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STATUTORY INSTRUMENTS

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**1998 No. 3132**

**The Civil Procedure Rules 1998**

**[<sup>F1</sup>PART 46**

**COSTS –SPECIAL CASES**

**Textual Amendments**

**F1** Pts. 44-48 substituted (1.4.2013) by [The Civil Procedure \(Amendment\) Rules 2013 \(S.I. 2013/262\)](#), rules 2, 16, [Sch.](#) (with [rule 22](#))

**Modifications etc. (not altering text)**

**C1** [Pt. 46](#) applied (with modifications) (1.7.2015) by [S.I. 2007/1744](#), [rule 160](#) (as substituted by [The Court of Protection \(Amendment\) Rules 2015 \(S.I. 2015/548\)](#), rules 1(2)(b), [52](#))

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## SECTION I

### *Costs Payable by or to Particular Persons*

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

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

(a) for an order under—

(i) section 33 of the Senior Courts Act 1981; or

- (ii) section 52 of the County Courts Act 1984,  
(which give the court powers exercisable before commencement of proceedings); or
- (b) for an order under—
  - (i) section 34 of the Senior Courts Act 1981; or
  - (ii) section 53 of the County Courts Act 1984,  
(which give the court power to make an order against a non-party for disclosure of documents, inspection of property etc.).
- (2) The general rule is that the court will award the person against whom the order is sought that person's costs—
  - (a) of the application; and
  - (b) of complying with any order made on the application.
- (3) The court may however make a different order, having regard to all the circumstances, including—
  - (a) the extent to which it was reasonable for the person against whom the order was sought to oppose the application; and
  - (b) whether the parties to the application have complied with any relevant pre-action protocol.

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

- 46.2.**—(1) Where the court is considering whether to exercise its power under section 51 of the Senior Courts Act 1981 (costs are in the discretion of the court) to make a costs order in favour of or against a person who is not a party to proceedings, that person must—
- (a) be added as a party to the proceedings for the purposes of costs only; and
  - (b) be given a reasonable opportunity to attend a hearing at which the court will consider the matter further.
- (2) This rule does not apply—
- (a) where the court is considering whether to—
    - (i) make an order against the Lord Chancellor in proceedings in which the Lord Chancellor has provided legal aid to a party to the proceedings;
    - (ii) make a wasted costs order (as defined in rule 46.8); and
  - (b) in proceedings to which rule 46.1 applies (pre-commencement disclosure and orders for disclosure against a person who is not a party).

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#### **Modifications etc. (not altering text)**

- C2** Rule 46.2(2)(a)(i) modified (1.4.2013) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Consequential, Transitional and Saving Provisions\) Regulations 2013 \(S.I. 2013/534\)](#), regs. 1, [14\(4\)\(b\)](#)

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

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

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

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

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

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

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

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

(2) The general rule is that—

- (a) the court must order a detailed assessment of the costs payable by, or out of money belonging to, any party who is a child or protected party; and
- (b) on an assessment under paragraph (a), the court must also assess any costs payable to that party in the proceedings, unless—
  - (i) the court has issued a default costs certificate in relation to those costs under rule 47.11; or
  - (ii) the costs are payable in proceedings to which [F5Section IV] of Part 45 applies.

(3) The court need not order detailed assessment of costs in the circumstances set out in [F6paragraph (5) or in] Practice Direction 46.

(4) Where—

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

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

[F7(5) Where the costs payable comprise only the success fee claimed by the child’s or protected party’s legal representative under a conditional fee agreement or the balance of any payment under a damages based agreement, the court may direct that—

- (a) the assessment procedure referred to in rule 46.10 and paragraph 6 of Practice Direction 46 shall not apply; and
- (b) such costs be assessed summarily.]

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

#### Textual Amendments

- F5** Words in rule 46.4(2)(b)(ii) substituted (1.10.2023) by [The Civil Procedure \(Amendment No. 2\) Rules 2023 \(S.I. 2023/572\)](#), rules 1(1), **16(2)** (with rule 2)
- F6** Words in rule 46.4(3) inserted (6.4.2015) by [The Civil Procedure \(Amendment No. 2\) Rules 2015 \(S.I. 2015/670\)](#), rules 2(2), **5(a)**
- F7** [Rule 46.4\(5\)](#) inserted (6.4.2015) by [The Civil Procedure \(Amendment No. 2\) Rules 2015 \(S.I. 2015/670\)](#), rules 2(2), **5(b)**

### **Litigants in person**

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

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

(3) The litigant in person shall be allowed—

(a) costs for the same categories of—

- (i) work; and
- (ii) disbursements,

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

(b) the payments reasonably made by the litigant in person for legal services relating to the conduct of the proceedings; and

(c) the costs of obtaining expert assistance in assessing the costs claim.

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

(a) where the litigant can prove financial loss, the amount that the litigant can prove to have been lost for time reasonably spent on doing the work; or

(b) where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate set out in Practice Direction 46.

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

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

(a) a company or other corporation which is acting without a legal representative; and

(b) any of the following who acts in person (except where any such person is represented by a firm in which that person is a partner)—

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

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

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

(2) In this rule—

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

“common costs” means—

- (i) costs incurred in relation to the GLO issues;
- (ii) individual costs incurred in a claim while it is proceeding as a test claim, and

(iii) costs incurred by the lead legal representative in administering the group litigation; and  
‘group litigant’ means a claimant or defendant, as the case may be, whose claim is entered on the group register.

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

[<sup>F8</sup>(4) The general rule is that a group litigant who is the paying party will, in addition to any liability to pay the receiving party, be liable for—

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

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

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

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

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

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

(Part 19 sets out rules about group litigation.)

#### Textual Amendments

**F8** Rule 46.6(4) substituted (1.10.2013) by [The Civil Procedure \(Amendment No.7\) Rules 2013 \(S.I. 2013/1974\)](#), rules 2, **21(a)**

### Orders in respect of pro bono representation

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

- (a) [<sup>F9</sup>the] court may order the payment to the prescribed charity of a sum no greater than the costs specified in Part 45 to which the party with pro bono representation would have been entitled in accordance with that Part and in respect of that representation had it not been provided free of charge; or
- (b) where Part 45 does not apply, the court may determine the amount of the payment (other than a sum equivalent to fixed costs) to be made by the paying party to the prescribed charity by—
  - (i) making a summary assessment; or
  - (ii) making an order for detailed assessment,

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

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

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

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

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

**Textual Amendments**

**F9** Word in [rule 46.7\(1\)\(a\)](#) substituted (1.10.2013) by [The Civil Procedure \(Amendment No.7\) Rules 2013 \(S.I. 2013/1974\)](#), rules 2, [21\(b\)](#)

*SECTION II*

*Costs relating to Legal Representatives*

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

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

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

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

- (a) specify the amount to be disallowed or paid; or
- (b) direct a costs judge or a [<sup>F10</sup>District Judge] to decide the amount of costs to be disallowed or paid.

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

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

**Textual Amendments**

**F10** Words in Rules substituted (22.4.2014) by [The Civil Procedure \(Amendment\) Rules 2014 \(S.I. 2014/407\)](#), rules 2(1), [4\(a\)\(iv\)](#); S.I. 2014/954, art. 2(a)

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

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

to Justice Act 1999 [<sup>F11</sup>or by the Lord Chancellor under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012].

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

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

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

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

#### Textual Amendments

- F11** Words in [rule 46.9\(1\)](#) inserted (1.4.2013) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Consequential, Transitional and Saving Provisions\) Regulations 2013 \(S.I. 2013/534\)](#), reg. 1, [Sch. para. 2\(a\)](#) (with [reg. 14\(4\)](#))

#### Assessment procedure

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

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

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

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

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

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

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



### SECTION III

#### Costs on Allocation and Re-Allocation

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

<sup>F12</sup>46.11. ....

###### Textual Amendments

**F12** Rule 46.11 omitted (1.10.2023) by virtue of [The Civil Procedure \(Amendment No. 2\) Rules 2023 \(S.I. 2023/572\)](#), rules 1(1), **16(3)** (with rule 2)

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

<sup>F13</sup>46.12. ....

###### Textual Amendments

**F13** Rule 46.12 omitted (1.10.2023) by virtue of [The Civil Procedure \(Amendment No. 2\) Rules 2023 \(S.I. 2023/572\)](#), rules 1(1), **16(4)** (with rule 2)

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

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

<sup>F14</sup>(2) .....

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

###### Textual Amendments

**F14** Rule 46.13(2) omitted (1.10.2023) by virtue of [The Civil Procedure \(Amendment No. 2\) Rules 2023 \(S.I. 2023/572\)](#), rules 1(1), **16(5)** (with rule 2)

### SECTION IV

#### Costs-only Proceedings

##### Costs-only proceedings

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

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

[<sup>F15</sup>(1A) This rule does not apply to a dispute to which the procedure under section 10 of Practice Direction 27B applies.]

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

#### Textual Amendments

**F15** Rule 46.14(1A) inserted (31.5.2021) by [The Civil Procedure \(Amendment No. 2\) Rules 2021 \(S.I. 2021/196\)](#), rules 1(1), **9**

### *[<sup>F16</sup>V COSTS IN CLAIMS FOR JUDICIAL REVIEW*

#### Textual Amendments

**F16** Pt. 46 Section 5 inserted (13.4.2015) by [The Civil Procedure \(Amendment No. 2\) Rules 2015 \(S.I. 2015/670\)](#), rules 2(3), **6** (with rule 12(1)); S.I. 2015/778, art. 3, **Sch. 1 para. 70**

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

**46.15.**—(1) In this rule the terms “intervener” and “relevant party” have the same meaning as in section 87 of the Criminal Justice and Courts Act 2015 (“the 2015 Act”).

(2) A relevant party may apply to the court for an order for an intervener to pay costs in accordance with section 87 of the 2015 Act.

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

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

### *[<sup>F17</sup>SECTION VI*

#### *Judicial Review Costs Capping Orders under Part 4 of the Criminal Justice and Courts Act 2015*

#### Textual Amendments

**F17** Pt. 46 Section 6 inserted (8.8.2016) by [The Civil Procedure \(Amendment No. 2\) Rules 2016 \(S.I. 2016/707\)](#), rules 2, **5(b)** (with rule 6); S.I. 2016/717, art. 3(d)

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

**46.16.**—(1) For the purposes of this Section—

- (a) “judicial review costs capping order” means a costs capping order made by the High Court or the Court of Appeal in accordance with sections 88, 89 and 90 of the 2015 Act; and
- (b) “the 2015 Act” means the Criminal Justice and Courts Act 2015.

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

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

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

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

- (a) be made on notice and, subject to paragraphs (2) and (3), in accordance with Part 23; and
- (b) be supported by evidence setting out—
  - (i) why a judicial review costs capping order should be made, having regard, in particular, to the matters at subsections (6) to (8) of section 88 of the 2015 Act and subsection (1) of section 89 of that Act;
  - (ii) a summary of the applicant’s financial resources;
  - (iii) the costs (and disbursements) which the applicant considers the parties are likely to incur in the future conduct of the proceedings; and
  - (iv) if the applicant is a body corporate, whether it is able to demonstrate that it is likely to have financial resources available to meet liabilities arising in connection with the proceedings.

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

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

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

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

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

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

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

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

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

## r<sup>F18</sup>VII

### SCALE COSTS FOR CLAIMS IN THE INTELLECTUAL PROPERTY ENTERPRISE COURT

#### Textual Amendments

**F18** Pt. 46 Section 7 inserted (1.10.2022) by [The Civil Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/783\)](#), rules 1(1), **18(2)**

#### Scope and interpretation

**46.20.**—(1) Subject to paragraph (2), this Section applies to proceedings in the Intellectual Property Enterprise Court.

(2) This Section does not apply where—

- (a) the court considers that a party has behaved in a manner which amounts to an abuse of the court’s process; or
- (b) the claim concerns the infringement or revocation of a patent or registered design or registered trade mark the validity of which has been certified by a court or by the Comptroller-General of Patents, Designs and Trade Marks in earlier proceedings.

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

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

#### Amount of scale costs

**46.21.**—(1) Subject to rule 46.22, the court will not order a party to pay total costs of more than—

- (a) £60,000 on the final determination of a claim in relation to liability; and
- (b) £30,000 on an inquiry as to damages or account of profits.

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

(3) The maximum amount of scale costs that the court will award for each stage of the claim is set out in Practice Direction 46.

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

(5) Subject to assessment where appropriate, the following may be recovered in addition to the amount of the scale costs set out in Practice Direction 46 – Costs - Special Cases—

- (a) court fees;
- (b) costs relating to the enforcement of any court order; and
- (c) wasted costs.

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

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

**46.22.** Costs awarded to a party under rule 63.26(2) are in addition to the total costs that may be awarded to that party under rule 46.21.]

## **[<sup>F19</sup>SECTION VIII**

### **ENVIRONMENTAL REVIEW COSTS**

#### **Textual Amendments**

**F19** Pt. 46 Section 8 inserted (1.10.2022) by [The Civil Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/783\)](#), rules 1(1), **18(2)**

#### **Environmental review costs**

**46.23.**—(1) In this Section, “party” includes an intervener or interested party.

(2) Subject to paragraph (3), no party to a claim for environmental review (for which see Section III of Part 54) is entitled to an order for costs against any other party.

(3) The court may make an order for costs against a party if satisfied that the conduct of a party or that party’s legal representative, before or during the proceedings, was unreasonable or improper.

(4) Where—

- (a) the court makes an order under paragraph (2) against a legally represented party; and
- (b) the party is not present when the order is made,

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

## **[<sup>F20</sup>SECTION IX**

### **Costs Limits in Aarhus Convention Claims**

#### **Textual Amendments**

**F20** Pt. 46 Section 9 inserted (1.10.2023) by [The Civil Procedure \(Amendment No. 2\) Rules 2023 \(S.I. 2023/572\)](#), rules 1(1), **16(6)** (with rule 2)

#### **Scope and interpretation**

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

(2) In this Section—

- (a) “Aarhus Convention claim” means a claim brought by one or more members of the public by judicial review or review under statute which challenges the legality of any decision, act or omission of a body exercising public functions, and which is within the scope of Article 9(1), 9(2) or 9(3) of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark on 25 June 1998 (“the Aarhus Convention”);
- (b) references to a member or members of the public are to be construed in accordance with the Aarhus Convention.

(3) This Section does not apply to appeals other than appeals brought under section 289(1) of the Town and Country Planning Act 1990 or section 65(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which are for the purposes of this Section to be treated as reviews under statute.

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

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

### **Opting out, and other cases where rules 46.26 to 46.28 do not apply to a claimant**

**46.25.**—(1) Subject to paragraph (2), rules 46.26 to 46.28 apply where a claimant who is a member of the public has—

- (a) stated in the claim form that the claim is an Aarhus Convention claim; and
- (b) filed and served with the claim form a schedule of the claimant’s financial resources, which is verified by a statement of truth and provides details of—
  - (i) the claimant’s significant assets, liabilities, income and expenditure; and
  - (ii) in relation to any financial support which any person has provided or is likely to provide to the claimant, the aggregate amount which has been provided and which is likely to be provided.

(2) Subject to paragraph (3), rules 46.26 to 46.28 do not apply where the claimant has stated in the claim form that although the claim is an Aarhus Convention claim, the claimant does not wish those rules to apply.

(3) If there is more than one claimant, rules 46.26 to 46.28 do not apply in relation to the costs payable by or to any claimant who has not acted as set out in paragraph (1), or who has acted as set out in paragraph (2), or who is not a member of the public.

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

**46.26.**—(1) Subject to rules 46.25 and 46.28, a claimant or defendant in an Aarhus Convention claim may not be ordered to pay costs exceeding the amounts in paragraph (2) or (3) or as varied in accordance with rule 46.27.

(2) For a claimant the amount is—

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

(3) For a defendant the amount is £35,000.

(4) In an Aarhus Convention claim with multiple claimants or multiple defendants, the amounts in paragraphs (2) and (3) (subject to any direction of the court under rule 46.27) apply in relation to each such claimant or defendant individually and may not be exceeded, irrespective of the number of receiving parties.

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

**46.27.**—(1) The court may vary the amounts in rule 46.26 or may remove altogether the limits on the maximum costs liability of any party in an Aarhus Convention claim.

(2) The court may vary such an amount or remove such a limit only on an application made in accordance with paragraphs (5) to (7) (“an application to vary”) and if satisfied that—

- (a) to do so would not make the costs of the proceedings prohibitively expensive for the claimant; and
- (b) in the case of a variation which would reduce a claimant’s maximum costs liability or increase that of a defendant, without the variation the costs of the proceedings would be prohibitively expensive for the claimant.

(3) Proceedings are to be considered prohibitively expensive for the purpose of this rule if their likely costs (including any court fees which are payable by the claimant) either—

- (a) exceed the financial resources of the claimant; or
- (b) are objectively unreasonable having regard to—
  - (i) the situation of the parties;
  - (ii) whether the claimant has a reasonable prospect of success;
  - (iii) the importance of what is at stake for the claimant;
  - (iv) the importance of what is at stake for the environment;
  - (v) the complexity of the relevant law and procedure; and
  - (vi) whether the claim is frivolous.

(4) When the court considers the financial resources of the claimant for the purposes of this rule, it must have regard to any financial support which any person has provided or is likely to provide to the claimant.

(5) Subject to paragraph (6), an application to vary must—

- (a) if made by the claimant, be made in the claim form and provide the claimant's reasons why, if the variation were not made, the costs of the proceedings would be prohibitively expensive for the claimant;
- (b) if made by the defendant, be made in the acknowledgment of service and provide the defendant's reasons why, if the variation were made, the costs of the proceedings would not be prohibitively expensive for the claimant; and
- (c) be determined by the court at the earliest opportunity.

(6) An application to vary may be made at a later stage if there has been a significant change in circumstances (including evidence that the schedule of the claimant's financial resources contained false or misleading information) which means that the proceedings would now—

- (a) be prohibitively expensive for the claimant if the variation were not made; or
- (b) not be prohibitively expensive for the claimant if the variation were made.

(7) An application under paragraph (6) must—

- (a) if made by the claimant—
  - (i) be accompanied by a revised schedule of the claimant's financial resources or confirmation that the claimant's financial resources have not changed; and
  - (ii) provide reasons why the proceedings would now be prohibitively expensive for the claimant if the variation were not made; and
- (b) if made by the defendant, provide reasons why the proceedings would now not be prohibitively expensive for the claimant if the variation were made.

(Rule 39.2(3)(c) makes provision for a hearing (or any part of it) to be in private if it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality.)

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

**46.28.**—(1) Where a claimant has complied with rule 46.25(1), and subject to rule 46.25(2) and (3), rule 46.26 applies unless—

- (a) the defendant has in the acknowledgment of service—
  - (i) denied that the claim is an Aarhus Convention claim; and

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**Changes to legislation:** *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Civil Procedure Rules 1998. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)*

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- (ii) set out the defendant's grounds for such denial; and
  - (b) the court has determined that the claim is not an Aarhus Convention claim.
- (2) Where the defendant denies that the claim is an Aarhus Convention claim, the court must determine that issue at the earliest opportunity.
- (3) In any proceedings to determine whether the claim is an Aarhus Convention claim—
- (a) if the court holds that the claim is not an Aarhus Convention claim, it shall, except for good reason, make no order for costs in relation to those proceedings;
  - (b) if the court holds that the claim is an Aarhus Convention claim, it shall, except for good reason, order the defendant to pay the claimant's costs of those proceedings to be assessed on the standard basis, and that order may be enforced even if this would increase the costs payable by the defendant beyond the amount stated in rule 46.26(3) or any variation of that amount.]]



**Changes to legislation:**

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Civil Procedure Rules 1998. Any changes that have already been made by the team appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 2 CCR Order 27 Table of Contents word substituted by [S.I. 2014/407 rule 39\(a\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Sch.2 CCR Order 27 does not have a Table of Contents.)
- Sch. 2 CCR Order 27 Table of Contents word substituted by [S.I. 2014/407 rule 39\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Sch.2 CCR Order 27 does not have a Table of Contents.)
- Sch. 2 CCR Order 27 rule 4(b) words omitted by [S.I. 2014/407 rule 39\(e\)\(ii\)\(aa\)](#) (This amendment not applied to legislation.gov.uk. The words "the justices's chief executive for" do not appear in Sch. 2 CCR Order 27 rule 4(b))
- Sch. 2 CCR Order 27 rule 10(3) words omitted by [S.I. 2014/407 rule 39\(k\)\(iii\)](#) (This amendment not applied to legislation.gov.uk. The words "the justices's chief executive for" do not appear in Sch. 2 CCR Order 27 rule 10(3))
- Sch. 2 CCR Order 28 words omitted by [S.I. 2014/867 rule 21\(a\)](#) (This amendment not applied to legislation.gov.uk. There is no Table of Contents in Sch. 2 CCR Order 28)
- Sch. 2 CCR Order 39 words omitted by [S.I. 2014/867 rule 22\(a\)](#) (This amendment not applied to legislation.gov.uk. There is no Table of Contents in Sch. 2 CCR Order 39)
- Sch. 2 CCR Order 27 rule 4(b) words substituted by [S.I. 2014/407 rule 39\(e\)\(ii\)\(bb\)](#) (This amendment not applied to legislation.gov.uk. The words "by that chief executive" do not appear in Sch. 2 CCR Order 27 rule 4(b))
- Sch. 2 CCR Order 27 words substituted by [S.I. 2014/407 rule 4\(a\)\(i\)](#) (This amendment not applied to legislation.gov.uk. The words "a county court" do not appear in Sch. 2 CCR Order 27)
- Sch. 2 CCR Order 27 words substituted by [S.I. 2014/407 rule 4\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. The words "county court" do not appear in Sch. 2 CCR Order 27)
- Sch. 2 CCR Order 27 words substituted by [S.I. 2014/407 rule 4\(a\)\(iii\)](#) (This amendment not applied to legislation.gov.uk. The words "county courts" do not appear in Sch. 2 CCR Order 27)
- Sch. 2 CCR Order 27 words substituted by [S.I. 2014/407 rule 4\(a\)\(iv\)](#) (This amendment not applied to legislation.gov.uk. The words "district judge" do not appear in Sch. 2 CCR Order 27)
- Sch. 2 CCR Order 28 words substituted by [S.I. 2014/867 rule 3\(a\)\(i\)](#) (This amendment not applied to legislation.gov.uk. The words "a county court" do not appear in Sch. 2 CCR Order 28)
- Sch. 2 CCR Order 28 words substituted by [S.I. 2014/867 rule 3\(a\)\(iii\)](#) (This amendment not applied to legislation.gov.uk. The words "county courts" do not appear in Sch. 2 CCR Order 28)
- Sch. 2 CCR Order 39 words substituted by [S.I. 2014/867 rule 3\(a\)\(i\)](#) (This amendment not applied to legislation.gov.uk. The words "a county court" do not appear in Sch. 2 CCR Order 39)
- Sch. 2 CCR Order 39 words substituted by [S.I. 2014/867 rule 3\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. The words "county court" do not appear in Sch. 2 CCR Order 39)

- Sch. 2 CCR Order 39 words substituted by [S.I. 2014/867 rule 3\(a\)\(iii\)](#) (This amendment not applied to legislation.gov.uk. The words "county courts" do not appear in Sch. 2 CCR Order 39)
- Sch. 2 CCR Order 44 words substituted by [S.I. 2014/867 rule 3\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. The words "a county court" do not appear in Sch. 2 CCR Order 44)
- Sch. 2 CCR Order 44 words substituted by [S.I. 2014/867 rule 3\(a\)\(iii\)](#) (This amendment not applied to legislation.gov.uk. The words "county courts" do not appear in Sch. 2 CCR Order 44)
- Sch. 2 CCR Order 44 words substituted by [S.I. 2014/867 rule 3\(a\)\(iv\)](#) (This amendment not applied to legislation.gov.uk. The words "district judge" do not appear in Sch. 2 CCR Order 44)
- rule 45.15A inserted by [S.I. 2024/106 rule 9\(4\)](#)
- rule 25.1(n) word omitted by [S.I. 2005/3515 rule 7\(a\)\(i\)](#)
- rule 26.9(10)(b)(ii)(iii) and words substituted for rule 26.9(10)(b)(ii) by [S.I. 2024/106 rule 6\(2\)\(a\)\(ii\)](#)
- rule 26.9(10)(f) inserted by [S.I. 2024/106 rule 6\(2\)\(d\)](#)
- rule 29.9(10)(b)(i) semicolon substituted by [S.I. 2024/106 rule 6\(2\)\(a\)\(i\)](#)
- rule 45.1(9)(10) inserted by [S.I. 2024/106 rule 9\(2\)\(c\)](#)
- rule 52.13(1)(a) words inserted by [S.I. 2014/879 art. 76](#) (This amendment not applied to legislation.gov.uk. There is no rule 52.13(1)(a))
- rule 54.8(4)(a)(i)(ii)(iii) rule 54.8(4)(a)(i)(ia)(ii) renumbered as rule 54.8(4)(a)(i)(ia)(iii) by [S.I. 2024/106 rule 10\(3\)](#)
- rule 54.5(7) inserted by [S.I. 2024/106 rule 10\(2\)\(b\)](#)
- rule 54.8A inserted by [S.I. 2024/106 rule 10\(4\)](#)
- rule 81.4(e) words omitted by [S.I. 2024/106 rule 11\(2\)\(b\)](#)
- rule 81.4(e) words substituted by [S.I. 2024/106 rule 11\(2\)\(a\)](#)