extent that they are applied to those proceedings by another enactment—

<i>Proceedings</i>	<i>Enactments</i>
1. Insolvency proceedings	Insolvency Act 1986 (1) , ss.411 and 412
2. Non-contentious or common form probate proceedings	Supreme Court Act 1981 (2) , s.127
3. Proceedings in the High Court when acting as a Prize Court	Prize Courts Act 1894 (3) , s.3
4. Proceedings before the judge within the meaning of Part VII of the Mental Health Act 1983 (4)	Mental Health Act 1983, s.106
5. Family proceedings	Matrimonial and Family Proceedings Act 1984 (5) , s.40

The glossary

2.2.—(1) The glossary at the end of these Rules is a guide to the meaning of certain legal expressions used in the Rules, but is not to be taken as giving those expressions any meaning in the Rules which they do not have in the law generally.

(2) Subject to paragraph (3), words in these Rules which are included in the glossary are followed by “(GL)”.

(3) The words ‘counterclaim’, ‘damages’, ‘practice form’ and ‘service’, which appear frequently in the Rules, are included in the glossary but are not followed by “(GL)”.

Interpretation

2.3.—(1) In these Rules—

“child” has the meaning given by rule 21.1(2);

“claim for personal injuries” means proceedings in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person’s death, and “personal injuries” includes any disease and any impairment of a person’s physical or mental condition;

“claimant” means a person who makes a claim;

(1) 1986 c. 45.

(2) 1981 c. 54.

(3) 1894 c. 39.

(4) 1983 c. 20.

(5) 1984 c. 42. Section 40 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 50.

“CCR” is to be interpreted in accordance with Part 50;

“court officer” means a member of the court staff;

“defendant” means a person against whom a claim is made;

“defendant’s home court” means—

- (a) if the claim is proceeding in a county court, the county court for the district in which the defendant’s address for service, as shown on the defence, is situated; and
- (b) if the claim is proceeding in the High Court, the district registry for the district in which the defendant’s address for service, as shown on the defence, is situated or, if there is no such district registry, the Royal Courts of Justice;

(Rule 6.5 provides for a party to give an address for service)

“filing”, in relation to a document, means delivering it, by post or otherwise, to the court office;

“judge” means, unless the context otherwise requires, a judge, Master or district judge or a person authorised to act as such;

“jurisdiction” means, unless the context otherwise requires, England and Wales and any part of the territorial waters of the United Kingdom adjoining England and Wales;

“legal representative” means a barrister or a solicitor, solicitor’s employee or other authorised litigator (as defined in the Courts and Legal Services Act 1990⁽⁶⁾) who has been instructed to act for a party in relation to a claim;

“litigation friend” has the meaning given by Part 21;

“patient” has the meaning given by rule 21.1(2);

“RSC” is to be interpreted in accordance with Part 50;

“statement of case”—

- (a) means a claim form, particulars of claim where these are not included in a claim form, defence, Part 20 claim, or reply to defence; and
- (b) includes any further information given in relation to them voluntarily or by court order under rule 18.1;

“statement of value” is to be interpreted in accordance with rule 16.3;

“summary judgment” is to be interpreted in accordance with Part 24.

(2) A reference to a “specialist list” is a reference to a list^(GL) that has been designated as such by a relevant practice direction.

(3) Where the context requires, a reference to “the court” means a reference to a particular county court, a district registry, or the Royal Courts of Justice.

Power of judge, Master or district judge to perform functions of the court

2.4 Where these Rules provide for the court to perform any act then, except where an enactment, rule or practice direction provides otherwise, that act may be performed—

- (a) in relation to proceedings in the High Court, by any judge, Master or district judge of that Court; and
- (b) in relation to proceedings in a county court, by any judge or district judge.

⁽⁶⁾ 1990 c. 41.

Court staff

2.5.—(1) Where these Rules require or permit the court to perform an act of a formal or administrative character, that act may be performed by a court officer.

(2) A requirement that a court officer carry out any act at the request of a party is subject to the payment of any fee required by a Fees Order for the carrying out of that act.

(Rule 3.2 allows a court officer to refer to a judge before taking any step)

Court documents to be sealed

2.6.—(1) The court must seal^(GL) the following documents on issue—

- (a) the claim form; and
- (b) any other document which a rule or practice direction requires it to seal.

(2) The court may place the seal^(GL) on the document—

- (a) by hand; or
- (b) by printing a facsimile of the seal on the document whether electronically or otherwise.

(3) A document purporting to bear the court's seal^(GL) shall be admissible in evidence without further proof.

Court's discretion as to where it deals with cases

2.7 The court may deal with a case at any place that it considers appropriate.

Time

2.8.—(1) This rule shows how to calculate any period of time for doing any act which is specified—

- (a) by these Rules;
- (b) by a practice direction; or
- (c) by a judgment or order of the court.

(2) A period of time expressed as a number of days shall be computed as clear days.

(3) In this rule “clear days” means that in computing the number of days—

- (a) the day on which the period begins; and
- (b) if the end of the period is defined by reference to an event, the day on which that event occurs,

are not included.

Examples

- (i) Notice of an application must be served at least 3 days before the hearing.

An application is to be heard on Friday 20 October.

The last date for service is Monday 16 October.

- (ii) The court is to fix a date for a hearing.

The hearing must be at least 28 days after the date of notice.

If the court gives notice of the date of the hearing on 1 October, the earliest date for the hearing is 30 October.

- (iii) Particulars of claim must be served within 14 days of service of the claim form.

The claim form is served on 2 October.

The last day for service of the particulars of claim is 16 October.

- (4) Where the specified period—
- (a) is 5 days or less; and
 - (b) includes—
 - (i) a Saturday or Sunday; or
 - (ii) a Bank Holiday, Christmas Day or Good Friday,that day does not count.

Example

Notice of an application must be served at least 3 days before the hearing.

An application is to be heard on Monday 20 October.

The last date for service is Tuesday 14 October.

- (5) When the period specified—
- (a) by these Rules or a practice direction; or
 - (b) by any judgment or court order,

for doing any act at the court office ends on a day on which the office is closed, that act shall be in time if done on the next day on which the court office is open.

Dates for compliance to be calendar dates and to include time of day

2.9.—(1) Where the court gives a judgment, order or direction which imposes a time limit for doing any act, the last date for compliance must, wherever practicable—

- (a) be expressed as a calendar date; and
- (b) include the time of day by which the act must be done.

(2) Where the date by which an act must be done is inserted in any document, the date must, wherever practicable, be expressed as a calendar date.

Meaning of “month” in judgments, etc.

2.10 Where “month” occurs in any judgment, order, direction or other document, it means a calendar month.

Time limits may be varied by parties

2.11 Unless these Rules or a practice direction provide otherwise or the court orders otherwise, the time specified by a rule or by the court for a person to do any act may be varied by the written agreement of the parties.

(Rules 3.8 (sanctions have effect unless defaulting party obtains relief), 28.4 (variation of case management timetable—fast track) and 29.5 (variation of case management timetable—multi-track) provide for time limits that cannot be varied by agreement between the parties)

PART 3

THE COURT'S CASE MANAGEMENT POWERS

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The court's general powers of management

3.1.—(1) The list of powers in this rule is in addition to any powers given to the court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.

(2) Except where these Rules provide otherwise, the court may —

- (a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired);
- (b) adjourn or bring forward a hearing;
- (c) require a party or a party's legal representative to attend the court;
- (d) hold a hearing and receive evidence by telephone or by using any other method of direct oral communication;
- (e) direct that part of any proceedings (such as a counterclaim) be dealt with as separate proceedings;
- (f) stay^(GL) the whole or part of any proceedings or judgment either generally or until a specified date or event;
- (g) consolidate proceedings;
- (h) try two or more claims on the same occasion;
- (i) direct a separate trial of any issue;
- (j) decide the order in which issues are to be tried;
- (k) exclude an issue from consideration;
- (l) dismiss or give judgment on a claim after a decision on a preliminary issue;

- (m) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective.
- (3) When the court makes an order, it may —
 - (a) make it subject to conditions, including a condition to pay a sum of money into court; and
 - (b) specify the consequence of failure to comply with the order or a condition.
- (4) Where the court gives directions it may take into account whether or not a party has complied with any relevant pre-action protocol^(GL).
- (5) The court may order a party to pay a sum of money into court if that party has, without good reason, failed to comply with a rule, practice direction or a relevant pre-action protocol.
- (6) When exercising its power under paragraph (5) the court must have regard to—
 - (a) the amount in dispute; and
 - (b) the costs which the parties have incurred or which they may incur.
- (7) A power of the court under these Rules to make an order includes a power to vary or revoke the order.

Court officer's power to refer to a judge

- 3.2** Where a step is to be taken by a court officer—
- (a) the court officer may consult a judge before taking that step;
 - (b) the step may be taken by a judge instead of the court officer.

Court's power to make order of its own initiative

3.3.—(1) Except where a rule or some other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.

(Part 23 sets out the procedure for making an application)

- (2) Where the court proposes to make an order of its own initiative—
 - (a) it may give any person likely to be affected by the order an opportunity to make representations; and
 - (b) where it does so it must specify the time by and the manner in which the representations must be made.
- (3) Where the court proposes—
 - (a) to make an order of its own initiative; and
 - (b) to hold a hearing to decide whether to make the order,

it must give each party likely to be affected by the order at least 3 days' notice of the hearing.

(4) The court may make an order of its own initiative without hearing the parties or giving them an opportunity to make representations.

- (5) Where the court has made an order under paragraph (4)—
 - (a) a party affected by the order may apply to have it set aside^(GL), varied or stayed^(GL); and
 - (b) the order must contain a statement of the right to make such an application.
- (6) An application under paragraph (5)(a) must be made—
 - (a) within such period as may be specified by the court; or
 - (b) if the court does not specify a period, not more than 7 days after the date on which the order was served on the party making the application.

Power to strike out a statement of case

3.4.—(1) In this rule and rule 3.5, reference to a statement of case includes reference to part of a statement of case.

- (2) The court may strike out^(GL) a statement of case if it appears to the court—
- (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
 - (b) that the statement of case is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of the proceedings; or
 - (c) that there has been a failure to comply with a rule, practice direction or court order.

(3) When the court strikes out a statement of case it may make any consequential order it considers appropriate.

- (4) Where—
- (a) the court has struck out a claimant’s statement of case;
 - (b) the claimant has been ordered to pay costs to the defendant; and
 - (c) before the claimant pays those costs, he starts another claim against the same defendant, arising out of facts which are the same or substantially the same as those relating to the claim in which the statement of case was struck out,

the court may, on the application of the defendant, stay^(GL) that other claim until the costs of the first claim have been paid.

- (5) Paragraph (2) does not limit any other power of the court to strike out^(GL) a statement of case.

Judgment without trial after striking out

3.5.—(1) This rule applies where—

- (a) the court makes an order which includes a term that the statement of case of a party shall be struck out if the party does not comply with the order; and
- (b) the party against whom the order was made does not comply with it.

(2) A party may obtain judgment with costs by filing a request for judgment if—

- (a) the order referred to in paragraph (1)(a) relates to the whole of a statement of case; and
- (b) where the party wishing to obtain judgment is the claimant, the claim is for—
 - (i) a specified amount of money;
 - (ii) an amount of money to be decided by the court;
 - (iii) delivery of goods where the claim form gives the defendant the alternative of paying their value; or
 - (iv) any combination of these remedies.

(3) The request must state that the right to enter judgment has arisen because the court’s order has not been complied with.

(4) A party must make an application in accordance with Part 23 if he wishes to obtain judgment under this rule in a case to which paragraph (2) does not apply.

Setting aside judgment entered after striking out

3.6.—(1) A party against whom the court has entered judgment under rule 3.5 may apply to the court to set the judgment aside.

(2) An application under paragraph (1) must be made not more than 14 days after the judgment has been served on the party making the application.

(3) If the right to enter judgment had not arisen at the time when judgment was entered, the court must set aside^(GL) the judgment.

(4) If the application to set aside^(GL) is made for any other reason, rule 3.9 (relief from sanctions) shall apply.

Sanctions for non—payment of certain fees

3.7.—(1) This rule applies where—

- (a) an allocation questionnaire or a listing questionnaire is filed without payment of the fee specified by the relevant Fees Order; or
- (b) the court dispenses with the need for an allocation questionnaire or a listing questionnaire or both; or
- (c) these Rules do not require an allocation questionnaire or a listing questionnaire to be filed in relation to the claim in question.

(Rule 26.3 provides for the court to dispense with the need for an allocation questionnaire and rules 28.5 and 29.6 provide for the court to dispense with the need for a listing questionnaire)

(2) The court will serve a notice on the claimant requiring payment of the fee which the relevant Fees Order specifies as being due—

- (a) on the filing of the allocation questionnaire or the listing questionnaire; or
- (b) in the circumstances where the claimant is not required to file an allocation questionnaire or a listing questionnaire,

if, at the time the fee is due, the claimant has not paid the fee or made an application for exemption from or remission of the fee.

(3) The notice will specify the date by which the claimant must pay the fee.

(4) If the claimant does not—

- (a) pay the fee; or
- (b) make an application for an exemption from or remission of the fee,

by the date specified in the notice—

- (i) the claim shall be struck out; and
- (ii) the claimant shall be liable for the costs which the defendant has incurred unless the court orders otherwise.

(Rule 44.12 provides for the basis of assessment where a right to costs arises under this rule)

(5) Where an application for exemption from or remission of a fee is refused, the court will serve notice on the claimant requiring payment of the fee by the date specified in the notice.

(6) If the claimant does not pay the fee by the date specified in the notice—

- (a) the claim shall be struck out; and
- (b) the claimant shall be liable for the costs which the defendant has incurred unless the court orders otherwise.

(7) If—

- (a) a claimant applies under rule 3.9 (relief from sanctions) to have the claim reinstated; and
- (b) the court grants relief under that rule,

the relief shall be conditional on the claimant—

- (i) paying the fee; or
 - (ii) filing evidence of exemption from payment or remission of the fee,
- within 2 days of the date of the order.

Sanctions have effect unless defaulting party obtains relief

3.8.—(1) Where a party has failed to comply with a rule, practice direction or court order, any sanction for failure to comply imposed by the rule, practice direction or court order has effect unless the party in default applies for and obtains relief from the sanction.

(Rule 3.9 sets out the circumstances which the court may consider on an application to grant relief from a sanction)

(2) Where the sanction is the payment of costs, the party in default may only obtain relief by appealing against the order for costs.

(3) Where a rule, practice direction or court order—

- (a) requires a party to do something within a specified time, and
- (b) specifies the consequence of failure to comply,

the time for doing the act in question may not be extended by agreement between the parties.

Relief from sanctions

3.9.—(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order the court will consider all the circumstances including—

- (a) the interests of the administration of justice;
 - (b) whether the application for relief has been made promptly;
 - (c) whether the failure to comply was intentional;
 - (d) whether there is a good explanation for the failure;
 - (e) the extent to which the party in default has complied with other rules, practice directions, court orders and any relevant pre-action protocol^(GL);
 - (f) whether the failure to comply was caused by the party or his legal representative;
 - (g) whether the trial date or the likely trial date can still be met if relief is granted;
 - (h) the effect which the failure to comply had on each party; and
 - (i) the effect which the granting of relief would have on each party.
- (2) An application for relief must be supported by evidence.

General power of the court to rectify matters where there has been an error of procedure

3.10 Where there has been an error of procedure such as a failure to comply with a rule or practice direction—

- (a) the error does not invalidate any step taken in the proceedings unless the court so orders; and
- (b) the court may make an order to remedy the error.

PART 4

FORMS

4.—(1) The forms set out in a practice direction shall be used in the cases to which they apply.

(2) A form may be varied by the court or a party if the variation is required by the circumstances of a particular case.

(3) A form must not be varied so as to leave out any information or guidance which the form gives to the recipient.

(4) Where these Rules require a form to be sent by the court or by a party for another party to use, it must be sent without any variation except such as is required by the circumstances of the particular case.

(5) Where the court or a party produces a form shown in a practice direction with the words “Royal Arms”, the form must include a replica of the Royal Arms at the head of the first page.

PART 5

COURT DOCUMENTS

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Supply of documents from court records	Rule 5.4

Scope of this Part

5.1 This Part contains general provisions about—

- (a) documents used in court proceedings; and
- (b) the obligations of a court officer in relation to those documents.

Preparation of documents

5.2.—(1) Where under these Rules, a document is to be prepared by the court, the document may be prepared by the party whose document it is, unless—

- (a) a court officer otherwise directs; or
- (b) it is a document to which—
 - (i) CCR Order 25, rule 5(3) (reissue of enforcement proceedings);
 - (ii) CCR Order 25, rule 8(9) (reissue of warrant where condition upon which warrant was suspended has not been complied with); or
 - (iii) CCR Order 28, rule 11(1) (issue of warrant of committal),
 applies.

(2) Nothing in this rule shall require a court officer to accept a document which is illegible, has not been duly authorised, or is unsatisfactory for some other similar reason.

Signature of documents by mechanical means

5.3 Where any of these Rules or any practice direction requires a document to be signed, that requirement shall be satisfied if the signature is printed by computer or other mechanical means.

Supply of documents from court records

5.4.—(1) Any party to proceedings may be supplied from the records of the court with a copy of any document relating to those proceedings (including documents filed before the claim was commenced), provided that the party seeking the document—

- (a) pays any prescribed fee; and
- (b) files a written request for the document.

(2) Any other person who pays the prescribed fee may, during office hours, search for, inspect and take a copy of the following documents, namely—

- (a) a claim form which has been served;
- (b) any judgment or order given or made in public;
- (c) any other document if the court gives permission.

(3) An application for permission under paragraph (2)(c) may be made without notice.

(4) This rule does not apply in relation to any proceedings in respect of which a practice direction makes different provision.

PART 6

SERVICE OF DOCUMENTS

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I GENERAL RULES ABOUT SERVICE

Part 6 rules about service apply generally

6.1 The rules in this Part apply to the service of documents, except where—

- (a) any other enactment, a rule in another Part, or a practice direction makes a different provision; or
- (b) the court orders otherwise.

(Other rules which deal with service include the following—

- (a) service out of the jurisdiction—see RSC Order 11;
- (b) service on the Crown—see RSC Order 77 r.4 and CCR Order 42 r.7;
- (c) service in proceedings for the recovery of land and mortgage possession actions—see RSC Order 10 r.4 and CCR Order 7 rr.15 and 15A.)

Methods of service—general

6.2.—(1) A document may be served by any of the following methods—

- (a) personal service, in accordance with rule 6.4;
- (b) first class post;
- (c) leaving the document at a place specified in rule 6.5;
- (d) through a document exchange in accordance with the relevant practice direction; or
- (e) by fax or other means of electronic communication in accordance with the relevant practice direction.

(Rule 6.8 provides for the court to permit service by an alternative method)

(2) A company may be served by any method permitted under this Part as an alternative to the methods of service set out in—

- (a) section 725 of the Companies Act 1985⁽⁷⁾ (service by leaving a document at or posting it to an authorised place);
- (b) section 695 of that Act (service on overseas companies); and
- (c) section 694A of that Act (service of documents on companies incorporated outside the UK and Gibraltar and having a branch in Great Britain).

Who is to serve

6.3.—(1) The court will serve a document which it has issued or prepared except where—

(7) 1985 c. 6.

- (a) a rule provides that a party must serve the document in question;
- (b) the party on whose behalf the document is to be served notifies the court that he wishes to serve it himself;
- (c) a practice direction provides otherwise;
- (d) the court orders otherwise; or
- (e) the court has failed to serve and has sent a notice of non-service to the party on whose behalf the document is to be served in accordance with rule 6.11.

(2) Where the court is to serve a document, it is for the court to decide which of the methods of service specified in rule 6.2 is to be used.

(3) Where a party prepares a document which is to be served by the court, that party must file a copy for the court, and for each party to be served.

Personal service

6.4.—(1) A document to be served may be served personally, except as provided in paragraph (2).

(2) Where a solicitor—

- (a) is authorised to accept service on behalf of a party; and
- (b) has notified the party serving the document in writing that he is so authorised,

a document must be served on the solicitor, unless personal service is required by an enactment, rule, practice direction or court order.

(3) A document is served personally on an individual by leaving it with that individual.

(4) A document is served personally on a company or other corporation by leaving it with a person holding a senior position within the company or corporation.

(The service practice direction sets out the meaning of “senior position”)

(5) A document is served personally on a partnership where partners are being sued in the name of their firm by leaving it with—

- (a) a partner; or
- (b) a person who, at the time of service, has the control or management of the partnership business at its principal place of business.

Address for service

6.5.—(1) Except as provided by RSC Order 11 (service out of the jurisdiction) a document must be served within the jurisdiction.

(“Jurisdiction” is defined in rule 2.3)

(2) A party must give an address for service within the jurisdiction.

(3) Where a party—

- (a) does not give the business address of his solicitor as his address for service; and
- (b) resides or carries on business within the jurisdiction,

he must give his residence or place of business as his address for service.

(4) Any document to be served—

- (a) by first class post;
- (b) by leaving it at the place of service;
- (c) through a document exchange; or

(d) by fax or by other means of electronic communication, must be sent or transmitted to, or left at, the address for service given by the party to be served.

(5) Where—

- (a) a solicitor is acting for the party to be served; and
- (b) the document to be served is not the claim form;

the party’s address for service is the business address of his solicitor.

(Rule 6.13 specifies when the business address of a defendant’s solicitor may be the defendant’s address for service in relation to the claim form)

(6) Where—

- (a) no solicitor is acting for the party to be served; and,
- (b) the party has not given an address for service,

the document must be sent or transmitted to, or left at, the place shown in the following table.

(Rule 6.2(2) sets out the statutory methods of service on a company)

<i>Nature of party to be served</i>	<i>Place of service</i>
Individual	<ul style="list-style-type: none"> • Usual or last known residence.
Proprietor of a business	<ul style="list-style-type: none"> • Usual or last known residence; or • Place of business or last known place of business.
Individual who is suing or being sued in the name of a firm	<ul style="list-style-type: none"> • Usual or last known residence; or • Principal or last known place of business of the firm.
Corporation incorporated in England and Wales other than a company	<ul style="list-style-type: none"> • Principal office of the corporation; or • Any place within the jurisdiction where the corporation carries on its activities and which has a real connection with the claim.
Company registered in England and Wales	<ul style="list-style-type: none"> • Principal office of the company; or • Any place of business of the company within the jurisdiction which has a real connection with the claim.
Any other company or corporation	<ul style="list-style-type: none"> • Any place within the jurisdiction where the corporation carries on its activities; or • Any place of business of the company within the jurisdiction.

(7) This rule does not apply where an order made by the court under rule 6.8 (service by an alternative method) specifies where the document in question may be served.

Service of documents on children and patients

6.6.—(1) The following table shows the person on whom a document must be served if it is a document which would otherwise be served on a child or a patient—

<i>Type of document</i>	<i>Nature of party</i>	<i>Person to be served</i>
Claim form	Child who is not also a patient	<ul style="list-style-type: none"> • One of the child's parents or guardians; or • if there is no parent or guardian, the person with whom the child resides or in whose care the child is.
Claim form	Patient	<ul style="list-style-type: none"> • The person authorised under Part VII of the Mental Health Act 1983⁽⁸⁾ to conduct the proceedings in the name of the patient or on his behalf; or • if there is no person so authorised, the person with whom the patient resides or in whose care the patient is.
Application for an order appointing a litigation friend, where a child or patient has no litigation friend	Child or patient	See rule 21.8.
Any other document	Child or patient	The litigation friend who is conducting proceedings on behalf of the child or patient.

(2) The court may make an order permitting a document to be served on the child or patient, or on some person other than the person specified in the table in this rule.

(3) An application for an order under paragraph (2) may be made without notice.

(4) The court may order that, although a document has been served on someone other than the person specified in the table, the document is to be treated as if it had been properly served.

(5) This rule does not apply where the court has made an order under rule 21.2(3) allowing a child to conduct proceedings without a litigation friend.

(Part 21 contains rules about the appointment of a litigation friend)

Deemed service

6.7.—(1) A document which is served in accordance with these rules or any relevant practice direction shall be deemed to be served on the day shown in the following table—

<i>Method of service</i>	<i>Deemed day of service</i>
First class post	The second day after it was posted.

⁽⁸⁾ 1983 c. 20.

<i>Method of service</i>	<i>Deemed day of service</i>
Document exchange	The second day after it was left at the document exchange.
Delivering the document to or leaving it at a permitted address	The day after it was delivered to or left at the permitted address.
Fax	<ul style="list-style-type: none"> • If it is transmitted on a business day before 4 p.m. on that day; or • in any other case, on the business day after the day on which it is transmitted.
Other electronic method	The second day after the day on which it is transmitted.

(2) If a document (other than a claim form) is served after 5 p.m. on a business day, or at any time on a Saturday, Sunday or a bank holiday, the document shall be treated as having been served on the next business day.

(3) In this rule—

“business day” means any day except Saturday, Sunday or a bank holiday; and

“bank holiday” includes Christmas Day and Good Friday.

Service by an alternative method

6.8.—(1) Where it appears to the court that there is a good reason to authorise service by a method not permitted by these Rules, the court may make an order permitting service by an alternative method.

(2) An application for an order permitting service by an alternative method—

(a) must be supported by evidence; and

(b) may be made without notice.

(3) An order permitting service by an alternative method must specify—

(a) the method of service; and

(b) the date when the document will be deemed to be served.

Power of court to dispense with service

6.9.—(1) The court may dispense with service of a document.

(2) An application for an order to dispense with service may be made without notice.

Certificate of service

6.10 Where a rule, practice direction or court order requires a certificate of service, the certificate must state—

(a) that the document has not been returned undelivered; and

(b) the details set out in the following table—

<i>Method of service</i>	<i>Details to be certified</i>
Post	Date of posting
Personal	Date of personal service

<i>Method of service</i>	<i>Details to be certified</i>
Document exchange	Date of delivery to the document exchange
Delivery of document to or leaving it at a permitted place	Date when the document was delivered to or left at the permitted place
Fax	Date and time of transmission
Other electronic means	Date of transmission and the means used
Alternative method permitted by the court	As required by the court

Notice of non-service

6.11 Where—

- (a) a document is to be served by the court; and
- (b) the court is unable to serve it,

the court must send a notice of non-service stating the method attempted to the party who requested service.

II SPECIAL PROVISIONS ABOUT SERVICE OF THE CLAIM FORM

General rules about service subject to special rules about service of claim form

6.12 The general rules about service are subject to the special rules about service contained in rules 6.13 to 6.16.

Service of claim form by the court—defendant’s address for service

6.13.—(1) Where a claim form is to be served by the court, the claim form must include the defendant’s address for service.

(2) For the purposes of paragraph (1), the defendant’s address for service may be the business address of the defendant’s solicitor if he is authorised to accept service on the defendant’s behalf but not otherwise.

(Rule 6.5 contains general provisions about the address for service)

Certificate of service relating to the claim form

6.14.—(1) Where a claim form is served by the court, the court must send the claimant a notice which will include the date when the claim form is deemed to be served under rule 6.7.

(2) Where the claim form is served by the claimant—

- (a) he must file a certificate of service within 7 days of service of the claim form; and
- (b) he may not obtain judgment in default under Part 12 unless he has filed the certificate of service.

(Rule 6.10 specifies what a certificate of service must show)

Service of the claim form by contractually agreed method

6.15.—(1) Where—

- (a) a contract contains a term providing that, in the event of a claim being issued in relation to the contract, the claim form may be served by a method specified in the contract; and

(b) a claim form containing only a claim in respect of that contract is issued, the claim form shall, subject to paragraph (2), be deemed to be served on the defendant if it is served by a method specified in the contract.

(2) Where the claim form is served out of the jurisdiction in accordance with the contract, it shall not be deemed to be served on the defendant unless—

- (a) permission to serve it out of the jurisdiction has been granted under RSC Order 11 r.1(1); or
- (b) it may be served without permission under RSC Order 11 r.1(2).

Service of claim form on agent of principal who is overseas

6.16.—(1) Where—

- (a) the defendant is overseas; and
- (b) the conditions specified in paragraph (2) are satisfied,

the court may, on an application only, permit a claim form relating to a contract to be served on a defendant's agent.

(2) The court may not make an order under this rule unless it is satisfied that—

- (a) the contract to which the claim relates was entered into within the jurisdiction with or through the defendant's agent; and
- (b) at the time of the application either the agent's authority has not been terminated or he is still in business relations with his principal.

(3) An application under this rule—

- (a) must be supported by evidence; and
- (b) may be made without notice.

(4) An order under this rule must state a period within which the defendant must respond to the particulars of claim.

(Rule 9.2 sets out how a defendant may respond to particulars of claim)

(5) The power conferred by this rule is additional to the power conferred by rule 6.8 (service by an alternative method).

(6) Where the court makes an order under this rule, the claimant must send to the defendant copies of—

- (a) the order; and
- (b) the claim form.

PART 7

HOW TO START PROCEEDINGS—THE CLAIM FORM

Contents of this Part

Where to start proceedings	Rule 7.1
How to start proceedings	Rule 7.2
Right to use one claim form to start two or more claims	Rule 7.3

Particulars of claim	Rule 7.4
Service of a claim form	Rule 7.5
Extension of time for serving a claim form	Rule 7.6
Application by defendant for service of a claim form	Rule 7.7
Form for defence etc. must be served with particulars of claim	Rule 7.8
Fixed date and other claims	Rule 7.9
Production Centre for claims	Rule 7.10

Where to start proceedings

7.1 Restrictions on where proceedings may be started are set out in the relevant practice direction.

How to start proceedings

7.2.—(1) Proceedings are started when the court issues a claim form at the request of the claimant.

(2) A claim form is issued on the date entered on the form by the court.

(A person who seeks a remedy from the court before proceedings are started or in relation to proceedings which are taking place, or will take place, in another jurisdiction must make an application under Part 23)

(Part 16 sets out what the claim form must include)

Right to use one claim form to start two or more claims

7.3 A claimant may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings.

Particulars of claim

7.4.—(1) Particulars of claim must—

(a) be contained in or served with the claim form; or

(b) subject to paragraph (2) be served on the defendant by the claimant within 14 days after service of the claim form.

(2) Particulars of claim must be served on the defendant no later than the latest time for serving a claim form.

(Rule 7.5 sets out the latest time for serving a claim form)

(3) Where the claimant serves particulars of claim separately from the claim form in accordance with paragraph (1)(b), he must, within 7 days of service on the defendant, file a copy of the particulars together with a certificate of service.

(Part 16 sets out what the particulars of claim must include)

(Part 22 requires particulars of claim to be verified by a statement of truth)

(Rule 6.10 makes provision for a certificate of service)

Service of a claim form

- 7.5.**—(1) After a claim form has been issued, it must be served on the defendant.
- (2) The general rule is that a claim form must be served within 4 months after the date of issue.
- (3) The period for service is 6 months where the claim form is to be served out of the jurisdiction.

Extension of time for serving a claim form

- 7.6.**—(1) The claimant may apply for an order extending the period within which the claim form may be served.
- (2) The general rule is that an application to extend the time for service must be made—
- (a) within the period for serving the claim form specified by rule 7.5; or
 - (b) where an order has been made under this rule, within the period for service specified by that order.
- (3) If the claimant applies for an order to extend the time for service of the claim form after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if—
- (a) the court has been unable to serve the claim form; or
 - (b) the claimant has taken all reasonable steps to serve the claim form but has been unable to do so; and
 - (c) in either case, the claimant has acted promptly in making the application.
- (4) An application for an order extending the time for service—
- (a) must be supported by evidence; and
 - (b) may be made without notice.

Application by defendant for service of claim form

- 7.7.**—(1) Where a claim form has been issued against a defendant, but has not yet been served on him, the defendant may serve a notice on the claimant requiring him to serve the claim form or discontinue the claim within a period specified in the notice.
- (2) The period specified in a notice served under paragraph (1) must be at least 14 days after service of the notice.
- (3) If the claimant fails to comply with the notice, the court may, on the application of the defendant—
- (a) dismiss the claim; or
 - (b) make any other order it thinks just.

Form for defence etc. must be served with particulars of claim

- 7.8.**—(1) When particulars of claim are served on a defendant, whether they are contained in the claim form, served with it or served subsequently, they must be accompanied by—
- (a) a form for defending the claim;
 - (b) a form for admitting the claim; and
 - (c) a form for acknowledging service.
- (2) Where the claimant is using the procedure set out in Part 8 (alternative procedure for claims)—
- (a) paragraph (1) does not apply; and

- (b) a form for acknowledging service must accompany the claim form.

Fixed date and other claims

7.9 A practice direction—

- (a) may set out the circumstances in which the court may give a fixed date for a hearing when it issues a claim;
- (b) may list claims in respect of which there is a specific claim form for use and set out the claim form in question; and
- (c) may disapply or modify these Rules as appropriate in relation to the claims referred to in paragraphs (a) and (b).

Production Centre for claims

7.10.—(1) There shall be a Production Centre for the issue of claim forms and other related matters.

(2) The relevant practice direction makes provision for—

- (a) which claimants may use the Production Centre;
- (b) the type of claims which the Production Centre may issue;
- (c) the functions which are to be discharged by the Production Centre;
- (d) the place where the Production Centre is to be located; and
- (e) other related matters.

(3) The relevant practice direction may disapply or modify these Rules as appropriate in relation to claims issued by the Production Centre.

PART 8

ALTERNATIVE PROCEDURE FOR CLAIMS

Contents of this Part

Types of claim in which Part 8 procedure may be followed	Rule 8.1
Contents of the claim form	Rule 8.2
Acknowledgment of service	Rule 8.3
Consequence of not filing an acknowledgment of service	Rule 8.4
Filing and serving written evidence	Rule 8.5
Evidence—general	Rule 8.6
Part 20 claims	Rule 8.7
Procedure where defendant objects to use of Part 8 procedure	Rule 8.8
Modifications to the general rules	Rule 8.9

Types of claim in which Part 8 procedure may be followed

- 8.1.**—(1) The Part 8 procedure is the procedure set out in this Part.
- (2) A claimant may use the Part 8 procedure where—
- (a) he seeks the court’s decision on a question which is unlikely to involve a substantial dispute of fact; or
 - (b) paragraph (6) applies.
- (3) The court may at any stage order the claim to continue as if the claimant had not used the Part 8 procedure and, if it does so, the court may give any directions it considers appropriate.
- (4) Paragraph (2) does not apply if a practice direction provides that the Part 8 procedure may not be used in relation to the type of claim in question.
- (5) Where the claimant uses the Part 8 procedure he may not obtain default judgment under Part 12.
- (6) A rule or practice direction may, in relation to a specified type of proceedings—
- (a) require or permit the use of the Part 8 procedure; and
 - (b) disapply or modify any of the rules set out in this Part as they apply to those proceedings.
- (Rule 8.9 provides for other modifications to the general rules where the Part 8 procedure is being used)

Contents of the claim form

- 8.2** Where the claimant uses the Part 8 procedure the claim form must state—
- (a) that this Part applies;
 - (b) (i) the question which the claimant wants the court to decide; or
(ii) the remedy which the claimant is seeking and the legal basis for the claim to that remedy;
 - (c) if the claim is being made under an enactment, what that enactment is;
 - (d) if the claimant is claiming in a representative capacity, what that capacity is; and
 - (e) if the defendant is sued in a representative capacity, what that capacity is.
- (Part 22 provides for the claim form to be verified by a statement of truth)
- (Rule 7.5 provides for service of the claim form)

Acknowledgment of service

- 8.3.**—(1) The defendant must—
- (a) file an acknowledgment of service in the relevant practice form not more than 14 days after service of the claim form; and
 - (b) serve the acknowledgment of service on the claimant and any other party.
- (2) The acknowledgment of service must state—
- (a) whether the defendant contests the claim; and
 - (b) if the defendant seeks a different remedy from that set out in the claim form, what that remedy is.
- (3) The following rules of Part 10 (acknowledgment of service) apply—
- (a) rule 10.3(2) (exceptions to the period for filing an acknowledgment of service); and
 - (b) rule 10.5 (contents of acknowledgment of service).

(4) Part 11 (disputing the court's jurisdiction) applies subject to the modification that in rule 11(4) (a) and (5)(b) (time limit for application disputing court's jurisdiction) references to the period for filing a defence are treated as if they were references to a period of 14 days from the filing of an acknowledgment of service.

Consequence of not filing an acknowledgment of service

8.4.—(1) This rule applies where—

- (a) the defendant has failed to file an acknowledgment of service; and
- (b) the time period for doing so has expired.

(2) The defendant may attend the hearing of the claim but may not take part in the hearing unless the court gives permission.

Filing and serving written evidence

8.5.—(1) The claimant must file any written evidence on which he intends to rely when he files his claim form.

(2) The claimant's evidence must be served on the defendant with the claim form.

(3) A defendant who wishes to rely on written evidence must file it when he files his acknowledgment of service.

(4) If he does so, he must also, at the same time, serve a copy of his evidence on the other parties.

(5) The claimant may, within 14 days of service of the defendant's evidence on him, file further written evidence in reply.

(6) If he does so, he must also, within the same time limit, serve a copy of his evidence on the other parties.

(7) The claimant may rely on the matters set out in his claim form as evidence under this rule if the claim form is verified by a statement of truth.

Evidence—general

8.6.—(1) No written evidence may be relied on at the hearing of the claim unless—

- (a) it has been served in accordance with rule 8.5; or
- (b) the court gives permission.

(2) The court may require or permit a party to give oral evidence at the hearing.

(3) The court may give directions requiring the attendance for cross-examination^(GL) of a witness who has given written evidence.

(Rule 32.1 contains a general power for the court to control evidence)

Part 20 claims

8.7 Where the Part 8 procedure is used, Part 20 (counterclaims and other additional claims) applies except that a party may not make a Part 20 claim (as defined by rule 20.2) without the court's permission.

Procedure where defendant objects to use of the Part 8 procedure

8.8.—(1) Where the defendant contends that the Part 8 procedure should not be used because—

- (a) there is a substantial dispute of fact; and

- (b) the use of the Part 8 procedure is not required or permitted by a rule or practice direction, he must state his reasons when he files his acknowledgment of service.

(Rule 8.5 requires a defendant who wishes to rely on written evidence to file it when he files his acknowledgment of service)

(2) When the court receives the acknowledgment of service and any written evidence it will give directions as to the future management of the case.

(Rule 8.1(3) allows the court to make an order that the claim continue as if the claimant had not used the Part 8 procedure)

Modifications to the general rules

8.9 Where the Part 8 procedure is followed—

- (a) provision is made in this Part for the matters which must be stated in the claim form and the defendant is not required to file a defence and therefore—
- (i) Part 16 (statements of case) does not apply;
 - (ii) Part 15 (defence and reply) does not apply;
 - (iii) any time limit in these Rules which prevents the parties from taking a step before a defence is filed does not apply; and
 - (iv) the requirement under rule 7.8 to serve on the defendant a form for defending the claim does not apply;
- (b) the claimant may not obtain judgment by request on an admission and therefore—
- (i) rules 14.4 to 14.7 do not apply; and
 - (ii) the requirement under rule 7.8 to serve on the defendant a form for admitting the claim does not apply; and
- (c) the claim shall be treated as allocated to the multi-track and therefore Part 26 does not apply.

PART 9

RESPONDING TO PARTICULARS OF CLAIM—GENERAL

Contents of this Part

Scope of this Part	Rule 9.1
Defence, admission or acknowledgment of service	Rule 9.2

Scope of this Part

9.1.—(1) This Part sets out how a defendant may respond to particulars of claim.

(2) Where the defendant receives a claim form which states that particulars of claim are to follow, he need not respond to the claim until the particulars of claim have been served on him.

Defence, admission or acknowledgment of service

9.2 When particulars of claim are served on a defendant, the defendant may—

- (a) file or serve an admission in accordance with Part 14;
 - (b) file a defence in accordance with Part 15,
- (or do both, if he admits only part of the claim); or
- (c) file an acknowledgment of service in accordance with Part 10.

PART 10

ACKNOWLEDGMENT OF SERVICE

Contents of this Part

Acknowledgment of service	Rule 10.1
Consequence of not filing an acknowledgment of service	Rule 10.2
The period for filing an acknowledgment of service	Rule 10.3
Notice to claimant that defendant has filed an acknowledgment of service	Rule 10.4
Contents of acknowledgment of service	Rule 10.5

Acknowledgment of service

10.1.—(1) This Part deals with the procedure for filing an acknowledgment of service.

(2) Where the claimant uses the procedure set out in Part 8 (alternative procedure for claims) this Part applies subject to the modifications set out in rule 8.3.

(3) A defendant may file an acknowledgment of service if—

- (a) he is unable to file a defence within the period specified in rule 15.4; or
- (b) he wishes to dispute the court’s jurisdiction.

(Part 11 sets out the procedure for disputing the court’s jurisdiction)

Consequence of not filing an acknowledgment of service

10.2 If—

- (a) a defendant fails to file an acknowledgment of service within the period specified in rule 10.3; and
- (b) does not within that period file a defence in accordance with Part 15 or serve or file an admission in accordance with Part 14,

the claimant may obtain default judgment if Part 12 allows it.

The period for filing an acknowledgment of service

10.3.—(1) The general rule is that the period for filing an acknowledgment of service is—

- (a) where the defendant is served with a claim form which states that particulars of claim are to follow, 14 days after service of the particulars of claim; and
- (b) in any other case, 14 days after service of the claim form.

- (2) The general rule is subject to the following rules—
- (a) RSC Order 11 r.1A (which specifies how the period for filing an acknowledgment of service is calculated where the claim form is served out of the jurisdiction); and
 - (b) rule 6.16(4) (which requires the court to specify the period for responding to the particulars of claim when it makes an order under that rule).

Notice to claimant that defendant has filed an acknowledgment of service

10.4 On receipt of an acknowledgment of service, the court must notify the claimant in writing.

Contents of acknowledgment of service

- 10.5** An acknowledgment of service must—
- (a) be signed by the defendant or his legal representative; and
 - (b) include the defendant’s address for service.

(Rule 6.5 provides that an address for service must be within the jurisdiction)

PART 11

DISPUTING THE COURT'S JURISDICTION

Contents of this Part

Procedure for disputing the court’s jurisdiction. Rule 11

Procedure for disputing the court’s jurisdiction

- 11.—(1)** A defendant who wishes to—
- (a) dispute the court’s jurisdiction to try the claim; or
 - (b) argue that the court should not exercise its jurisdiction,

may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.

(2) A defendant who wishes to make such an application must first file an acknowledgment of service in accordance with Part 10.

(3) A defendant who files an acknowledgment of service does not, by doing so, lose any right that he may have to dispute the court’s jurisdiction.

- (4) An application under this rule must—
- (a) be made within the period for filing a defence; and
 - (b) be supported by evidence.

(Rule 15.4 sets out the period for filing a defence)

- (5) If the defendant—
- (a) files an acknowledgment of service; and
 - (b) does not make such an application within the period for filing a defence,
- he is to be treated as having accepted that the court has jurisdiction to try the claim.

(6) An order containing a declaration that the court has no jurisdiction or will not exercise its jurisdiction may also make further provision including—

- (a) setting aside the claim form;
- (b) setting aside service of the claim form;
- (c) discharging any order made before the claim was commenced or before the claim form was served; and
- (d) staying^(GL)the proceedings.

(7) If on an application under this rule the court does not make a declaration—

- (a) the acknowledgment of service shall cease to have effect; and
- (b) the defendant may file a further acknowledgment of service within 14 days or such other period as the court may direct.

(8) If the defendant files a further acknowledgment of service in accordance with paragraph (7) (b) he shall be treated as having accepted that the court has jurisdiction to try the claim.

(9) Where a defendant makes an application under this rule he need not file a defence before the hearing of the application.

(10) Where the claimant uses the procedure set out in Part 8 (alternative procedure for claims) this Part applies subject to the modifications set out in rule 8.3.

PART 12

DEFAULT JUDGMENT

Contents of this Part

Meaning of “default judgment”	Rule 12.1
Claims in which default judgment may not be obtained	Rule 12.2
Conditions to be satisfied	Rule 12.3
Procedure for obtaining default judgment	Rule 12.4
Nature of judgment where default judgment obtained by filing a request	Rule 12.5
Interest	Rule 12.6
Procedure for deciding an amount or value	Rule 12.7
Claim against more than one defendant	Rule 12.8
Procedure for obtaining default judgment for costs only	Rule 12.9
Default judgment obtained by making an application	Rule 12.10
Supplementary provisions where applications for default judgment are made	Rule 12.11

Meaning of “default judgment”

12.1 In these Rules, “default judgment” means judgment without trial where a defendant—

- (a) has failed to file an acknowledgment of service; or
- (b) has failed to file a defence.

(Part 10 contains provisions about filing an acknowledgment of service and Part 15 contains provisions about filing a defence)

Claims in which default judgment may not be obtained

12.2 A claimant may not obtain a default judgment—

- (a) on a claim for delivery of goods subject to an agreement regulated by the Consumer Credit Act 1974(9);
- (b) where he uses the procedure set out in Part 8 (alternative procedure for claims); or
- (c) in any other case where a practice direction provides that the claimant may not obtain default judgment.

Conditions to be satisfied

12.3.—(1) The claimant may obtain judgment in default of an acknowledgment of service only if—

- (a) the defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and
 - (b) the relevant time for doing so has expired.
- (2)** The claimant may obtain judgment in default of defence only if—
- (a) the defendant has filed an acknowledgment of service but has not filed a defence; and
 - (b) the relevant time for doing so has expired.

(Rules 10.3 and 15.4 deal respectively with the period for filing an acknowledgment of service and the period for filing a defence)

- (3)** The claimant may not obtain a default judgment if—
 - (a) the defendant has applied for summary judgment under Part 24, and that application has not been disposed of;
 - (b) the defendant has satisfied the whole claim (including any claim for costs) on which the claimant is seeking judgment; or
 - (c)
 - (i) the claimant is seeking judgment on a claim for money; and
 - (ii) the defendant has filed or served on the claimant an admission under rule 14.4 or 14.7 (admission of liability to pay all of the money claimed) together with a request for time to pay.

(Part 14 sets out the procedure where a defendant admits a money claim and asks for time to pay)

(Rule 6.14 provides that, where the claim form is served by the claimant, he may not obtain default judgment unless he has filed a certificate of service)

Procedure for obtaining default judgment

12.4.—(1) Subject to paragraph (2), a claimant may obtain a default judgment by filing a request in the relevant practice form where the claim is for—

- (a) a specified amount of money;
- (b) an amount of money to be decided by the court;
- (c) delivery of goods where the claim form gives the defendant the alternative of paying their value; or
- (d) any combination of these remedies.

(2) The claimant must make an application in accordance with Part 23 if he wishes to obtain a default judgment—

- (a) on a claim which consists of or includes a claim for any other remedy; or
- (b) where rule 12.9 or rule 12.10 so provides.

(3) Where a claimant—

- (a) claims any other remedy in his claim form in addition to those specified in paragraph (1); but
- (b) abandons that claim in his request for judgment,

he may still obtain a default judgment by filing a request under paragraph (1).

Nature of judgment where default judgment obtained by filing a request

12.5.—(1) Where the claim is for a specified sum of money, the claimant may specify in a request filed under rule 12.4(1)—

- (a) the date by which the whole of the judgment debt is to be paid; or
- (b) the times and rate at which it is to be paid by instalments.

(2) Except where paragraph (4) applies, a default judgment on a claim for a specified amount of money obtained on the filing of a request, will be judgment for the amount of the claim (less any payments made) and costs—

- (a) to be paid by the date or at the rate specified in the request for judgment; or
- (b) if none is specified, immediately.

(Interest may be included in a default judgment obtained by filing a request if the conditions set out in Rule 12.6 are satisfied)

(Rule 45.4 provides for fixed costs on the entry of a default judgment)

12.5.—(3) Where the claim is for an unspecified amount of money, a default judgment obtained on the filing of a request will be for an amount to be decided by the court and costs.

(4) Where the claim is for delivery of goods and the claim form gives the defendant the alternative of paying their value, a default judgment obtained on the filing of a request will be judgment requiring the defendant to—

- (a) deliver the goods or (if he does not do so) pay the value of the goods as decided by the court (less any payments made); and
- (b) pay costs.

(Rule 12.7 sets out the procedure for deciding the amount of a judgment or the value of the goods)

(5) The claimant's right to enter judgment requiring the defendant to deliver goods is subject to rule 40.14 (judgment in favour of certain part owners relating to the detention of goods).

Interest

12.6.—(1) A default judgment on a claim for a specified amount of money obtained on the filing of a request may include the amount of interest claimed to the date of judgment if—

- (a) the particulars of claim include the details required by rule 16.4;
- (b) where interest is claimed under section 35A of the Supreme Court Act 1981⁽¹⁰⁾ or section 69 of the County Courts Act 1984⁽¹¹⁾, the rate is no higher than the rate of interest payable on judgment debts at the date when the claim form was issued; and
- (c) the claimant’s request for judgment includes a calculation of the interest claimed for the period from the date up to which interest was stated to be calculated in the claim form to the date of the request for judgment.

(2) In any case where paragraph (1) does not apply, judgment will be for an amount of interest to be decided by the court.

(Rule 12.7 sets out the procedure for deciding the amount of interest)

Procedure for deciding an amount or value

12.7.—(1) This rule applies where the claimant obtains a default judgment on the filing of a request under rule 12.4(1) and judgment is for—

- (a) an amount of money to be decided by the court;
- (b) the value of goods to be decided by the court; or
- (c) an amount of interest to be decided by the court.

(2) Where the court enters judgment it will—

- (a) give any directions it considers appropriate; and
- (b) if it considers it appropriate, allocate the case.

Claim against more than one defendant

12.8.—(1) A claimant may obtain a default judgment on request under this Part on a claim for money or a claim for delivery of goods against one of two or more defendants, and proceed with his claim against the other defendants.

(2) Where a claimant applies for a default judgment against one of two or more defendants—

- (a) if the claim can be dealt with separately from the claim against the other defendants—
 - (i) the court may enter a default judgment against that defendant; and
 - (ii) the claimant may continue the proceedings against the other defendants;
- (b) if the claim cannot be dealt with separately from the claim against the other defendants—
 - (i) the court will not enter default judgment against that defendant; and
 - (ii) the court must deal with the application at the same time as it disposes of the claim against the other defendants.

(3) A claimant may not enforce against one of two or more defendants any judgment obtained under this Part for possession of land or for delivery of goods unless—

- (a) he has obtained a judgment for possession or delivery (whether or not obtained under this Part) against all the defendants to the claim; or
- (b) the court gives permission.

⁽¹⁰⁾ 1981 c. 54. Section 35A was inserted by the Administration of Justice Act 1982 (c. 53), section 15(1), Schedule 1, Part I.

⁽¹¹⁾ 1984 c. 28. Section 69 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 46.

Procedure for obtaining a default judgment for costs only

12.9.—(1) Where a claimant wishes to obtain a default judgment for costs only—

- (a) if the claim is for fixed costs, he may obtain it by filing a request in the relevant practice form;
- (b) if the claim is for any other type of costs, he must make an application in accordance with Part 23.

(2) Where an application is made under this rule for costs only, judgment shall be for an amount to be decided by the court.

(Part 45 sets out when a claimant is entitled to fixed costs)

Default judgment obtained by making an application

12.10 The claimant must make an application in accordance with Part 23 where—

- (a) the claim is—
 - (i) a claim against a child or patient;
 - (ii) a claim in tort by one spouse against the other; or
 - (iii) a claim against the Crown.
- (b) he wishes to obtain a default judgment where the defendant has failed to file an acknowledgment of service—
 - (i) against a defendant who has been served with the claim out of the jurisdiction under RSC Order 11 r.1(2)(a) (service without leave under the Civil Jurisdiction and Judgments Act 1982⁽¹²⁾);
 - (ii) against a defendant domiciled in Scotland or Northern Ireland or in any other Convention territory;
 - (iii) against a State;
 - (iv) against a diplomatic agent who enjoys immunity from civil jurisdiction by virtue of the Diplomatic Privileges Act 1964⁽¹³⁾; or
 - (v) against persons or organisations who enjoy immunity from civil jurisdiction pursuant to the provisions of the International Organisations Acts 1968 and 1981⁽¹⁴⁾.

Supplementary provisions where applications for default judgment are made

12.11.—(1) Where the claimant makes an application for a default judgment, judgment shall be such judgment as it appears to the court that the claimant is entitled to on his statement of case.

(2) Any evidence relied on by the claimant in support of his application need not be served on a party who has failed to file an acknowledgment of service.

(3) An application for a default judgment on a claim against a child or patient or a claim in tort between spouses must be supported by evidence.

(4) An application for a default judgment may be made without notice if—

- (a) the claim was served in accordance with the Civil Jurisdiction and Judgments Act 1982;
- (b) the defendant has failed to file an acknowledgment of service; and
- (c) notice does not need to be given under any other provision of these Rules.

⁽¹²⁾ 1982 c. 27.

⁽¹³⁾ 1964 c. 81.

⁽¹⁴⁾ 1968 c. 48; 1981 c. 9.

(5) Where an application is made against a State for a default judgment where the defendant has failed to file an acknowledgment of service—

- (a) the application may be made without notice, but the court hearing the application may direct that a copy of the application notice be served on the State;
- (b) if the court—
 - (i) grants the application; or
 - (ii) directs that a copy of the application notice be served on the State,
 the judgment or application notice (and the evidence in support) may be served out of the jurisdiction without any further order;
- (c) where paragraph (5)(b) permits a judgment or an application notice to be served out of the jurisdiction, the procedure for serving the judgment or the application notice is the same as for serving a claim form under RSC Order 11 except where an alternative method of service has been agreed under section 12(6) of the State Immunity Act 1978⁽¹⁵⁾.

(Rule 23.1 defines “application notice”)

- (6) For the purposes of this rule and rule 12.10—
 - (a) “domicile” is to be determined in accordance with the provisions of sections 41 to 46 of the Civil Jurisdiction and Judgments Act 1982;
 - (b) “Convention territory” means the territory or territories of any Contracting State, as defined by section 1(3) of the Civil Jurisdiction and Judgments Act 1982, to which the Brussels Conventions or Lugano Convention apply;
 - (c) “State” has the meaning given by section 14 of the State Immunity Act 1978; and
 - (d) “Diplomatic agent” has the meaning given by Article 1 (e) of Schedule 1 to the Diplomatic Privileges Act 1964.

PART 13

SETTING ASIDE OR VARYING DEFAULT JUDGMENT

Contents of this Part

Scope of this Part	Rule 13.1
Cases where the court must set aside judgment entered under Part 12	Rule 13.2
Cases where the court may set aside or vary judgment entered under Part 12	Rule 13.3
Application to set aside or vary judgment— procedure	Rule 13.4
Claimant’s duty to apply to set aside judgment	Rule 13.5
Abandoned claim restored where default judgment set aside	Rule 13.6

⁽¹⁵⁾ 1978 c. 33.

Scope of this Part

13.1 The rules in this Part set out the procedure for setting aside or varying judgment entered under Part 12 (default judgment).

(CCR Order 22 r.10 sets out the procedure for varying the rate at which a judgment debt must be paid)

Cases where the court must set aside judgment entered under Part 12

13.2 The court must set aside^(GL) a judgment entered under Part 12 if judgment was wrongly entered because—

- (a) in the case of a judgment in default of an acknowledgment of service, any of the conditions in rule 12.3(1) and 12.3(3) was not satisfied;
- (b) in the case of a judgment in default of a defence, any of the conditions in rule 12.3(2) and 12.3(3) was not satisfied; or
- (c) the whole of the claim was satisfied before judgment was entered.

Cases where the court may set aside or vary judgment entered under Part 12

13.3.—(1) In any other case, the court may set aside^(GL) or vary a judgment entered under Part 12 if—

- (a) the defendant has a real prospect of successfully defending the claim; or
- (b) it appears to the court that there is some other good reason why—
 - (i) the judgment should be set aside or varied; or
 - (ii) the defendant should be allowed to defend the claim.

(2) In considering whether to set aside^(GL) or vary a judgment entered under Part 12, the matters to which the court must have regard include whether the person seeking to set aside the judgment made an application to do so promptly.

(Rule 3.1(3) provides that the court may attach conditions when it makes an order)

Application to set aside or vary judgment—procedure

13.4.—(1) Where—

- (a) the claim is for a specified amount of money;
- (b) the judgment was obtained in a court which is not the defendant's home court;
- (c) the claim has not been transferred to another defendant's home court under rule 14.12 (admission—determination of rate of payment by judge) or rule 26.2 (automatic transfer); and
- (d) the defendant is an individual,

the court will transfer an application by a defendant under this Part to set aside^(GL) or vary judgment to the defendant's home court.

(Rule 2.3 explains which court is a defendant's home court)

(2) Paragraph (1) does not apply where the claim was commenced in a specialist list.

(3) An application under rule 13.3 (cases where the court may set aside^(GL) or vary judgment) must be supported by evidence.

Claimant's duty to apply to set aside judgment

13.5.—(1) This rule applies where—

- (a) the claimant has purported to serve particulars of claim; and
- (b) the claimant has entered judgment under Part 12 against the defendant to whom the particulars of claim were sent.

(2) If a claimant who has entered judgment subsequently has good reason to believe that the particulars of claim did not reach the defendant before the claimant entered judgment, he must—

- (a) file a request for the judgment to be set aside^(GL); or
- (b) apply to the court for directions.

(3) The claimant may take no further step in the proceedings for the enforcement of the judgment until the judgment has been set aside^(GL) or the court has disposed of the application for directions.

Abandoned claim restored where default judgment set aside

13.6 Where—

- (a) the claimant claimed a remedy in addition to one specified in rule 12.4(1) (claims in respect of which the claimant may obtain default judgment by filing a request);
- (b) the claimant abandoned his claim for that remedy in order to obtain default judgment on request in accordance with rule 12.4(3); and
- (c) that default judgment is set aside^(GL) under this Part,

the abandoned claim is restored when the default judgment is set aside.

PART 14**ADMISSIONS****Contents of this Part**

Making an admission	Rule 14.1
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Admission by notice in writing—application for judgment	Rule 14.3
Admission of whole of claim for specified amount of money	Rule 14.4
Admission of part of claim for specified amount of money	Rule 14.5
Admission of liability to pay whole of claim for unspecified amount of money	Rule 14.6
Admission of liability to pay claim for unspecified amount of money where defendant offers a sum in satisfaction of the claim	Rule 14.7
Allocation of claims in relation to outstanding matters	Rule 14.8

Request for time to pay	Rule 14.9
Determination of rate of payment	Rule 14.10
Determination of rate of payment by court officer	Rule 14.11
Determination of rate of payment by judge	Rule 14.12
Right of re-determination	Rule 14.13
Interest	Rule 14.14

Making an admission

14.1.—(1) A party may admit the truth of the whole or any part of another party’s case.

(2) He may do this by giving notice in writing (such as in a statement of case or by letter).

(3) Where the only remedy which the claimant is seeking is the payment of money, the defendant may also make an admission in accordance with—

- (a) rule 14.4 (admission of whole claim for specified amount of money);
- (b) rule 14.5 (admission of part of claim for specified amount of money);
- (c) rule 14.6 (admission of liability to pay whole of claim for unspecified amount of money);
or
- (d) rule 14.7 (admission of liability to pay claim for unspecified amount of money where defendant offers a sum in satisfaction of the claim).

(4) Where the defendant makes an admission as mentioned in paragraph (3), the claimant has a right to enter judgment except where—

- (a) the defendant is a child or patient; or
- (b) the claimant is a child or patient and the admission is made under rule 14.5 or 14.7.

(Rule 21.10 provides that, where a claim is made by or on behalf of a child or patient or against a child or patient, no settlement, compromise or payment shall be valid, so far as it relates to that person’s claim, without the approval of the court)

(5) The court may allow a party to amend or withdraw an admission.

(Rule 3.1(3) provides that the court may attach conditions when it makes an order)

Period for making an admission

14.2.—(1) The period for returning an admission under rule 14.4 or for filing it under rules 14.5, 14.6 or 14.7 is—

- (a) where the defendant is served with a claim form which states that particulars of claim will follow, 14 days after service of the particulars; and
- (b) in any other case, 14 days after service of the claim form.

(2) Paragraph (1) is subject to the following rules—

- (a) RSC Order 11 r.1A (which specifies how the period for filing or returning an admission is calculated where the claim form is served out of the jurisdiction); and
- (b) rule 6.16(4) (which requires the court to specify the period for responding to the particulars of claim when it makes an order under that rule).

(3) A defendant may return an admission under rule 14.4 or file it under rules 14.5, 14.6 or 14.7 after the end of the period for returning or filing it specified in paragraph (1) if the claimant has not obtained default judgment under Part 12.

(4) If he does so, this Part shall apply as if he had made the admission within that period.

Admission by notice in writing—application for judgment

14.3.—(1) Where a party makes an admission under rule 14.1(2) (admission by notice in writing), any other party may apply for judgment on the admission.

(2) Judgment shall be such judgment as it appears to the court that the applicant is entitled to on the admission.

Admission of whole of claim for specified amount of money

14.4.—(1) This rule applies where—

(a) the only remedy which the claimant is seeking is the payment of a specified amount of money; and

(b) the defendant admits the whole of the claim.

(2) The defendant may admit the claim by returning to the claimant an admission in the relevant practice form.

(3) The claimant may obtain judgment by filing a request in the relevant practice form and, if he does so—

(a) if the defendant has not requested time to pay, the procedure in paragraphs (4) to (6) will apply;

(b) if the defendant has requested time to pay, the procedure in rule 14.9 will apply.

(4) The claimant may specify in his request for judgment—

(a) the date by which the whole of the judgment debt is to be paid; or

(b) the times and rate at which it is to be paid by instalments.

(5) On receipt of the request for judgment the court will enter judgment.

(6) Judgment will be for the amount of the claim (less any payments made) and costs—

(a) to be paid by the date or at the rate specified in the request for judgment; or

(b) if none is specified, immediately.

(Rule 14.14 deals with the circumstances in which judgment under this rule may include interest)

Admission of part of a claim for a specified amount of money

14.5.—(1) This rule applies where—

(a) the only remedy which the claimant is seeking is the payment of a specified amount of money; and

(b) the defendant admits part of the claim.

(2) The defendant may admit part of the claim by filing an admission in the relevant practice form.

(3) On receipt of the admission, the court will serve a notice on the claimant requiring him to return the notice stating that—

(a) he accepts the amount admitted in satisfaction of the claim;

(b) he does not accept the amount admitted by the defendant and wishes the proceedings to continue; or

- (c) if the defendant has requested time to pay, he accepts the amount admitted in satisfaction of the claim, but not the defendant's proposals as to payment.
- (4) The claimant must—
 - (a) file the notice; and
 - (b) serve a copy on the defendant,within 14 days after it is served on him.
- (5) If the claimant does not file the notice within 14 days after it is served on him, the claim is stayed^(GL) until he files the notice.
- (6) If the claimant accepts the amount admitted in satisfaction of the claim, he may obtain judgment by filing a request in the relevant practice form and, if he does so—
 - (a) if the defendant has not requested time to pay, the procedure in paragraphs (7) to (9) will apply;
 - (b) if the defendant has requested time to pay, the procedure in rule 14.9 will apply.
- (7) The claimant may specify in his request for judgment—
 - (a) the date by which the whole of the judgment debt is to be paid; or
 - (b) the time and rate at which it is to be paid by instalments.
- (8) On receipt of the request for judgment, the court will enter judgment.
- (9) Judgment will be for the amount admitted (less any payments made) and costs—
 - (a) to be paid by the date or at the rate specified in the request for judgment; or
 - (b) if none is specified, immediately.

(If the claimant files notice under paragraph (3) that he wishes the proceedings to continue, the procedure which then follows is set out in Part 26)

Admission of liability to pay whole of claim for unspecified amount of money

- 14.6.**—(1) This rule applies where—
- (a) the only remedy which the claimant is seeking is the payment of money;
 - (b) the amount of the claim is not specified; and
 - (c) the defendant admits liability but does not offer to pay a specified amount of money in satisfaction of the claim.
- (2) The defendant may admit the claim by filing an admission in the relevant practice form.
 - (3) On receipt of the admission, the court will serve a copy on the claimant.
 - (4) The claimant may obtain judgment by filing a request in the relevant practice form.
 - (5) If the claimant does not file a request for judgment within 14 days after service of the admission on him, the claim is stayed^(GL) until he files the request.
 - (6) On receipt of the request for judgment the court will enter judgment.
 - (7) Judgment will be for an amount to be decided by the court and costs.

Admission of liability to pay claim for unspecified amount of money where defendant offers a sum in satisfaction of the claim

- 14.7.**—(1) This rule applies where—
- (a) the only remedy which the claimant is seeking is the payment of money;
 - (b) the amount of the claim is not specified; and

- (c) the defendant—
 - (i) admits liability; and
 - (ii) offers to pay a specified amount of money in satisfaction of the claim.
- (2) The defendant may admit the claim by filing an admission in the relevant practice form.
- (3) On receipt of the admission, the court will serve a notice on the claimant requiring him to return the notice stating whether or not he accepts the amount in satisfaction of the claim.
- (4) If the claimant does not file the notice within 14 days after it is served on him, the claim is stayed^(GL) until he files the notice.
- (5) If the claimant accepts the offer he may obtain judgment by filing a request in the relevant practice form and if he does so—
 - (a) if the defendant has not requested time to pay, the procedure in paragraphs (6) to (8) will apply;
 - (b) if the defendant has requested time to pay, the procedure in rule 14.9 will apply.
- (6) The claimant may specify in his request for judgment—
 - (a) the date by which the whole of the judgment debt is to be paid; or
 - (b) the times and rate at which it is to be paid by instalments.
- (7) On receipt of the request for judgment, the court will enter judgment.
- (8) Judgment will be for the amount offered by the defendant (less any payments made) and costs—
 - (a) to be paid on the date or at the rate specified in the request for judgment; or
 - (b) if none is specified, immediately.
- (9) If the claimant does not accept the amount offered by the defendant, he may obtain judgment by filing a request in the relevant practice form.
- (10) Judgment under paragraph (9) will be for an amount to be decided by the court and costs.

Allocation of claims in relation to outstanding matters

14.8 Where the court enters judgment under rule 14.6 or 14.7 for an amount to be decided by the court it will—

- (a) give any directions it considers appropriate; and
- (b) if it considers it appropriate, allocate the case.

Request for time to pay

14.9.—(1) A defendant who makes an admission under rules 14.4, 14.5 or 14.7 (admission relating to a claim for a specified amount of money or offering to pay a specified amount of money) may make a request for time to pay.

(2) A request for time to pay is a proposal about the date of payment or a proposal to pay by instalments at the times and rate specified in the request.

(3) The defendant's request for time to pay must be served or filed (as the case may be) with his admission.

(4) If the claimant accepts the defendant's request, he may obtain judgment by filing a request in the relevant practice form.

(5) On receipt of the request for judgment, the court will enter judgment.

(6) Judgment will be—

- (a) where rule 14.4 applies, for the amount of the claim (less any payments made) and costs;
- (b) where rule 14.5 applies, for the amount admitted (less any payments made) and costs; or
- (c) where rule 14.7 applies, for the amount offered by the defendant (less any payments made) and costs; and

(in all cases) will be for payment at the time and rate specified in the defendant's request for time to pay.

(Rule 14.10 sets out the procedure to be followed if the claimant does not accept the defendant's request for time to pay)

Determination of rate of payment

14.10.—(1) This rule applies where the defendant makes a request for time to pay under rule 14.9.

(2) If the claimant does not accept the defendant's proposals for payment, he must file a notice in the relevant practice form.

(3) Where the defendant's admission was served direct on the claimant, a copy of the admission and the request for time to pay must be filed with the claimant's notice.

(4) When the court receives the claimant's notice, it will enter judgment for the amount admitted (less any payments made) to be paid at the time and rate of payment determined by the court.

Determination of rate of payment by court officer

14.11.—(1) A court officer may exercise the powers of the court under rule 14.10(4) where the amount outstanding (including costs) is not more than £50,000.

(2) Where a court officer is to determine the time and rate of payment, he must do so without a hearing.

Determination of rate of payment by judge

14.12.—(1) Where a judge is to determine the time and rate of payment, he may do so without a hearing.

(2) Where a judge is to determine the time and rate of payment at a hearing, the proceedings must be transferred automatically to the defendant's home court if—

- (a) the only claim is for a specified amount of money;
- (b) the defendant is an individual;
- (c) the claim has not been transferred to another defendant's home court under rule 13.4 (application to set aside^(GL) or vary default judgment—procedure) or rule 26.2 (automatic transfer);
- (d) the claim was not started in the defendant's home court; and
- (e) the claim was not started in a specialist list.

(Rule 2.3 explains which court is a defendant's home court)

(3) If there is to be a hearing to determine the time and rate of payment, the court must give each party at least 7 days' notice of the hearing.

Right of re-determination

14.13.—(1) Where—

- (a) a court officer has determined the time and rate of payment under rule 14.11; or

- (b) a judge has determined the time and rate of payment under rule 14.12 without a hearing, either party may apply for the decision to be re-determined by a judge.
- (2) An application for re-determination must be made within 14 days after service of the determination on the applicant.
- (3) Where an application for re-determination is made, the proceedings must be transferred to the defendant's home court if—
- the only claim (apart from a claim for interest or costs) is for a specified amount of money;
 - the defendant is an individual;
 - the claim has not been transferred to another defendant's home court under rule 13.4 (application to set aside^(GL) or vary default judgment—procedure) or rule 26.2 (automatic transfer);
 - the claim was not started in the defendant's home court; and
 - the claim was not started in a specialist list.

(Rule 2.3 explains which court is a defendant's home court)

Interest

- 14.14.**—(1) Judgment under rule 14.4 (admission of whole of claim for specified amount of money) shall include the amount of interest claimed to the date of judgment if—
- the particulars of claim include the details required by rule 16.4;
 - where interest is claimed under section 35A of the Supreme Court Act 1981⁽¹⁶⁾ or section 69 of the County Courts Act 1984⁽¹⁷⁾, the rate is no higher than the rate of interest payable on judgment debts at the date when the claim form was issued; and
 - the claimant's request for judgment includes a calculation of the interest claimed for the period from the date up to which interest was stated to be calculated in the claim form to the date of the request for judgment.
- (2) In any case where judgment is entered under rule 14.4 and the conditions in paragraph (1) are not satisfied judgment shall be for an amount of interest to be decided by the court.
- (3) Where judgment is entered for an amount of interest to be decided by the court, the court will give directions for the management of the case.

PART 15

DEFENCE AND REPLY

Contents of this Part

Part not to apply where claimant uses Part 8 procedure	Rule 15.1
Filing a defence	Rule 15.2
Consequence of not filing a defence	Rule 15.3
The period for filing a defence	Rule 15.4

⁽¹⁶⁾ 1981 c. 54. Section 35A was inserted by the Administration of Justice Act 1982 (c. 53), section 15(1), Schedule 1, Part I.

⁽¹⁷⁾ 1984 c. 28. Section 69 was amended by the Courts and Legal Services Act 1990 (c. 41), section 125(3), Schedule 18, paragraph 46.

Agreement extending the period for filing a defence	Rule 15.5
Service of copy of defence	Rule 15.6
Making a counterclaim	Rule 15.7
Reply to defence	Rule 15.8
No statement of case after a reply to be filed without court's permission	Rule 15.9
Claimant's notice where defence is that money claimed has been paid	Rule 15.10
Claim stayed if it is not defended or admitted	Rule 15.11

Part not to apply where claimant uses the Part 8 procedure

15.1 This Part does not apply where the claimant uses the procedure set out in Part 8 (alternative procedure for claims).

Filing a defence

15.2 A defendant who wishes to defend all or part of a claim must file a defence.
(Part 14 contains further provisions which apply where the defendant admits a claim)

Consequence of not filing a defence

15.3 If a defendant fails to file a defence, the claimant may obtain default judgment if Part 12 allows it.

The period for filing a defence

15.4.—(1) The general rule is that the period for filing a defence is—

- (a) 14 days after service of the particulars of claim; or
- (b) if the defendant files an acknowledgment of service under Part 10, 28 days after service of the particulars of claim.

(Rule 7.4 provides for the particulars of claim to be contained in or served with the claim form or served within 14 days of service of the claim form)

(2) The general rule is subject to the following rules—

- (a) RSC Order 11 r.1B (which specifies how the period for filing a defence is calculated where the claim form is served out of the jurisdiction);
- (b) rule 11 (which provides that, where the defendant makes an application disputing the court's jurisdiction, he need not file a defence before the hearing);
- (c) rule 24.4(2) (which provides that, if the claimant applies for summary judgment before the defendant has filed a defence, the defendant need not file a defence before the summary judgment hearing); and
- (d) rule 6.16(4) (which requires the court to specify the period for responding to the particulars of claim when it makes an order under that rule).

Agreement extending the period for filing a defence

15.5.—(1) The defendant and the claimant may agree that the period for filing a defence specified in rule 15.4 shall be extended by up to 28 days.

(2) Where the defendant and the claimant agree to extend the period for filing a defence, the defendant must notify the court in writing.

Service of copy of defence

15.6 A copy of the defence must be served on every other party. (Part 16 sets out what a defence must contain)

Making a counterclaim

15.7 Part 20 applies to a defendant who wishes to make a counterclaim.

Reply to defence

15.8 If a claimant files a reply to the defence, he must—

- (a) file his reply when he files his allocation questionnaire; and
- (b) serve his reply on the other parties at the same time as he files it.

(Rule 26.3(6) requires the parties to file allocation questionnaires and specifies the period for doing so)

(Part 22 requires a reply to be verified by a statement of truth)

No statement of case after a reply to be filed without court's permission

15.9 A party may not file or serve any statement of case after a reply without the permission of the court.

Claimant's notice where defence is that money claimed has been paid

15.10.—(1) Where—

- (a) the only claim (apart from a claim for costs and interest) is for a specified amount of money; and
- (b) the defendant states in his defence that he has paid to the claimant the amount claimed,

the court will send notice to the claimant requiring him to state in writing whether he wishes the proceedings to continue.

(2) When the claimant responds, he must serve a copy of his response on the defendant.

(3) If the claimant fails to respond under this rule within 28 days after service of the court's notice on him the claim shall be stayed^(GL).

(4) Where a claim is stayed under this rule any party may apply for the stay^(GL) to be lifted.

(If the claimant files notice under this rule that he wishes the proceedings to continue, the procedure which then follows is set out in Part 26)

Claim stayed if it is not defended or admitted

15.11.—(1) Where—

- (a) at least 6 months have expired since the end of the period for filing a defence specified in rule 15.4;
- (b) no defendant has served or filed an admission or filed a defence or counterclaim; and
- (c) the claimant has not entered or applied for judgment under Part 12 (default judgment), or Part 24 (summary judgment),

the claim shall be stayed^(GL).

- (2) Where a claim is stayed^(GL) under this rule any party may apply for the stay to be lifted.

PART 16

STATEMENTS OF CASE

Contents of this Part

Part not to apply where claimant uses Part 8 procedure	Rule 16.1
Contents of the claim form	Rule 16.2
Statement of value to be included in the claim form	Rule 16.3
Contents of the particulars of claim	Rule 16.4
Contents of defence	Rule 16.5
Defence of set-off	Rule 16.6
Reply to defence	Rule 16.7
Court's power to dispense with statements of case	Rule 16.8

Part not to apply where claimant uses Part 8 procedure

16.1 This Part does not apply where the claimant uses the procedure set out in Part 8 (alternative procedure for claims).

Contents of the claim form

16.2.—(1) The claim form must—

- (a) contain a concise statement of the nature of the claim;
- (b) specify the remedy which the claimant seeks;
- (c) where the claimant is making a claim for money, contain a statement of value in accordance with rule 16.3; and
- (d) contain such other matters as may be set out in a practice direction.

(2) If the particulars of claim specified in rule 16.4 are not contained in or are not served with the claim form, the claimant must state on the claim form that the particulars of claim will follow.

(3) If the claimant is claiming in a representative capacity, the claim form must state what that capacity is.

(4) If the defendant is sued in a representative capacity, the claim form must state what that capacity is.

(5) The court may grant any remedy to which the claimant is entitled even if that remedy is not specified in the claim form.

(Part 22 requires a claim form to be verified by a statement of truth)

Statement of value to be included in the claim form

16.3.—(1) This rule applies where the claimant is making a claim for money.

(2) The claimant must, in the claim form, state—

- (a) the amount of money which he is claiming;
- (b) that he expects to recover—
 - (i) not more than £5,000;
 - (ii) more than £5,000 but not more than £15,000; or
 - (iii) more than £15,000; or
- (c) that he cannot say how much he expects to recover.

(3) In a claim for personal injuries, the claimant must also state in the claim form whether the amount which he expects to recover as general damages for pain, suffering and loss of amenity is—

- (a) not more than £1,000; or
- (b) more than £1,000.

(4) In a claim which includes a claim by a tenant of residential premises against his landlord where the tenant is seeking an order requiring the landlord to carry out repairs or other work to the premises, the claimant must also state in the claim form whether the amount he expects to recover as damages in respect of those repairs or other work is—

- (a) not more than £1,000; or
- (b) more than £1,000.

(5) If the claim form is to be issued in the High Court it must, where this rule applies—

- (a) state that the claimant expects to recover more than £15,000;
- (b) state that some other enactment provides that the claim may be commenced only in the High Court and specify that enactment;
- (c) if the claim is a claim for personal injuries state that the claimant expects to recover £50,000 or more; or
- (d) state that the claim is to be in one of the specialist High Court lists and state which list.

(6) When calculating how much he expects to recover, the claimant must disregard any possibility—

- (a) that he may recover—
 - (i) interest;
 - (ii) costs;
- (b) that the court may make a finding of contributory negligence against him;
- (c) that the defendant may make a counterclaim or that the defence may include a set-off; or

- (d) that the defendant may be liable to pay an amount of money which the court awards to the claimant to the Secretary of State for Social Security under section 6 of the Social Security (Recovery of Benefits) Act 1997(18).

(7) The statement of value in the claim form does not limit the power of the court to give judgment for the amount which it finds the claimant is entitled to.

Contents of the particulars of claim

16.4.—(1) Particulars of claim must include—

- (a) a concise statement of the facts on which the claimant relies;
- (b) if the claimant is seeking interest, a statement to that effect and the details set out in paragraph (2);
- (c) if the claimant is seeking aggravated damages^(GL) or exemplary damages^(GL), a statement to that effect and his grounds for claiming them;
- (d) if the claimant is seeking provisional damages, a statement to that effect and his grounds for claiming them; and
- (e) such other matters as may be set out in a practice direction.

(2) If the claimant is seeking interest he must—

- (a) state whether he is doing so—
 - (i) under the terms of a contract;
 - (ii) under an enactment and if so which; or
 - (iii) on some other basis and if so what that basis is; and
- (b) if the claim is for a specified amount of money, state—
 - (i) the percentage rate at which interest is claimed;
 - (ii) the date from which it is claimed;
 - (iii) the date to which it is calculated, which must not be later than the date on which the claim form is issued;
 - (iv) the total amount of interest claimed to the date of calculation; and
 - (v) the daily rate at which interest accrues after that date.

(Part 22 requires particulars of claim to be verified by a statement of truth)

Contents of defence

16.5.—(1) In his defence, the defendant must state—

- (a) which of the allegations in the particulars of claim he denies;
- (b) which allegations he is unable to admit or deny, but which he requires the claimant to prove; and
- (c) which allegations he admits.

(2) Where the defendant denies an allegation—

- (a) he must state his reasons for doing so; and
- (b) if he intends to put forward a different version of events from that given by the claimant, he must state his own version.

(3) A defendant who—

- (a) fails to deal with an allegation; but
- (b) has set out in his defence the nature of his case in relation to the issue to which that allegation is relevant,

shall be taken to require that allegation to be proved.

(4) Where the claim includes a money claim, a defendant shall be taken to require that any allegation relating to the amount of money claimed be proved unless he expressly admits the allegation.

(5) Subject to paragraphs (3) and (4), a defendant who fails to deal with an allegation shall be taken to admit that allegation.

(6) If the defendant disputes the claimant's statement of value under rule 16.3 he must—

- (a) state why he disputes it; and
- (b) if he is able, give his own statement of the value of the claim.

(7) If the defendant is defending in a representative capacity, he must state what that capacity is.

(8) If the defendant has not filed an acknowledgment of service under Part 10, he must give an address for service.

(Part 22 requires a defence to be verified by a statement of truth)

(Rule 6.5 provides that an address for service must be within the jurisdiction)

Defence of set-off

16.6 Where a defendant—

- (a) contends he is entitled to money from the claimant; and
- (b) relies on this as a defence to the whole or part of the claim,

the contention may be included in the defence and set off against the claim, whether or not it is also a Part 20 claim.

Reply to defence

16.7.—(1) A claimant who does not file a reply to the defence shall not be taken to admit the matters raised in the defence.

(2) A claimant who—

- (a) files a reply to a defence; but
- (b) fails to deal with a matter raised in the defence,

shall be taken to require that matter to be proved.

(Part 22 requires a reply to be verified by a statement of truth)

Court's power to dispense with statements of case

16.8 If a claim form has been—

- (a) issued in accordance with rule 7.2; and
- (b) served in accordance with rule 7.5,

the court may make an order that the claim will continue without any other statement of case.

PART 17

AMENDMENTS TO STATEMENTS OF CASE

Contents of this Part

Amendments to statements of case	Rule 17.1
Power of court to disallow amendments made without permission	Rule 17.2
Amendments to statements of case with the permission of the court	Rule 17.3
Amendments to statements of case after the end of a relevant limitation period	Rule 17.4

Amendments to statements of case

17.1.—(1) A party may amend his statement of case at any time before it has been served on any other party.

(2) If his statement of case has been served, a party may amend it only—

- (a) with the written consent of all the other parties; or
- (b) with the permission of the court.

(Part 19 also applies where the amendment relates to the addition, substitution or removal of a party)

(Part 22 requires amendments to a statement of case to be verified by a statement of truth unless the court orders otherwise)

Power of court to disallow amendments made without permission

17.2.—(1) If a party has amended his statement of case where permission of the court was not required, the court may disallow the amendment.

(2) A party may apply to the court for an order under paragraph (1) within 14 days of service of a copy of the amended statement of case on him.

Amendments to statements of case with the permission of the court

17.3.—(1) Where the court gives permission for a party to amend his statement of case, it may give directions as to—

- (a) amendments to be made to any other statement of case; and
- (b) service of any amended statement of case.

(2) The power of the court to give permission under this rule is subject to—

- (a) rule 19.1 (change of parties—general);
- (b) rule 19.4 (special provisions about adding or substituting parties after the end of a relevant limitation period^(GL)); and
- (c) rule 17.4 (amendments of statement of case after the end of a relevant limitation period).

Amendments to statements of case after the end of a relevant limitation period

17.4.—(1) This rule applies where—

- (a) a party applies to amend his statement of case in one of the ways mentioned in this rule; and
- (b) a period of limitation has expired under—
 - (i) the Limitation Act 1980⁽¹⁹⁾;
 - (ii) the Foreign Limitation Periods Act 1984⁽²⁰⁾;
 - (iii) section 190 of the Merchant Shipping Act 1995⁽²¹⁾; or
 - (iv) any other statutory provision.

(2) The court may allow an amendment whose effect will be to add or substitute a new claim, but only if the new claim arises out of the same facts or substantially the same facts as a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings.

(3) The court may allow an amendment to correct a mistake as to the name of a party, but only where the mistake was genuine and not one which would cause reasonable doubt as to the identity of the party in question.

(4) The court may allow an amendment to alter the capacity in which a party claims if the new capacity is one which that party had when the proceedings started or has since acquired.

(Rule 19.4 specifies the circumstances in which the court may allow a new party to be added or substituted after the end of a relevant limitation period^(GL))

PART 18**FURTHER INFORMATION****Contents of this Part**

Obtaining further information	Rule 18.1
Restriction on the use of further information	Rule 18.2

Obtaining further information

18.1.—(1) The court may at any time order a party to—

- (a) clarify any matter which is in dispute in the proceedings; or
- (b) give additional information in relation to any such matter,

whether or not the matter is contained or referred to in a statement of case.

(2) Paragraph (1) is subject to any rule of law to the contrary.

(3) Where the court makes an order under paragraph (1), the party against whom it is made must—

- (a) file his response; and
- (b) serve it on the other parties,

within the time specified by the court.

(Part 22 requires a response to be verified by a statement of truth)

⁽¹⁹⁾ 1980 c. 58.

⁽²⁰⁾ 1984 c. 16.

⁽²¹⁾ 1995 c. 21.

Restriction on the use of further information

18.2 The court may direct that information provided by a party to another party (whether given voluntarily or following an order made under rule 18.1) must not be used for any purpose except for that of the proceedings in which it is given.

PART 19

ADDITION AND SUBSTITUTION OF PARTIES

Contents of this Part

Change of parties—general	Rule 19.1
Provisions applicable where two or more persons are jointly entitled to a remedy	Rule 19.2
Procedure for adding and substituting parties	Rule 19.3
Special provisions about adding or substituting parties after the end of a relevant limitation period	Rule 19.4

Change of parties—general

19.1.—(1) This rule applies where a party is to be added or substituted except where the case falls within rule 19.4 (special provisions about changing parties after the end of a relevant limitation period^(GL)).

(2) The court may order a person to be added as a new party if—

- (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or
- (b) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue.

(3) The court may order any person to cease to be a party if it is not desirable for that person to be a party to the proceedings.

(4) The court may order a new party to be substituted for an existing one if—

- (a) the existing party's interest or liability has passed to the new party; and
- (b) it is desirable to substitute the new party so that the court can resolve the matters in dispute in the proceedings.

Provisions applicable where two or more persons are jointly entitled to a remedy

19.2.—(1) Where a claimant claims a remedy to which some other person is jointly entitled with him, all persons jointly entitled to the remedy must be parties unless the court orders otherwise.

(2) If any person does not agree to be a claimant, he must be made a defendant, unless the court orders otherwise.

(3) This rule does not apply in probate proceedings.

Procedure for adding and substituting parties

- 19.3.**—(1) An application for permission to remove, add or substitute a party may be made by—
- (a) an existing party; or
 - (b) a person who wishes to become a party.
- (2) An application for an order under rule 19.1(4) (substitution of new party where existing party's interest or liability has passed)—
- (a) may be made without notice; and
 - (b) must be supported by evidence.
- (3) Nobody may be added or substituted as a claimant unless—
- (a) he has given his consent in writing; and
 - (b) that consent has been filed with the court.
- (4) An order for the removal, addition or substitution of a party must be served on—
- (a) all parties to the proceedings; and
 - (b) any other person affected by the order.
- (5) When the court makes an order for the removal, addition or substitution of a party, it may give consequential directions about—
- (a) filing and serving the claim form on any new defendant;
 - (b) serving relevant documents on the new party; and
 - (c) the management of the proceedings.

Special provisions about adding or substituting parties after the end of a relevant limitation period

- 19.4.**—(1) This rule applies to a change of parties after the end of a period of limitation under—
- (a) the Limitation Act 1980(**22**);
 - (b) the Foreign Limitation Periods Act 1984(**23**);
 - (c) section 190 of the Merchant Shipping Act 1995(**24**); or
 - (d) any other statutory provision.
- (2) The court may add or substitute a party only if—
- (a) the relevant limitation period^(GL) was current when the proceedings were started; and
 - (b) the addition or substitution is necessary.
- (3) The addition or substitution of a party is necessary only if the court is satisfied that—
- (a) the new party is to be substituted for a party who was named in the claim form in mistake for the new party;
 - (b) the claim cannot properly be carried on by or against the original party unless the new party is added or substituted as claimant or defendant; or
 - (c) the original party has died or had a bankruptcy order made against him and his interest or liability has passed to the new party.
- (4) In addition, in a claim for personal injuries the court may add or substitute a party where it directs that—

(22) 1980 c. 58.

(23) 1984 c. 16.

(24) 1995 c. 21.

- (a) (i) section 11 (special time limit for claims for personal injuries); or
(ii) section 12 (special time limit for claims under fatal accidents legislation),
of the Limitation Act 1980 shall not apply to the claim by or against the new party; or
(b) the issue of whether those sections apply shall be determined at trial.
- (Rule 17.4 deals with other changes after the end of a relevant limitation period^(GL))

PART 20

COUNTERCLAIMS AND OTHER ADDITIONAL CLAIMS

Contents of this Part

Purpose of Part 20	Rule 20.1
Meaning of “Part 20 claim”	Rule 20.2
Part 20 claim to be treated as a claim for the purposes of the Rules	Rule 20.3
Defendant’s counterclaim against the claimant	Rule 20.4
Counterclaim against a person other than the claimant	Rule 20.5
Defendant’s claim for contribution or indemnity from co-defendant	Rule 20.6
Procedure for making any other Part 20 claim	Rule 20.7
Service of a Part 20 claim form	Rule 20.8
Matters relevant to question of whether a Part 20 claim should be separate from main claim	Rule 20.9
Effect of service of a Part 20 claim	Rule 20.10
Special provisions relating to default judgment on a Part 20 claim other than a counterclaim or a contribution or indemnity notice	Rule 20.11
Procedural steps on service of a Part 20 claim form on a non-party	Rule 20.12
Case management where there is a defence to a Part 20 claim form	Rule 20.13

Purpose of Part 20

20.1 The purpose of Part 20 is to enable Part 20 claims to be managed in the most convenient and effective manner.

Meaning of “Part 20 claim”

20.2.—(1) A Part 20 claim is any claim other than a claim by a claimant against a defendant and includes—

- (a) a counterclaim by a defendant against the claimant or against the claimant and some other person;
 - (b) a claim by a defendant against any person (whether or not already a party) for contribution^(GL) or indemnity^(GL) or some other remedy; and
 - (c) where a Part 20 claim has been made against a person who is not already a party, any claim made by that person against any other person (whether or not already a party).
- (2) In this Part “Part 20 claimant” means a person who makes a Part 20 claim.

Part 20 claim to be treated as a claim for the purposes of the Rules

20.3.—(1) A Part 20 claim shall be treated as if it were a claim for the purposes of these Rules, except as provided by this Part.

- (2) The following rules do not apply to Part 20 claims—
 - (a) rules 7.5 and 7.6 (time within which a claim form may be served);
 - (b) rule 16.3(5) (statement of value where claim to be issued in the High Court); and
 - (c) Part 26 (Case management—preliminary stage).
- (3) The following rules do not apply to Part 20 claims except where the Part 20 claim is a counterclaim—
 - (a) Part 12 (default judgment); and
 - (b) Part 14 (admissions) except rules 14.1(1) and (2) (which provide that a party may admit in writing the truth of another party’s case) and 14.3 (admission by notice in writing—application for judgment).

(Rule 20.11 makes special provision for default judgment on a Part 20 claim)

Defendant’s counterclaim against the claimant

20.4.—(1) A defendant may make a counterclaim against a claimant by filing particulars of the counterclaim.

- (2) A defendant may make a counterclaim against a claimant—
 - (a) without the court’s permission if he files it with his defence; or
 - (b) at any other time with the court’s permission.

(Part 15 makes provision for a defence to a claim and applies to a defence to a counterclaim by virtue of rule 20.3)

(3) Part 10 (acknowledgment of service) does not apply to a claimant who wishes to defend a counterclaim.

Counterclaim against a person other than the claimant

20.5.—(1) A defendant who wishes to counterclaim against a person other than the claimant must apply to the court for an order that that person be added as defendant to the counterclaim.

(2) An application for an order under paragraph (1) may be made without notice unless the court directs otherwise.

(3) Where the court makes an order under paragraph (1), it will give directions as to the management of the case.

Defendant's claim for contribution or indemnity from co-defendant

20.6 A defendant who has filed an acknowledgment of service or a defence may make a Part 20 claim for contribution^(GL) or indemnity^(GL) against another defendant by—

- (a) filing a notice containing a statement of the nature and grounds of his claim; and
- (b) serving that notice on the other defendant.

Procedure for making any other Part 20 claim

20.7.—(1) This rule applies to any Part 20 claim except—

- (a) a counterclaim; and
 - (b) a claim for contribution^(GL) or indemnity^(GL) made in accordance with rule 20.6.
- (2) A Part 20 claim is made when the court issues a Part 20 claim form.
- (3) A defendant may make a Part 20 claim—
- (a) without the court's permission if the Part 20 claim is issued before or at the same time as he files his defence;
 - (b) at any other time with the court's permission.

(Rule 15.4 sets out the period for filing a defence)

- (4) Particulars of a Part 20 claim must be contained in or served with the Part 20 claim form.
- (5) An application for permission to make a Part 20 claim may be made without notice, unless the court directs otherwise.

Service of a Part 20 claim form

20.8.—(1) Where a Part 20 claim may be made without the court's permission, the Part 20 claim form must—

- (a) in the case of a counterclaim, be served on every other party when a copy of the defence is served;
 - (b) in the case of any other Part 20 claim, be served on the person against whom it is made within 14 days after the date on which the party making the Part 20 claim files his defence.
- (2) Paragraph (1) does not apply to a claim for contribution^(GL) or indemnity^(GL) made in accordance with rule 20.6.
- (3) Where the court gives permission to make a Part 20 claim it will at the same time give directions as to the service of the Part 20 claim.

Matters relevant to question of whether a Part 20 claim should be separate from main claim

20.9.—(1) This rule applies where the court is considering whether to—

- (a) permit a Part 20 claim to be made;
- (b) dismiss a Part 20 claim; or
- (c) require a Part 20 claim to be dealt with separately from the claim by the claimant against the defendant.

(Rule 3.1(2)(e) and (j) deal respectively with the court's power to order that part of proceedings be dealt with as separate proceedings and to decide the order in which issues are to be tried)

- (2) The matters to which the court may have regard include—

- (a) the connection between the Part 20 claim and the claim made by the claimant against the defendant;
- (b) whether the Part 20 claimant is seeking substantially the same remedy which some other party is claiming from him; and
- (c) whether the Part 20 claimant wants the court to decide any question connected with the subject matter of the proceedings—
 - (i) not only between existing parties but also between existing parties and a person not already a party; or
 - (ii) against an existing party not only in a capacity in which he is already a party but also in some further capacity.

Effect of service of a Part 20 claim

20.10.—(1) A person on whom a Part 20 claim is served becomes a party to the proceedings if he is not a party already.

(2) When a Part 20 claim is served on an existing party for the purpose of requiring the court to decide a question against that party in a further capacity, that party also becomes a party in the further capacity specified in the Part 20 claim.

Special provisions relating to default judgment on a Part 20 claim other than a counterclaim or a contribution or indemnity notice

20.11.—(1) This rule applies if—

- (a) the Part 20 claim is not—
 - (i) a counterclaim; or
 - (ii) a claim by a defendant for contribution^(GL) or indemnity^(GL) against another defendant under rule 20.6; and
- (b) the party against whom a Part 20 claim is made fails to file an acknowledgment of service or defence in respect of the Part 20 claim.

(2) The party against whom the Part 20 claim is made—

- (a) is deemed to admit the Part 20 claim, and is bound by any judgment or decision in the main proceedings in so far as it is relevant to any matter arising in the Part 20 claim;
- (b) subject to paragraph (3), if default judgment under Part 12 is given against the Part 20 claimant, the Part 20 claimant may obtain judgment in respect of the Part 20 claim by filing a request in the relevant practice form.

(3) A Part 20 claimant may not enter judgment under paragraph (2)(b) without the court's permission if—

- (a) he has not satisfied the default judgment which has been given against him; or
- (b) he wishes to obtain judgment for any remedy other than a contribution^(GL) or indemnity^(GL).

(4) An application for the court's permission under paragraph (3) may be made without notice unless the court directs otherwise.

(5) The court may at any time set aside^(GL) or vary a judgment entered under paragraph (2)(b).

Procedural steps on service of a Part 20 claim form on a non-party

20.12.—(1) Where a Part 20 claim form is served on a person who is not already a party it must be accompanied by—

- (a) a form for defending the claim;
 - (b) a form for admitting the claim;
 - (c) a form for acknowledging service; and
 - (d) a copy of—
 - (i) every statement of case which has already been served in the proceedings; and
 - (ii) such other documents as the court may direct.
- (2) A copy of the Part 20 claim form must be served on every existing party.

Case management where there is a defence to a Part 20 claim form

20.13.—(1) Where a defence is filed to a Part 20 claim the court must consider the future conduct of the proceedings and give appropriate directions.

(2) In giving directions under paragraph (1) the court must ensure that, so far as practicable, the Part 20 claim and the main claim are managed together.

PART 21

CHILDREN AND PATIENTS

Contents of this Part

Scope of this Part	Rule 21.1
Requirement for litigation friend in proceedings by or against children and patients	Rule 21.2
Stage of proceedings at which a litigation friend becomes necessary	Rule 21.3
Who may be a litigation friend without a court order	Rule 21.4
How a person becomes a litigation friend without a court order	Rule 21.5
How a person becomes a litigation friend by court order	Rule 21.6
Court's power to change litigation friend and to prevent person acting as litigation friend	Rule 21.7
Appointment of litigation friend by court order—supplementary	Rule 21.8
Procedure where appointment of litigation friend ceases	Rule 21.9
Compromise etc. by or on behalf of child or patient	Rule 21.10
Control of money recovered by or on behalf of child or patient	Rule 21.11
Appointment of guardian of child's estate	Rule 21.12

Scope of this Part**21.1.—(1)** This Part—

- (a) contains special provisions which apply in proceedings involving children and patients; and
- (b) sets out how a person becomes a litigation friend.

(2) In this Part—

- (a) “child” means a person under 18; and
- (b) “patient” means a person who by reason of mental disorder within the meaning of the Mental Health Act 1983⁽²⁵⁾ is incapable of managing and administering his own affairs.

(Rule 6.6 contains provisions about the service of documents on children and patients)

(Rule 48.5 deals with costs where money is payable by or to a child or patient)

Requirement for litigation friend in proceedings by or against children and patients**21.2.—(1)** A patient must have a litigation friend to conduct proceedings on his behalf.

(2) A child must have a litigation friend to conduct proceedings on his behalf unless the court makes an order under paragraph (3).

(3) The court may make an order permitting the child to conduct proceedings without a litigation friend.

(4) An application for an order under paragraph (3)—

- (a) may be made by the child;
- (b) if the child already has a litigation friend, must be made on notice to the litigation friend; and
- (c) if the child has no litigation friend, may be made without notice.

(5) Where—

- (a) the court has made an order under paragraph (3); and
- (b) it subsequently appears to the court that it is desirable for a litigation friend to conduct the proceedings on behalf of the child, the court may appoint a person to be the child’s litigation friend.

Stage of proceedings at which a litigation friend becomes necessary**21.3.—(1)** This rule does not apply where the court has made an order under rule 21.2(3).**(2)** A person may not, without the permission of the court—

- (a) make an application against a child or patient before proceedings have started; or
- (b) take any step in proceedings except—
 - (i) issuing and serving a claim form; or
 - (ii) applying for the appointment of a litigation friend under rule 21.6, until the child or patient has a litigation friend.

(3) If a party becomes a patient during proceedings, no party may take any step in the proceedings without the permission of the court until the patient has a litigation friend.

(4) Any step taken before a child or patient has a litigation friend shall be of no effect unless the court otherwise orders.

(25) 1983 c. 20.

Who may be a litigation friend without a court order

21.4.—(1) This rule does not apply if the court has appointed a person to be a litigation friend.

(2) A person authorised under Part VII of the Mental Health Act 1983 to conduct legal proceedings in the name of a patient or on his behalf is entitled to be the litigation friend of the patient in any proceedings to which his authority extends.

(3) If nobody has been appointed by the court or, in the case of a patient, authorised under Part VII, a person may act as a litigation friend if he—

- (a) can fairly and competently conduct proceedings on behalf of the child or patient;
- (b) has no interest adverse to that of the child or patient; and
- (c) where the child or patient is a claimant, undertakes to pay any costs which the child or patient may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the child or patient.

How a person becomes a litigation friend without a court order

21.5.—(1) If the court has not appointed a litigation friend, a person who wishes to act as a litigation friend must follow the procedure set out in this rule.

(2) A person authorised under Part VII of the Mental Health Act 1983 must file an official copy^(GL) of the order or other document which constitutes his authorisation to act.

(3) Any other person must file a certificate of suitability stating that he satisfies the conditions specified in rule 21.4(3).

(4) A person who is to act as a litigation friend for a claimant must file—

- (a) the authorisation; or
 - (b) the certificate of suitability,
- at the time when the claim is made.

(5) A person who is to act as a litigation friend for a defendant must file—

- (a) the authorisation; or
- (b) the certificate of suitability,

at the time when he first takes a step in the proceedings on behalf of the defendant.

(6) The litigation friend must—

- (a) serve the certificate of suitability on every person on whom, in accordance with rule 6.6 (service on parent, guardian etc.), the claim form should be served; and
- (b) file a certificate of service when he files the certificate of suitability.

(Rule 6.10 sets out the details to be contained in a certificate of service)

How a person becomes a litigation friend by court order

21.6.—(1) The court may make an order appointing a litigation friend.

(2) An application for an order appointing a litigation friend may be made by—

- (a) a person who wishes to be the litigation friend; or
- (b) a party.

(3) Where—

- (a) a person makes a claim against a child or patient;
- (b) the child or patient has no litigation friend;

- (c) the court has not made an order under rule 21.2(3) (order that a child can act without a litigation friend); and
- (d) either—
 - (i) someone who is not entitled to be a litigation friend files a defence; or
 - (ii) the claimant wishes to take some step in the proceedings,
 - the claimant must apply to the court for an order appointing a litigation friend for the child or patient.
- (4) An application for an order appointing a litigation friend must be supported by evidence.
- (5) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 21.4(3).

Court's power to change litigation friend and to prevent person acting as litigation friend

- 21.7.**—(1) The court may—
- (a) direct that a person may not act as a litigation friend;
 - (b) terminate a litigation friend's appointment;
 - (c) appoint a new litigation friend in substitution for an existing one.
- (2) An application for an order under paragraph (1) must be supported by evidence.
- (3) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 21.4(3).

Appointment of litigation friend by court order—supplementary

- 21.8.**—(1) An application for an order under rule 21.6 or 21.7 must be served on every person on whom, in accordance with rule 6.6 (service on parent, guardian etc.), the claim form should be served.
- (2) Where an application for an order under rule 21.6 is in respect of a patient, the application must also be served on the patient unless the court orders otherwise.
- (3) An application for an order under rule 21.7 must also be served on—
- (a) the person who is the litigation friend, or who is purporting to act as the litigation friend, when the application is made; and
 - (b) the person who it is proposed should be the litigation friend, if he is not the applicant.
- (4) On an application for an order under rule 21.6 or 21.7, the court may appoint the person proposed or any other person who complies with the conditions specified in rule 21.4(3).

Procedure where appointment of litigation friend ceases

- 21.9.**—(1) When a child who is not a patient reaches the age of 18, a litigation friend's appointment ceases.
- (2) When a party ceases to be a patient, the litigation friend's appointment continues until it is ended by a court order.
- (3) An application for an order under paragraph (2) may be made by—
- (a) the former patient;
 - (b) the litigation friend; or
 - (c) a party.

(4) The child or patient in respect of whom the appointment to act has ceased must serve notice on the other parties—

- (a) stating that the appointment of his litigation friend to act has ceased;
- (b) giving his address for service; and
- (c) stating whether or not he intends to carry on the proceedings.

(5) If he does not do so within 28 days after the day on which the appointment of the litigation friend ceases the court may, on application, strike out^(GL) any claim or defence brought by him.

(6) The liability of a litigation friend for costs continues until—

- (a) the person in respect of whom his appointment to act has ceased serves the notice referred to in paragraph (4); or
- (b) the litigation friend serves notice on the parties that his appointment to act has ceased.

Compromise etc. by or on behalf of child or patient

21.10.—(1) Where a claim is made—

- (a) by or on behalf of a child or patient; or
- (b) against a child or patient,

no settlement, compromise or payment and no acceptance of money paid into court shall be valid, so far as it relates to the claim by, on behalf of or against the child or patient, without the approval of the court.

(2) Where—

- (a) before proceedings in which a claim is made by or on behalf of, or against a child or patient (whether alone or with any other person) are begun, an agreement is reached for the settlement of the claim; and
- (b) the sole purpose of proceedings on that claim is to obtain the approval of the court to a settlement or compromise of the claim,

the claim must—

- (i) be made using the procedure set out in Part 8 (alternative procedure for claims); and
- (ii) include a request to the court for approval of the settlement or compromise.

(Rule 48.5 contains provisions about costs where money is payable to a child or patient)

Control of money recovered by or on behalf of child or patient

21.11.—(1) Where in any proceedings—

- (a) money is recovered by or on behalf of or for the benefit of a child or patient; or
- (b) money paid into court is accepted by or on behalf of a child or patient, the money shall be dealt with in accordance with directions given by the court under this rule and not otherwise.

(2) Directions given under this rule may provide that the money shall be wholly or partly paid into court and invested or otherwise dealt with.

Appointment of guardian of child's estate

21.12.—(1) The court may appoint the Official Solicitor to be a guardian of a child's estate where—

- (a) money is paid into court on behalf of the child in accordance with directions given under rule 21.11 (control of money received by a child or patient);
 - (b) the Criminal Injuries Compensation Board or the Criminal Injuries Compensation Authority notifies the court that it has made or intends to make an award to the child;
 - (c) a court or tribunal outside England and Wales notifies the court that it has ordered or intends to order that money be paid to the child;
 - (d) the child is absolutely entitled to the proceeds of a pension fund; or
 - (e) in any other case, such an appointment seems desirable to the court.
- (2) The court may not appoint the Official Solicitor under this rule unless—
- (a) the persons with parental responsibility (within the meaning of section 3 of the Children Act 1989⁽²⁶⁾) agree; or
 - (b) the court considers that their agreement can be dispensed with.
- (3) The Official Solicitor’s appointment may continue only until the child reaches 18.

PART 22

STATEMENTS OF TRUTH

Contents of this Part

Documents to be verified by a statement of truth	Rule 22.1
Failure to verify a statement of case	Rule 22.2
Failure to verify a witness statement	Rule 22.3
Power of the court to require a document to be verified	Rule 22.4

Documents to be verified by a statement of truth

22.1.—(1) The following documents must be verified by a statement of truth—

- (a) a statement of case;
- (b) a response complying with an order under rule 18.1 to provide further information; and
- (c) a witness statement.

(2) Where a statement of case is amended, the amendments must be verified by a statement of truth unless the court orders otherwise.

(Part 17 provides for amendments to statements of case)

(3) If an applicant wishes to rely on matters set out in his application notice as evidence, the application notice must be verified by a statement of truth.

(4) Subject to paragraph (5), a statement of truth is a statement that—

- (a) the party putting forward the document; or
- (b) in the case of a witness statement, the maker of the witness statement,

believes the facts stated in the document are true.

(26) 1989 c. 41.

- (5) If a party is conducting proceedings with a litigation friend, the statement of truth in—
- (a) a statement of case;
 - (b) a response; or
 - (c) an application notice,
- is a statement that the litigation friend believes the facts stated in the document being verified are true.
- (6) The statement of truth must be signed by—
- (a) in the case of a statement of case, a response or an application—
 - (i) the party or litigation friend; or
 - (ii) the legal representative on behalf of the party or litigation friend; and
 - (b) in the case of a witness statement, the maker of the statement.
- (7) A statement of truth which is not contained in the document which it verifies, must clearly identify that document.
- (8) A statement of truth in a statement of case may be made by—
- (a) a person who is not a party; or
 - (b) by two parties jointly,
- where this is permitted by a relevant practice direction.

Failure to verify a statement of case

- 22.2.**—(1) If a party fails to verify his statement of case by a statement of truth—
- (a) the statement of case shall remain effective unless struck out; but
 - (b) the party may not rely on the statement of case as evidence of any of the matters set out in it.
- (2) The court may strike out^(GL) a statement of case which is not verified by a statement of truth.
- (3) Any party may apply for an order under paragraph (2).

Failure to verify a witness statement

22.3 If the maker of a witness statement fails to verify the witness statement by a statement of truth the court may direct that it shall not be admissible as evidence.

Power of the court to require a document to be verified

- 22.4.**—(1) The court may order a person who has failed to verify a document in accordance with rule 22.1 to verify the document.
- (2) Any party may apply for an order under paragraph (1).

PART 23

GENERAL RULES ABOUT APPLICATIONS FOR COURT ORDERS

Contents of this Part

Meaning of “application notice” and
“respondent”

Rule 23.1

Where to make an application	Rule 23.2
Application notice to be filed	Rule 23.3
Notice of an application	Rule 23.4
Time when an application is made	Rule 23.5
What an application notice must include	Rule 23.6
Service of a copy of an application notice	Rule 23.7
Applications which may be dealt with without a hearing	Rule 23.8
Service of application where application made without notice	Rule 23.9
Application to set aside or vary order made without notice	Rule 23.10
Power of the court to proceed in the absence of a party	Rule 23.11

Meaning of “application notice” and “respondent”

23.1 In this Part—

“application notice” means a document in which the applicant states his intention to seek a court order; and

“respondent” means—

- (a) the person against whom the order is sought; and
- (b) such other person as the court may direct.

Where to make an application

23.2.—(1) The general rule is that an application must be made to the court where the claim was started.

(2) If a claim has been transferred to another court since it was started, an application must be made to the court to which the claim has been transferred.

(3) If the parties have been notified of a fixed date for the trial, an application must be made to the court where the trial is to take place.

(4) If an application is made before a claim has been started, it must be made to the court where it is likely that the claim to which the application relates will be started unless there is good reason to make the application to a different court.

(5) If an application is made after proceedings to enforce judgment have begun, it must be made to any court which is dealing with the enforcement of the judgment unless any rule or practice direction provides otherwise.

Application notice to be filed

23.3.—(1) The general rule is that an applicant must file an application notice.

(2) An applicant may make an application without filing an application notice if—

- (a) this is permitted by a rule or practice direction; or
- (b) the court dispenses with the requirement for an application notice.

Notice of an application

23.4.—(1) The general rule is that a copy of the application notice must be served on each respondent.

(2) An application may be made without serving a copy of the application notice if this is permitted by—

- (a) a rule;
- (b) a practice direction; or
- (c) a court order.

(Rule 23.7 deals with service of a copy of the application notice)

Time when an application is made

23.5 Where an application must be made within a specified time, it is so made if the application notice is received by the court within that time.

What an application notice must include

23.6 An application notice must state—

- (a) what order the applicant is seeking; and
- (b) briefly, why the applicant is seeking the order.

(Part 22 requires an application notice to be verified by a statement of truth if the applicant wishes to rely on matters set out in his application notice as evidence)

Service of a copy of an application notice

23.7.—(1) A copy of the application notice—

- (a) must be served as soon as practicable after it is filed; and
- (b) except where another time limit is specified in these Rules or a practice direction, must in any event be served at least 3 days before the court is to deal with the application.

(2) If a copy of the application notice is to be served by the court, the applicant must, when he files the application notice, file a copy of any written evidence in support.

(3) When a copy of an application notice is served it must be accompanied by—

- (a) a copy of any written evidence in support; and
- (b) a copy of any draft order which the applicant has attached to his application.

(4) If—

- (a) an application notice is served; but
- (b) the period of notice is shorter than the period required by these Rules or a practice direction,

the court may direct that, in the circumstances of the case, sufficient notice has been given and hear the application.

(5) This rule does not require written evidence—

- (a) to be filed if it has already been filed; or
- (b) to be served on a party on whom it has already been served.

(Part 6 contains the general rules about service of documents including who must serve a copy of the application notice)

Applications which may be dealt with without a hearing

23.8 The court may deal with an application without a hearing if—

- (a) the parties agree as to the terms of the order sought;
- (b) the parties agree that the court should dispose of the application without a hearing, or
- (c) the court does not consider that a hearing would be appropriate.

Service of application where application made without notice

23.9.—(1) This rule applies where the court has disposed of an application which it permitted to be made without service of a copy of the application notice.

(2) Where the court makes an order, whether granting or dismissing the application, a copy of the application notice and any evidence in support must, unless the court orders otherwise, be served with the order on any party or other person—

- (a) against whom the order was made; and
- (b) against whom the order was sought.

(3) The order must contain a statement of the right to make an application to set aside^(GL) or vary the order under rule 23.10.

Application to set aside or vary order made without notice

23.10.—(1) A person served with an order made on an application but on whom a copy of the application notice was not served may apply to the court for the order to be set aside^(GL) or varied.

(2) An application under this rule must be made within 7 days after the date on which the order was served on the person making the application.

Power of the court to proceed in the absence of a party

23.11.—(1) Where the applicant or any respondent fails to attend the hearing of an application, the court may proceed in his absence.

(2) Where—

- (a) the applicant or any respondent fails to attend the hearing of an application; and
- (b) the court makes an order at the hearing,

the court may, on application or of its own initiative, re-list the application.

(Part 40 deals with service of orders)

PART 24**SUMMARY JUDGMENT****Contents of this Part**

Scope of this Part	Rule 24.1
Grounds for summary judgment	Rule 24.2
Types of proceedings in which summary judgment is available	Rule 24.3

ProcedureRule 24.4	Rule 24.5
Evidence for the purposes of a summary judgment hearing	
Court's powers when it determines a summary judgment application	Rule 24.6

Scope of this Part

24.1 This Part sets out a procedure by which the court may decide a claim or a particular issue without a trial.

Grounds for summary judgment

24.2 The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if—

- (a) it considers that—
 - (i) that claimant has no real prospect of succeeding on the claim or issue; or
 - (ii) that defendant has no real prospect of successfully defending the claim or issue; and
- (b) there is no other reason why the case or issue should be disposed of at a trial.

(Rule 3.4 makes provision for the court to strike out^(GL) a statement of case or part of a statement of case if it appears that it discloses no reasonable grounds for bringing or defending a claim)

Types of proceedings in which summary judgment is available

24.3.—(1) The court may give summary judgment against a claimant in any type of proceedings.

(2) The court may give summary judgment against a defendant in any type of proceedings except—

- (a) proceedings for possession of residential premises against a tenant, a mortgagor or a person holding over after the end of his tenancy; and
- (b) proceedings for an admiralty claim in rem.

Procedure

24.4.—(1) A claimant may not apply for summary judgment until the defendant against whom the application is made has filed—

- (a) an acknowledgement of service; or
- (b) a defence,
 - unless—
 - (i) the court gives permission; or
 - (ii) a practice direction provides otherwise.

(Rule 10.3 sets out the period for filing an acknowledgment of service and rule 15.4 the period for filing a defence)

(2) If a claimant applies for summary judgment before a defendant against whom the application is made has filed a defence, that defendant need not file a defence before the hearing.

(3) Where a summary judgment hearing is fixed, the respondent (or the parties where the hearing is fixed of the court's own initiative) must be given at least 14 days' notice of—

- (a) the date fixed for the hearing; and
- (b) the issues which it is proposed that the court will decide at the hearing.

(Part 23 contains the general rules about how to make an application)

(Rule 3.3 applies where the court exercises its powers of its own initiative)

Evidence for the purposes of a summary judgment hearing

24.5.—(1) If the respondent to an application for summary judgment wishes to rely on written evidence at the hearing, he must—

- (a) file the written evidence; and
- (b) serve copies on every other party to the application, at least 7 days before the summary judgment hearing.

(2) If the applicant wishes to rely on written evidence in reply, he must—

- (a) file the written evidence; and
- (b) serve a copy on the respondent,

at least 3 days before the summary judgment hearing.

(3) Where a summary judgment hearing is fixed by the court of its own initiative—

- (a) any party who wishes to rely on written evidence at the hearing must—
 - (i) file the written evidence; and
 - (ii) unless the court orders otherwise, serve copies on every other party to the proceedings,

at least 7 days before the date of the hearing;

- (b) any party who wishes to rely on written evidence at the hearing in reply to any other party's written evidence must—

- (i) file the written evidence in reply; and
- (ii) unless the court orders otherwise serve copies on every other party to the proceedings,

at least 3 days before the date of the hearing.

(4) This rule does not require written evidence—

- (a) to be filed if it has already been filed; or
- (b) to be served on a party on whom it has already been served.

Court's powers when it determines a summary judgment application

24.6 When the court determines a summary judgment application it may—

- (a) give directions as to the filing and service of a defence;
- (b) give further directions about the management of the case.

(Rule 3.1(3) provides that the court may attach conditions when it makes an order)

Part 25

INTERIM REMEDIES

Contents of this Part

Orders for interim remedies	Rule 25.1
Time when an order for an interim remedy may be made	Rule 25.2
How to apply for an interim remedy	Rule 25.3
Application for an interim remedy where there is no related claim	Rule 25.4
Inspection of property before commencement or against a non-party	Rule 25.5
Interim payments—general procedure	Rule 25.6
Interim payments—conditions to be satisfied and matters to be taken into account	Rule 25.7
Powers of court where it has made an order for interim payment	Rule 25.8
Restriction on disclosure of an interim payment	Rule 25.9
Interim injunction to cease if claim stayed	Rule 25.10

Orders for interim remedies

25.1.—(1) The court may grant the following interim remedies—

- (a) an interim injunction^(GL);
- (b) an interim declaration;
- (c) an order—
 - (i) for the detention, custody or preservation of relevant property;
 - (ii) for the inspection of relevant property;
 - (iii) for the taking of a sample of relevant property;
 - (iv) for the carrying out of an experiment on or with relevant property;
 - (v) for the sale of relevant property which is of a perishable nature or which for any other good reason it is desirable to sell quickly; and
 - (vi) for the payment of income from relevant property until a claim is decided;
- (d) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-paragraph (c);
- (e) an order under section 4 of the Torts (Interference with Goods) Act 1977⁽²⁷⁾ to deliver up goods;
- (f) an order (referred to as a “freezing injunction^(GL)”)—

⁽²⁷⁾ 1977 c. 32; section 4 was amended by the Supreme Court Act 1981 (c. 54), section 152(1), Schedule 5; by the County Courts Act 1984 (c. 28), section 148(1), Schedule 2, Part V, paragraph 64 and by S.I. 1980/397 (N13).

- (i) restraining a party from removing from the jurisdiction assets located there; or
- (ii) restraining a party from dealing with any assets whether located within the jurisdiction or not;
- (g) an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing injunction^(GL);
- (h) an order (referred to as a “search order”) under section 7 of the Civil Procedure Act 1997~~(28)~~ (order requiring a party to admit another party to premises for the purpose of preserving evidence etc.);
- (i) an order under section 33 of the Supreme Court Act 1981~~(29)~~ or section 52 of the County Courts Act 1984~~(30)~~ (order for disclosure of documents or inspection of property before a claim has been made);
- (j) an order under section 34 of the Supreme Court Act 1981~~(31)~~ or section 53 of the County Courts Act 1984~~(32)~~ (order in certain proceedings for disclosure of documents or inspection of property against a non-party);
- (k) an order (referred to as an order for interim payment) under rule 25.6 for payment by a defendant on account of any damages, debt or other sum (except costs) which the court may hold the defendant liable to pay;
- (l) an order for a specified fund to be paid into court or otherwise secured, where there is a dispute over a party’s right to the fund;
- (m) an order permitting a party seeking to recover personal property to pay money into court pending the outcome of the proceedings and directing that, if he does so, the property shall be given up to him; and
- (n) an order directing a party to prepare and file accounts relating to the dispute.

(Rule 34.2 provides for the court to issue a witness summons requiring a witness to produce documents to the court at the hearing or on such date as the court may direct)

(2) In paragraph (1)(c) and (g), “relevant property” means property (including land) which is the subject of a claim or as to which any question may arise on a claim.

(3) The fact that a particular kind of interim remedy is not listed in paragraph (1) does not affect any power that the court may have to grant that remedy.

(4) The court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind.

Time when an order for an interim remedy may be made

25.2.—(1) An order for an interim remedy may be made at any time, including—

- (a) before proceedings are started; and
- (b) after judgment has been given.

(Rule 7.2 provides that proceedings are started when the court issues a claim form)

(2) However—

⁽²⁸⁾ 1997 c. 12.

⁽²⁹⁾ 1981 c. 54. Section 33 was amended by S.I. 1998/ 2940.

⁽³⁰⁾ 1984 c. 28. Section 52 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 43 and by S.I. 1998/2940.

⁽³¹⁾ 1981 c. 54. Section 34 was amended by S.I. 1998/ 2940.

⁽³²⁾ 1984 c. 28. Section 53 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 44 and by S.I. 1998/2940.

- (a) paragraph (1) is subject to any rule, practice direction or other enactment which provides otherwise;
- (b) the court may grant an interim remedy before a claim has been made only if—
 - (i) the matter is urgent; or
 - (ii) it is otherwise desirable to do so in the interests of justice; and
- (c) unless the court otherwise orders, a defendant may not apply for any of the orders listed in rule 25.1(1) before he has filed either an acknowledgement of service or a defence.

(Part 10 provides for filing an acknowledgment of service and Part 15 for filing a defence)

(3) Where the court grants an interim remedy before a claim has been commenced, it may give directions requiring a claim to be commenced.

(4) In particular, the court need not direct that a claim be commenced where the application is made under section 33 of the Supreme Court Act 1981 or section 52 of the County Courts Act 1984 (order for disclosure, inspection etc. before commencement of a claim).

How to apply for an interim remedy

25.3.—(1) The court may grant an interim remedy on an application made without notice if it appears to the court that there are good reasons for not giving notice.

(2) An application for an interim remedy must be supported by evidence, unless the court orders otherwise.

(3) If the applicant makes an application without giving notice, the evidence in support of the application must state the reasons why notice has not been given.

(Part 3 lists general powers of the court)

(Part 23 contains general rules about making an application)

Application for an interim remedy where there is no related claim

25.4.—(1) This rule applies where a party wishes to apply for an interim remedy but—

- (a) the remedy is sought in relation to proceedings which are taking place, or will take place, outside the jurisdiction; or
- (b) the application is made under section 33 of the Supreme Court Act 1981 or section 52 of the County Courts Act 1984 (order for disclosure, inspection etc. before commencement) before a claim has been commenced.

(2) An application under this rule must be made in accordance with the general rules about applications contained in Part 23.

(The following provisions are also relevant—

- Rule 25.5 (inspection of property before commencement or against a non-party)
- Rule 31.16 (orders for disclosure of documents before proceedings start)
- Rule 31.17 (orders for disclosure of documents against a person not a party))

Inspection of property before commencement or against a non-party

25.5.—(1) This rule applies where a person makes an application under—

- (a) section 33(1) of the Supreme Court Act 1981 or section 52(1) of the County Courts Act 1984 (inspection etc. of property before commencement);

- (b) section 34(3) of the Supreme Court Act 1981 or section 53(3) of the County Courts Act 1984 (inspection etc. of property against a non-party).
- (2) The evidence in support of such an application must show, if practicable by reference to any statement of case prepared in relation to the proceedings or anticipated proceedings, that the property—
 - (a) is or may become the subject matter of such proceedings; or
 - (b) is relevant to the issues that will arise in relation to such proceedings.
- (3) A copy of the application notice and a copy of the evidence in support must be served on—
 - (a) the person against whom the order is sought; and
 - (b) in relation to an application under section 34(3) of the Supreme Court Act 1981 or section 53(3) of the County Courts Act 1984, every party to the proceedings other than the applicant.

Interim payments—general procedure

25.6.—(1) The claimant may not apply for an order for an interim payment before the end of the period for filing an acknowledgement of service applicable to the defendant against whom the application is made.

(Rule 10.3 sets out the period for filing an acknowledgement of service)

(Rule 25.1(1)(k) defines an interim payment)

25.6.—(2) The claimant may make more than one application for an order for an interim payment.

- (3) A copy of an application notice for an order for an interim payment must—
 - (a) be served at least 14 days before the hearing of the application; and
 - (b) be supported by evidence.
 - (4) If the respondent to an application for an order for an interim payment wishes to rely on written evidence at the hearing, he must—
 - (a) file the written evidence; and
 - (b) serve copies on every other party to the application,
 at least 7 days before the hearing of the application.
 - (5) If the applicant wishes to rely on written evidence in reply, he must—
 - (a) file the written evidence; and
 - (b) serve a copy on the respondent,
 at least 3 days before the hearing of the application.
 - (6) This rule does not require written evidence—
 - (a) to be filed if it has already been filed; or
 - (b) to be served on a party on whom it has already been served.
 - (7) The court may order an interim payment in one sum or in instalments.
- (Part 23 contains general rules about applications)

Interim payments—conditions to be satisfied and matters to be taken into account

- 25.7.—(1)** The court may make an order for an interim payment only if—
 - (a) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant;

- (b) the claimant has obtained judgment against that defendant for damages to be assessed or for a sum of money (other than costs) to be assessed;
 - (c) except where paragraph (3) applies, it is satisfied that, if the claim went to trial, the claimant would obtain judgment for a substantial amount of money (other than costs) against the defendant from whom he is seeking an order for an interim payment; or
 - (d) the following conditions are satisfied—
 - (i) the claimant is seeking an order for possession of land (whether or not any other order is also sought); and
 - (ii) the court is satisfied that, if the case went to trial, the defendant would be held liable (even if the claim for possession fails) to pay the claimant a sum of money for the defendant's occupation and use of the land while the claim for possession was pending.
- (2) In addition, in a claim for personal injuries the court may make an order for an interim payment of damages only if—
- (a) the defendant is insured in respect of the claim;
 - (b) the defendant's liability will be met by—
 - (i) an insurer under section 151 of the Road Traffic Act 1988⁽³³⁾; or
 - (ii) an insurer acting under the Motor Insurers Bureau Agreement, or the Motor Insurers Bureau where it is acting itself; or
 - (c) the defendant is a public body.
- (3) In a claim for personal injuries where there are two or more defendants, the court may make an order for the interim payment of damages against any defendant if—
- (a) it is satisfied that, if the claim went to trial, the claimant would obtain judgment for substantial damages against at least one of the defendants (even if the court has not yet determined which of them is liable); and
 - (b) paragraph (2) is satisfied in relation to each of the defendants.
- (4) The court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.
- (5) The court must take into account—
- (a) contributory negligence; and
 - (b) any relevant set-off or counterclaim.

Powers of court where it has made an order for interim payment

25.8.—(1) Where a defendant has been ordered to make an interim payment, or has in fact made an interim payment (whether voluntarily or under an order), the court may make an order to adjust the interim payment.

- (2) The court may in particular—
 - (a) order all or part of the interim payment to be repaid;
 - (b) vary or discharge the order for the interim payment;
 - (c) order a defendant to reimburse, either wholly or partly, another defendant who has made an interim payment.
- (3) The court may make an order under paragraph (2)(c) only if—

(33) 1988 c. 52. Section 151 was amended by the Road Traffic Act 1991 (c. 40), section 83, Schedule 8.

- (a) the defendant to be reimbursed made the interim payment in relation to a claim in respect of which he has made a claim against the other defendant for a contribution^(GL), indemnity^(GL) or other remedy; and
 - (b) where the claim or part to which the interim payment relates has not been discontinued or disposed of, the circumstances are such that the court could make an order for interim payment under rule 25.7.
- (4) The court may make an order under this rule without an application by any party if it makes the order when it disposes of the claim or any part of it.
- (5) Where—
- (a) a defendant has made an interim payment; and
 - (b) the amount of the payment is more than his total liability under the final judgment or order,
- the court may award him interest on the overpaid amount from the date when he made the interim payment.

Restriction on disclosure of an interim payment

25.9 The fact that a defendant has made an interim payment, whether voluntarily or by court order, shall not be disclosed to the trial judge until all questions of liability and the amount of money to be awarded have been decided unless the defendant agrees.

Interim injunction to cease if claim is stayed

25.10 If—

- (a) the court has granted an interim injunction^(GL); and
- (b) the claim is stayed^(GL) other than by agreement between the parties, the interim injunction^(GL) shall be set aside^(GL) unless the court orders that it should continue to have effect even though the claim is stayed.

PART 26

CASE MANAGEMENT—PRELIMINARY STAGE

Contents of this Part

Scope of this Part	Rule 26.1
Automatic transfer	Rule 26.2
Allocation questionnaire	Rule 26.3
Stay to allow for settlement of the case	Rule 26.4
Allocation	Rule 26.5
Scope of each track	Rule 26.6
General rule for allocation	Rule 26.7
Matters relevant to allocation to a track	Rule 26.8
Notice of allocation	Rule 26.9
Re-allocation	Rule 26.10

Scope of this Part

26.1.—(1) This Part provides for—

- (a) the automatic transfer of some defended cases between courts; and
- (b) the allocation of defended cases to case management tracks.

(2) There are three tracks—

- (a) the small claims track;
- (b) the fast track; and
- (c) the multi-track.

(Rule 26.6 sets out the normal scope of each track. Part 27 makes provision for the small claims track. Part 28 makes provision for the fast track. Part 29 makes provision for the multi-track)

Automatic transfer

26.2.—(1) This rule applies to proceedings where—

- (a) the claim is for a specified amount of money;
- (b) the claim was commenced in a court which is not the defendant’s home court;
- (c) the claim has not been transferred to another defendant’s home court under rule 13.4 (application to set aside^(GL) or vary default judgment—procedure) or rule 14.12 (admission—de termination of rate of payment by judge); and
- (d) the defendant is an individual.

(2) This rule does not apply where the claim was commenced in a specialist list^(GL).

(3) Where this rule applies, the court will transfer the proceedings to the defendant’s home court when a defence is filed, unless paragraph (4) applies.

(Rule 2.3 defines “defendant’s home court”)

(4) Where the claimant notifies the court under rule 15.10 or rule 14.5 that he wishes the proceedings to continue, the court will transfer the proceedings to the defendant’s home court when it receives that notification from the claimant.

(Rule 15.10 deals with a claimant’s notice where the defence is that money claimed has been paid)

(Rule 14.5 sets out the procedure where the defendant admits part of a claim for a specified amount of money)

(5) Where—

- (a) the claim is against two or more defendants with different home courts; and
- (b) the defendant whose defence is filed first is an individual,

proceedings are to be transferred under this rule to the home court of that defendant.

(6) The time when a claim is automatically transferred under this rule may be varied by a practice direction in respect of claims issued by the Production Centre.

(Rule 7.10 makes provision for the Production Centre)

Allocation questionnaire

26.3.—(1) When a defendant files a defence the court will serve an allocation questionnaire on each party unless—

- (a) rule 15.10 or rule 14.5 applies; or

(b) the court dispenses with the need for a questionnaire.

(2) Where there are two or more defendants and at least one of them files a defence, the court will serve the allocation questionnaire under paragraph (1)—

(a) when all the defendants have filed a defence; or

(b) when the period for the filing of the last defence has expired,

whichever is the sooner.

(Rule 15.4 specifies the period for filing a defence)

(3) Where proceedings are automatically transferred to the defendant's home court under rule 26.2, the court in which the proceedings have been commenced will serve an allocation questionnaire before the proceedings are transferred.

(4) Where—

(a) rule 15.10 or rule 14.5 applies; and

(b) the proceedings are not automatically transferred to the defendant's home court under rule 26.2,

the court will serve an allocation questionnaire on each party when the claimant files a notice indicating that he wishes the proceedings to continue.

(5) The court may, on the application of the claimant, serve an allocation questionnaire earlier than it would otherwise serve it under this rule.

(6) Each party must file the completed allocation questionnaire no later than the date specified in it, which shall be at least 14 days after the date when it is deemed to be served on the party in question.

(7) The time when the court serves an allocation questionnaire under this rule may be varied by a practice direction in respect of claims issued by the Production Centre.

(Rule 7.10 makes provision for the Production Centre)

(Rule 6.7 specifies when a document is deemed to be served)

Stay to allow for settlement of the case

26.4.—(1) A party may, when filing the completed allocation questionnaire, make a written request for the proceedings to be stayed^(GL) while the parties try to settle the case by alternative dispute resolution^(GL) or other means.

(2) Where—

(a) all parties request a stay^(GL) under paragraph (1); or

(b) the court, of its own initiative, considers that such a stay would be appropriate,

the court will direct that the proceedings be stayed for one month.

(3) The court may extend the stay^(GL) until such date or for such specified period as it considers appropriate.

(4) Where the court stays^(GL) the proceedings under this rule, the claimant must tell the court if a settlement is reached.

(5) If the claimant does not tell the court by the end of the period of the stay^(GL) that a settlement has been reached, the court will give such directions as to the management of the case as it considers appropriate.

Allocation

26.5.—(1) The court will allocate the claim to a track—

- (a) when every defendant has filed an allocation questionnaire, or
- (b) when the period for filing the allocation questionnaires has expired,

whichever is the sooner, unless it has—

- (i) stayed^(GL) the proceedings under rule 26.4; or
- (ii) dispensed with the need for allocation questionnaires.

(Rules 12.7 and 14.8 provide for the court to allocate a claim to a track where the claimant obtains default judgment on request or judgment on admission for an amount to be decided by the court)

(2) If the court has stayed^(GL) the proceedings under rule 26.4, it will allocate the claim to a track at the end of the period of the stay.

(3) Before deciding the track to which to allocate proceedings or deciding whether to give directions for an allocation hearing to be fixed, the court may order a party to provide further information about his case.

(4) The court may hold an allocation hearing if it thinks it is necessary.

(5) If a party fails to file an allocation questionnaire, the court may give any direction it considers appropriate.

Scope of each track

26.6.—(1) The small claims track is the normal track for—

- (a) any claim for personal injuries where—
 - (i) the financial value of the claim is not more than £5,000; and
 - (ii) the financial value of any claim for damages for personal injuries is not more than £1,000;
- (b) any claim which includes a claim by a tenant of residential premises against his landlord where—
 - (i) the tenant is seeking an order requiring the landlord to carry out repairs or other work to the premises (whether or not the tenant is also seeking some other remedy);
 - (ii) the cost of the repairs or other work to the premises is estimated to be not more than £1,000; and
 - (iii) the financial value of any other claim for damages is not more than £1,000.

(Rule 2.3 defines “claim for personal injuries” as proceedings in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person’s death)

(2) For the purposes of paragraph (1) “damages for personal injuries” means damages claimed as compensation for pain, suffering and loss of amenity and does not include any other damages which are claimed.

(3) Subject to paragraph (1), the small claims track is the normal track for any claim which has a financial value of not more than £5,000.

(Rule 26.7(4) provides that the court will not allocate to the small claims track certain claims in respect of harassment or unlawful eviction)

(4) Subject to paragraph (5), the fast track is the normal track for any claim—

- (a) for which the small claims track is not the normal track; and

(b) which has a financial value of not more than £15,000.

(5) The fast track is the normal track for the claims referred to in paragraph (4) only if the court considers that—

- (a) the trial is likely to last for no longer than one day; and
- (b) oral expert evidence at trial will be limited to—
 - (i) one expert per party in relation to any expert field; and
 - (ii) expert evidence in two expert fields.

(6) The multi-track is the normal track for any claim for which the small claims track or the fast track is not the normal track.

General rule for allocation

26.7.—(1) In considering whether to allocate a claim to the normal track for that claim under rule 26.6, the court will have regard to the matters mentioned in rule 26.8(1).

(2) The court will allocate a claim which has no financial value to the track which it considers most suitable having regard to the matters mentioned in rule 26.8(1).

(3) The court will not allocate proceedings to a track if the financial value of any claim in those proceedings, assessed by the court under rule 26.8, exceeds the limit for that track unless all the parties consent to the allocation of the claim to that track.

(4) The court will not allocate a claim to the small claims track, if it includes a claim by a tenant of residential premises against his landlord for a remedy in respect of harassment or unlawful eviction.

Matters relevant to allocation to a track

26.8.—(1) When deciding the track for a claim, the matters to which the court shall have regard include—

- (a) the financial value, if any, of the claim;
- (b) the nature of the remedy sought;
- (c) the likely complexity of the facts, law or evidence;
- (d) the number of parties or likely parties;
- (e) the value of any counterclaim or other Part 20 claim and the complexity of any matters relating to it;
- (f) the amount of oral evidence which may be required;
- (g) the importance of the claim to persons who are not parties to the proceedings;
- (h) the views expressed by the parties; and
- (i) the circumstances of the parties.

(2) It is for the court to assess the financial value of a claim and in doing so it will disregard—

- (a) any amount not in dispute;
- (b) any claim for interest;
- (c) costs; and
- (d) any contributory negligence.

(3) Where—

- (a) two or more claimants have started a claim against the same defendant using the same claim form; and

(b) each claimant has a claim against the defendant separate from the other claimants, the court will consider the claim of each claimant separately when it assesses financial value under paragraph (1).

Notice of allocation

26.9.—(1) When it has allocated a claim to a track, the court will serve notice of allocation on every party.

(2) When the court serves notice of allocation on a party, it will also serve—

- (a) a copy of the allocation questionnaires filed by the other parties; and
- (b) a copy of any further information provided by another party about his case (whether by order or not).

(Rule 26.5 provides that the court may, before allocating proceedings, order a party to provide further information about his case)

Re-allocation

26.10 The court may subsequently re-allocate a claim to a different track.

PART 27

THE SMALL CLAIMS TRACK

Contents of this Part

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Experts	Rule 27.5
Preliminary hearing	Rule 27.6
Power of court to add to, vary or revoke directions	Rule 27.7
Conduct of the hearing	Rule 27.8
Non-attendance of parties at a final hearing	Rule 27.9
Disposal without a hearing	Rule 27.10
Setting judgment aside and re-hearing	Rule 27.11
Right of appeal under Part 27	Rule 27.12
Procedure for making an appeal	Rule 27.13
Costs on the small claims track	Rule 27.14
Claim re-allocated from the small claims track to another track	Rule 27.15

Scope of this Part

27.1.—(1) This Part—

- (a) sets out the special procedure for dealing with claims which have been allocated to the small claims track under Part 26; and
- (b) limits the amount of costs that can be recovered in respect of a claim which has been allocated to the small claims track.

(Rule 27.14 deals with costs on the small claims track)

(2) A claim being dealt with under this Part is called a small claim.

(Rule 26.6 provides for the scope of the small claims track. A claim for a remedy for harassment or unlawful eviction relating, in either case, to residential premises shall not be allocated to the small claims track whatever the financial value of the claim.

Otherwise, the small claims track will be the normal track for—

- any claim which has a financial value of not more than £5,000 subject to the special provisions about claims for personal injuries and housing disrepair claims;
- any claim for personal injuries which has a financial value of not more than £5,000 where the claim for damages for personal injuries is not more than £1,000; and
- any claim which includes a claim by a tenant of residential premises against his landlord for repairs or other work to the premises where the estimated cost of the repairs or other work is not more than £1,000 and the financial value of any claim for damages in respect of those repairs or other work is not more than £1,000)

Extent to which other Parts apply

27.2.—(1) The following Parts of these Rules do not apply to small claims—

- (a) Part 25 (interim remedies) except as it relates to interim injunctions^(GL);
- (b) Part 31 (disclosure and inspection);
- (c) Part 32 (evidence) except rule 32.1 (power of court to control evidence);
- (d) Part 33 (miscellaneous rules about evidence);
- (e) Part 35 (experts and assessors) except rules 35.1 (duty to restrict expert evidence), 35.3 (experts—overriding duty to the court) and 35.8 (instructions to a single joint expert);
- (f) Part 18 (further information);
- (g) Part 36 (offers to settle and payments into court); and
- (h) Part 39 (hearings) except rule 39.2 (general rule—hearing to be in public).

(2) The other Parts of these Rules apply to small claims except to the extent that a rule limits such application.

Court's power to grant a final remedy

27.3 The court may grant any final remedy in relation to a small claim which it could grant if the proceedings were on the fast track or the multi-track.

Preparation for the hearing

27.4.—(1) After allocation the court will—

- (a) give standard directions and fix a date for the final hearing;

- (b) give special directions and fix a date for the final hearing;
 - (c) give special directions and direct that the court will consider what further directions are to be given no later than 28 days after the date the special directions were given;
 - (d) fix a date for a preliminary hearing under rule 27.6; or
 - (e) give notice that it proposes to deal with the claim without a hearing under rule 27.10 and invite the parties to notify the court by a specified date if they agree the proposal.
- (2) The court will—
- (a) give the parties at least 21 days' notice of the date fixed for the final hearing, unless the parties agree to accept less notice; and
 - (b) inform them of the amount of time allowed for the final hearing.
- (3) In this rule
- (a) “standard directions” means—
 - (i) a direction that each party shall, at least 14 days before the date fixed for the final hearing, file and serve on every other party copies of all documents (including any expert’s report) on which he intends to rely at the hearing; and
 - (ii) any other standard directions set out in the relevant practice direction; and
 - (b) “special directions” means directions given in addition to or instead of the standard directions.

Experts

27.5 No expert may give evidence, whether written or oral, at a hearing without the permission of the court.

(Rule 27.14(3)(d) provides for the payment of an expert’s fees)

Preliminary hearing

- 27.6.**—(1) The court may hold a preliminary hearing for the consideration of the claim, but only—
- (a) where—
 - (i) it considers that special directions, as defined in rule 27.4, are needed to ensure a fair hearing; and
 - (ii) it appears necessary for a party to attend at court to ensure that he understands what he must do to comply with the special directions; or
 - (b) to enable it to dispose of the claim on the basis that one or other of the parties has no real prospect of success at a final hearing; or
 - (c) to enable it to strike out^(GL) a statement of case or part of a statement of case on the basis that the statement of case, or the part to be struck out, discloses no reasonable grounds for bringing or defending the claim.
- (2) When considering whether or not to hold a preliminary hearing, the court must have regard to the desirability of limiting the expense to the parties of attending court.
- (3) Where the court decides to hold a preliminary hearing, it will give the parties at least 14 days' notice of the date of the hearing.
- (4) The court may treat the preliminary hearing as the final hearing of the claim if all the parties agree.
- (5) At or after the preliminary hearing the court will—

- (a) fix the date of the final hearing (if it has not been fixed already) and give the parties at least 21 days' notice of the date fixed unless the parties agree to accept less notice;
- (b) inform them of the amount of time allowed for the final hearing; and
- (c) give any appropriate directions.

Power of court to add to, vary or revoke directions

27.7 The court may add to, vary or revoke directions.

Conduct of the hearing

- 27.8.**—(1) The court may adopt any method of proceeding at a hearing that it considers to be fair.
- (2) Hearings will be informal.
 - (3) The strict rules of evidence do not apply.
 - (4) The court need not take evidence on oath.
 - (5) The court may limit cross-examination^(GL).
 - (6) The court must give reasons for its decision.

Non-attendance of parties at a final hearing

27.9.—(1) If a party who does not attend a final hearing—

- (a) has given the court written notice at least 7 days before the date of the hearing that he will not attend; and
- (b) has, in that notice, requested the court to decide the claim in his absence,

the court will take into account that party's statement of case and any other documents he has filed when it decides the claim.

(2) If a claimant does not—

- (a) attend the hearing; and
- (b) give the notice referred to in paragraph (1)

the court may strike out^(GL) the claim.

(3) If—

- (a) a defendant does not
 - (i) attend the hearing; or
 - (ii) give the notice referred to in paragraph (1); and
- (b) the claimant either—
 - (i) does attend the hearing; or
 - (ii) gives the notice referred to in paragraph (1),

the court may decide the claim on the basis of the evidence of the claimant alone.

(4) If neither party attends or gives the notice referred to in paragraph (1), the court may strike out^(GL) the claim and any defence and counterclaim.

Disposal without a hearing

27.10 The court may, if all parties agree, deal with the claim without a hearing.

Setting judgment aside and re-hearing

27.11.—(1) A party—

- (a) who was neither present nor represented at the hearing of the claim; and
- (b) who has not given written notice to the court under rule 27.9(1),

may apply for an order that a judgment under this Part shall be set aside^(GL) and the claim re-heard.

(2) A party who applies for an order setting aside a judgment under this rule must make the application not more than 14 days after the day on which notice of the judgment was served on him.

(3) The court may grant an application under paragraph (2) only if the applicant—

- (a) had a good reason for not attending or being represented at the hearing or giving written notice to the court under rule 27.9(1); and
- (b) has a reasonable prospect of success at the hearing.

(4) If a judgment is set aside^(GL)—

- (a) the court must fix a new hearing for the claim; and
- (b) the hearing may take place immediately after the hearing of the application to set the judgment aside and may be dealt with by the judge who set aside^(GL) the judgment.

(5) A party may not apply to set aside^(GL) a judgment under this rule if the court dealt with the claim without a hearing under rule 27.10.

Right of appeal under Part 27

27.12.—(1) A party may appeal against an order under this Part only on the grounds that—

- (a) there was serious irregularity affecting the proceedings; or
- (b) the court made a mistake of law.

(2) On an appeal the court may make any order it considers appropriate.

(3) The court may dismiss an appeal without a hearing.

(4) This rule does not limit any right of appeal arising under any Act.

Procedure for making an appeal

27.13.—(1) A party who wishes to appeal must file a notice of appeal not more than 14 days after the day on which notice of the order was served on him.

(2) Notice of appeal—

- (a) must be filed at the court which made the order; and
- (b) must set out the grounds for the appeal with particulars of the serious irregularity or mistake of law alleged.

Costs on the small claims track

27.14.—(1) This rule applies to any case which has been allocated to the small claims track unless paragraph (5) applies.

(Rules 44.9 and 44.11 make provision in relation to orders for costs made before a claim has been allocated to the small claims track)

(2) The court may not order a party to pay a sum to another party in respect of that other party's costs except—

- (a) the fixed costs payable under Part 45 attributable to issuing the claim;
 - (b) in proceedings which included a claim for an injunction^(GL) or an order for specific performance a sum not exceeding the amount specified in the relevant practice direction for legal advice and assistance relating to that claim;
 - (c) costs assessed by the summary procedure in relation to an appeal under rule 27.12; and
 - (d) such further costs as the court may assess by the summary procedure and order to be paid by a party who has behaved unreasonably.
- (3) The court may also order a party to pay all or part of—
- (a) any court fees paid by another party;
 - (b) 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;
 - (c) a sum not exceeding the amount specified in the relevant practice direction for any loss of earnings by a party or witness due to attending a hearing or to staying away from home for the purpose of attending a hearing; and
 - (d) a sum not exceeding the amount specified in the relevant practice direction for an expert's fees.
- (4) The limits on costs imposed by this rule also apply to any fee or reward for acting on behalf of a party to the proceedings charged by a person exercising a right of audience by virtue of an order under section 11 of the Courts and Legal Services Act 1990⁽³⁴⁾ (a lay representative).
- (5) Where—
- (a) the financial value of a claim exceeds the limit for the small claims track; but
 - (b) the claim has been allocated to the small claims track in accordance with rule 26.7(3),
- the claim shall be treated, for the purposes of costs, as if it were proceeding on the fast track except that trial costs shall be in the discretion of the court and shall not exceed the amount set out for the value of the claim in rule 46.2 (amount of fast track trial costs).
- (Rule 26.7(3) allows the parties to consent to a claim being allocated to a track where the financial value of the claim exceeds the limit for that track)

Claim re-allocated from the small claims track to another track

27.15 Where a claim is allocated to the small claims track and subsequently re-allocated to another track, rule 27.14 (costs on the small claims track) will cease to apply after the claim has been re-allocated and the fast track or multi-track costs rules will apply from the date of re-allocation.

PART 28

THE FAST TRACK

Contents of this Part

Scope of this Part	Rule 28.1
General provisions	Rule 28.2
Directions	Rule 28.3

(34) 1990 c. 41.

Variation of case management timetable	Rule 28.4
Listing questionnaire	Rule 28.5
Fixing or confirming the trial date and giving directions	Rule 28.6
Conduct of trial	Rule 28.7

Scope of this Part

28.1 This Part contains general provisions about management of cases allocated to the fast track and applies only to cases allocated to that track.

(Part 27 sets out the procedure for claims allocated to the small claims track)

(Part 29 sets out the procedure for claims allocated to the multi-track)

General provisions

28.2.—(1) When it allocates a case to the fast track, the court will give directions for the management of the case and set a timetable for the steps to be taken between the giving of the directions and the trial.

(2) When it gives directions, the court will—

(a) fix the trial date; or

(b) fix a period, not exceeding 3 weeks, within which the trial is to take place.

(3) The trial date or trial period will be specified in the notice of allocation.

(4) The standard period between the giving of directions and the trial will be not more than 30 weeks.

(5) The court's power to award trial costs is limited in accordance with Part 46.

Directions

28.3.—(1) The matters to be dealt with by directions under rule 28.2(1) include—

(a) disclosure of documents;

(b) service of witness statements; and

(c) expert evidence.

(2) If the court decides not to direct standard disclosure, it may—

(a) direct that no disclosure take place; or

(b) specify the documents or the classes of documents which the parties must disclose.

(Rule 31.6 explains what is meant by standard disclosure)

(Rule 26.6(5) deals with limitations in relation to expert evidence and the likely length of trial in fast track cases)

Variation of case management timetable

28.4.—(1) A party must apply to the court if he wishes to vary the date which the court has fixed for—

(a) the return of a listing questionnaire under rule 28.5;

(b) the trial; or

(c) the trial period.

(2) Any date set by the court or these Rules for doing any act may not be varied by the parties if the variation would make it necessary to vary any of the dates mentioned in paragraph (1).

(Rule 2.11 allows the parties to vary a date by written agreement except where the rules provide otherwise or the court orders otherwise)

Listing questionnaire

28.5.—(1) The court will send the parties a listing questionnaire for completion and return by the date specified in the notice of allocation unless it considers that the claim can be listed for trial without the need for a listing questionnaire.

(2) The date specified for filing a listing questionnaire will not be more than 8 weeks before the trial date or the beginning of the trial period.

(3) If—

- (a) a party fails to file the completed questionnaire by the date specified;
- (b) a party has failed to give all the information requested by the listing questionnaire; or
- (c) the court considers that a hearing is necessary to enable it to decide what directions to give in order to complete preparation of the case for trial,

the court may fix a listing hearing or give such other directions as it thinks appropriate.

Fixing or confirming the trial date and giving directions

28.6.—(1) As soon as practicable after the date specified for filing a completed listing questionnaire the court will—

- (a) fix the date for the trial (or, if it has already done so, confirm that date);
- (b) give any directions for the trial, including a trial timetable, which it considers appropriate; and
- (c) specify any further steps that need to be taken before trial.

(2) The court will give the parties at least 3 weeks' notice of the date of the trial unless, in exceptional circumstances, the court directs that shorter notice will be given.

Conduct of trial

28.7 Unless the trial judge otherwise directs, the trial will be conducted in accordance with any order previously made.

PART 29

THE MULTI-TRACK

Contents of this Part

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Listing questionnaire	Rule 29.6
Pre-trial review	Rule 29.7
Setting a trial timetable and fixing or confirming the trial date or week	Rule 29.8
Conduct of the trial	Rule 29.9

Scope of this Part

29.1 This Part contains general provisions about management of cases allocated to the multi-track and applies only to cases allocated to that track.

(Part 27 sets out the procedure for claims allocated to the small claims track)

(Part 28 sets out the procedure for claims allocated to the fast track)

Case management

29.2.—(1) When it allocates a case to the multi-track, the court will—

(a) give directions for the management of the case and set a timetable for the steps to be taken between the giving of directions and the trial; or

(b) fix—

(i) a case management conference; or

(ii) a pre-trial review,

or both, and give such other directions relating to the management of the case as it sees fit.

(2) The court will fix the trial date or the period in which the trial is to take place as soon as practicable.

(3) When the court fixes the trial date or the trial period under paragraph (2), it will—

(a) give notice to the parties of the date or period; and

(b) specify the date by which the parties must file a listing questionnaire.

Case management conference and pre-trial review

29.3.—(1) The court may fix—

(a) a case management conference; or

(b) a pre-trial review,

at any time after the claim has been allocated.

(2) If a party has a legal representative, a representative—

(a) familiar with the case; and

(b) with sufficient authority to deal with any issues that are likely to arise, must attend case management conferences and pre-trial reviews.

(Rule 3.1(2)(c) provides that the court may require a party to attend the court)

Steps taken by the parties

29.4 If—

- (a) the parties agree proposals for the management of the proceedings (including a proposed trial date or period in which the trial is to take place); and
- (b) the court considers that the proposals are suitable,

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

Variation of case management timetable

29.5.—(1) A party must apply to the court if he wishes to vary the date which the court has fixed for—

- (a) a case management conference;
- (b) a pre-trial review;
- (c) the return of a listing questionnaire under rule 29.6;
- (d) the trial; or
- (e) the trial period.

(2) Any date set by the court or these Rules for doing any act may not be varied by the parties if the variation would make it necessary to vary any of the dates mentioned in paragraph (1).

(Rule 2.11 allows the parties to vary a date by written agreement except where the rules provide otherwise or the court orders otherwise)

Listing questionnaire

29.6.—(1) The court will send the parties a listing questionnaire for completion and return by the date specified in directions given under rule 29.2(3) unless it considers that the claim can be listed for trial without the need for a listing questionnaire.

(2) Each party must file the completed listing questionnaire by the date specified by the court.

(3) If—

- (a) a party fails to file the completed questionnaire by the date specified;
- (b) a party has failed to give all the information requested by the listing questionnaire; or
- (c) the court considers that a hearing is necessary to enable it to decide what directions to give in order to complete preparation of the case for trial,

the court may fix a date for a listing hearing or give such other directions as it thinks appropriate.

Pre-trial review

29.7 If, on receipt of the parties' listing questionnaires, the court decides—

- (a) to hold a pre-trial review; or
- (b) to cancel a pre-trial review which has already been fixed,

it will serve notice of its decision at least 7 days before the date fixed for the hearing or, as the case may be, the cancelled hearing.

Setting a trial timetable and fixing or confirming the trial date or week

29.8 As soon as practicable after—

- (a) each party has filed a completed listing questionnaire;

- (b) the court has held a listing hearing under rule 29.6(3); or
- (c) the court has held a pre-trial review under rule 29.7,

the court will—

- (i) set a timetable for the trial unless a timetable has already been fixed, or the court considers that it would be inappropriate to do so;
- (ii) fix the date for the trial or the week within which the trial is to begin (or, if it has already done so, confirm that date); and
- (iii) notify the parties of the trial timetable (where one is fixed under this rule) and the date or trial period.

Conduct of trial

29.9 Unless the trial judge otherwise directs, the trial will be conducted in accordance with any order previously made.

PART 30

TRANSFER

Contents of this Part

Scope of this Part	Rule 30.1
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Criteria for a transfer order	Rule 30.3
Procedure	Rule 30.4
Transfer between Divisions and to and from a specialist list	Rule 30.5
Power to specify place where hearings are to be held	Rule 30.6
Transfer of control of money in court	Rule 30.7
Certiorari or prohibition	Rule 30.8

Scope of this Part

30.1 This Part deals with the transfer of proceedings between county courts, between the High Court and the county courts and within the High Court.

(Rule 26.2 provides for automatic transfer in certain cases)

Transfer between county courts and within the High Court

30.2.—(1) A county court may order proceedings before that court, or any part of them (such as a counterclaim or an application made in the proceedings), to be transferred to another county court if it is satisfied that—

- (a) an order should be made having regard to the criteria in rule 30.3; or

- (b) proceedings for
 - (i) the detailed assessment of costs; or
 - (ii) the enforcement of a judgment or order,
 could be more conveniently or fairly taken in that other county court.
- (2) If proceedings have been started in the wrong county court, a judge of the county court may order that the proceedings—
 - (a) be transferred to the county court in which they ought to have been started;
 - (b) continue in the county court in which they have been started; or
 - (c) be struck out.
- (3) An application for an order under paragraph (1) or (2) must be made to the county court where the claim is proceeding.
- (4) The High Court may, having regard to the criteria in rule 30.3, order proceedings in the Royal Courts of Justice or a district registry, or any part of such proceedings (such as a counterclaim or an application made in the proceedings), to be transferred—
 - (a) from the Royal Courts of Justice to a district registry; or
 - (b) from a district registry to the Royal Courts of Justice or to another district registry.
- (5) A district registry may order proceedings before it for the detailed assessment of costs to be transferred to another district registry if it is satisfied that the proceedings could be more conveniently or fairly taken in that other district registry.
- (6) An application for an order under paragraph (4) or (5) must, if the claim is proceeding in a district registry, be made to that registry.
- (7) Where some enactment, other than these Rules, requires proceedings to be started in a particular county court, neither paragraphs (1) nor (2) give the court power to order proceedings to be transferred to a county court which is not the court in which they should have been started or to order them to continue in the wrong court.
- (8) Probate proceedings may only be transferred under paragraph (4) to the Chancery Division at the Royal Courts of Justice or to one of the Chancery district registries.

Criteria for a transfer order

- 30.3.**—(1) Paragraph (2) sets out the matters to which the court must have regard when considering whether to make an order under—
- (a) s.40(2), 41(1) or 42(2) of the County Courts Act 1984⁽³⁵⁾ (transfer between the High Court and a county court);
 - (b) rule 30.2(1) (transfer between county courts); or
 - (c) rule 30.2(4) (transfer between the Royal Courts of Justice and the district registries).
- (2) The matters to which the court must have regard include—
- (a) the financial value of the claim and the amount in dispute, if different;
 - (b) whether it would be more convenient or fair for hearings (including the trial) to be held in some other court;
 - (c) the availability of a judge specialising in the type of claim in question;
 - (d) whether the facts, legal issues, remedies or procedures involved are simple or complex;

⁽³⁵⁾ 1984 c. 28. Section 40 was substituted by section 2(1) of the Courts and Legal Services Act 1990 (c. 41). Section 41 was amended by the Matrimonial and Family Proceedings Act 1984 (c. 42), Schedule 1, paragraph 31 and by section 2(2) of the Courts and Legal Services Act 1990. Section 42 was substituted by section 2(3) of the Courts and Legal Services Act 1990.

- (e) the importance of the outcome of the claim to the public in general;
- (f) the facilities available at the court where the claim is being dealt with and whether they may be inadequate because of any disabilities of a party or potential witness.

Procedure

30.4.—(1) Where the court orders proceedings to be transferred, the court from which they are to be transferred must give notice of the transfer to all the parties.

(2) An order made before the transfer of the proceedings shall not be affected by the order to transfer.

Transfer between Divisions and to and from a specialist list

30.5.—(1) The High Court may order proceedings in any Division of the High Court to be transferred to another Division.

(2) The court may order proceedings to be transferred to or from a specialist list.

(3) An application for the transfer of proceedings to or from a specialist list must be made to a judge dealing with claims in that list.

Power to specify place where hearings are to be held

30.6 The court may specify the place (for instance, a particular county court) where the trial or some other hearing in any proceedings is to be held and may do so without ordering the proceedings to be transferred.

Transfer of control of money in court

30.7 The court may order that control of any money held by it under rule 21.11 (control of money recovered by or on behalf of a child or patient) be transferred to another court if that court would be more convenient.

Certiorari or prohibition

30.8 A party obtaining from the High Court, on an application made without notice, an order giving permission to make an application for—

- (a) an order of certiorari to remove proceedings from a county court; or
- (b) an order of prohibition to any county court,

must immediately serve a copy of the order on the other parties and on the court officer of the county court.

PART 31

DISCLOSURE AND INSPECTION OF DOCUMENTS

Contents of this Part

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Duty of search	Rule 31.7
Duty of disclosure limited to documents which are or have been in a party’s control	Rule 31.8
Disclosure of copies	Rule 31.9
Procedure for standard disclosure	Rule 31.10
Duty of disclosure continues during proceedings	Rule 31.11
Specific disclosure or inspection	Rule 31.12
Disclosure in stages	Rule 31.13
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Orders for disclosure against a person not a party	Rule 31.17
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Claim to withhold inspection or disclosure of a document	Rule 31.19
Restriction on use of a privileged document inspection of which has been inadvertently allowed	Rule 31.20
Consequence of failure to disclose documents or permit inspection	Rule 31.21
Subsequent use of disclosed documents	Rule 31.22

Scope of this Part

- 31.1.**—(1) This Part sets out rules about the disclosure and inspection of documents.
(2) This Part applies to all claims except a claim on the small claims track.

Meaning of disclosure

- 31.2** A party discloses a document by stating that the document exists or has existed.

Right of inspection of a disclosed document

- 31.3.**—(1) A party to whom a document has been disclosed has a right to inspect that document except where—
(a) the document is no longer in the control of the party who disclosed it;

- (b) the party disclosing the document has a right or a duty to withhold inspection of it; or
- (c) paragraph (2) applies.

(Rule 31.8 sets out when a document is in the control of a party)

(Rule 31.19 sets out the procedure for claiming a right or duty to withhold inspection)

31.3.—(2) Where a party considers that it would be disproportionate to the issues in the case to permit inspection of documents within a category or class of document disclosed under rule 31.6(b)

- (a) he is not required to permit inspection of documents within that category or class; but
- (b) he must state in his disclosure statement that inspection of those documents will not be permitted on the grounds that to do so would be disproportionate.

(Rule 31.6 provides for standard disclosure)

(Rule 31.10 makes provision for a disclosure statement)

(Rule 31.12 provides for a party to apply for an order for specific inspection of documents)

Meaning of document

31.4 In this Part—

“document” means anything in which information of any description is recorded; and
“copy”, in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.

Disclosure limited to standard disclosure

31.5.—(1) An order to give disclosure is an order to give standard disclosure unless the court directs otherwise.

- (2) The court may dispense with or limit standard disclosure.
- (3) The parties may agree in writing to dispense with or to limit standard disclosure.

(The court may make an order requiring standard disclosure under rule 28.3 which deals with directions in relation to cases on the fast track and under rule 29.2 which deals with case management in relation to cases on the multi-track)

Standard disclosure—what documents are to be disclosed

31.6 Standard disclosure requires a party to disclose only—

- (a) the documents on which he relies; and
- (b) the documents which—
 - (i) adversely affect his own case;
 - (ii) adversely affect another party’s case; or
 - (iii) support another party’s case; and
- (c) the documents which he is required to disclose by a relevant practice direction.

Duty of search

31.7.—(1) When giving standard disclosure, a party is required to make a reasonable search for documents falling within rule 31.6(b) or (c).

- (2) The factors relevant in deciding the reasonableness of a search include the following—

- (a) the number of documents involved;
- (b) the nature and complexity of the proceedings;
- (c) the ease and expense of retrieval of any particular document; and
- (d) the significance of any document which is likely to be located during the search.

(3) Where a party has not searched for a category or class of document on the grounds that to do so would be unreasonable, he must state this in his disclosure statement and identify the category or class of document.

(Rule 31.10 makes provision for a disclosure statement)

Duty of disclosure limited to documents which are or have been in party's control

31.8.—(1) A party's duty to disclose documents is limited to documents which are or have been in his control.

- (2) For this purpose a party has or has had a document in his control if—
 - (a) it is or was in his physical possession;
 - (b) he has or has had a right to possession of it; or
 - (c) he has or has had a right to inspect or take copies of it.

Disclosure of copies

31.9.—(1) A party need not disclose more than one copy of a document.

- (2) A copy of a document that contains a modification, obliteration or other marking or feature—
 - (a) on which a party intends to rely; or
 - (b) which adversely affects his own case or another party's case or supports another party's case;

shall be treated as a separate document.

(Rule 31.4 sets out the meaning of a copy of a document)

Procedure for standard disclosure

31.10.—(1) The procedure for standard disclosure is as follows.

(2) Each party must make and serve on every other party, a list of documents in the relevant practice form.

(3) The list must identify the documents in a convenient order and manner and as concisely as possible.

- (4) The list must indicate—
 - (a) those documents in respect of which the party claims a right or duty to withhold inspection; and
 - (b) (i) those documents which are no longer in the party's control; and
 - (ii) what has happened to those documents.

(Rule 31.19 (3) and (4) require a statement in the list of documents relating to any documents inspection of which a person claims he has a right or duty to withhold)

- (5) The list must include a disclosure statement.
- (6) A disclosure statement is a statement made by the party disclosing the documents—

- (a) setting out the extent of the search that has been made to locate documents which he is required to disclose;
 - (b) certifying that he understands the duty to disclose documents; and
 - (c) certifying that to the best of his knowledge he has carried out that duty.
- (7) Where the party making the disclosure statement is a company, firm, association or other organisation, the statement must also—
- (a) identify the person making the statement; and
 - (b) explain why he is considered an appropriate person to make the statement.
- (8) The parties may agree in writing—
- (a) to disclose documents without making a list; and
 - (b) to disclose documents without the disclosing party making a disclosure statement.
- (9) A disclosure statement may be made by a person who is not a party where this is permitted by a relevant practice direction.

Duty of disclosure continues during proceedings

31.11.—(1) Any duty of disclosure continues until the proceedings are concluded.

(2) If documents to which that duty extends come to a party's notice at any time during the proceedings, he must immediately notify every other party.

Specific disclosure or inspection

31.12.—(1) The court may make an order for specific disclosure or specific inspection.

(2) An order for specific disclosure is an order that a party must do one or more of the following things—

- (a) disclose documents or classes of documents specified in the order;
- (b) carry out a search to the extent stated in the order;
- (c) disclose any documents located as a result of that search.

(3) An order for specific inspection is an order that a party permit inspection of a document referred to in rule 31.3(2).

(Rule 31.3(2) allows a party to state in his disclosure statement that he will not permit inspection of a document on the grounds that it would be disproportionate to do so)

Disclosure in stages

31.13 The parties may agree in writing, or the court may direct, that disclosure or inspection or both shall take place in stages.

Documents referred to in statements of case etc.

31.14 A party may inspect a document mentioned in—

- (a) a statement of case;
- (b) a witness statement;
- (c) a witness summary;
- (d) an affidavit^(GL); or
- (e) subject to rule 35.10(4), an expert's report.

(Rule 35.10(4) makes provision in relation to instructions referred to in an expert's report)

Inspection and copying of documents

31.15 Where a party has a right to inspect a document—

- (a) that party must give the party who disclosed the document written notice of his wish to inspect it;
- (b) the party who disclosed the document must permit inspection not more than 7 days after the date on which he received the notice; and
- (c) that party may request a copy of the document and, if he also undertakes to pay reasonable copying costs, the party who disclosed the document must supply him with a copy not more than 7 days after the date on which he received the request.

(Rule 31.3 and 31.14 deal with the right of a party to inspect a document)

Disclosure before proceedings start

31.16.—(1) This rule applies where an application is made to the court under any Act for disclosure before proceedings have started⁽³⁶⁾.

- (2) The application must be supported by evidence.
- (3) The court may make an order under this rule only where—
 - (a) the respondent is likely to be a party to subsequent proceedings;
 - (b) the applicant is also likely to be a party to those proceedings;
 - (c) if proceedings had started, the respondent's duty by way of standard disclosure, set out in rule 31.6, would extend to the documents or classes of documents of which the applicant seeks disclosure; and
 - (d) disclosure before proceedings have started is desirable in order to—
 - (i) dispose fairly of the anticipated proceedings;
 - (ii) assist the dispute to be resolved without proceedings; or
 - (iii) save costs.
- (4) An order under this rule must—
 - (a) specify the documents or the classes of documents which the respondent must disclose; and
 - (b) require him, when making disclosure, to specify any of those documents—
 - (i) which are no longer in his control; or
 - (ii) in respect of which he claims a right or duty to withhold inspection.
- (5) Such an order may—
 - (a) require the respondent to indicate what has happened to any documents which are no longer in his control; and
 - (b) specify the time and place for disclosure and inspection.

⁽³⁶⁾ An application for disclosure before proceedings have started is permitted under section 33 of the Supreme Court Act 1981(c. 54) or section 52 of the County Courts Act 1984 (c. 28).

Orders for disclosure against a person not a party

31.17.—(1) This rule applies where an application is made to the court under any Act for disclosure by a person who is not a party to the proceedings⁽³⁷⁾.

- (2) The application must be supported by evidence.
- (3) The court may make an order under this rule only where—
 - (a) the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and
 - (b) disclosure is necessary in order to dispose fairly of the claim or to save costs.
- (4) An order under this rule must—
 - (a) specify the documents or the classes of documents which the respondent must disclose; and
 - (b) require the respondent, when making disclosure, to specify any of those documents—
 - (i) which are no longer in his control; or
 - (ii) in respect of which he claims a right or duty to withhold inspection.
- (5) Such an order may—
 - (a) require the respondent to indicate what has happened to any documents which are no longer in his control; and
 - (b) specify the time and place for disclosure and inspection.

Rules not to limit other powers of the court to order disclosure

- 31.18** Rules 31.16 and 31.17 do not limit any other power which the court may have to order—
- (a) disclosure before proceedings have started; and
 - (b) disclosure against a person who is not a party to proceedings.

Claim to withhold inspection or disclosure of a document

31.19.—(1) A person may apply, without notice, for an order permitting him to withhold disclosure of a document on the ground that disclosure would damage the public interest.

- (2) Unless the court orders otherwise, an order of the court under paragraph (1)—
 - (a) must not be served on any other person; and
 - (b) must not be open to inspection by any person.
- (3) A person who wishes to claim that he has a right or a duty to withhold inspection of a document, or part of a document, must state in writing—
 - (a) that he has such a right or duty; and
 - (b) the grounds on which he claims that right or duty.
- (4) The statement referred to in paragraph (3) must be made—
 - (a) in the list in which the document is disclosed; or
 - (b) if there is no list, to the person wishing to inspect the document.
- (5) A party may apply to the court to decide whether a claim made under paragraph (3) should be upheld.

⁽³⁷⁾ An application for disclosure against a person who is not a party to proceedings is permitted under section 34 of the Supreme Court Act 1981(c. 54) or section 53 of the County Courts Act 1984 (c. 28).

(6) For the purpose of deciding an application under paragraph (1) (application to withhold disclosure) or paragraph (3) (claim to withhold inspection) the court may—

- (a) require the person seeking to withhold disclosure or inspection of a document to produce that document to the court; and
- (b) invite any person, whether or not a party, to make representations.

(7) An application under paragraph (1) or paragraph (5) must be supported by evidence.

(8) This Part does not affect any rule of law which permits or requires a document to be withheld from disclosure or inspection on the ground that its disclosure or inspection would damage the public interest.

Restriction on use of a privileged document inspection of which has been inadvertently allowed

31.20 Where a party inadvertently allows a privileged^(GL) document to be inspected, the party who has inspected the document may use it or its contents only with the permission of the court.

Consequence of failure to disclose documents or permit inspection

31.21 A party may not rely on any document which he fails to disclose or in respect of which he fails to permit inspection unless the court gives permission.

Subsequent use of disclosed documents

31.22.—(1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where—

- (a) the document has been read to or by the court, or referred to, at a hearing which has been held in public;
- (b) the court gives permission; or
- (c) the party who disclosed the document and the person to whom the document belongs agree.

(2) The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to, at a hearing which has been held in public.

(3) An application for such an order may be made—

- (a) by a party; or
- (b) by any person to whom the document belongs.

PART 32

EVIDENCE

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Power of court to control evidence

32.1.—(1) The court may control the evidence by giving directions as to—

- (a) the issues on which it requires evidence;
- (b) the nature of the evidence which it requires to decide those issues; and
- (c) the way in which the evidence is to be placed before the court.

(2) The court may use its power under this rule to exclude evidence that would otherwise be admissible.

(3) The court may limit cross-examination^(GL).

Evidence of witnesses—general rule

32.2.—(1) The general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved—

- (a) at trial, by their oral evidence given in public; and
- (b) at any other hearing, by their evidence in writing.

(2) This is subject—

- (a) to any provision to the contrary contained in these Rules or elsewhere; or
- (b) to any order of the court.

Evidence by video link or other means

32.3 The court may allow a witness to give evidence through a video link or by other means.

Requirement to serve witness statements for use at trial

32.4.—(1) A witness statement is a written statement signed by a person which contains the evidence which that person would be allowed to give orally.

(2) The court will order a party to serve on the other parties any witness statement of the oral evidence which the party serving the statement intends to rely on in relation to any issues of fact to be decided at the trial.

(3) The court may give directions as to—

- (a) the order in which witness statements are to be served; and
- (b) whether or not the witness statements are to be filed.

Use at trial of witness statements which have been served

32.5.—(1) If—

- (a) a party has served a witness statement; and
- (b) he wishes to rely at trial on the evidence of the witness who made the statement,

he must call the witness to give oral evidence unless the court orders otherwise or he puts the statement in as hearsay evidence.

(Part 33 contains provisions about hearsay evidence)

(2) Where a witness is called to give oral evidence under paragraph (1), his witness statement shall stand as his evidence in chief^(GL) unless the court orders otherwise.

(3) A witness giving oral evidence at trial may with the permission of the court—

- (a) amplify his witness statement; and
- (b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties.

(4) The court will give permission under paragraph (3) only if it considers that there is good reason not to confine the evidence of the witness to the contents of his witness statement.

(5) If a party who has served a witness statement does not—

- (a) call the witness to give evidence at trial; or
- (b) put the witness statement in as hearsay evidence,

any other party may put the witness statement in as hearsay evidence.

Evidence in proceedings other than at trial

32.6.—(1) Subject to paragraph (2), the general rule is that evidence at hearings other than the trial is to be by witness statement unless the court, a practice direction or any other enactment requires otherwise.

(2) At hearings other than the trial, a party may, in support of his application, rely on the matters set out in—

- (a) his statement of case; or
- (b) his application notice,

if the statement of case or application notice is verified by a statement of truth.

Order for cross-examination

32.7.—(1) Where, at a hearing other than the trial, evidence is given in writing, any party may apply to the court for permission to cross-examine the person giving the evidence.

(2) If the court gives permission under paragraph (1) but the person in question does not attend as required by the order, his evidence may not be used unless the court gives permission.

Form of witness statement

32.8 A witness statement must comply with the requirements set out in the relevant practice direction.

(Part 22 requires a witness statement to be verified by a statement of truth)

Witness summaries

32.9.—(1) A party who—

- (a) is required to serve a witness statement for use at trial; but
- (b) is unable to obtain one,

may apply, without notice, for permission to serve a witness summary instead.

(2) A witness summary is a summary of—

- (a) the evidence, if known, which would otherwise be included in a witness statement; or
- (b) if the evidence is not known, the matters about which the party serving the witness summary proposes to question the witness.

(3) Unless the court orders otherwise, a witness summary must include the name and address of the intended witness.

(4) Unless the court orders otherwise, a witness summary must be served within the period in which a witness statement would have had to be served.

(5) Where a party serves a witness summary, so far as practicable rules 32.4 (requirement to serve witness statements for use at trial), 32.5(3) (amplifying witness statements), and 32.8 (form of witness statement) shall apply to the summary.

Consequence of failure to serve witness statement or summary

32.10 If a witness statement or a witness summary for use at trial is not served in respect of an intended witness within the time specified by the court, then the witness may not be called to give oral evidence unless the court gives permission.

Cross-examination on a witness statement

32.11 Where a witness is called to give evidence at trial, he may be cross-examined on his witness statement whether or not the statement or any part of it was referred to during the witness's evidence in chief^(GL).

Use of witness statements for other purposes

32.12.—(1) Except as provided by this rule, a witness statement may be used only for the purpose of the proceedings in which it is served.

(2) Paragraph (1) does not apply if and to the extent that—

- (a) the witness gives consent in writing to some other use of it;

- (b) the court gives permission for some other use; or
- (c) the witness statement has been put in evidence at a hearing held in public.

Availability of witness statements for inspection

32.13.—(1) A witness statement which stands as evidence in chief^(GL) is open to inspection unless the court otherwise directs during the course of the trial.

(2) Any person may ask for a direction that a witness statement is not open to inspection.

(3) The court will not make a direction under paragraph (2) unless it is satisfied that a witness statement should not be open to inspection because of—

- (a) the interests of justice;
 - (b) the public interest;
 - (c) the nature of any expert medical evidence in the statement;
 - (d) the nature of any confidential information (including information relating to personal financial matters) in the statement; or
 - (e) the need to protect the interests of any child or patient.
- (4) The court may exclude from inspection words or passages in the statement.

False statements

32.14.—(1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

(Part 22 makes provision for a statement of truth)

(2) Proceedings under this rule may be brought only—

- (a) by the Attorney General; or
- (b) with the permission of the court.

Affidavit evidence

32.15.—(1) Evidence must be given by affidavit^(GL) instead of or in addition to a witness statement if this is required by the court, a provision contained in any other rule, a practice direction or any other enactment.

(2) Nothing in these Rules prevents a witness giving evidence by affidavit^(GL) at a hearing other than the trial if he chooses to do so in a case where paragraph (1) does not apply, but the party putting forward the affidavit^(GL) may not recover the additional cost of making it from any other party unless the court orders otherwise.

Form of affidavits

32.16 An affidavit^(GL) must comply with the requirements set out in the relevant practice direction.

Affidavit made outside the jurisdiction

32.17 A person may make an affidavit^(GL) outside the jurisdiction in accordance with—

- (a) this Part; or

(b) the law of the place where he makes the affidavit^(GL).

Notice to admit facts

32.18.—(1) A party may serve notice on another party requiring him to admit the facts, or the part of the case of the serving party, specified in the notice.

(2) A notice to admit facts must be served no later than 21 days before the trial.

(3) Where the other party makes any admission in response to the notice, the admission may be used against him only—

(a) in the proceedings in which the notice to admit is served; and

(b) by the party who served the notice.

(4) The court may allow a party to amend or withdraw any admission made by him on such terms as it thinks just.

Notice to admit or produce documents

32.19.—(1) A party shall be deemed to admit the authenticity of a document disclosed to him under Part 31 (disclosure and inspection of documents) unless he serves notice that he wishes the document to be proved at trial.

(2) A notice to prove a document must be served—

(a) by the latest date for serving witness statements; or

(b) within 7 days of disclosure of the document,

whichever is later.

PART 33

MISCELLANEOUS RULES ABOUT EVIDENCE

Contents of this Part

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Use of plans, photographs and models as evidence	Rule 33.6
Evidence of finding on question of foreign law	Rule 33.7
Evidence of consent of trustee to act	Rule 33.8

Introductory

33.1 In this Part—

- (a) “hearsay” means a statement, made otherwise than by a person while giving oral evidence in proceedings, which is tendered as evidence of the matters stated; and
- (b) references to hearsay include hearsay of whatever degree.

Notice of intention to rely on hearsay evidence

33.2.—(1) Where a party intends to rely on hearsay evidence at trial and either—

- (a) that evidence is to be given by a witness giving oral evidence; or
- (b) that evidence is contained in a witness statement of a person who is not being called to give oral evidence;

that party complies with section 2(1)(a) of the Civil Evidence Act 1995⁽³⁸⁾ by serving a witness statement on the other parties in accordance with the court’s order.

(2) Where paragraph (1)(b) applies, the party intending to rely on the hearsay evidence must, when he serves the witness statement—

- (a) inform the other parties that the witness is not being called to give oral evidence; and
- (b) give the reason why the witness will not be called.

(3) In all other cases where a party intends to rely on hearsay evidence at trial, that party complies with section 2(1)(a) of the Civil Evidence Act 1995 by serving a notice on the other parties which—

- (a) identifies the hearsay evidence;
- (b) states that the party serving the notice proposes to rely on the hearsay evidence at trial; and
- (c) gives the reason why the witness will not be called.

(4) The party proposing to rely on the hearsay evidence must—

- (a) serve the notice no later than the latest date for serving witness statements; and
- (b) if the hearsay evidence is to be in a document, supply a copy to any party who requests him to do so.

Circumstances in which notice of intention to rely on hearsay evidence is not required

33.3 Section 2(1) of the Civil Evidence Act 1995 (duty to give notice of intention to rely on hearsay evidence) does not apply—

- (a) to evidence at hearings other than trials;
- (b) to a statement which a party to a probate action wishes to put in evidence and which is alleged to have been made by the person whose estate is the subject of the proceedings; or
- (c) where the requirement is excluded by a practice direction.

Power to call witness for cross-examination on hearsay evidence

33.4.—(1) Where a party—

- (a) proposes to rely on hearsay evidence; and
- (b) does not propose to call the person who made the original statement to give oral evidence,

the court may, on the application of any other party, permit that party to call the maker of the statement to be cross-examined on the contents of the statement.

⁽³⁸⁾ 1995 c. 38. Section 2 provides that a party proposing to bring hearsay evidence must notify any other party of that fact and, on request, give particulars of or relating to the evidence.

(2) An application for permission to cross-examine under this rule must be made not more than 14 days after the day on which a notice of intention to rely on the hearsay evidence was served on the applicant.

Credibility

33.5.—(1) Where a party—

- (a) proposes to rely on hearsay evidence; but
- (b) does not propose to call the person who made the original statement to give oral evidence; and
- (c) another party wishes to call evidence to attack the credibility of the person who made the statement,

the party who so wishes must give notice of his intention to the party who proposes to give the hearsay statement in evidence.

(2) A party must give notice under paragraph (1) not more than 14 days after the day on which a hearsay notice relating to the hearsay evidence was served on him.

Use of plans, photographs and models as evidence

33.6.—(1) This rule applies to evidence (such as a plan, photograph or model) which is not—

- (a) contained in a witness statement, affidavit^(GL) or expert's report;
- (b) to be given orally at trial; or
- (c) evidence of which prior notice must be given under rule 33.2.

(2) This rule includes documents which may be received in evidence without further proof under section 9 of the Civil Evidence Act 1995⁽³⁹⁾.

(3) Unless the court orders otherwise the evidence shall not be receivable at a trial unless the party intending to put it in evidence has given notice to the other parties in accordance with this rule.

(4) Where the party intends to use the evidence as evidence of any fact then, except where paragraph (6) applies, he must give notice not later than the latest date for serving witness statements.

(5) He must give notice at least 21 days before the hearing at which he proposes to put in the evidence, if—

- (a) there are not to be witness statements; or
- (b) he intends to put in the evidence solely in order to disprove an allegation made in a witness statement.

(6) Where the evidence forms part of expert evidence, he must give notice when the expert's report is served on the other party.

(7) Where the evidence is being produced to the court for any reason other than as part of factual or expert evidence, he must give notice at least 21 days before the hearing at which he proposes to put in the evidence.

(8) Where a party has given notice that he intends to put in the evidence, he must give every other party an opportunity to inspect it and to agree to its admission without further proof.

⁽³⁹⁾ Section 9 of the Civil Evidence Act 1995 provides that documents that form part of the records of a business or public authority, as defined in that section, may be received in evidence without further proof.

Evidence of finding on question of foreign law

33.7.—(1) This rule sets out the procedure which must be followed by a party who intends to put in evidence a finding on a question of foreign law by virtue of section 4(2) of the Civil Evidence Act 1972(40).

- (2) He must give any other party notice of his intention.
- (3) He must give the notice—
 - (a) if there are to be witness statements, not later than the latest date for serving them; or
 - (b) otherwise, not less than 21 days before the hearing at which he proposes to put the finding in evidence.
- (4) The notice must—
 - (a) specify the question on which the finding was made; and
 - (b) enclose a copy of a document where it is reported or recorded.

Evidence of consent of trustee to act

33.8 A document purporting to contain the written consent of a person to act as trustee and to bear his signature verified by some other person is evidence of such consent.

PART 34**DEPOSITIONS AND COURT ATTENDANCE BY WITNESSES****Contents of this Part**

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Where a person to be examined is out of the jurisdiction—letter of request	Rule 34.13
Fees and expenses of examiner	Rule 34.14
Examiners of the court	Rule 34.15

Scope of this Part

34.1.—(1) This Part provides—

- (a) for the circumstances in which a person may be required to attend court to give evidence or to produce a document; and
 - (b) for a party to obtain evidence before a hearing to be used at the hearing.
- (2) In this Part, reference to a hearing includes a reference to the trial.

Witness summonses

34.2.—(1) A witness summons is a document issued by the court requiring a witness to—

- (a) attend court to give evidence; or
 - (b) produce documents to the court.
- (2) A witness summons must be in the relevant practice form.
- (3) There must be a separate witness summons for each witness.
- (4) A witness summons may require a witness to produce documents to the court either—
- (a) on the date fixed for a hearing; or
 - (b) on such date as the court may direct.
- (5) The only documents that a summons under this rule can require a person to produce before a hearing are documents which that person could be required to produce at the hearing.

Issue of a witness summons

34.3.—(1) A witness summons is issued on the date entered on the summons by the court.

- (2) A party must obtain permission from the court where he wishes to—
- (a) have a summons issued less than 7 days before the date of the trial;
 - (b) have a summons issued for a witness to attend court to give evidence or to produce documents on any date except the date fixed for the trial; or
 - (c) have a summons issued for a witness to attend court to give evidence or to produce documents at any hearing except the trial.
- (3) A witness summons must be issued by—
- (a) the court where the case is proceeding; or
 - (b) the court where the hearing in question will be held.
- (4) The court may set aside^(GL) or vary a witness summons issued under this rule.

Witness summons in aid of inferior court or of tribunal

- 34.4.**—(1) The court may issue a witness summons in aid of an inferior court or of a tribunal.
- (2) The court which issued the witness summons under this rule may set it aside.

(3) In this rule, “inferior court or tribunal” means any court or tribunal that does not have power to issue a witness summons in relation to proceedings before it.

Time for serving a witness summons

34.5.—(1) The general rule is that a witness summons is binding if it is served at least 7 days before the date on which the witness is required to attend before the court or tribunal.

(2) The court may direct that a witness summons shall be binding although it will be served less than 7 days before the date on which the witness is required to attend before the court or tribunal.

(3) A witness summons which is—

- (a) served in accordance with this rule; and
- (b) requires the witness to attend court to give evidence,

is binding until the conclusion of the hearing at which the attendance of the witness is required.

Who is to serve a witness summons

34.6.—(1) A witness summons is to be served by the court unless the party on whose behalf it is issued indicates in writing, when he asks the court to issue the summons, that he wishes to serve it himself.

(2) Where the court is to serve the witness summons, the party on whose behalf it is issued must deposit, in the court office, the money to be paid or offered to the witness under rule 34.7.

Right of witness to travelling expenses and compensation for loss of time

34.7 At the time of service of a witness summons the witness must be offered or paid—

- (a) a sum reasonably sufficient to cover his expenses in travelling to and from the court; and
- (b) such sum by way of compensation for loss of time as may be specified in the relevant practice direction.

Evidence by deposition

34.8.—(1) A party may apply for an order for a person to be examined before the hearing takes place.

(2) A person from whom evidence is to be obtained following an order under this rule is referred to as a “deponent” and the evidence is referred to as a “deposition”.

(3) An order under this rule shall be for a deponent to be examined on oath before—

- (a) a judge;
- (b) an examiner of the court; or
- (c) such other person as the court appoints.

(Rule 34.15 makes provision for the appointment of examiners of the court)

(4) The order may require the production of any document which the court considers is necessary for the purposes of the examination.

(5) The order must state the date, time and place of the examination.

(6) At the time of service of the order the deponent must be offered or paid—

- (a) a sum reasonably sufficient to cover his expenses in travelling to and from the place of examination; and

(b) such sum by way of compensation for loss of time as may be specified in the relevant practice direction.

(7) Where the court makes an order for a deposition to be taken, it may also order the party who obtained the order to serve a witness statement or witness summary in relation to the evidence to be given by the person to be examined.

(Part 32 contains the general rules about witness statements and witness summaries)

Conduct of examination

34.9.—(1) Subject to any directions contained in the order for examination, the examination must be conducted in the same way as if the witness were giving evidence at a trial.

(2) If all the parties are present, the examiner may conduct the examination of a person not named in the order for examination if all the parties and the person to be examined consent.

(3) The examiner may conduct the examination in private if he considers it appropriate to do so.

(4) The examiner must ensure that the evidence given by the witness is recorded in full.

(5) The examiner must send a copy of the deposition—

(a) to the person who obtained the order for the examination of the witness; and

(b) to the court where the case is proceeding.

(6) The party who obtained the order must send each of the other parties a copy of the deposition which he receives from the examiner.

Enforcing attendance of witness

34.10.—(1) If a person served with an order to attend before an examiner—

(a) fails to attend; or

(b) refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document at the examination,

a certificate of his failure or refusal, signed by the examiner, must be filed by the party requiring the deposition.

(2) On the certificate being filed, the party requiring the deposition may apply to the court for an order requiring that person to attend or to be sworn or to answer any question or produce any document, as the case may be.

(3) An application for an order under this rule may be made without notice.

(4) The court may order the person against whom an order is made under this rule to pay any costs resulting from his failure or refusal.

Use of deposition at a hearing

34.11.—(1) A deposition ordered under rule 34.8 may be given in evidence at a hearing unless the court orders otherwise.

(2) A party intending to put in evidence a deposition at a hearing must serve notice of his intention to do so on every other party.

(3) He must serve the notice at least 21 days before the day fixed for the hearing.

(4) The court may require a deponent to attend the hearing and give evidence orally.

(5) Where a deposition is given in evidence at trial, it shall be treated as if it were a witness statement for the purposes of rule 32.13 (availability of witness statements for inspection).

Restrictions on subsequent use of deposition taken for the purpose of any hearing except the trial

34.12.—(1) Where the court orders a party to be examined about his or any other assets for the purpose of any hearing except the trial, the deposition may be used only for the purpose of the proceedings in which the order was made.

- (2) However, it may be used for some other purpose—
- (a) by the party who was examined;
 - (b) if the party who was examined agrees; or
 - (c) if the court gives permission.

Where a person to be examined is out of the jurisdiction—letter of request

34.13.—(1) Where a party wishes to take a deposition from a person outside the jurisdiction, the High Court may order the issue of a letter of request to the judicial authorities of the country in which the proposed deponent is.

(2) A letter of request is a request to a judicial authority to take the evidence of that person, or arrange for it to be taken.

(3) The High Court may make an order under this rule in relation to county court proceedings.

(4) If the government of the country to which the letter is sent allows a person appointed by the High Court to examine a person in that country, the High Court may make an order appointing a special examiner for that purpose.

(5) A person may be examined under this rule on oath or affirmation or in accordance with any procedure permitted in the country in which the examination is to take place.

(6) If the High Court makes an order for the issue of a letter of request, the party who sought the order must file—

- (a) the following documents and, except where paragraph (7) applies, a translation of them—
 - (i) a draft letter of request;
 - (ii) a statement of the issues relevant to the proceedings;
 - (iii) a list of questions or the subject matter of questions to be put to the person to be examined; and
- (b) an undertaking to be responsible for the Secretary of State's expenses.

(7) There is no need to file a translation if—

- (a) English is one of the official languages of the country where the examination is to take place; or
- (b) a practice direction has specified that country as a country where no translation is necessary.

Fees and expenses of examiner

34.14.—(1) The examiner may charge a fee for the examination.

(2) He need not send the deposition to the court unless the fee is paid.

(3) The examiner's fees and expenses must be paid by the party who obtained the order for examination.

(4) If the fees and expenses due to an examiner are not paid within a reasonable time, he may report that fact to the court.

(5) The court may order the party who obtained the order for examination to deposit in the court office a specified sum in respect of the examiner's fees and, where it does so, the examiner will not be asked to act until the sum has been deposited.

(6) An order under this rule does not affect any decision as to the party who is ultimately to bear the costs of the examination.

Examiners of the court

34.15.—(1) The Lord Chancellor shall appoint persons to be examiners of the court.

(2) The persons appointed shall be barristers or solicitor-advocates who have been practising for a period of not less than three years.

(3) The Lord Chancellor may revoke an appointment at any time.

PART 35

EXPERTS AND ASSESSORS

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Duty to restrict expert evidence

35.1 Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.

Interpretation

35.2 A reference to an “expert” in this Part is a reference to an expert who has been instructed to give or prepare evidence for the purpose of court proceedings.

Experts—overriding duty to the court

35.3.—(1) It is the duty of an expert to help the court on the matters within his expertise.

(2) This duty overrides any obligation to the person from whom he has received instructions or by whom he is paid.

Court’s power to restrict expert evidence

35.4.—(1) No party may call an expert or put in evidence an expert’s report without the court’s permission.

(2) When a party applies for permission under this rule he must identify—

- (a) the field in which he wishes to rely on expert evidence; and
- (b) where practicable the expert in that field on whose evidence he wishes to rely.

(3) If permission is granted under this rule it shall be in relation only to the expert named or the field identified under paragraph (2).

(4) The court may limit the amount of the expert’s fees and expenses that the party who wishes to rely on the expert may recover from any other party.

General requirement for expert evidence to be given in a written report

35.5.—(1) Expert evidence is to be given in a written report unless the court directs otherwise.

(2) If a claim is on the fast track, the court will not direct an expert to attend a hearing unless it is necessary to do so in the interests of justice.

Written questions to experts

35.6.—(1) A party may put to—

- (a) an expert instructed by another party; or
- (b) a single joint expert appointed under rule 35.7,

written questions about his report.

(2) Written questions under paragraph (1)—

- (a) may be put once only;
- (b) must be put within 28 days of service of the expert’s report; and
- (c) must be for the purpose only of clarification of the report,

unless in any case,

- (i) the court gives permission; or
- (ii) the other party agrees.

(3) An expert’s answers to questions put in accordance with paragraph (1) shall be treated as part of the expert’s report.

(4) Where—

- (a) a party has put a written question to an expert instructed by another party in accordance with this rule; and

(b) the expert does not answer that question,
the court may make one or both of the following orders in relation to the party who instructed the expert—

- (i) that the party may not rely on the evidence of that expert; or
- (ii) that the party may not recover the fees and expenses of that expert from any other party.

Court's power to direct that evidence is to be given by a single joint expert

35.7.—(1) Where two or more parties wish to submit expert evidence on a particular issue, the court may direct that the evidence on that issue is to be given by one expert only.

- (2) The parties wishing to submit the expert evidence are called “the instructing parties”.
- (3) Where the instructing parties cannot agree who should be the expert, the court may—
 - (a) select the expert from a list prepared or identified by the instructing parties; or
 - (b) direct that the expert be selected in such other manner as the court may direct.

Instructions to a single joint expert

35.8.—(1) Where the court gives a direction under rule 35.7 for a single joint expert to be used, each instructing party may give instructions to the expert.

(2) When an instructing party gives instructions to the expert he must, at the same time, send a copy of the instructions to the other instructing parties.

- (3) The court may give directions about—
 - (a) the payment of the expert's fees and expenses; and
 - (b) any inspection, examination or experiments which the expert wishes to carry out.

- (4) The court may, before an expert is instructed—
 - (a) limit the amount that can be paid by way of fees and expenses to the expert; and
 - (b) direct that the instructing parties pay that amount into court.

(5) Unless the court otherwise directs, the instructing parties are jointly and severally liable^(GL) for the payment of the expert's fees and expenses.

Power of court to direct a party to provide information

35.9 Where a party has access to information which is not reasonably available to the other party, the court may direct the party who has access to the information to—

- (a) prepare and file a document recording the information; and
- (b) serve a copy of that document on the other party.

Contents of report

35.10.—(1) An expert's report must comply with the requirements set out in the relevant practice direction.

- (2) At the end of an expert's report there must be a statement that—
 - (a) the expert understands his duty to the court; and
 - (b) he has complied with that duty.

(3) The expert's report must state the substance of all material instructions, whether written or oral, on the basis of which the report was written.

(4) The instructions referred to in paragraph (3) shall not be privileged^(GL) against disclosure but the court will not, in relation to those instructions—

(a) order disclosure of any specific document; or

(b) permit any questioning in court, other than by the party who instructed the expert,

unless it is satisfied that there are reasonable grounds to consider the statement of instructions given under paragraph (3) to be inaccurate or incomplete.

Use by one party of expert's report disclosed by another

35.11 Where a party has disclosed an expert's report, any party may use that expert's report as evidence at the trial.

Discussions between experts

35.12.—(1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to—

(a) identify the issues in the proceedings; and

(b) where possible, reach agreement on an issue.

(2) The court may specify the issues which the experts must discuss.

(3) The court may direct that following a discussion between the experts they must prepare a statement for the court showing—

(a) those issues on which they agree; and

(b) those issues on which they disagree and a summary of their reasons for disagreeing.

(4) The content of the discussion between the experts shall not be referred to at the trial unless the parties agree.

(5) Where experts reach agreement on an issue during their discussions, the agreement shall not bind the parties unless the parties expressly agree to be bound by the agreement.

Consequence of failure to disclose expert's report

35.13 A party who fails to disclose an expert's report may not use the report at the trial or call the expert to give evidence orally unless the court gives permission.

Expert's right to ask court for directions

35.14.—(1) An expert may file a written request for directions to assist him in carrying out his function as an expert.

(2) An expert may request directions under paragraph (1) without giving notice to any party.

(3) The court, when it gives directions, may also direct that a party be served with—

(a) a copy of the directions; and

(b) a copy of the request for directions.

Assessors

35.15.—(1) This rule applies where the court appoints one or more persons (an “assessor”) under section 70 of the Supreme Court Act 1981⁽⁴¹⁾ or section 63 of the County Courts Act 1984⁽⁴²⁾.

(41) 1981 c. 54.

(42) 1984 c. 28. Section 63 was amended by S.I. 1998/2940.

(2) The assessor shall assist the court in dealing with a matter in which the assessor has skill and experience.

(3) An assessor shall take such part in the proceedings as the court may direct and in particular the court may—

(a) direct the assessor to prepare a report for the court on any matter at issue in the proceedings; and

(b) direct the assessor to attend the whole or any part of the trial to advise the court on any such matter.

(4) If the assessor prepares a report for the court before the trial has begun—

(a) the court will send a copy to each of the parties; and

(b) the parties may use it at trial.

(5) The remuneration to be paid to the assessor for his services shall be determined by the court and shall form part of the costs of the proceedings.

(6) The court may order any party to deposit in the court office a specified sum in respect of the assessor's fees and, where it does so, the assessor will not be asked to act until the sum has been deposited.

(7) Paragraphs (5) and (6) do not apply where the remuneration of the assessor is to be paid out of money provided by Parliament.

PART 36

OFFERS TO SETTLE AND PAYMENTS INTO COURT

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Scope of this Part

36.1.—(1) This Part contains rules about—

- (a) offers to settle and payments into court; and
- (b) the consequences where an offer to settle or payment into court is made in accordance with this Part.

(2) Nothing in this Part prevents a party making an offer to settle in whatever way he chooses, but if that offer is not made in accordance with this Part, it will only have the consequences specified in this Part if the court so orders.

(Part 36 applies to Part 20 claims by virtue of rule 20.3)

Part 36 offers and Part 36 payments—general provisions

36.2.—(1) An offer made in accordance with the requirements of this Part is called—

- (a) if made by way of a payment into court, “a Part 36 payment”;
- (b) otherwise “a Part 36 offer”.

(Rule 36.3 sets out when an offer has to be made by way of a payment into court)

- (2) The party who makes an offer is the “offeror”.
 - (3) The party to whom an offer is made is the “offeree”.
 - (4) A Part 36 offer or a Part 36 payment—
 - (a) may be made at any time after proceedings have started; and
 - (b) may be made in appeal proceedings.
 - (5) A Part 36 offer or a Part 36 payment shall not have the consequences set out in this Part while the claim is being dealt with on the small claims track unless the court orders otherwise.
- (Part 26 deals with allocation to the small claims track)
- (Rule 27.2 provides that Part 36 does not apply to small claims)

A defendant’s offer to settle a money claim requires a Part 36 payment

- 36.3.**—(1) Subject to rules 36.5(5) and 36.23, an offer by a defendant to settle a money claim will not have the consequences set out in this Part unless it is made by way of a Part 36 payment.
- (2) A Part 36 payment may only be made after proceedings have started.
- (Rule 36.5(5) permits a Part 36 offer to be made by reference to an interim payment)
- (Rule 36.10 makes provision for an offer to settle a money claim before the commencement of proceedings)
- (Rule 36.23 makes provision for where benefit is recoverable under the Social Security (Recovery of Benefit) Act 1997(**43**))

Defendant’s offer to settle the whole of a claim which includes both a money claim and a non-money claim

- 36.4.**—(1) This rule applies where a defendant to a claim which includes both a money claim and a non-money claim wishes—
- (a) to make an offer to settle the whole claim which will have the consequences set out in this Part; and
 - (b) to make an offer in respect of both the money claim and the non-money claim.
- (2) The defendant must—
 - (a) make a Part 36 payment in relation to the money claim; and
 - (b) make a Part 36 offer in relation to the non-money claim.
 - (3) The Part 36 payment notice must—
 - (a) identify the document which sets out the terms of the Part 36 offer; and
 - (b) state that if the claimant gives notice of acceptance of the Part 36 payment he will be treated as also accepting the Part 36 offer.
- (Rule 36.6 makes provision for a Part 36 payment notice)
- (4) If the claimant gives notice of acceptance of the Part 36 payment, he shall also be taken as giving notice of acceptance of the Part 36 offer in relation to the non-money claim.

Form and content of a Part 36 offer

- 36.5.**—(1) A Part 36 offer must be in writing.

- (2) A Part 36 offer may relate to the whole claim or to part of it or to any issue that arises in it.
- (3) A Part 36 offer must—
- (a) state whether it relates to the whole of the claim or to part of it or to an issue that arises in it and if so to which part or issue;
 - (b) state whether it takes into account any counterclaim; and
 - (c) if it is expressed not to be inclusive of interest, give the details relating to interest set out in rule 36.22(2).
- (4) A defendant may make a Part 36 offer limited to accepting liability up to a specified proportion.
- (5) A Part 36 offer may be made by reference to an interim payment.
- (Part 25 contains provisions relating to interim payments)
- (6) A Part 36 offer made not less than 21 days before the start of the trial must—
- (a) be expressed to remain open for acceptance for 21 days from the date it is made; and
 - (b) provide that after 21 days the offeree may only accept it if—
 - (i) the parties agree the liability for costs; or
 - (ii) the court gives permission.
- (7) A Part 36 offer made less than 21 days before the start of the trial must state that the offeree may only accept it if—
- (a) the parties agree the liability for costs; or
 - (b) the court gives permission.
- (Rule 36.8 makes provision for when a Part 36 offer is treated as being made)
- (8) If a Part 36 offer is withdrawn it will not have the consequences set out in this Part.

Notice of a Part 36 payment

36.6.—(1) A Part 36 payment may relate to the whole claim or part of it or to an issue that arises in it.

(2) A defendant who makes a Part 36 payment must file with the court a notice (“Part 36 payment notice”) which—

- (a) states the amount of the payment;
- (b) states whether the payment relates to the whole claim or to part of it or to any issue that arises in it and if so to which part or issue;
- (c) states whether it takes into account any counterclaim;
- (d) if an interim payment has been made, states that the defendant has taken into account the interim payment; and
- (e) if it is expressed not to be inclusive of interest, gives the details relating to interest set out in rule 36.22(2).

(Rule 25.6 makes provision for an interim payment)

(Rule 36.4 provides for further information to be included where a defendant wishes to settle the whole of a claim which includes a money claim and a non-money claim)

(Rule 36.23 makes provision for extra information to be included in the payment notice in a case where benefit is recoverable under the Social Security (Recovery of Benefit) Act 1997)

36.6.—(3) The court will serve the Part 36 payment notice on the offeree unless the offeror informs the court, when the money is paid into court, that the offeror has served the notice.

(4) Where the offeror serves the Part 36 payment notice he must file a certificate of service.

(Rule 6.10 specifies what must be contained in a certificate of service)

(5) A Part 36 payment may be withdrawn only with the permission of the court.

Offer to settle a claim for provisional damages

36.7.—(1) A defendant may make a Part 36 payment in respect of a claim which includes a claim for provisional damages.

(2) Where he does so, the Part 36 payment notice must specify whether or not the defendant is offering to agree to the making of an award of provisional damages.

(3) Where the defendant is offering to agree to the making of an award of provisional damages the payment notice must also state—

(a) that the sum paid into court is in satisfaction of the claim for damages on the assumption that the injured person will not develop the disease or suffer the type of deterioration specified in the notice;

(b) that the offer is subject to the condition that the claimant must make any claim for further damages within a limited period; and

(c) what that period is.

(4) Where a Part 36 payment is—

(a) made in accordance with paragraph (3); and

(b) accepted within the relevant period in rule 36.11,

the Part 36 payment will have the consequences set out in rule 36.13, unless the court orders otherwise.

(5) If the claimant accepts the Part 36 payment he must, within 7 days of doing so, apply to the court for an order for an award of provisional damages under rule 41.2.

(Rule 41.2 provides for an order for an award of provisional damages)

(6) The money in court may not be paid out until the court has disposed of the application made in accordance with paragraph (5).

Time when a Part 36 offer or a Part 36 payment is made and accepted

36.8.—(1) A Part 36 offer is made when received by the offeree.

(2) A Part 36 payment is made when written notice of the payment into court is served on the offeree.

(3) An improvement to a Part 36 offer will be effective when its details are received by the offeree.

(4) An increase in a Part 36 payment will be effective when notice of the increase is served on the offeree.

(5) A Part 36 offer or Part 36 payment is accepted when notice of its acceptance is received by the offeror.

Clarification of a Part 36 offer or a Part 36 payment notice

36.9.—(1) The offeree may, within 7 days of a Part 36 offer or payment being made, request the offeror to clarify the offer or payment notice.

(2) If the offeror does not give the clarification requested under paragraph (1) within 7 days of receiving the request, the offeree may, unless the trial has started, apply for an order that he does so.

(3) If the court makes an order under paragraph (2), it must specify the date when the Part 36 offer or Part 36 payment is to be treated as having been made.

Court to take into account offer to settle made before commencement of proceedings

36.10.—(1) If a person makes an offer to settle before proceedings are begun which complies with the provisions of this rule, the court will take that offer into account when making any order as to costs.

(2) The offer must—

- (a) be expressed to be open for at least 21 days after the date it was made;
- (b) if made by a person who would be a defendant were proceedings commenced, include an offer to pay the costs of the offeree incurred up to the date 21 days after the date it was made; and
- (c) otherwise comply with this Part.

(3) If the offeror is a defendant to a money claim—

- (a) he must make a Part 36 payment within 14 days of service of the claim form; and
- (b) the amount of the payment must be not less than the sum offered before proceedings began.

(4) An offeree may not, after proceedings have begun, accept—

- (a) an offer made under paragraph (2); or
- (b) a Part 36 payment made under paragraph (3),

without the permission of the court.

(5) An offer under this rule is made when it is received by the offeree.

Time for acceptance of a defendant's Part 36 offer or Part 36 payment

36.11.—(1) A claimant may accept a Part 36 offer or a Part 36 payment made not less than 21 days before the start of the trial without needing the court's permission if he gives the defendant written notice of acceptance not later than 21 days after the offer or payment was made.

(Rule 36.13 sets out the costs consequences of accepting a defendant's offer or payment without needing the permission of the court)

(2) If—

- (a) a defendant's Part 36 offer or Part 36 payment is made less than 21 days before the start of the trial; or
- (b) the claimant does not accept it within the period specified in paragraph (1)—
 - (i) if the parties agree the liability for costs, the claimant may accept the offer or payment without needing the permission of the court;
 - (ii) if the parties do not agree the liability for costs the claimant may only accept the offer or payment with the permission of the court.

(3) Where the permission of the court is needed under paragraph (2) the court will, if it gives permission, make an order as to costs.

Time for acceptance of a claimant's Part 36 offer

36.12.—(1) A defendant may accept a Part 36 offer made not less than 21 days before the start of the trial without needing the court's permission if he gives the claimant written notice of acceptance not later than 21 days after the offer was made.

(Rule 36.14 sets out the costs consequences of accepting a claimant's offer without needing the permission of the court)

(2) If—

- (a) a claimant's Part 36 offer is made less than 21 days before the start of the trial; or
- (b) the defendant does not accept it within the period specified in paragraph (1)—
 - (i) if the parties agree the liability for costs, the defendant may accept the offer without needing the permission of the court;
 - (ii) if the parties do not agree the liability for costs the defendant may only accept the offer with the permission of the court.

(3) Where the permission of the court is needed under paragraph (2) the court will, if it gives permission, make an order as to costs.

Costs consequences of acceptance of a defendant's Part 36 offer or Part 36 payment

36.13.—(1) Where a Part 36 offer or a Part 36 payment is accepted without needing the permission of the court the claimant will be entitled to his costs of the proceedings up to the date of serving notice of acceptance.

(2) Where—

- (a) a Part 36 offer or a Part 36 payment relates to part only of the claim; and
 - (b) at the time of serving notice of acceptance the claimant abandons the balance of the claim,
- the claimant will be entitled to his costs of the proceedings up to the date of serving notice of acceptance, unless the court orders otherwise.

(3) The claimant's costs include any costs attributable to the defendant's counterclaim if the Part 36 offer or the Part 36 payment notice states that it takes into account the counterclaim.

(4) Costs under this rule will be payable on the standard basis if not agreed.

Costs consequences of acceptance of a claimant's Part 36 offer

36.14 Where a claimant's Part 36 offer is accepted without needing the permission of the court the claimant will be entitled to his costs of the proceedings up to the date upon which the defendant serves notice of acceptance.

The effect of acceptance of a Part 36 offer or a Part 36 payment

36.15.—(1) If a Part 36 offer or Part 36 payment relates to the whole claim and is accepted, the claim will be stayed^(GL).

(2) In the case of acceptance of a Part 36 offer which relates to the whole claim—

- (a) the stay^(GL) will be upon the terms of the offer; and
- (b) either party may apply to enforce those terms without the need for a new claim.

(3) If a Part 36 offer or a Part 36 payment which relates to part only of the claim is accepted—

- (a) the claim will be stayed^(GL) as to that part; and
- (b) unless the parties have agreed costs, the liability for costs shall be decided by the court.

(4) If the approval of the court is required before a settlement can be binding, any stay^(GL) which would otherwise arise on the acceptance of a Part 36 offer or a Part 36 payment will take effect only when that approval has been given.

- (5) Any stay^(GL) arising under this rule will not affect the power of the court—
- (a) to enforce the terms of a Part 36 offer;
 - (b) to deal with any question of costs (including interest on costs) relating to the proceedings;
 - (c) to order payment out of court of any sum paid into court.
- (6) Where—
- (a) a Part 36 offer has been accepted; and
 - (b) a party alleges that—
 - (i) the other party has not honoured the terms of the offer; and
 - (ii) he is therefore entitled to a remedy for breach of contract,the party may claim the remedy by applying to the court without the need to start a new claim unless the court orders otherwise.

Payment out of a sum in court on the acceptance of a Part 36 payment

36.16 Where a Part 36 payment is accepted the claimant obtains payment out of the sum in court by making a request for payment in the practice form.

Acceptance of a Part 36 offer or a Part 36 payment made by one or more, but not all, defendants

36.17.—(1) This rule applies where the claimant wishes to accept a Part 36 offer or a Part 36 payment made by one or more, but not all, of a number of defendants.

(2) If the defendants are sued jointly or in the alternative, the claimant may accept the offer or payment without needing the permission of the court in accordance with rule 36.11(1) if—

- (a) he discontinues his claim against those defendants who have not made the offer or payment; and
- (b) those defendants give written consent to the acceptance of the offer or payment.

(3) If the claimant alleges that the defendants have a several liability^(GL) to him the claimant may—

- (a) accept the offer or payment in accordance with rule 36.11(1); and
- (b) continue with his claims against the other defendants.

(4) In all other cases the claimant must apply to the court for—

- (a) an order permitting a payment out to him of any sum in court; and
- (b) such order as to costs as the court considers appropriate.

Other cases where a court order is required to enable acceptance of a Part 36 offer or a Part 36 payment

36.18.—(1) Where a Part 36 offer or a Part 36 payment is made in proceedings to which rule 21.10 applies—

- (a) the offer or payment may be accepted only with the permission of the court; and
- (b) no payment out of any sum in court shall be made without a court order.

(Rule 21.10 deals with compromise etc. by or on behalf of a child or patient)

(2) Where the court gives a claimant permission to accept a Part 36 offer or payment after the trial has started—

- (a) any money in court may be paid out only with a court order; and
- (b) the court must, in the order, deal with the whole costs of the proceedings.

(3) Where a claimant accepts a Part 36 payment after a defence of tender before claim^(GL) has been put forward by the defendant, the money in court may be paid out only after an order of the court.

(Rule 37.3 requires a defendant who wishes to rely on a defence of tender before claim^(GL) to make a payment into court)

Restriction on disclosure of a Part 36 offer or a Part 36 payment

36.19.—(1) A Part 36 offer will be treated as “without prejudice^(GL) except as to costs”.

(2) The fact that a Part 36 payment has been made shall not be communicated to the trial judge until all questions of liability and the amount of money to be awarded have been decided.

(3) Paragraph (2) does not apply—

- (a) where the defence of tender before claim^(GL) has been raised;
- (b) where the proceedings have been stayed^(GL) under rule 36.15 following acceptance of a Part 36 offer or Part 36 payment; or
- (c) where—
 - (i) the issue of liability has been determined before any assessment of the money claimed; and
 - (ii) the fact that there has or has not been a Part 36 payment may be relevant to the question of the costs of the issue of liability.

Costs consequences where claimant fails to do better than a Part 36 offer or a Part 36 payment

36.20.—(1) This rule applies where at trial a claimant—

- (a) fails to do better than a Part 36 offer; or
- (b) fails to obtain a judgment which is more advantageous than a Part 36 offer.

(2) Unless it considers it unjust to do so, the court will order the claimant to pay any costs incurred by the defendant after the latest date on which the payment or offer could have been accepted without needing the permission of the court.

(Rule 36.11 sets out the time for acceptance of a defendant’s Part 36 offer or Part 36 payment)

Costs and other consequences where claimant does better than he proposed in his Part 36 offer

36.21.—(1) This rule applies where at trial—

- (a) a defendant is held liable for more; or
- (b) the judgment against a defendant is more advantageous to the claimant,

than the proposals contained in a claimant’s Part 36 offer.

(2) The court may order interest on the whole or part of any sum of money (excluding interest) awarded to the claimant at a rate not exceeding 10% above base rate^(GL) for some or all of the period

starting with the latest date on which the defendant could have accepted the offer without needing the permission of the court.

- (3) The court may also order that the claimant is entitled to—
- (a) his costs on the indemnity basis from the latest date when the defendant could have accepted the offer without needing the permission of the court; and
 - (b) interest on those costs at a rate not exceeding 10% above base rate^(GL).

(4) Where this rule applies, the court will make the orders referred to in paragraphs (2) and (3) unless it considers it unjust to do so.

(Rule 36.12 sets out the latest date when the defendant could have accepted the offer)

(5) In considering whether it would be unjust to make the orders referred to in paragraphs (2) and (3) above, the court will take into account all the circumstances of the case including—

- (a) the terms of any Part 36 offer;
- (b) the stage in the proceedings when any Part 36 offer or Part 36 payment was made;
- (c) the information available to the parties at the time when the Part 36 offer or Part 36 payment was made; and
- (d) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the offer or payment into court to be made or evaluated.

(6) The power of the court under this rule is in addition to any other power it may have to award interest.

Interest

36.22.—(1) Unless—

- (a) a claimant’s Part 36 offer which offers to accept a sum of money; or
- (b) a Part 36 payment notice,

indicates to the contrary, any such offer or payment will be treated as inclusive of all interest until the last date on which it could be accepted without needing the permission of the court.

(2) Where a claimant’s Part 36 offer or Part 36 payment notice is expressed not to be inclusive of interest, the offer or notice must state—

- (a) whether interest is offered; and
- (b) if so, the amount offered, the rate or rates offered and the period or periods for which it is offered.

Deduction of benefits

36.23.—(1) This rule applies where a payment to a claimant following acceptance of a Part 36 offer or Part 36 payment into court would be a compensation payment as defined in section 1 of the Social Security (Recovery of Benefits) Act 1997⁽⁴⁴⁾.

(2) A defendant to a money claim may make an offer to settle the claim which will have the consequences set out in this Part, without making a Part 36 payment if—

- (a) at the time he makes the offer he has applied for, but not received, a certificate of recoverable benefit; and
- (b) he makes a Part 36 payment not more than 7 days after he receives the certificate.

(Section 1 of the 1997 Act defines “recoverable benefit”)

(44) 1997 c. 27.

- (3) A Part 36 payment notice must state—
- (a) the amount of gross compensation;
 - (b) the name and amount of any benefit by which that gross amount is reduced in accordance with section 8 and Schedule 2 to the 1997 Act; and
 - (c) that the sum paid in is the net amount after deduction of the amount of benefit.
- (4) For the purposes of rule 36.20, a claimant fails to better a Part 36 payment if he fails to obtain judgment for more than the gross sum specified in the Part 36 payment notice.
- (5) Where—
- (a) a Part 36 payment has been made; and
 - (b) application is made for the money remaining in court to be paid out,
- the court may treat the money in court as being reduced by a sum equivalent to any further recoverable benefits paid to the claimant since the date of payment into court and may direct payment out accordingly.

PART 37

MISCELLANEOUS PROVISIONS ABOUT PAYMENTS INTO COURT

Contents of this Part

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Money paid into court under a court order—general

37.1.—(1) When a party makes a payment into court under a court order, the court will give notice of the payment to every other party.

(2) Money paid into court under a court order may not be paid out without the court’s permission except where—

- (a) the defendant treats the money as a Part 36 payment under rule 37.2; and
- (b) the claimant accepts the Part 36 payment without needing the permission of the court.

(Rule 36.11 sets out when the claimant can accept a Part 36 payment without needing the permission of the court)

Money paid into court may be treated as a Part 36 payment

37.2.—(1) Where a defendant makes a payment into court following an order made under rule 3.1(3) or 3.1(5) he may choose to treat the whole or any part of the money paid into court as a Part 36 payment.

(Rule 36.2 defines a Part 36 payment)

(2) To do this he must file a Part 36 payment notice.

(Rule 36.6 sets out what a Part 36 payment notice must contain and provides for the court to serve it on the other parties)

(3) If he does so Part 36 applies to the money as if he had paid it into court as a Part 36 payment.

Money paid into court where defendant wishes to rely on defence of tender before claim

37.3.—(1) Where a defendant wishes to rely on a defence of tender before claim^(GL) he must make a payment into court of the amount he says was tendered.

(2) If the defendant does not make a payment in accordance with paragraph (1) the defence of tender before claim^(GL) will not be available to him until he does so.

(3) Where the defendant makes such payment into court—

- (a) he may choose to treat the whole or any part of the money paid into court as a Part 36 payment; and
- (b) if he does so, he must file a Part 36 payment notice.

Proceedings under Fatal Accidents Act 1976(45) and Law Reform (Miscellaneous Provisions) Act 1934(46)—apportionment by court

37.4.—(1) Where—

- (a) a claim includes claims arising under—
 - (i) the Fatal Accidents Act 1976; and
 - (ii) the Law Reform (Miscellaneous Provisions) Act 1934;
- (b) a single sum of money is paid into court in satisfaction of those claims; and
- (c) the money is accepted,

the court shall apportion the money between the different claims.

(2) The court shall apportion money under paragraph (1)—

- (a) when it gives directions under rule 21.11 (control of money received by a child or patient); or
- (b) if rule 21.11 does not apply, when it gives permission for the money to be paid out of court.

(3) Where, in an action in which a claim under the Fatal Accidents Act 1976 is made by or on behalf of more than one person—

- (a) a sum in respect of damages is ordered or agreed to be paid in satisfaction of the claim; or
- (b) a sum of money is accepted in satisfaction of the claim,

the court shall apportion it between the persons entitled to it unless it has already been apportioned by the court, a jury, or agreement between the parties.

(45) 1976 c. 30.

(46) 1934 c. 41.

PART 38

DISCONTINUANCE

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Scope of this Part

38.1.—(1) The rules in this Part set out the procedure by which a claimant may discontinue all or part of a claim.

(2) A claimant who—

- (a) claims more than one remedy; and
- (b) subsequently abandons his claim to one or more of the remedies but continues with his claim for the other remedies,

is not treated as discontinuing all or part of a claim for the purposes of this Part.

(The procedure for amending a statement of case, set out in Part 17, applies where a claimant abandons a claim for a particular remedy but wishes to continue with his claim for other remedies)

Right to discontinue claim

38.2.—(1) A claimant may discontinue all or part of a claim at any time.

(2) However—

- (a) a claimant must obtain the permission of the court if he wishes to discontinue all or part of a claim in relation to which—
 - (i) the court has granted an interim injunction^(GL); or
 - (ii) any party has given an undertaking to the court;
- (b) where the claimant has received an interim payment in relation to a claim (whether voluntarily or pursuant to an order under Part 25), he may discontinue that claim only if—
 - (i) the defendant who made the interim payment consents in writing; or
 - (ii) the court gives permission;
- (c) where there is more than one claimant, a claimant may not discontinue unless—
 - (i) every other claimant consents in writing; or

(ii) the court gives permission.

(3) Where there is more than one defendant, the claimant may discontinue all or part of a claim against all or any of the defendants.

Procedure for discontinuing

38.3.—(1) To discontinue a claim or part of a claim, a claimant must—

- (a) file a notice of discontinuance; and
- (b) serve a copy of it on every other party to the proceedings.

(2) The claimant must state in the notice of discontinuance which he files that he has served notice of discontinuance on every other party to the proceedings.

(3) Where the claimant needs the consent of some other party, a copy of the necessary consent must be attached to the notice of discontinuance.

(4) Where there is more than one defendant, the notice of discontinuance must specify against which defendants the claim is discontinued.

Right to apply to have notice of discontinuance set aside

38.4.—(1) Where the claimant discontinues under rule 38.2(1) the defendant may apply to have the notice of discontinuance set aside^(GL).

(2) The defendant may not make an application under this rule more than 28 days after the date when the notice of discontinuance was served on him.

When discontinuance takes effect where permission of the court is not needed

38.5.—(1) Discontinuance against any defendant takes effect on the date when notice of discontinuance is served on him under rule 38.3(1).

- (2) Subject to rule 38.4, the proceedings are brought to an end as against him on that date.
- (3) However, this does not affect proceedings to deal with any question of costs.

Liability for costs

38.6.—(1) Unless the court orders otherwise, a claimant who discontinues is liable for the costs which a defendant against whom he discontinues incurred on or before the date on which notice of discontinuance was served on him.

- (2) If proceedings are only partly discontinued—
 - (a) the claimant is liable under paragraph (1) for costs relating only to the part of the proceedings which he is discontinuing; and
 - (b) unless the court orders otherwise, the costs which the claimant is liable to pay must not be assessed until the conclusion of the rest of the proceedings.

(3) This rule does not apply to claims allocated to the small claims track.

(Rule 44.12 provides for the basis of assessment where right to costs arises on discontinuance)

Discontinuance and subsequent proceedings

38.7 A claimant who discontinues a claim needs the permission of the court to make another claim against the same defendant if—

- (a) he discontinued the claim after the defendant filed a defence; and

- (b) the other claim arises out of facts which are the same or substantially the same as those relating to the discontinued claim.

Stay of remainder of partly discontinued proceedings where costs not paid

38.8.—(1) This rule applies where—

- (a) proceedings are partly discontinued;
- (b) a claimant is liable to pay costs under rule 38.6; and
- (c) the claimant fails to pay those costs within 21 days of—
 - (i) the date on which the parties agreed the sum payable by the claimant; or
 - (ii) the date on which the court ordered the costs to be paid.

(2) Where this rule applies, the court may stay^(GL) the remainder of the proceedings until the claimant pays the whole of the costs which he is liable to pay under rule 38.6

PART 39

MISCELLANEOUS PROVISIONS RELATING TO HEARINGS

Contents of this Part

Interpretation	Rule 39.1
General rule—hearing to be in public	Rule 39.2
Failure to attend the trial	Rule 39.3
Timetable for trial	Rule 39.4
Trial bundles	Rule 39.5
Representation at trial of companies or other corporations	Rule 39.6
Impounded documents	Rule 39.7

Interpretation

39.1 In this Part, reference to a hearing includes a reference to the trial.

General rule—hearing to be in public

39.2.—(1) The general rule is that a hearing is to be in public.

(2) The requirement for a hearing to be in public does not require the court to make special arrangements for accommodating members of the public.

(3) A hearing, or any part of it, may be in private if—

- (a) publicity would defeat the object of the hearing;
- (b) it involves matters relating to national security;
- (c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality;
- (d) a private hearing is necessary to protect the interests of any child or patient;

- (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;
 - (f) it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or
 - (g) the court considers this to be necessary, in the interests of justice.
- (4) The court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness.

Failure to attend the trial

- 39.3.**—(1) The court may proceed with a trial in the absence of a party but—
- (a) if no party attends the trial, it may strike out^(GL) the whole of the proceedings;
 - (b) if the claimant does not attend, it may strike out his claim and any defence to counterclaim; and
 - (c) if a defendant does not attend, it may strike out his defence or counterclaim (or both).
- (2) Where the court strikes out proceedings, or any part of them, under this rule, it may subsequently restore the proceedings, or that part.
- (3) Where a party does not attend and the court gives judgment or makes an order against him, the party who failed to attend may apply for the judgment or order to be set aside^(GL).
- (4) An application under paragraph (2) or paragraph (3) for an order to restore proceedings must be supported by evidence.
- (5) Where an application is made under paragraph (2) or (3) by a party who failed to attend the trial, the court may grant the application only if the applicant—
- (a) acted promptly when he found out that the court had exercised its power to strike out^(GL) or to enter judgment or make an order against him;
 - (b) had a good reason for not attending the trial; and
 - (c) has a reasonable prospect of success at the trial.

Timetable for trial

39.4 When the court sets a timetable for a trial in accordance with rule 28.6 (fixing or confirming the trial date and giving directions—fast track) or rule 29.8 (setting a trial timetable and fixing or confirming the trial date or week—multi-track) it will do so in consultation with the parties.

Trial bundles

- 39.5.**—(1) Unless the court orders otherwise, the claimant must file a trial bundle containing documents required by—
- (a) a relevant practice direction; and
 - (b) any court order.
- (2) The claimant must file the trial bundle not more than 7 days and not less than 3 days before the start of the trial.

Representation at trial of companies or other corporations

39.6 A company or other corporation may be represented at trial by an employee if—

- (a) the employee has been authorised by the company or corporation to appear at trial on its behalf; and
- (b) the court gives permission.

Impounded documents

39.7.—(1) Documents impounded by order of the court must not be released from the custody of the court except in compliance—

- (a) with a court order; or
- (b) with a written request made by a Law Officer or the Director of Public Prosecutions.

(2) A document released from the custody of the court under paragraph(1)(b) must be released into the custody of the person who requested it.

(3) Documents impounded by order of the court, while in the custody of the court, may not be inspected except by a person authorised to do so by a court order.

PART 40

JUDGMENTS AND ORDERS

Contents of this Part

Scope of this Part	Rule 40.1
Standard requirements	Rule 40.2
Drawing up and filing of judgments and orders	Rule 40.3
Service of judgments and orders	Rule 40.4
Power to require judgment or order to be served on a party as well as his solicitor	Rule 40.5
Consent judgments and orders	Rule 40.6
When judgment or order takes effect	Rule 40.7
Time from which interest begins to run	Rule 40.8
Who may apply to set aside or vary a judgment or order	Rule 40.9
Judgment against a State in default of acknowledgment of service	Rule 40.10
Time for complying with a judgment or order	Rule 40.11
Correction of errors in judgments and orders	Rule 40.12
Cases where court gives judgment both on claim and counterclaim	Rule 40.13
Judgment in favour of certain part owners relating to the detention of goods	Rule 40.14

Scope of this Part

40.1 This Part sets out rules about judgments and orders which apply except where any other of these Rules makes a different provision in relation to the judgment or order in question.

Standard requirements

40.2.—(1) Every judgment or order must state the name and judicial title of the person who made it, unless it is—

- (a) default judgment entered under rule 12.4(1) (entry of default judgment where judgment is entered by a court officer) or a default costs certificate obtained under rule 47.11;
 - (b) judgment entered under rule 14.4, 14.5, 14.6, 14.7 and 14.9 (entry of judgment on admission where judgment is entered by a court officer); or
 - (c) a consent order under rule 40.6(2) (consent orders made by court officers).
- (2) Every judgment or order must—
- (a) bear the date on which it is given or made; and
 - (b) be sealed^(GL) by the court.

Drawing up and filing of judgments and orders

40.3.—(1) Every judgment or order will be drawn up by the court unless—

- (a) the court orders a party to draw it up;
 - (b) a party, with the permission of the court, agrees to draw it up;
 - (c) the court dispenses with the need to draw it up; or
 - (d) it is a consent order under rule 40.6.
- (2) The court may direct that—
- (a) a judgment or an order drawn up by a party must be checked by the court before it is sealed^(GL); or
 - (b) before a judgment or an order is drawn up by the court, the parties must file an agreed statement of its terms.
- (3) Where a judgment or an order is to be drawn up by a party—
- (a) he must file it no later than 7 days after the date on which the court ordered or permitted him to draw it up so that it can be sealed^(GL) by the court; and
 - (b) if he fails to file it within that period, any other party may draw it up and file it.

Service of judgments and orders

40.4.—(1) Where a judgment or an order has been drawn up by a party and is to be served by the court—

- (a) the party who drew it up must file a copy to be retained at court and sufficient copies for service on him and on the other parties; and
 - (b) once it has been sealed^(GL), the court must serve a copy of it on each party to the proceedings.
- (2) Unless the court directs otherwise, any order made otherwise than at trial must be served on—
- (a) the applicant and the respondent; and
 - (b) any other person on whom the court orders it to be served.

(Rule 6.3 specifies who must serve judgments and orders)

Power to require judgment or order to be served on a party as well as his solicitor

40.5 Where the party on whom a judgment or order is to be served is acting by a solicitor, the court may order the judgment or order to be served on the party as well as on his solicitor.

Consent judgments and orders

40.6.—(1) This rule applies where all the parties agree the terms in which a judgment should be given or an order should be made.

- (2) A court officer may enter and seal^(GL) an agreed judgment or order if—
 - (a) the judgment or order is listed in paragraph (3);
 - (b) none of the parties is a litigant in person; and
 - (c) the approval of the court is not required by these Rules, a practice direction or any enactment before an agreed order can be made.
- (3) The judgments and orders referred to in paragraph (2) are—
 - (a) a judgment or order for—
 - (i) the payment of an amount of money (including a judgment or order for damages or the value of goods to be decided by the court); or
 - (ii) the delivery up of goods with or without the option of paying the value of the goods or the agreed value.
 - (b) an order for—
 - (i) the dismissal of any proceedings, wholly or in part;
 - (ii) the stay^(GL) of proceedings on agreed terms, disposing of the proceedings, whether those terms are recorded in a schedule to the order or elsewhere;
 - (iii) the stay^(GL) of enforcement of a judgment, either unconditionally or on condition that the money due under the judgment is paid by instalments specified in the order;
 - (iv) the setting aside under Part 13 of a default judgment which has not been satisfied;
 - (v) the payment out of money which has been paid into court;
 - (vi) the discharge from liability of any party;
 - (vii) the payment, assessment or waiver of costs, or such other provision for costs as may be agreed.
- (4) Rule 40.3 (drawing up and filing of judgments and orders) applies to judgments and orders entered and sealed^(GL) by a court officer under paragraph (2) as it applies to other judgments and orders.
- (5) Where paragraph (2) does not apply, any party may apply for a judgment or order in the terms agreed.
- (6) The court may deal with an application under paragraph (5) without a hearing.
- (7) Where this rule applies—
 - (a) the order which is agreed by the parties must be drawn up in the terms agreed;
 - (b) it must be expressed as being “By Consent”;
 - (c) it must be signed by the legal representative acting for each of the parties to whom the order relates or, where paragraph (5) applies, by the party if he is a litigant in person.

When judgment or order takes effect

40.7.—(1) A judgment or order takes effect from the day when it is given or made, or such later date as the court may specify.

(2) This rule applies to all judgments and orders except those to which rule 40.10 (judgment against a State) applies.

Time from which interest begins to run

40.8.—(1) Where interest is payable on a judgment pursuant to section 17 of the Judgments Act 1838~~(47)~~ or section 74 of the County Courts Act 1984~~(48)~~, the interest shall begin to run from the date that judgment is given unless—

- (a) a rule in another Part or a practice direction makes different provision; or
- (b) the court orders otherwise.

(2) The court may order that interest shall begin to run from a date before the date that judgment is given.

Who may apply to set aside or vary a judgment or order

40.9 A person who is not a party but who is directly affected by a judgment or order may apply to have the judgment or order set aside or varied.

Judgment against a State in default of acknowledgment of service

40.10.—(1) Where the claimant obtains default judgment under Part 12 on a claim against a State where the defendant has failed to file an acknowledgment of service, the judgment does not take effect until 2 months after service on the State of—

- (a) a copy of the judgment; and
- (b) a copy of the evidence in support of the application for permission to enter default judgment (unless the evidence has already been served on the State in accordance with an order made under Part 12).

(2) In this rule, “State” has the meaning given by section 14 of the State Immunity Act 1978~~(49)~~.

Time for complying with a judgment or order

40.11 A party must comply with a judgment or order for the payment of an amount of money (including costs) within 14 days of the date of the judgment or order, unless—

- (a) the judgment or order specifies a different date for compliance (including specifying payment by instalments);
- (b) any of these Rules specifies a different date for compliance; or
- (c) the court has stayed the proceedings or judgment.

(Parts 12 and 14 specify different dates for complying with certain default judgments and judgments on admissions)

~~(47)~~ 1838 c. 110. Section 17 was amended by S.I. 1998/ 2940.

~~(48)~~ 1984 c. 28. Section 74 was amended by section 2 of the Private International Law (Miscellaneous Provisions) Act 1995 (c. 42).

~~(49)~~ 1978 c. 33.

Correction of errors in judgments and orders

40.12.—(1) The court may at any time correct an accidental slip or omission in a judgment or order.

(2) A party may apply for a correction without notice.

Cases where court gives judgment both on claim and counterclaim

40.13.—(1) This rule applies where the court gives judgment for specified amounts both for the claimant on his claim and against the claimant on a counterclaim.

(2) If there is a balance in favour of one of the parties, it may order the party whose judgment is for the lesser amount to pay the balance.

(3) In a case to which this rule applies, the court may make a separate order as to costs against each party.

Judgment in favour of certain part owners relating to the detention of goods

40.14.—(1) In this rule “part owner” means one of two or more persons who have an interest in the same goods.

(2) Where—

(a) a part owner makes a claim relating to the detention of the goods; and

(b) the claim is not based on a right to possession,

any judgment or order given or made in respect of the claim is to be for the payment of damages only, unless the claimant had the written authority of every other part owner of the goods to make the claim on his behalf as well as for himself.

(3) This rule applies notwithstanding anything in subsection (3) of section 3 of the Torts (Interference with Goods) Act 1977(50), but does not affect the remedies and jurisdiction mentioned in subsection (8) of that section.

PART 41

PROVISIONAL DAMAGES

Contents of this Part

Application and definitions	Rule 41.1
Order for an award of provisional damages	Rule 41.2
Application for further damages	Rule 41.3

Application and definitions

41.1.—(1) This Part applies to proceedings to which SCA s.32A or CCA s.51 applies.

(2) In this Part—

(a) “SCA s.32A” means section 32A of the Supreme Court Act 1981(51);

(50) 1977 c. 32.

(51) 1981 c. 54. Section 32A was inserted by section 6(1) of the Administration of Justice Act 1982 (c. 53)

- (b) “CCA s.51” means section 51 of the County Courts Act 1984(52); and
- (c) “award of provisional damages” means an award of damages for personal injuries under which—
 - (i) damages are assessed on the assumption referred to in SCA s.32A or CCA s.51 that the injured person will not develop the disease or suffer the deterioration; and
 - (ii) the injured person is entitled to apply for further damages at a future date if he develops the disease or suffers the deterioration.

Order for an award of provisional damages

41.2.—(1) The court may make an order for an award of provisional damages if—

- (a) the particulars of claim include a claim for provisional damages; and
- (b) the court is satisfied that SCA s.32A or CCA s.51 applies.

(Rule 16.4(1)(d) sets out what must be included in the particulars of claim where the claimant is claiming provisional damages)

(2) An order for an award of provisional damages—

- (a) must specify the disease or type of deterioration in respect of which an application may be made at a future date;
- (b) must specify the period within which such an application may be made; and
- (c) may be made in respect of more than one disease or type of deterioration and may, in respect of each disease or type of deterioration, specify a different period within which a subsequent application may be made.

(3) The claimant may make more than one application to extend the period specified under paragraph (2)(b) or (2)(c).

Application for further damages

41.3.—(1) The claimant may not make an application for further damages after the end of the period specified under rule 41.2(2), or such period as extended by the court.

(2) Only one application for further damages may be made in respect of each disease or type of deterioration specified in the award of provisional damages.

(3) The claimant must give at least 28 days written notice to the defendant of his intention to apply for further damages.

(4) If the claimant knows—

- (a) that the defendant is insured in respect of the claim; and
- (b) the identity of the defendant’s insurers,

he must also give at least 28 days written notice to the insurers.

(5) Within 21 days after the end of the 28 day notice period referred to in paragraphs (3) and (4), the claimant must apply for directions.

(6) The rules in Part 25 about the making of an interim payment apply where an application is made under this rule.

PART 42

CHANGE OF SOLICITOR

Contents of this Part

Solicitor acting for a party	Rule 42.1
Change of solicitor—duty to give notice	Rule 42.2
Order that a solicitor has ceased to act	Rule 42.3
Removal of solicitor who has ceased to act on application of another party	Rule 42.4

Solicitor acting for a party

42.1 Where the address for service of a party is the business address of his solicitor, the solicitor will be considered to be acting for that party until the provisions of this Part have been complied with. (Part 6 contains provisions about the address for service)

Change of solicitor—duty to give notice

- 42.2.**—(1) This rule applies where—
- (a) a party for whom a solicitor has acted wants to change his solicitor;
 - (b) a party, after having conducted the claim in person, appoints a solicitor to act on his behalf (except where the solicitor is appointed only to act as an advocate for a hearing); or
 - (c) a party, after having conducted the claim by a solicitor, intends to act in person.
- (2) Where this rule applies, the party or his solicitor (where one is acting) must—
- (a) file notice of the change; and
 - (b) serve notice of the change on every other party and, where paragraph (1)(a) or (c) applies, on the former solicitor.
- (3) The notice must state the party’s new address for service.
- (4) The notice filed at court must state that notice has been served as required by paragraph (2)(b).
- (5) Subject to paragraph (6), where a party has changed his solicitor or intends to act in person, the former solicitor will be considered to be the party’s solicitor unless and until—
- (a) notice is served in accordance with paragraph (1); or
 - (b) the court makes an order under rule 42.3 and the order is served as required by paragraph (3) of that rule.
- (6) Where the certificate of an assisted person within the meaning of the Civil Legal Aid (General) Regulations 1989(53) is revoked or discharged—
- (a) the solicitor who acted for the assisted person shall cease to be the solicitor acting in the case as soon as his retainer is determined under regulation 83 of those Regulations; and
 - (b) if the assisted person wishes to continue—
 - (i) where he appoints a solicitor to act on his behalf paragraph (2) will apply as if he had previously conducted the claim in person; and

(ii) where he wants to act in person he must give an address for service.

(Rule 6.5 deals with a party's address for service)

Order that a solicitor has ceased to act

42.3.—(1) A solicitor may apply for an order declaring that he has ceased to be the solicitor acting for a party.

(2) Where an application is made under this rule—

- (a) notice of the application must be given to the party for whom the solicitor is acting, unless the court directs otherwise; and
- (b) the application must be supported by evidence.

(3) Where the court makes an order that a solicitor has ceased to act—

- (a) a copy of the order must be served on every party to the proceedings; and
- (b) if it is served by a party or the solicitor, the party or the solicitor (as the case may be) must file a certificate of service.

Removal of solicitor who has ceased to act on application of another party

42.4.—(1) Where—

(a) a solicitor who has acted for a party—

- (i) has died;
- (ii) has become bankrupt;
- (iii) has ceased to practice; or
- (iv) cannot be found; and

(b) the party has not given notice of a change of solicitor or notice of intention to act in person as required by rule 42.2(2),

any other party may apply for an order declaring that the solicitor has ceased to be the solicitor acting for the other party in the case.

(2) Where an application is made under this rule, notice of the application must be given to the party to whose solicitor the application relates unless the court directs otherwise.

(3) Where the court makes an order made under this rule—

- (a) a copy of the order must be served on every other party to the proceedings; and
- (b) where it is served by a party, that party must file a certificate of service.

PART 43

SCOPE OF COST RULES AND DEFINITIONS

Contents of this Part

Scope of this Part	Rule 43.1
Definitions and application	Rule 43.2
Meaning of summary assessment	Rule 43.3
Meaning of detailed assessment	Rule 43.4

Scope of this Part

43.1 This Part contains definitions and interpretation of certain matters set out in the rules about costs contained in Parts 44 to 48.

(Part 44 contains general rules about costs; Part 45 deals with fixed costs; Part 46 deals with fast track trial costs; Part 47 deals with the detailed assessment of costs and related appeals and Part 48 deals with costs payable in special cases)

Definitions and application

43.2.—(1) In Parts 44 to 48, unless the context otherwise requires—

- (a) “costs” includes fees, charges, disbursements, expenses, remuneration, reimbursement allowed to a litigant in person under rule 48.6 and any fee or reward charged by a lay representative for acting on behalf of a party in proceedings allocated to the small claims track;
- (b) “costs judge” means a taxing master of the Supreme Court;
- (c) “costs officer” means—
 - (i) a costs judge;
 - (ii) a district judge; and
 - (iii) an authorised court officer;
- (d) “authorised court officer” means any officer of—
 - (i) a county court;
 - (ii) a district registry;
 - (iii) the Principal Registry of the Family Division; or
 - (iv) the Supreme Court Costs Office,whom the Lord Chancellor has authorised to assess costs.
- (e) “fund” includes any estate or property held for the benefit of any person or class of person and any fund to which a trustee or personal representative is entitled in his capacity as such;
- (f) “receiving party” means a party entitled to be paid costs;
- (g) “paying party” means a party liable to pay costs;
- (h) “assisted person” means an assisted person within the statutory provisions relating to legal aid; and
- (i) “fixed costs” means the amounts which are to be allowed in respect of solicitors' charges in the circumstances set out in Part 45.

(2) The costs to which Parts 44 to 48 apply include—

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

Meaning of summary assessment

43.3 “Summary assessment” means the procedure by which the court, when making an order about costs, orders payment of a sum of money instead of fixed costs or “detailed assessment”.

Meaning of detailed assessment

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

PART 44**GENERAL RULES ABOUT COSTS****Contents of this Part**

Scope of this Part	Rule 44.1
Solicitor’s duty to notify client	Rule 44.2
Court’s discretion and circumstances to be taken into account when exercising its discretion as to costs	Rule 44.3
Basis of assessment	Rule 44.4
Factors to be taken into account in deciding the amount of costs	Rule 44.5
Fixed costs	Rule 44.6
Procedure for assessing costs	Rule 44.7
Time for complying with an order for costs	Rule 44.8
Costs on the small claims track and fast track	Rule 44.9
Limitation on amount court may award where a claim allocated to the fast track settles before trial	Rule 44.10
Costs following allocation and re-allocation	Rule 44.11
Cases where costs orders deemed to have been made	Rule 44.12
Special situations	Rule 44.13
Court’s powers in relation to misconduct	Rule 44.14

Scope of this Part

44.1 This Part contains general rules about costs and entitlement to costs.
(The definitions contained in Part 43 are relevant to this Part)

Solicitor’s duty to notify client

44.2 Where—

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

the party's solicitor must notify his client in writing of the costs order no later than 7 days after the solicitor receives notice of the order.

Court's discretion and circumstances to be taken into account when exercising its discretion as to costs

44.3.—(1) The court has discretion as to—

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

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

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

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

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

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

- (a) the conduct of all the parties;
- (b) whether a party has succeeded on part of his case, even if he has not been wholly successful; and
- (c) any payment into court or admissible offer to settle made by a party which is drawn to the court's attention (whether or not made in accordance with Part 36).

(Part 36 contains further provisions about how the court's discretion is to be exercised where a payment into court or an offer to settle is made under that Part)

(5) The conduct of the parties includes—

- (a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed any relevant pre-action protocol;
- (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
- (c) the manner in which a party has pursued or defended his case or a particular allegation or issue; and
- (d) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim.

(6) The orders which the court may make under this rule include an order that a party must pay—

- (a) a proportion of another party's costs;
- (b) a stated amount in respect of another party's costs;
- (c) costs from or until a certain date only;
- (d) costs incurred before proceedings have begun;

- (e) costs relating to particular steps taken in the proceedings;
- (f) costs relating only to a distinct part of the proceedings; and
- (g) interest on costs from or until a certain date, including a date before judgment.

(7) Where the court would otherwise consider making an order under paragraph (6)(f), it must instead, if practicable, make an order under paragraph (6)(a) or (c).

(8) Where the court has ordered a party to pay costs, it may order an amount to be paid on account before the costs are assessed.

(9) Where a party entitled to costs is also liable to pay costs the court may assess the costs which that party is liable to pay and either—

- (a) set off the amount assessed against the amount the party is entitled to be paid and direct him to pay any balance; or
- (b) delay the issue of a certificate for the costs to which the party is entitled until he has paid the amount which he is liable to pay.

Basis of assessment

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

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

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

(Rule 48.3 sets out how the court decides the amount of costs payable under a contract)

(2) Where the amount of costs is to be assessed on the standard basis, the court will—

- (a) only allow costs which are proportionate to the matters in issue; and
- (b) resolve any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party.

(Factors which the court may take into account are set out in rule 44.5)

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

(4) Where—

- (a) the court makes an order about costs without indicating the basis on which the costs are to be assessed; or
- (b) the court makes an order for costs to be assessed on a basis other than the standard basis or the indemnity basis,

the costs will be assessed on the standard basis.

(5) This rule and Part 47 (detailed assessment of costs by a costs officer) do not apply to the extent that regulations made under the Legal Aid Act 1988⁽⁵⁴⁾ determine the amount payable.

(6) Where the amount of a solicitor's remuneration in respect of non-contentious business is regulated by any general orders made under the Solicitors Act 1974⁽⁵⁵⁾, the amount of the costs to be allowed in respect of any such business which falls to be assessed by the court will be decided in accordance with those general orders rather than this rule and rule 44.5.

⁽⁵⁴⁾ 1988 c. 34.

⁽⁵⁵⁾ 1974 c. 47.

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

44.5.—(1) The court is to have regard to all the circumstances in deciding whether costs were—

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

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

(3) The court must also have regard to—

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

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

Fixed costs

44.6 A party may recover the fixed costs specified in Part 45 in accordance with that Part.

Procedure for assessing costs

44.7 Where the court orders a party to pay costs to another party (other than fixed costs) it may either—

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

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

(The costs practice direction sets out the factors which will affect the court's decision under this rule)

Time for complying with an order for costs

44.8 A party must comply with an order for the payment of costs within 14 days of—

- (a) the date of the judgment or order if it states the amount of those costs; or
- (b) if the amount of those costs (or part of them) is decided later in accordance with Part 47, the date of the certificate which states the amount.

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

Costs on the small claims track and fast track

- 44.9.**—(1) Part 27 (Small claims) and Part 46 (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) Those special rules do not apply until a claim is allocated to a particular track.

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

- 44.10.**—(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 shall 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 46. (Part 46 sets out the amount of fast track trial costs which may be awarded)

Costs following allocation and re-allocation

- 44.11.**—(1) Any costs orders made before a claim is allocated will not be affected by allocation.
- (2) Where—
- (a) 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.
- (Part 26 deals with the allocation and re-allocation of claims between tracks)

Cases where costs orders deemed to have been made

- 44.12.**—(1) Where a right to costs arises under—
- (a) rule 3.7 (defendant’s right to costs where claim struck out for non-payment of fees);
 - (b) rule 36.13(1) (claimant’s right to costs where he accepts defendant’s Part 36 offer or Part 36 payment);
 - (c) rule 36.14 (claimant’s right to costs where defendant accepts the claimant’s Part 36 offer);
- or

(d) rule 38.6 (defendant’s right to costs where claimant discontinues), a costs order will be deemed to have been made on the standard basis.

(2) Interest payable pursuant to section 17 of the Judgments Act 1838⁽⁵⁶⁾ or section 74 of the County Courts Act 1984⁽⁵⁷⁾ on the costs deemed to have been ordered under paragraph (1) shall begin to run from the date on which the event which gave rise to the entitlement to costs occurred.

Special situations

44.13.—(1) Where the court makes an order which does not mention costs no party is entitled to costs in relation to that order.

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

(3) Where proceedings are transferred from one court to another, the court to which they are transferred may deal with all the costs, including the costs before the transfer.

(4) Paragraph (3) is subject to any order of the court which ordered the transfer.

Court’s powers in relation to misconduct

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

- (a) a party or his legal representative fails to conduct detailed assessment proceedings in accordance with Part 47 or any direction of the court; or
- (b) it appears to the court that the conduct of a party or his legal representative, before or during the proceedings which gave rise to the assessment proceedings, was unreasonable or improper.

(2) Where paragraph (1) applies, the court may—

- (a) disallow all or part of the costs which are being assessed; or
- (b) order the party at fault or his legal representative to pay costs which he has caused any other party to incur.

(3) Where—

- (a) the court makes an order under paragraph (2) against a legally represented party; and
- (b) the party is not present when the order is made,

the party’s solicitor must notify his client in writing of the order no later than 7 days after the solicitor receives notice of the order.

PART 45

FIXED COSTS

Contents of this Part

Scope of this Part	Rule 45.1
Amount of fixed commencement costs	Rule 45.2

⁽⁵⁶⁾ 1838 c. 110. Section 17 was amended by S.I. 1998/2940.

⁽⁵⁷⁾ 1984 c. 28. Section 74 was amended by section (2) of the Private International Law (Miscellaneous Provisions) Act 1995 (c. 42).

When defendant liable for fixed commencement costs	Rule 45.3
Costs on entry of judgment	Rule 45.4
Miscellaneous fixed costs	Rule 45.5

Scope of this Part

45.1.—(1) This Part sets out the amounts which, unless the court orders otherwise, are to be allowed in respect of solicitors' charges in the cases to which this Part applies.

(The definitions contained in Part 43 are relevant to this Part)

(2) This Part applies where—

(a) the only claim is a claim for a specified sum of money 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 ^(GL) a defence under rule 3.4(2)(a) as disclosing no reasonable grounds for defending the claim; or

(vi) rule 45.3 applies; or

(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 in either case the value of the claim exceeds £25.

(The practice direction supplementing rule 7.9 sets out the types of case where a court may give a fixed date for a hearing when it issues a claim)

(3) The rules in this Part do not apply to the extent that regulations under the Legal Aid Act 1988⁽⁵⁸⁾ determine the amount of costs payable to legal representatives.

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

Amount of fixed commencement costs

45.2.—(1) The claim form may include a claim for fixed commencement costs.

(2) The amount of fixed commencement costs which the claim form may include shall be calculated by reference to the following Table (Table 1).

(3) Additional costs may also be claimed in the circumstances specified in Table 3.

(4) 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 the Table that applies to the claim.

TABLE 1*Fixed costs on commencement of a claim*

<i>Relevant Band</i>	<i>Where the claim form is served by the court or by any method other than personal service by the claimant</i>	<i>Where</i> <ul style="list-style-type: none"> • <i>the claim form is served personally by the claimant; and</i> • <i>there is only one defendant</i> 	<i>Where there is more than one defendant, for each additional defendant personally served at separate addresses by the claimant</i>
Where— <ul style="list-style-type: none"> • the value of the claim exceeds £25 but does not exceed £500 	£50	£60	£15
Where— <ul style="list-style-type: none"> • the value of the claim exceeds £500 but does not exceed £1000 	£70	£80	£15
Where— <ul style="list-style-type: none"> • the value of the claim exceeds £1000 but does not exceed £5000; or • the only claim is for delivery of goods and no value is specified or stated on the claim form 	£80	£90	£15
Where— <ul style="list-style-type: none"> • the value of the claim exceeds £5000 	£100	£110	£15

When defendant only liable for fixed commencement costs**45.3.—(1) 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 particulars of claim on him, 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.

(2) Where—

- (a) the claimant gives notice of acceptance of a payment into court in satisfaction of the whole claim;
- (b) the only claim is for a specified sum of money; and
- (c) the defendant made the payment into court within 14 days after service of the particulars of claim on him, together with the fixed costs stated in the claim form,
- the defendant is not liable for any further costs unless the court orders otherwise.

Costs on entry of judgment

45.4 Where—

- (a) the claimant has claimed fixed commencement costs under rule 45.2; and
- (b) judgment is entered in the circumstances specified in the table in this rule (Table 2),
- the amount to be included in the judgment in respect of the claimant’s solicitor’s charges is the aggregate of—
- (i) the fixed commencement costs; and
- (ii) the relevant amount shown in Table 2.

TABLE 2

Fixed Costs on Entry of Judgment

	<i>Where the amount of the judgment exceeds £25 but does not exceed £5000</i>	<i>Where the amount of the judgment exceeds £5000</i>
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

	<i>Where the amount of the judgment exceeds £25 but does not exceed £5000</i>	<i>Where the amount of the judgment exceeds £5000</i>
Where judgment is entered under rule 14.4 (judgment on admission), or rule 14.5 (judgment on admission on part of claim) and court decides the date or times 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 ⁽⁵⁹⁾ and no other entry in this table applies	£60	£85

Miscellaneous fixed costs

45.5 The table in this rule (Table 3) shows the amount to be allowed in respect of solicitor's charges in the circumstances mentioned.

TABLE 3*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 Where service by an alternative method is permitted by an order under rule 6.8 for each individual served	£25
Where a document is served out of the jurisdiction—	£65
(a) in Scotland, Northern Ireland, the Isle of Man or the Channel Islands;	
(b) (b) in any other place	£75

⁽⁵⁹⁾ 1974 c. 39.

PART 46

FAST TRACK TRIAL COSTS

Contents of this Part

Scope of this Part	46.1
Amount of fast track trial costs	46.2
Power to award more or less than amount of fast track trial costs	46.3
Fast track trial costs where there is more than one claimant or defendant	46.4

Scope of this Part

46.1.—(1) This Part 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 Part—

- (a) “advocate” means a person exercising a right of audience as a representative of, or on behalf of, a party;
- (b) “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
- (c) “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.
 (Part 21 deals with claims made by or on behalf of, or against, children and patients)

Amount of fast track trial costs

46.2.—(1) The following table shows the amount of fast track trial costs which the court may award (whether by summary or detailed assessment).

<i>Value of the claim</i>	<i>Amount of fast track trial costs which the court may award</i>
Up to £3,000	£350
More than £3,000 but not more than £10,000	£500
More than £10,000	£750

- (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 46.3 applies,

but the court may apportion the amount awarded between the parties to reflect their respective degrees of success on the issues at trial.

- (3) Where the only claim is for the payment of money—
 - (a) for the purpose of quantifying fast track trial costs awarded to a claimant, the value of the claim is the total amount of the judgment excluding—
 - (i) interest and costs; and
 - (ii) any reduction made for contributory negligence;
 - (b) for the purpose of the 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 £10,000, if the claim form states that the claimant cannot reasonably say how much he expects to recover.

(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 his 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.

(Rule 20.4 sets out how a defendant may make a counterclaim)

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

- 46.3.**—(1) This rule sets out when a court may award—
- (a) an additional amount to the amount of fast track trial costs shown in the table in rule 46.2(1); and
 - (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 £250 in respect of the legal representative's attendance at the trial.

(Legal representative is defined in rule 2.3)

(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 must not exceed two-thirds of the amount payable for that claim, subject to a minimum award of £350.

(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 the costs practice direction.

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

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

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

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

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

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

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

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

46.4.—(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) 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 46.2(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 sub paragraph (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. ^(GL)

(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.

PART 47

PROCEDURE FOR DETAILED ASSESSMENT OF COSTS AND DEFAULT PROVISIONS

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(The definitions contained in Part 43 are relevant to this Part)

SECTION I—GENERAL RULES ABOUT DETAILED ASSESSMENT

Time when detailed assessment may be carried out

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

(The costs practice direction gives further guidance about when proceedings are concluded for the purpose of this rule)

No stay of detailed assessment where there is an appeal

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

Powers of an authorised court officer

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

- (a) power to make a wasted costs order as defined in rule 48.7;
- (b) power to make an order under—
 - (i) rule 44.14 (powers in relation to misconduct);
 - (ii) rule 47.8 (sanction for delay in commencing detailed assessment proceedings);
 - (iii) paragraph (2) (objection to detailed assessment by authorised court officer); and
- (c) power to make a detailed assessment of costs payable to a solicitor by his client, unless the costs are being assessed under rule 48.5 (costs where money is payable to a child or patient).

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

(The costs practice direction sets out the relevant procedure)

Venue for detailed assessment proceedings

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

(The costs practice direction sets out the meaning of “appropriate office” in any particular case)

- (2) The court may direct that the appropriate office is to be the Supreme Court Costs Office.
- (3) A county court may direct that another county court is to be the appropriate office.
- (4) A direction under paragraph (3) may be made without proceedings being transferred to that court.

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

**SECTION II—COSTS PAYABLE BY ONE PARTY TO ANOTHER—
COMMENCEMENT OF DETAILED ASSESSMENT PROCEEDINGS**

Application of this Section

47.5 This section of Part 47 applies where a costs officer is to make a detailed assessment of costs which are payable by one party to another.

Commencement of detailed assessment proceedings

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

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

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

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

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

(The costs practice direction deals with—

- other documents which the party must file when he requests detailed assessment;
- the court’s powers where it considers that a hearing may be necessary;
- the form of a bill; and
- the length of notice which will be given if a hearing date is fixed)

Period for commencing detailed assessment proceedings

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

<i>Source of right to detailed assessment</i>	<i>Time by which detailed assessment proceedings must be commenced</i>
Judgment, direction, order, award or other determination	3 months after the date of the judgment etc. Where detailed assessment is stayed pending an appeal, 3 months after the date of the order lifting the stay.
Discontinuance under Part 38	3 months after the date of service of notice of discontinuance under rule 38.3; or 3 months after the date of the dismissal of application to set the notice of discontinuance aside under rule 38.4
Acceptance of an offer to settle or a payment into court under Part 36	3 months after the date when the right to costs arose.

Sanction for delay in commencing detailed assessment proceedings

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

- (a) in rule 47.7; or

(b) by any direction of the court,
the paying party may apply for an order requiring the receiving party to commence detailed assessment proceedings within such time as the court may specify.

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

(3) If—

(a) the paying party has not made an application in accordance with paragraph (1); and

(b) the receiving party commences the proceedings later than the period specified in rule 47.7,
the court may disallow all or part of the interest otherwise payable to the receiving party under—

(i) section 17 of the Judgments Act 1838(60); or

(ii) section 74 of the County Courts Act 1984(61),

but must not impose any other sanction except in accordance with rule 44.14 (powers in relation to misconduct).

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

Points of dispute and consequence of not serving

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

(a) the receiving party; and

(b) every other party to the detailed assessment proceedings.

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

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

(The costs practice direction sets out requirements about the form of points of dispute)

(4) The receiving party may file a request for a default costs certificate if—

(a) the period set out in rule 47.9(2) for serving points of dispute has expired; and

(b) he has not been served with any points of dispute.

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

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

Procedure where costs are agreed

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

(Rule 47.15 and Rule 47.16 contain further provisions about interim and final costs certificates respectively)

(60) 1838 c. 110. Section 17 was amended by S.I. 1998/2940.

(61) 1984 c. 28. Section 74 was amended by section 2 of the Private International Law (Miscellaneous Provisions) Act 1995 (c. 42).

- (2) An application for a certificate under paragraph (1) must be made—
- (a) where the right to detailed assessment arises from a judgment or court order—
 - (i) to the court where the judgment or order was given or made, if the proceedings have not been transferred since then; or
 - (ii) to the court to which the proceedings have been transferred; and
 - (b) in any other case, to the court which would be the venue for detailed assessment proceedings under rule 47.4.

**SECTION III—COSTS PAYABLE BY ONE
PARTY TO ANOTHER—DEFAULT PROVISIONS**

Default costs certificate

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

(The costs practice direction deals with the procedure by which the receiving party may obtain a default costs certificate)

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

Setting aside default costs certificate

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

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

- (3) Where—
- (a) the receiving party has purported to serve the notice of commencement on the paying party;
 - (b) a default costs certificate has been issued; and
 - (c) the receiving party subsequently discovers that the notice of commencement did not reach the paying party at least 21 days before the default costs certificate was issued,

the receiving party must—

- (i) file a request for the default costs certificate to be set aside; or
- (ii) apply to the court for directions.

- (4) Where paragraph (3) applies, the receiving party may take no further step in
- (a) the detailed assessment proceedings; or
 - (b) the enforcement of the default costs certificate,

until the certificate has been set aside or the court has given directions.

(The costs practice direction contains further details about the procedure for setting aside a default costs certificate and the matters which the court must take into account)

**SECTION IV—COSTS PAYABLE BY ONE PARTY TO ANOTHER
—PROCEDURE WHERE POINTS OF DISPUTE ARE SERVED**

Optional reply

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

(2) He may do so within 21 days after service on him of the points of dispute to which his reply relates.

Detailed assessment hearing

47.14.—(1) Where points of dispute are served in accordance with this Part, the receiving party must file a request for a detailed assessment hearing.

(2) He must file the request within 3 months of the expiry of the period for commencing detailed assessment proceedings as specified—

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

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

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

- (5) If—
- (a) the paying party has not made an application in accordance with paragraph (3); and
 - (b) the receiving party commences the proceedings later than the period specified in paragraph (2),

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

- (i) section 17 of the Judgments Act 1838(**62**); or
- (ii) section 74 of the County Courts Act 1984(**63**),

but must not impose any other sanction except in accordance with rule 44.14 (powers in relation to misconduct).

- (6) No person other than—
- (a) the receiving party;
 - (b) the paying party; and
 - (c) any party who has served points of dispute under rule 47.9,

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

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

(The costs practice direction specifies other documents which must be filed with the request for hearing and the length of notice which the court will give when it fixes a hearing date)

(62) 1838 c. 110. Section 17 was amended by S.I. 1998/2940.

(63) 1984 c. 28. Section 74 was amended by section 2 of the Private International Law (Miscellaneous Provisions) Act 1995 (c. 42).

SECTION V—INTERIM COSTS CERTIFICATE AND FINAL COSTS CERTIFICATE

Power to issue an interim certificate

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

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

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

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

Final costs certificate

47.16.—(1) In this rule a completed bill means a bill which the receiving party has calculated to show the amount due following the detailed assessment of the costs.

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

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

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

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

(The costs practice direction deals with the form of a final costs certificate)

SECTION VI—DETAILED ASSESSMENT PROCEDURE FOR COSTS OF AN ASSISTED PERSON WHERE COSTS ARE PAYABLE OUT OF THE LEGAL AID FUND

Detailed assessment procedure for costs of an assisted person where costs are payable out of the legal aid fund

47.17.—(1) Where the court is to assess costs of an assisted person which are payable out of the legal aid fund, the assisted person’s solicitor may commence detailed assessment proceedings by filing a request in the relevant practice form.

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

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

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

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

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

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

SECTION VII—COSTS OF DETAILED ASSESSMENT PROCEEDINGS

Liability for costs of detailed assessment proceedings

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

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

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

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

Offers to settle without prejudice save as to costs of the detailed assessment proceedings

47.19.—(1) Where—

- (a) a party (whether the paying party or the receiving party) makes a written offer to settle the costs of the proceedings which gave rise to the assessment proceedings; and
- (b) the offer is expressed to be without prejudice^(GL) save as to the costs of the detailed assessment proceedings,

the court will take the offer into account in deciding who should pay the costs of those proceedings.

(2) The fact of the offer must not be communicated to the costs officer until the question of costs of the detailed assessment proceedings falls to be decided.

(The costs practice direction provides that rule 47.19 does not apply where the receiving party is an assisted person)

SECTION VIII—APPEAL AGAINST DECISIONS IN DETAILED ASSESSMENT PROCEEDINGS

Right to appeal

47.20.—(1) Any party to detailed assessment proceedings may appeal against any decision of the court in those proceedings, subject to the requirements of rule 47.21.

(2) For the purposes of this Section, an assisted person is not a party to the detailed assessment proceedings.

Preliminary requirements for bringing an appeal

47.21.—(1) A party may not appeal against a decision in detailed assessment proceedings until he has—

- (a) sought written reasons for the decision in accordance with rule 47.23; and
- (b) obtained the court's permission where necessary in accordance with rule 47.24,

unless the court orders otherwise.

(2) Where a party has complied with the requirements under paragraph (1) he may file a notice of appeal in accordance with rule 47.25.

Court to hear appeal

47.22.—(1) Where an appeal is made against a decision of an authorised court officer the appeal is—

- (a) if the detailed assessment proceedings were in the High Court, to a costs judge or a district judge of that court; or
- (b) if they were in a county court, to a district judge.

(2) Where an appeal is made to a costs judge or a district judge against a decision of an authorised court officer, a further appeal lies—

- (a) if the detailed assessment proceedings were in the High Court, to a judge of that court; or
- (b) if they were in a county court, to a circuit judge.

(3) Where an appeal against a decision of a costs judge or a district judge hearing the detailed assessment is made the appeal lies—

- (a) if the detailed assessment proceedings were in the High Court, to a judge of that court; or
- (b) if they were in a county court, to a circuit judge.

Duty to seek reasons

47.23.—(1) A party may seek reasons for a decision in detailed assessment proceedings by filing a request with the court that gave the decision.

(2) Where the party seeking reasons is the receiving party, he must file his request for reasons when he files the completed bill of costs.

(Rule 47.16 deals with completed bills of costs)

(3) Where the party seeking reasons is the paying party, he must file his request for reasons within 7 days after the end of the detailed assessment hearing.

Obtaining the court's permission to appeal

47.24.—(1) Permission is not required to appeal against—

- (a) a decision of an authorised court officer; or
- (b) a decision of a costs judge or a district judge to impose a sanction on a legal representative under—
 - (i) rule 44.14 (powers in relation to misconduct); or
 - (ii) rule 48.7 (wasted costs order).

(2) Subject to paragraph (1)(b), permission is required to appeal against a decision of a costs judge or a district judge.

(3) Permission to appeal may be given by—

- (a) the costs judge or district judge who made the decision in question; or
- (b) a High Court judge or a circuit judge, as the case may be.

(4) A party may seek permission to appeal—

- (a) within 14 days after receiving written reasons under rule 47.23; or
- (b) if the court directs that reasons do not need to be obtained, within 7 days after the decision in question.

Appeal procedure

- 47.25.**—(1) A party who has a right to appeal may do so by filing a notice of appeal.
- (2) Where the appeal is against a decision of an authorised court officer, he must file the notice—
- (a) within 14 days after service of the court officer’s reasons on him; or
 - (b) if the court has directed that reasons need not be obtained, within 7 days after the date of the decision appealed against.
- (3) Where the appeal is against a decision of a costs judge or a district judge, he must file the notice within 14 days after the date of the court’s decision to give permission to appeal.
- (4) On receipt of a notice of appeal, the court will—
- (a) serve a copy of the notice on the other parties to the detailed assessment proceedings; and
 - (b) give notice of the appeal hearing to those parties.

Powers of the court on appeal

- 47.26.**—(1) On an appeal from an authorised court officer the court will—
- (a) rehear the proceedings which gave rise to the decision appealed against; and
 - (b) make any order and give such directions as it considers appropriate.
- (2) On an appeal from a costs judge or district judge, if the court is satisfied that the appeal should be allowed, it may make any order and give such directions as it considers appropriate.
- (3) If on an appeal the court exercises the power to appoint assessors conferred—
- (a) by section 70 of the Supreme Court Act 1981(**64**); or
 - (b) by section 63 of the County Courts Act 1984(**65**),
- it must appoint at least two assessors.
- (Rule 35.15 contains further provisions about the appointment of assessors)
- (4) One assessor must be a district judge or costs judge and one must be a practising barrister or solicitor.

PART 48

COSTS—SPECIAL CASES

Contents of this Part

I COSTS PAYABLE BY OR TO PARTICULAR PERSONS

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(64) 1981 c. 54.

(65) 1984 c. 28. Section 63 was amended by S.I. 1998/2940.

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(The definitions contained in Part 43 are relevant to this Part)

SECTION 1—COSTS PAYABLE BY OR TO PARTICULAR PERSONS

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

48.1.—(1) This paragraph applies where a person applies—

(a) for an order under—

(i) section 33 of the Supreme Court Act 1981(**66**); or

(ii) section 52 of the County Courts Act 1984(**67**),

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

(b) for an order under—

(i) section 34 of the Supreme Court Act 1981(**68**); or

(ii) section 53 of the County Courts Act 1984(**69**),

(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 his 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

(66) 1981 c. 54. Section 33 was amended by S.I. 1998/2940.

(67) 1984 c. 28. Section 52 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 43 and by S.I. 1998/2940.

(68) 1981 c. 54. Section 34 was amended by S.I. 1998/2940.

(69) 1984 c. 28. Section 53 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 44 and by S.I. 1998/2940.

- (b) whether the parties to the application have complied with any relevant pre-action protocol.

Costs orders in favour of or against non-parties

48.2.—(1) Where the court is considering whether to exercise its power under section 51 of the Supreme Court Act 1981(**70**) (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—

- (a) that person must be added as a party to the proceedings for the purposes of costs only; and
 - (b) he must 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 Legal Aid Board;
 - (ii) make a wasted costs order (as defined in 48.7); and
 - (b) in proceedings to which rule 48.1 applies (pre-commencement disclosure and orders for disclosure against a person who is not a party).

Amount of costs where costs are payable pursuant to a contract

48.3.—(1) Where the court assesses (whether by the summary or detailed procedure) costs which are payable by the paying party to the receiving party under the terms of a contract, the costs payable under those terms are, unless the contract expressly provides otherwise, to be presumed to be costs which—

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

and the court will assess them accordingly.

(The costs practice direction sets out circumstances where the court may order otherwise)

- (2) This rule does not apply where the contract is between a solicitor and his client.

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

48.4.—(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 48.3 does not apply.

(2) The general rule is that he is entitled to the costs of those proceedings on the indemnity basis, so far as they are not recovered from or paid by any other person, out of the fund held by him as trustee or personal representative.

(3) The court may order otherwise but only if a trustee or personal representative has acted for a benefit other than that of the fund.

Costs where money is payable by or to a child or patient

48.5.—(1) This rule applies to any proceedings where a party is a child or patient and—

- (a) money is ordered or agreed to be paid to, or for the benefit of, that party; or

(70) 1981 c. 54. Section 51 was substituted by section 4(1) of the Courts and Legal Services Act 1990 (c. 41).

(b) money is ordered to be paid by him or on his behalf.

(“Child” and “patient” are defined in rule 2.3)

(2) The general rule is that—

(a) the court must order a detailed assessment of the costs payable by any party who is a child or patient to his solicitor; and

(b) on an assessment under paragraph (a), the court must also assess any costs payable to that party in the proceedings, unless the court has issued a default costs certificate in relation to those costs under rule 47.11.

(3) The court need not order detailed assessment of costs in the circumstances set out in the costs practice direction.

(4) Where—

(a) a claimant is a child or patient; and

(b) a detailed assessment has taken place under paragraph (2)(a),

the only amount payable by the child or patient to his solicitor is the amount which the court certifies as payable.

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

Litigants in person

48.6.—(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 must 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) Costs allowed to the litigant in person shall be—

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

(b) the payments reasonably made by him for legal services relating to the conduct of the proceedings; and

(c) the costs of obtaining expert assistance in connection with assessing the claim for costs.

(The costs practice direction deals with who may be an expert for the purpose of paragraph (2)(c))

(4) Subject to paragraph (2), the amount of costs to be allowed to the litigant in person for any item of work to which the costs relate shall, if he fails to prove financial loss, be an amount in respect of the time spent reasonably doing the work at the rate specified in the costs practice direction.

(5) A litigant who is allowed costs for attending at court to conduct his 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) a barrister, solicitor, solicitor’s employee or other authorised litigator (as defined in the Courts and Legal Services Act 1990(71)) who is acting for himself.

SECTION II—COSTS RELATING TO SOLICITORS AND OTHER LEGAL REPRESENTATIVES

Personal liability of legal representative for costs—wasted costs orders

48.7.—(1) This rule applies where the court is considering whether to make an order under section 51(6) of the Supreme Court Act 1981⁽⁷²⁾ (court’s power to disallow or (as the case may be) order a legal representative to meet, “wasted costs”).

(2) The court must give the legal representative a reasonable opportunity to attend a hearing to give reasons why it should not make such an order.

(3) For the purposes of this rule, the court may direct that privileged^(GL) documents are to be disclosed to the court and, if the court so directs, to the other party to the application for an order.

(4) When the court makes a wasted costs order, it must specify the amount to be disallowed or paid.

(5) 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.

(6) Before making a wasted costs order, the court may direct a costs judge or a district judge to inquire into the matter and report to the court.

(7) The court may refer the question of wasted costs to a costs judge or a district judge, instead of making a wasted costs order.

Basis of detailed assessment of solicitor and client costs

48.8.—(1) This rule applies to every assessment of a solicitor’s bill to his client except—

- (a) a bill which is to be paid out of the legal aid fund under the Legal Aid Act 1988⁽⁷³⁾; or
- (b) where the solicitor and his client have entered into a conditional fee agreement as defined by section 58 of the Courts and Legal Services Act 1990⁽⁷⁴⁾.

(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 his client that as a result he might not recover all of them from the other party.

Conditional fees

48.9.—(1) This rule applies to every assessment (whether by the summary or detailed procedure) of a solicitor’s bill to his client where the solicitor and the client have entered into a conditional fee agreement as defined in section 58 of the Courts and Legal Services Act 1990.

⁽⁷²⁾ 1981 c. 54. Section 51 was substituted by section 4(1) of the Courts and Legal Services Act 1990 (c. 41).

⁽⁷³⁾ 1988 c. 34.

⁽⁷⁴⁾ 1990 c. 41. Section 58 was amended by the Family Law Act 1996 (c. 27), Schedule 8, Part III, paragraph 61.

(2) In this rule—

“the base costs” means the costs other than a percentage increase;

“percentage increase” means a percentage increase pursuant to a conditional fee agreement entered into between the solicitor and his client or between counsel and the solicitor, or counsel and the client; and

“costs” includes all fees, charges, disbursements and other expenses charged by the solicitor or counsel under the conditional fee agreement in question.

(3) On an assessment to which this rule applies, the client may apply for assessment of the base costs or of a percentage increase or of both.

(4) Where the client applies for assessment of the base costs, the base costs are to be assessed in accordance with rule 48.8(2) as if the solicitor and his client had not entered into a conditional fee agreement.

(5) Where the client applies for assessment of a percentage increase, the court may reduce the percentage increase where it considers it to be disproportionate having regard to all relevant factors as they reasonably appeared to the solicitor or counsel when the conditional fee agreement was entered into.

(6) The court will not vary a percentage increase where the client is a child or patient, except in accordance with paragraph (5).

(The costs practice direction specifies some of the relevant factors)

Assessment procedure

48.10.—(1) This paragraph sets out the procedure to be followed where the court has made an order under Part III of the Solicitors Act 1974(75) for the assessment of costs payable to a solicitor by his 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 him of the breakdown of costs.

(4) If the solicitor wishes to serve a reply, he must do so within 14 days of service on him 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.

PART 49

SPECIALIST PROCEEDINGS

49.—(1) These Rules shall apply to the proceedings listed in paragraph (2) subject to the provisions of the relevant practice direction which applies to those proceedings.

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

(a) admiralty proceedings;

- (b) arbitration proceedings;
- (c) commercial and mercantile actions;
- (d) Patents Court business (as defined by the relevant practice direction) and proceedings under—
 - (i) the Copyright, Designs and Patents Act 1988⁽⁷⁶⁾;
 - (ii) the Trade Marks Act 1994⁽⁷⁷⁾; and
 - (iii) the Olympic Symbol etc Protection Act 1995⁽⁷⁸⁾ and Olympics Association Right (Infringement Proceedings) Regulations 1995⁽⁷⁹⁾;
- (e) Technology and Construction Court Business (as defined by the relevant practice direction);
- (f) proceedings under the Companies Act 1985⁽⁸⁰⁾ and the Companies Act 1989⁽⁸¹⁾; and
- (g) contentious probate proceedings.

PART 50

APPLICATION OF THE SCHEDULES

50.—(1) The Schedules to these Rules set out, with modifications, certain provisions previously contained in the Rules of the Supreme Court 1965⁽⁸²⁾ and the County Court Rules 1981⁽⁸³⁾.

(2) These Rules apply in relation to the proceedings to which the Schedules apply subject to the provisions in the Schedules and the relevant practice directions.

(3) A provision previously contained in the Rules of the Supreme Court 1965—

- (a) is headed “RSC”;
- (b) is numbered with the Order and rule numbers it bore as part of the RSC; and
- (c) unless otherwise stated in the Schedules or the relevant practice direction, applies only to proceedings in the High Court.

(4) A provision previously contained in the County Court Rules 1981—

- (a) is headed “CCR”;
- (b) is numbered with the Order and rule numbers it bore as part of the CCR; and
- (c) unless otherwise stated in the Schedules or the relevant practice direction, applies only to proceedings in the county court.

(5) A reference in a Schedule to a rule by number alone is a reference to the rule so numbered in the Order in which the reference occurs.

(6) A reference in a Schedule to a rule by number prefixed by “CPR” is a reference to the rule with that number in these Rules.

(7) In the Schedules, unless otherwise stated, “the Act” means—

- (a) in a provision headed “RSC”, the Supreme Court Act 1981; and

⁽⁷⁶⁾ 1988 c. 48.

⁽⁷⁷⁾ 1994 c. 26.

⁽⁷⁸⁾ 1995 c. 32.

⁽⁷⁹⁾ S.I. 1995/3325.

⁽⁸⁰⁾ 1985 c. 6.

⁽⁸¹⁾ 1989 c. 40.

⁽⁸²⁾ S.I. 1965/1776.

⁽⁸³⁾ S.I. 1981/1687.

(b) in a provision headed “CCR”, the County Courts Act 1984.

PART 51

TRANSITIONAL ARRANGEMENTS

51. A practice direction shall make provision for the extent to which these Rules shall apply to proceedings issued before 26th April 1999.

GLOSSARY

Scope

This glossary is a guide to the meaning of certain legal expressions as used in these Rules, but it does not give the expressions any meaning in the Rules which they do not otherwise have in the law.

Expression	Meaning
Affidavit	A written, sworn statement of evidence.
Alternative dispute resolution	Collective description of methods of resolving disputes otherwise than through the normal trial process.
Base rate	The interest rate set by the Bank of England which is used as the basis for other banks' rates.
Contribution	A right of someone to recover from a third person all or part of the amount which he himself is liable to pay.
Counterclaim	A claim brought by a defendant in response to the claimant's claim, which is included in the same proceedings as the claimant's claim.
Cross-examination (and see “evidence in chief”)	Questioning of a witness by a party other than the party who called the witness.
Damages	A sum of money awarded by the court as compensation to the claimant.
• aggravated damages	Additional damages which the court may award as compensation for the defendant's objectionable behaviour
• exemplary damages	Damages which go beyond compensating for actual loss and are awarded to show the court's disapproval of the defendant's behaviour
Defence of tender before claim	A defence that, before the claimant started proceedings, the defendant unconditionally offered to the claimant the amount due or, if no specified amount is claimed, an amount sufficient to satisfy the claim.

Expression	Meaning
Evidence in chief (and see “cross-examination”)	The evidence given by a witness for the party who called him.
Indemnity	A right of someone to recover from a third party the whole amount which he himself is liable to pay.
Injunction	A court order prohibiting a person from doing something or requiring a person to do something.
Joint liability (and see “several liability”)	Parties who are jointly liable share a single liability and each party can be held liable for the whole of it.
Limitation period	The period within which a person who has a right to claim against another person must start court proceedings to establish that right. The expiry of the period may be a defence to the claim.
List	Cases are allocated to different lists depending on the subject matter of the case. The lists are used for administrative purposes and may also have their own procedures and judges.
Official copy	A copy of an official document, supplied and marked as such by the office which issued the original.
Practice form	Form to be used for a particular purpose in proceedings, the form and purpose being specified by a practice direction.
Pre-action protocol	Statements of understanding between legal practitioners and others about pre-action practice and which are approved by a relevant practice direction.
Privilege	The right of a party to refuse to disclose a document or produce a document or to refuse to answer questions on the ground of some special interest recognised by law.
Seal	A seal is a mark which the court puts on a document to indicate that the document has been issued by the court.
Service	Steps required by rules of court to bring documents used in court proceedings to a person’s attention.
Set aside	Cancelling a judgment or order or a step taken by a party in the proceedings.
Several liability (and see “joint liability”)	A person who is severally liable with others may remain liable for the whole claim even

Expression	Meaning
	where judgment has been obtained against the others.
Stay	A stay imposes a halt on proceedings, apart from taking any steps allowed by the Rules or the terms of the stay. Proceedings can be continued if a stay is lifted.
Strike out	Striking out means the court ordering written material to be deleted so that it may no longer be relied upon.
Without prejudice	Negotiations with a view to a settlement are usually conducted “without prejudice” which means that the circumstances in which the content of those negotiations may be revealed to the court are very restricted.

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I allow these Rules which shall come into force on 26th April 1999

Dated 10th December 1998

Irvine of Laing, C.