

---

STATUTORY INSTRUMENTS

---

**2023 No. 572 (L. 6)**

**SENIOR COURTS OF ENGLAND AND WALES  
COUNTY COURT, ENGLAND AND WALES**

**The Civil Procedure (Amendment No. 2) Rules 2023**

*Made* - - - - 22nd May 2023  
*Laid before Parliament* 24th May 2023  
*Coming into force* - - 1st October 2023

The Civil Procedure Rule Committee, having power under section 2 of the Civil Procedure Act 1997(1) to make rules under section 1 of and Schedule 1 to that Act and section 67B(1) of the Courts Act 2003(2), and after fulfilling the requirements of section 2(6) of the Civil Procedure Act 1997 and section 67C of the Courts Act 2003, makes the following Rules.

**Citation, commencement and interpretation**

1.—(1) These Rules may be cited as the Civil Procedure (Amendment No. 2) Rules 2023 and come into force on 1st October 2023, subject to rule 2.

(2) In these Rules a reference to a Part or rule by number alone means the Part or rule so numbered in the Civil Procedure Rules 1998(3).

**Transitional provisions**

2.—(1) Subject to paragraphs (2) and (3), in so far as any amendment made by these Rules applies to—

- (a) allocation;
- (b) assignment to a complexity band;

---

(1) 1997 c. 12. Section 2(1) was substituted by the Constitutional Reform Act 2005 (c. 4), section 15 and Schedule 4, Part 1. Section 1(3) was substituted by section 82(1) of the Courts Act 2003 (c. 39) and further amended by the Constitutional Reform Act 2005, sections 15 and 146 and Schedule 4, Part 1, paragraphs 261 and 262 and Schedule 18. Section 1(1) was amended by the Crime and Courts Act 2013 (c. 22), section 17(5) and Schedule 9, Part 3, paragraph 67(a). Schedule 1 to the 1997 Act was amended by the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33), section 3, Schedule, Part 1, paragraph 19, the Crime and Courts Act 2013, section 175, Schedule 9, Part 3, paragraph 67(b).

(2) 2003 c. 39. Sections 67B and 67C were inserted by section 3 of, and paragraph 32 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

(3) S.I. 1998/3132. There are relevant amendments in S.I. 2000/221, S.I. 2000/2092, S.I. 2001/256, S.I. 2001/1388, S.I. 2001/4015, S.I. 2002/2058, S.I. 2006/3435, S.I. 2007/2204, S.I. 2009/3390, S.I. 2012/2208, S.I. 2013/262, S.I. 2016/788, S.I. 2017/95, S.I. 2019/1118, S.I. 2021/117, S.I. 2021/196, S.I. 2022/101 and S.I. 2022/783.

- (c) directions in the fast track or the intermediate track; or
- (d) costs,

those amendments only apply to a claim where proceedings are issued on or after 1st October 2023.

- (2) The amendments referred to in paragraph (1) only apply—
  - (a) to a claim which includes a claim for personal injuries, other than a disease claim, where the cause of action accrues on or after 1st October 2023; or
  - (b) to a claim for personal injuries, which includes a disease claim, in respect of which no letter of claim has been sent before 1st October 2023.

(3) This rule does not apply to the amendments made by rule 9(3)(b)(i) or rule 16(1) and (6) of these Rules, nor to Section II of Part 45 in Schedule 3 to these Rules.

### **Amendments to the Civil Procedure Rules 1998**

- 3. The Civil Procedure Rules 1998 are amended in accordance with rules 4 to 21 of these Rules.

#### **Amendment of Part 2**

4. In rule 2.11, in the words in parentheses, for “28.4 (variation of case management timetable – fast track)” substitute “28.3 (variation of case management timetable – fast track and intermediate track)”.

#### **Amendment of Part 3**

- 5.—(1) In rule 3.1A(3), after “multi-track” insert “, intermediate track”.
- (2) In rule 3.7A1(1)(d), after “multi-track” insert “, intermediate track”.

#### **Amendment of Part 16**

- 6.—(1) In rule 16.2, after paragraph (1) insert—
  - “(1A1) In a claim to which Part 45 does not apply, no amount shall be entered on the claim form for the charges of the claimant’s legal representative, but the words ‘to be assessed’ shall be inserted.”.
- (2) In rule 16.3—
  - (a) in paragraph (2)(b), after paragraph (iii) insert—
    - “(iv) more than £25,000 but not more than £100,000; or”;
  - (b) in paragraph (3A)(b), for “26.5A, 26.6A or 26.6B” substitute “26.8, 26.10 or 26.11”;
  - (c) in paragraph (3AA)(b), for “26.6A” substitute “26.10”; and
  - (d) in paragraph (3B) for “26.6(2A)” substitute “26.9(3)”.

#### **Amendment of Part 21**

- 7.—(1) In rule 21.10(6), for “Section II or Section III” substitute “Section IV”.
- (2) In rule 21.12(9)—
  - (a) for “Section II, III, or IIIA” substitute “Section IV, Section VI, Section VII or Section VIII”; and
  - (b) for “45.13 or 45.29J” substitute “45.9 or 45.10”.

### **Amendment of Part 26**

8. For Part 26 substitute Part 26 as set out in Schedule 1 to these Rules.

### **Amendment of Part 27**

9.—(1) In rule 27.1(2), in the words in parentheses, for “26.6”, in both places it appears, substitute “26.9”.

(2) In rule 27.3, after “fast track” insert “, the intermediate track”.

(3) In rule 27.14—

(a) after paragraph (1), in the words in parentheses, for “Rules 46.11 and 46.13 make” substitute “Rule 46.13 makes”; and

(b) in paragraph (2)—

(i) for sub-paragraph (a) substitute—

“(a) the fixed costs attributable to issuing the claim, calculated in accordance with Table 2 in Practice Direction 45; or”; and

(ii) in sub-paragraph (h), for “the Stage 1 and, where relevant, the Stage 2 fixed costs in rule 45.18”, substitute “the applicable Stage 1 and, where relevant, the Stage 2 fixed costs in Table 10 and Table 11 in Practice Direction 45”.

(4) For rule 27.15 substitute—

“**27.15.**—(1) Where a claim is allocated to the small claims track and subsequently re-allocated to another track, the costs which may be allowed are those applicable to the track to which the claim is reallocated, as if the claim been allocated to that track at the outset.

(2) Where a claim is reallocated to the small claims track from the multi-track, rule 27.14 shall apply to the period before, as well as after, reallocation, except where a court order or a rule or practice direction provides otherwise.”.

### **Amendment of Part 28**

10. For Part 28 substitute Part 28 as set out in Schedule 2 to these Rules.

### **Amendment of Part 29**

11. In rule 29.1, in the second set of words in parentheses, after “claims allocated to the fast track” insert “or intermediate track”.

### **Amendment of Part 36**

12.—(1) In the table of contents of this Part, for the entries for rule 36.20 to the end substitute—

“Deduction of benefits and Lump sum payments Rule 36.20

MISCELLANEOUS

Cases in which the offeror’s costs have been Rule 36.21  
limited to court fees

*Section II - Claims to which Sections VI, VII or  
VIII of Part 45 Apply*

Scope of this Section

Rule 36.22

Costs consequences of acceptance of a Part 36 offer Rule 36.23

Costs consequences following judgment Rule 36.24

*Section III - RTA Protocol and EL/PL Protocol offers to settle*

Scope of this Section Rule 36.25

Form and content of a Protocol offer Rule 36.26

Time when a Protocol offer is made Rule 36.27

General provisions Rule 36.28

Restrictions on disclosure of a Protocol offer Rule 36.29

Costs consequences following judgment Rule 36.30

Deduction of benefits Rule 36.31”.

---

(2) In rule 36.1—

(a) after paragraph (2) insert—

“(3) Section II of this Part contains rules about Part 36 offers where a claim is one to which Section VI (fixed costs in the fast track), Section VII (fixed costs in the intermediate track) or Section VIII (claims for noise-induced hearing loss) of Part 45 applies.”;

(b) in the paragraph which, going forward, follows paragraph (3)—

- (i) renumber that paragraph, paragraph (4); and
- (ii) for “Section II” substitute “Section III”.

(3) In rule 36.2, for paragraph (1), substitute—

“(1) This Section—

- (a) applies to an offer to settle to which Section II of this Part applies, unless otherwise stated; but
- (b) does not apply to an offer to settle to which Section III applies.”.

(4) In rule 36.5—

- (a) in paragraph (1)(c), for “36.20” substitute “36.23”; and
- (b) in paragraph (3), for “36.22” substitute “36.20”.

(5) In rule 36.11(3), in—

- (a) sub-paragraph (b); and
- (b) after sub-paragraph (d), in the second set of parentheses,

for “36.22”, in both places it appears, substitute “36.20”.

(6) In rule 36.13, after paragraph (1), omit the words in parentheses.

(7) In rule 36.17(1)—

- (a) for “36.21” substitute “36.24”; and
- (b) after sub-paragraph (b), omit the words in parentheses.

(8) Omit rule 36.20 and rule 36.21.

(9) Renumber—

- (a) rule 36.22, rule 36.20; and

- (b) rule 36.23, rule 36.21.
- (10) After what, going forward, will be rule 36.21 insert—

*“SECTION II*

*Claims to Which Sections VI, VII, or VIII of Part 45 Apply*

**Scope of this Section and definitions**

**36.22.**—(1) This Section applies where a claim is one to which Section VI, Section VII or Section VIII of Part 45 applies.

(2) In this Section—

- (a) “fixed cost medical report” and “soft tissue injury claim” have the meaning ascribed by paragraph 1.1(10A) and (16A) respectively of the RTA Protocol;
- (b) for the purposes of rules 36.23 and 36.24, a defendant’s Protocol offer is either—
  - (i) defined in accordance with rules 36.26 and 36.27; or
  - (ii) if the claim leaves the Protocol before the Court Proceedings Pack Form is sent to the defendant—
    - (aa) the last offer made by the defendant before the claim leaves the Protocol; and
    - (bb) deemed to be made on the first business day after the claim leaves the Protocol; and
- (c) reference to—
  - (i) the “Court Proceedings Pack Form” is a reference to the form used in the Protocol; and
  - (ii) “business day” is a reference to a business day as defined in rule 6.2.

**Costs consequences of acceptance of a Part 36 offer**

**36.23.**—(1) Where a Part 36 offer is accepted within the relevant period, the claimant is entitled to—

- (a) the fixed costs in Table 12, Table 14 or Table 15 in Practice Direction 45 for the stage applicable at the date on which notice of acceptance was served on the offeror; and
- (b) any applicable additional fixed costs allowed under Section I, Section VI, Section VII or Section VIII of Part 45 incurred in any period for which costs are payable to them.

(2) Where—

- (a) a defendant’s Part 36 offer relates to part only of the claim; and
- (b) at the time of serving notice of acceptance within the relevant period the claimant abandons the balance of the claim,

the claimant is entitled to the fixed costs in paragraph (1).

(3) Subject to paragraphs (4) and (5), where a defendant’s Part 36 offer is accepted after the relevant period—

- (a) the claimant is entitled to—
  - (i) the fixed costs in Table 12, Table 14 or Table 15 in Practice Direction 45 for the stage applicable at the date on which the relevant period expired; and

- (ii) any applicable additional fixed costs allowed under Section I, Section VI, Section VII or Section VIII incurred in any period for which costs are payable to them; and
  - (b) the claimant is liable for the defendant's costs in accordance with paragraph (8).
- (4) Where a claim no longer continues under the RTA or EL/PL Protocol, then, subject to paragraph (5), where the claimant accepts the defendant's Protocol offer after the date on which the claim leaves the Protocol—
- (a) the claimant is entitled to the applicable Stage 1 and Stage 2 fixed costs in Table 10 or Table 11 in Practice Direction 45; and
  - (b) the claimant is liable for the defendant's costs in accordance with paragraph (8).
- (5) In a soft tissue injury claim, if the defendant makes a Part 36 offer before the defendant receives a fixed cost medical report, paragraphs (3) and (4) shall only have effect if the claimant accepts the offer more than 21 days after the defendant received the report.
- (6) Fixed costs shall be calculated by reference to the amount of the offer which is accepted.
- (7) Where the parties do not agree the liability for costs, the court must make an order as to costs.
- (8) Subject to paragraph (9) where the court makes an order for costs in favour of the defendant, the defendant is entitled to—
- (a) the fixed costs in Table 12, Table 14 or Table 15 in Practice Direction 45 for the stage applicable at the date of acceptance; and
  - (b) any applicable additional fixed costs allowed under Section I, Section VI, Section VII or Section VIII incurred in any period for which costs are payable to them,
- less the fixed costs to which the claimant is entitled under paragraph (3)(a)(i) or (4).
- (9) Where—
- (a) an order for costs is made pursuant to paragraph (3); and
  - (b) the stage applicable at the date on which the relevant period expires and the stage applicable at the date of acceptance are the same,
- the defendant is entitled to the fixed costs applicable to that stage.
- (10) The parties are entitled to disbursements allowed in accordance with Section IX of Part 45 incurred in any period for which costs are payable to them.

### **Costs consequences following judgment**

**36.24.**—(1) Rule 36.17 applies with the following modifications.

- (2) Subject to paragraphs (3), (4) and (5), where an order for costs is made pursuant to rule 36.17(3)—
- (a) the claimant is entitled to—
    - (i) the fixed costs in Table 12, Table 14 or Table 15 in Practice Direction 45 for the stage applicable at the date on which the relevant period expired; and
    - (ii) any applicable additional fixed costs allowed under Section I, Section VI, Section VII or Section VIII incurred in any period for which costs are payable to them; and
  - (b) the claimant is liable for the defendant's costs in accordance with paragraph (9).
- (3) Where rule 36.17(1)(b) applies, the claimant is entitled to—

(a) the fixed costs in Table 12, Table 14 or Table 15 in Practice Direction 45 for the stage applicable at the date of judgment; and

(b) any applicable additional fixed costs allowed under Section I, Section VI, Section VII or Section VIII incurred in any period for which costs are payable to them.

(4) Where the court makes an order pursuant to rule 36.17(4), instead of costs awarded on the indemnity basis under rule 36.17(4)(b), the claimant is entitled to additional costs in accordance with paragraph (5).

(5) The additional costs are an amount equivalent to 35% of the difference between the fixed costs for—

(a) the stage applicable when the relevant period expires; and

(b) the stage applicable at the date of judgment,

to which the claimant is entitled under paragraph (3)(a) and (b).

(6) Where a claim no longer continues under the RTA or EL/PL Protocol, then, subject to paragraph (7), where the claimant fails to obtain a judgment more advantageous than the defendant's Protocol offer—

(a) the claimant is entitled to the applicable Stage 1 and Stage 2 fixed costs in Table 10 or Table 11 in Practice Direction 45; and

(b) the claimant is liable for the defendant's costs in accordance with paragraph (9); and

(c) in this rule, the amount of the judgment is less than the Protocol offer where the judgment is less than the offer once deductible amounts identified in the judgment are deducted.

("Deductible amount" is defined in rule 36.20(1)(d).)

(7) In a soft tissue injury claim, if the defendant makes a Part 36 offer or Protocol offer before the defendant receives a fixed cost medical report, paragraphs (2) and (6) shall only have effect in respect of costs incurred by either party more than 21 days after the defendant received the report.

(8) Fixed costs must be calculated by reference to the amount which is awarded.

(9) Where the court makes an order for costs in favour of the defendant, the defendant is entitled to—

(a) the fixed costs in Table 12, Table 14 or Table 15 in Practice Direction 45 applicable at the date of judgment; and

(b) any applicable additional fixed costs allowed under Section I, Section VI, Section VII or Section VIII incurred in any period for which costs are payable to them,

less the fixed costs to which the claimant is entitled under paragraph (2)(a) or (6).

(10) The parties are entitled to disbursements allowed in accordance with Section IX of Part 45 incurred in any period for which costs are payable to them.".

(11) Renumber Section II, Section III.

(12) In rule 36.24—

(a) renumber that rule 36.25; and

(b) in paragraph (1), for "does not" substitute "and Section II do not";

(13) Renumber—

(a) current rule 36.25, rule 36.26;

(b) current rule 36.26, rule 36.27; and

(c) current rule 36.27, rule 36.28.

(14) In what, going forward, will now be rule 36.28, in paragraph (b), for “45.18” substitute “45.29”.

(15) Renumber—

- (a) current rule 36.28, rule 36.29; and
- (b) current rule 36.29, rule 36.30.

(16) In what, going forward, will now be rule 36.30—

- (a) in paragraph (2)—
  - (i) in sub-paragraph (a), for “45.26” substitute “45.37”; and
  - (ii) in sub-paragraph (b), for “36.26” substitute “36.27”; and
- (b) in paragraph (3), for “45.20” substitute “45.30” ; and
- (c) in paragraph (4)—
  - (i) in sub-paragraph (a), for “36.26” substitute “36.37”; and
  - (ii) in sub-paragraph (b), for “45.20” substitute “45.30”.

(17) In current rule 36.30—

- (a) renumber that rule 36.31;
- (b) in that rule, for “36.29” substitute “36.30”; and
- (c) in the words in parentheses which follow that rule, for “36.22” substitute “36.20”.

#### **Amendment of Part 39**

**13.** In rule 39.4—

- (a) for “28.6” substitute “28.5”; and
- (b) in the words in the first set of parentheses, omit “—fast track”.

#### **Amendment of Part 44**

**14.** In rule 44.1(1), for the definition of fixed costs substitute—

“‘fixed costs’ means costs, the amounts of which are fixed by these Rules;”.

#### **Amendment of Part 45**

**15.** For Part 45 substitute Part 45 as set out in Schedule 3 to these Rules.

#### **Amendment of Part 46**

**16.**—(1) In the table of contents to this Part, after the entry for rule 46.23 insert—

“SECTION IX COSTS LIMITS IN AARHUS CONVENTION CLAIMS

Scope and interpretation rule 46.24

Opting out, and other cases where rules 46.26 to rule 46.25  
46.28 do not apply to a claimant

Limit on costs recoverable from a party in an rule 46.26  
Aarhus Convention claim

Varying the limit on costs recoverable from a rule 46.27  
party in an Aarhus Convention claim



Challenging whether the claim is an Aarhus rule 46.28”.  
Convention claim

---

- (2) In rule 46.4(2)(b)(ii), for “Section II or Section III”, substitute “Section IV”.
- (3) Omit rule 46.11.
- (4) Omit rule 46.12.
- (5) In rule 46.13, omit paragraph (2).
- (6) After rule 46.23, insert—

### “SECTION IX

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

#### **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(4) or section 65(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990(5), 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

---

(4) 1990 c. 8.  
(5) 1990 c. 9.

(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
  - (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.”.

### **Amendment of Part 52**

17. In rule 52.19A—

- (a) in paragraph (1)—
  - (i) for “Section VII of Part 45” substitute “Section IX of Part 46”; and
  - (ii) for “45.43 to 45.45” substitute “46.26 to 46.28”; and
- (b) in paragraph (2), for “45.43 to 45.45” substitute “46.26 to 46.28”.

### **Amendment of Part 54**

18. In rule 54.6(1), after paragraph (d), in the words in parentheses, for “45.41 to 45.44” substitute “46.24 to 46.27”.

### **Amendment of Part 55**

19.—(1) In rule 55.8(3)(a), after “the fast track” insert “, the intermediate track”.

(2) In rule 55.9—

- (a) in paragraph (1)(a), for “26.8” substitute “26.13”; and
  - (b) in paragraph (3), for “rule 45.38 (amount of fast track costs)” substitute “Part 45”.
- (3) In rule 55.36(3)(a), after “the fast track” insert “, the intermediate track”.
- (4) In rule 55.37—
- (a) in paragraph (1)(a), for “26.8” substitute “26.13”; and
  - (b) in paragraph (3), for “rule 45.38 (amount of fast track costs)” substitute “Part 45”.

### **Amendment of Part 63**

20. In rule 63.1(3)—

- (a) for “26.3(1)” substitute “26.4(1)”; and
- (b) for “26.3(1B)” substitute “26.4(2)”; and
- (c) for “26.4 to 26.10” substitute “26.5 to 26.18”.

### **Amendment of Part 65**

21.—(1) In rule 65.18(3)(a), after “fast track” insert “, intermediate track”.

(2) In rule 65.19(a), for “26.8” substitute “26.13”.

*Lord Justice Birss  
Mr Justice Kerr  
Mr Justice Trower  
Master Cook  
His Honour Judge Bird  
District Judge Clarke  
Isabel Hitching KC  
Tom Montagu-Smith KC  
Ben Roe  
Ian Curtis-Nye*

I allow these Rules.  
Signed by authority of the Lord Chancellor

22nd May 2023

*Bellamy*  
Parliamentary Under Secretary of State  
Ministry of Justice

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SCHEDULE 1

Rule 8

## “PART 26

## CASE MANAGEMENT – PRELIMINARY STAGE

**Contents of this Part**

<i>Title</i>	<i>Number</i>
Scope of this Part	Rule 26.1
Automatic transfer in the High Court	Rule 26.2
Transfer of money claims within the County Court	Rule 26.3
Directions questionnaire	Rule 26.4
Stay to allow for settlement of the case	Rule 26.5
Referral to the Mediation Service	Rule 26.6
Allocation and assignment	Rule 26.7
Proceedings under Practice Direction 27B	Rule 26.8
Scope of each track	Rule 26.9
Road traffic accident related personal injury claims	Rule 26.10
Children and protected parties	Rule 26.11
Allocation - general	Rule 26.12
Matters relevant to allocation to a track	Rule 26.13
Assignment within the fast track and intermediate track	Rule 26.14
Assignment within the fast track	Rule 26.15
Assignment within the intermediate track	Rule 26.16
Notice of allocation and assignment	Rule 26.17
Reallocation and reassignment	Rule 26.18
Trial with a jury	Rule 26.19

**Scope of this Part**

**26.1.**—(1) This Part provides for—

- (a) the automatic transfer of some defended cases in the High Court;
- (b) the circumstances in which defended cases may be sent from one County Court hearing centre or court office to another; and
- (c) the allocation of defended cases to case management tracks and, where applicable, their assignment to a complexity band.

(2) There are four tracks—

- (a) the small claims track;
- (b) the fast track;
- (c) the intermediate track; and
- (d) the multi-track.

(Rule 26.9 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 and the intermediate track. Part 29 makes provision for the multi-track.)

### **Automatic transfer in the High Court**

**26.2.**—(1) This rule applies to proceedings in the High Court 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; and
- (d) the defendant is an individual.

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

(3) Where this rule applies, the court shall 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 they wish the proceedings to continue, the court shall 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.)

### **Transfer of money claims within the County Court**

**26.3.**—(1) This rule applies where the claim is for an amount of money in the County Court, specified or unspecified.

(2) If at any time a court officer considers that the claim should be referred to a judge for directions, the court officer may send the proceedings to the defendant’s home court or the preferred hearing centre or other County Court hearing centre as may be appropriate.

(3) Subject to paragraphs (5) and (6), if the defendant is an individual and the claim is for a specified sum of money, at the relevant time the claim must be sent to the defendant’s home court (save that where there are two or more defendants, one or more of whom are individuals, the claim must be sent to the home court of the defendant who first files their defence).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(4) Subject to paragraphs (5) and (6), in any other claim to which this rule applies, the court must, at the relevant time, send the claim to the preferred hearing centre.

(5) Subject to paragraph (6), if, on their directions questionnaire—

- (a) a defendant under paragraph (3) has specified a hearing centre other than the defendant's home court; or
- (b) a claimant under paragraph (4) has specified a hearing centre other than the preferred hearing centre,

the claim must be sent to that other hearing centre.

(6) At the relevant time, the claim must be sent to the County Court at Central London if—

- (a) the claim is started at the County Court Business Centre or the County Court Money Claims Centre;
- (b) a court officer provisionally decides, pursuant to rule 26.4, that the track which appears to be most suitable for the claim is the multi-track; and
- (c) either—
  - (i) in respect of a defendant under paragraphs (3) and (5)(a), the home court (or the home court of the defendant who first files their defence) or the hearing centre specified on the directions questionnaire; or
  - (ii) in respect of a claimant under paragraphs (4) and (5)(b), the preferred hearing centre or the hearing centre specified on the directions questionnaire,is one of the hearing centres listed in Practice Direction 26 at paragraph 19.

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

- (a) all parties have filed their directions questionnaires;
- (b) any stay ordered by the court or period to attempt settlement through mediation has expired; or
- (c) if the claim falls within Practice Direction 49D—
  - (i) the defence is filed; or
  - (ii) enforcement of a default judgment other than by a warrant of control is requested,

whichever occurs first.

### **Directions questionnaire**

**26.4.**—(1) Subject to rule 26.8, if a defendant files a defence—

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



(v) if a case appears suitable for allocation to the fast track, intermediate track or multi-track, require the parties to file proposed directions by the date specified in the notice.

(2) The court shall serve on any unrepresented party the appropriate directions questionnaire.

(3) Where there are two or more defendants and at least one of them files a defence, the court shall serve the notice 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.)

(4) If proceedings are automatically transferred under rule 26.2 or rule 26.3 the court in which the proceedings have been commenced—

- (a) shall serve the notice of proposed allocation before the proceedings are transferred; and
- (b) shall not transfer the proceedings until all parties have complied with the notice or the time for doing so has expired.

(5) If rule 15.10 or rule 14.5 applies, the court shall not serve a notice under rule 26.3(1) until the claimant has filed a notice requiring the proceedings to continue.

(6) If a notice is served under paragraph (1)—

- (a) each party must file, and serve on all other parties, the documents required by the notice by no later than the date specified in it; and
- (b) the date specified must be—
  - (i) if the notice relates to the small claims track, at least 14 days; or
  - (ii) if the notice relates to the fast track, intermediate track, or multi-track, at least 28 days,

after the date when it is deemed to be served on the party in question.

(7) The date for complying with a notice served under paragraph (1) may not be varied by agreement between the parties.

(8) The time when the court serves a directions questionnaire under this rule may be varied by a practice direction in respect of claims issued by the Production Centre.

(9) If a claim is a claim to which rule 26.3 applies and a party does not comply with the notice served under paragraph (1) by the date specified—

- (a) the court shall serve a further notice on that party, requiring them to comply within 7 days; and
- (b) if that party fails to comply with the notice served under sub-paragraph (a), the party's statement of case shall be struck out without further order of the court.

(10) If a claim is a claim to which rule 26.2 applies and a party does not comply with the notice served under rule paragraph (1) by the date specified, the court may make such order as it considers appropriate, including—

- (a) an order for directions;
- (b) an order striking out the claim;
- (c) an order striking out the defence and entering judgment; or
- (d) listing the case for a case management conference.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(11) Where a case has been struck out under paragraph (9)(b) or an order has been made under paragraph (10), a party who was in default shall, unless the court thinks it unjust to do so, be ordered to pay the costs that the default caused to any other party.

(Rule 7.10 makes provision for the Production Centre.)

(Rules 6.14 and 6.26 specify when a document is deemed to be served.)

### **Stay to allow for settlement of the case**

**26.5.**—(1) A party may, when filing the completed directions questionnaire, make a written request for the proceedings to be stayed while the parties try to settle the case by alternative dispute resolution or other means.

(2) If all parties request a stay the proceedings shall be stayed for one month and the court shall notify the parties accordingly.

(3) If the court otherwise considers that such a stay would be appropriate, the court may direct that the proceedings, either in whole or in part, be stayed for one month, or for such other period as it considers appropriate.

(4) The court may extend the stay until such date or for such specified period as it considers appropriate.

(5) Where the court stays the proceedings under this rule, the claimant must tell the court if a settlement is reached.

(6) If the claimant does not tell the court by the end of the period of the stay that a settlement has been reached, the court shall give such directions as to the management of the case as it considers appropriate.

### **Referral to the Mediation Service**

**26.6.**—(1) This rule applies to claims started in the County Court which would normally be allocated to the small claims track pursuant to rule 26.9.

(2) This rule does not apply to—

(a) road traffic accident, personal injury or housing disrepair claims; or

(b) any claim in which any party to the proceedings does not agree to referral to the Mediation Service.

(3) In this rule, ‘the Mediation Service’ means the Small Claims Mediation Service operated by His Majesty’s Courts and Tribunals Service.

(4) Where all parties indicate on their directions questionnaire that they agree to mediation, the claim shall be referred to the Mediation Service.

(5) If a claim to which this rule applies is settled, the proceedings shall automatically be stayed with permission to apply for—

(a) judgment for the unpaid balance of the outstanding sum of the settlement agreement;  
or

(b) the claim to be restored for hearing of the full amount claimed,

unless the parties have agreed that the claim is to be discontinued or dismissed.

### **Allocation and assignment**

**26.7.**—(1) Subject to rule 26.8, the court shall allocate the claim to a track and, where applicable, assign it to a complexity band—

- (a) when all parties have filed their directions questionnaires; or
- (b) when giving directions pursuant to rule 26.4(10),

unless it has stayed the proceedings under rule 26.5.

(2) If the court has stayed the proceedings under rule 26.5, it shall allocate the claim to a track and, where applicable, assign it to a complexity band at the end of the period of the stay.

(3) If—

- (a) a claim is referred to the Mediation Service pursuant to rule 26.6; and
- (b) the court has not been notified in writing that a settlement has been agreed,

the claim shall be allocated to a track and, where applicable, assigned to a complexity band in accordance with this rule no later than four weeks from the date on which the last directions questionnaire is filed.

(4) Before deciding the track to which to allocate or the complexity band to which to assign proceedings, or deciding whether to give directions for an allocation hearing or an assignment hearing to be fixed, the court may order a party to provide further information about his case.

(5) The court may hold an allocation hearing or an assignment hearing if it thinks it is necessary.

(6) If a party fails to file a directions questionnaire, the court may give any direction it considers appropriate.

(7) When, in a claim to which Section VI or Section VII of Part 45 applies, the court decides the track to which a claim should be allocated or the complexity band to which it should be assigned—

- (a) it shall also consider whether it is in the interests of justice to order that rule 45.5(4) should apply to that claim; and
- (b) when considering whether it is in the interests of justice to make such an order, it shall have regard to whether the claim of each claimant arises from the same or substantially the same facts and gives rise to the same or substantially the same issues.

### **Proceedings under Practice Direction 27B**

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

- (a) the parties have followed the Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents; and
- (b) proceedings have been started under Practice Direction 27B.

(2) Subject to paragraph (3), where this rule applies, the claim shall be treated as allocated to the small claims track when it is issued and rules 26.4, 26.5 and 26.7 shall not apply.

(3) Where in any claim started or continued under Practice Direction 27B—

- (a) the appropriate court form states that—
  - (i) the amount claimed is more than £10,000; or
  - (ii) the claim for personal injury damages is more than £5,000; or
- (b) rule 26.10 applies,

a court officer must refer the claim to a judge for allocation to a track and to give directions.

### **Scope of each track**

**26.9.**—(1) The small claims track is the normal track for—

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (a) any claim for personal injuries where—
  - (i) the value of the claim is not more than £10,000; and
  - (ii) the value of any claim for damages for personal injuries is not more than—
    - (aa) £5,000 in a claim for personal injuries arising from a road traffic accident, except as provided in sub-paragraph (bb);
    - (bb) £1,000 in a claim for personal injuries arising from a road traffic accident, in any of the circumstances specified in rule 26.10; or
    - (cc) £1,500 in any other claim for personal injuries.
- (b) any claim which includes a claim by a tenant of residential premises against a 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 value of any other claim for damages is not more than £1,000; and
- (c) in relation to claims under the Renting Homes (Wales) Act 2016<sup>(6)</sup>, any claim which includes a claim by a contract-holder of a dwelling against a landlord where—
  - (i) the contract holder is seeking an order requiring the landlord to carry out repairs or other work to the dwelling (whether or not the contract-holder is also seeking some other remedy);
  - (ii) the cost of repairs or other work to the dwelling is estimated to be not more than £1,000; and
  - (iii) the 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) ‘Road traffic accident’ means an accident resulting in a bodily injury to any person caused by, or arising out of, the use of a motor vehicle on a road or other public place in England and Wales unless the injury was caused wholly or in part by a breach by the defendant of one or more of the relevant statutory provisions as defined by section 53 of the Health and Safety at Work etc. Act 1974<sup>(7)</sup>.

(4) Subject to paragraph (1), the small claims track is the normal track for any claim which has a value of not more than £10,000.

(Rule 26.12(2) and (3) provides that the court must not allocate to the small claims track certain claims in respect of harassment or unlawful eviction.)

---

<sup>(6)</sup> 2016 anaw 1.

<sup>(7)</sup> 1974 c. 37. Which has been amended by the Employment Protection Act 1975 (c. 71), sections 116 and 125(3), Schedule 15, paragraph 18, the Consumer Protection Act 1987 (c. 43), section 36, Schedule 3, S.I. 2008/960, articles 3 and 17(a) and (b), the Police (Health And Safety) Act 1997 (c. 42), section 6(1), the Local Government (Wales) Act 1994 (c. 19), sections 22(3) and 66(8), Schedule 9, paragraph 9 and Schedule 18, the Local Government Act 1985 (c. 51), section 102, Schedule 17, the Local Government etc (Scotland) Act 1994 (c. 39), section 180(1), Schedule 13 paragraph 93(3), the Energy Act 2013 (c. 32) section 116, Schedule 12, Part 1, paragraphs 1 and 12(a), (b) and (c), and the Railways Act 2005 (c. 14), section 2, Schedule 3, paragraph 15(3).

- (5) Subject to paragraphs (6) and (10), the fast track is the normal track for any claim—
- (a) for which the small claims track is not the normal track; and
  - (b) the claim—
    - (i) is a claim for monetary relief, the value of which is not more than £25,000; or
    - (ii) is or includes a claim for non-monetary relief and—
      - (aa) if the claim includes a claim for monetary relief, the value of the claim for monetary relief is not more than £25,000;
      - (bb) the claim meets the criteria in paragraph (6)(a) and (b); and
      - (cc) the court is satisfied that it is in the interests of justice for it to be allocated to the fast track.
- (6) The fast track is the normal track for the claims referred to in paragraph (5) 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 is likely to be limited to—
    - (i) one expert per party in relation to any expert field; and
    - (ii) expert evidence in two expert fields.
- (7) Subject to paragraphs (8), (9) and (10), the intermediate track is the normal track where—
- (a) the claim is suitable for neither the small claims track nor the fast track;
  - (b) the claim includes a claim for monetary relief, the value of which is not more than £100,000;
  - (c) the court considers that—
    - (i) if the case is managed proportionately, the trial will not last longer than three days;
    - (ii) oral expert evidence at trial is likely to be limited to two experts per party;
    - (iii) the claim may be justly and proportionately managed under the procedure set out in Section IV of Part 28; and
    - (iv) there are no additional factors, which would make the claim inappropriate for the intermediate track; and
  - (d) the claim is brought by one claimant against either one or two defendants, or is brought by two claimants against one defendant.
- (8) Where the relief sought includes a claim for non-monetary relief, the claim shall not be allocated to the intermediate track unless the court also considers it to be in the interests of justice to do so.
- (9) Subject to paragraph (10), the court may allocate a claim to the intermediate track where it considers it to be in the interests of justice to do so.
- (10) A claim must be allocated to the multi-track where that claim is—
- (a) a mesothelioma claim or asbestos lung disease claim;
  - (b) one which includes a claim for clinical negligence, unless—
    - (i) the claim is one which would normally be allocated to the intermediate track and
    - (ii) both breach of duty and causation have been admitted;

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (c) a claim for damages in relation to harm, abuse or neglect of or by children or vulnerable adults;
  - (d) a claim is one the court could order to be tried by jury if satisfied that there is in issue a matter set out in section 66(3) of the County Courts Act 1984<sup>(8)</sup> or section 69(1) of the Senior Courts Act 1981<sup>(9)</sup>; or
  - (e) a claim against the police which includes a claim for—
    - (i) an intentional or reckless tort; or
    - (ii) relief or a remedy in relation to a breach of the Human Rights Act 1998<sup>(10)</sup>.
- (11) Paragraph (10)(e) does not apply to—
- (a) a road accident claim arising from negligent police driving;
  - (b) an employer’s liability claim;
  - (c) any other claim for an accidental fall on police premises.
- (12) The multi-track is the normal track for any claim for which the small claims track or the fast track or the intermediate track is not the normal track.

### **Road traffic accident related personal injury claims**

- 26.10.** The circumstances referred to in rule 26.9(1)(a)(ii)(bb) are—
- (a) the accident occurred before 31st May 2021;
  - (b) unless rule 26.11 applies, on the date that proceedings are started, the claimant is—
    - (i) a child; or
    - (ii) a protected party;
  - (c) when the accident occurred, the claimant was—
    - (i) using a motor cycle;
    - (ii) a pillion passenger on, or a passenger in a sidecar attached to, a motor cycle;
    - (iii) using a wheelchair, a powered wheelchair or a mobility scooter;
    - (iv) using a bicycle or other pedal cycle;
    - (v) riding a horse; or
    - (vi) a pedestrian;
  - (d) unless rule 26.11 applies, on the date that proceedings are started—
    - (i) the claimant is an undischarged bankrupt; or
    - (ii) the claimant or defendant acts as a personal representative of a deceased person; or
  - (e) unless rule 26.11 applies, on the date of the accident, the defendant’s vehicle was registered outside the United Kingdom.

### **Children and protected parties**

- 26.11.**—(1) The fast track is the normal track where a claim—
- (a) is for personal injuries arising from a road traffic accident which occurs on or after 31st May 2021;

<sup>(8)</sup> 1984 c. 28. Section 66(3) has been amended by the Defamation Act 2013 (c. 26), section 11(2).

<sup>(9)</sup> 1981 c. 54. Section 69 has been amended by the Defamation Act 2013 (c. 26), section 11(1) and the Justice and Security Act 2013 (c. 18), section 19(1), Schedule 2, Part 2, paragraph 8(1) to (5).

<sup>(10)</sup> 1998 c. 42.

- (b) is made by—
  - (i) a child or a protected party; or
  - (ii) a person who, on the date the claim was first presented via the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents, was a child; and
- (c) consists of, or includes, a claim for a whiplash injury.
- (2) Where this rule applies, the claim must not be allocated to the small claims track.
- (3) ‘Whiplash injury’ has the meaning ascribed to it by paragraph 1.2(38) of the Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents.

#### **Allocation - general**

- 26.12.**—(1) In considering whether to allocate a claim to the normal track for that claim under rules 26.9, 26.10 or 26.11, the court shall have regard to the matters mentioned in rule 26.13(1).
- (2) The court must 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.
  - (3) In claims under the Renting Homes (Wales) Act 2016, the court must not allocate a claim to the small claims track if it includes a claim by a contract-holder of a dwelling against their landlord for a remedy in respect of harassment or unlawful eviction.

#### **Matters relevant to allocation to a track**

- 26.13.**—(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 additional 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 shall disregard—
- (a) any amount not in dispute;
  - (b) any claim for interest;
  - (c) costs;
  - (d) any contributory negligence; and
  - (e) where the claim is, or includes a claim for non-monetary relief, any amount prescribed by rule 45.45(1)(a)(ii) and rule 45.50(2)(b)(ii).
- (3) Where—

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (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 shall consider the claim of each claimant separately when it assesses financial value under paragraph (1).

**Assignment within the fast track and the intermediate track**

**26.14.**—(1) When a claim is allocated to the fast track or the intermediate track, the court must also assign the claim to a complexity band, unless it is one to which Section VIII of Part 45 applies.

(2) In both Table 1 and Table 2, below, the complexity bands numbered 1 to 4 provide an ascending scale of allowable costs commensurate with the complexity of the claim.

(3) The complexity band to which a claim is assigned shall determine the costs that are to be allowed under Table 12 or Table 14 in Practice Direction 45.

(4) Subject to paragraph (5), the parties may agree the complexity band to which a claim is assigned.

(5) The court may direct that a claim be assigned to a different complexity band than that agreed by the parties, but shall have regard to the factors set out in rule 26.13(1).

(6) A party must state on their directions questionnaire—

- (a) the agreed complexity band; or
- (b) where the parties disagree, the complexity band considered appropriate by that party, together with any relevant information in support.

**Assignment within the fast track**

**26.15.** Unless the claim is one for noise induced hearing loss (in respect of which Sections I and IV of Part 28 and Section VIII of Part 45 make provision), the complexity band to which a claim will normally be assigned in the fast track is set out in Table 1.

**Table 1**

<i>Complexity band 1</i>	<i>Complexity band 2</i>	<i>Complexity band 3</i>	<i>Complexity band 4</i>
(a) road traffic accident related, non-personal injury claims; and	(a) road traffic accident related, personal injury claims which are or should have been started under the RTA Protocol; and	(a) road traffic accident related, personal injury claims to which the RTA Protocol does not apply;	(a) employer’s liability disease claims (other than a claim for noise induced hearing loss);
(b) defended debt claims	(b) personal injury claims to which the Pre-action Protocol for Resolution of Package Travel Claims apply	(b) employer’s liability (accident) and public liability personal injury claims;	(b) complex possession and housing disrepair claims;
		(c) possession claims;	(c) property and building disputes;



**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>Complexity band 1</i>	<i>Complexity band 2</i>	<i>Complexity band 3</i>	<i>Complexity band 4</i>
		(d) housing disrepair claims; and  (e) other money claims	(d) professional negligence claims; and  (e) any claim which would normally be allocated to the fast track, but is nonetheless complex

**Assignment within the intermediate track**

**26.16.** The complexity band to which a claim will normally be assigned in the intermediate track is set out in Table 2.

**Table 2**

<i>Complexity band 1</i>	<i>Complexity band 2</i>	<i>Complexity band 3</i>	<i>Complexity band 4</i>
Any claim where—  (a) only one issue is in dispute; and  (b) the trial is not expected to last longer than one day, including—  (i) personal injury claims where liability or quantum is in dispute;  (ii) non-personal injury road traffic claims; and  (iii) defended debt claims	Any less complex claim where more than one issue is in dispute, including personal injury accident claims where liability and quantum are in dispute	Any more complex claim where more than one issue is in dispute, but which is unsuitable for assignment to complexity band 2, including noise induced hearing loss and other employer’s liability disease claims	Any claim which would normally be allocated to the intermediate track, but which is unsuitable for assignment to complexity bands 1 to 3, including any personal injury claim where there are serious issues of fact or law

**26.17.** When it has allocated a claim to a track, the court shall serve notice of allocation and, where applicable, assignment on every party.

**Reallocation and reassignment**

**26.18.—**(1) Subject to paragraphs (2) and (3), the court may on application or on its own initiative subsequently—

- (a) reallocate a claim to a different track; or
- (b) reassign a claim to a different complexity band.

(2) Where—

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (a) a claim is allocated to the intermediate track; and
  - (b) directions in respect of that claim have been given,
- the court may only reallocate the claim where it decides that there are exceptional reasons to justify doing so.
- (3) The court may only reassign a claim to a different complexity band, where—
    - (a) there has been a change in circumstances since a direction was made assigning the claim to a particular complexity band; and
    - (b) the court decides the change in circumstances justifies reassignment.

**Trial with a jury**

- 26.19.—(1) An application for a claim, other than a claim for libel and slander, to be tried with a jury must be made within 28 days of service of the defence.
- (2) A claim for libel or slander must be tried by Judge alone, unless at the first case management conference a party applies for trial with a jury and the court makes an order to that effect.”

SCHEDULE 2

Rule 10

“PART 28

THE FAST TRACK AND THE INTERMEDIATE TRACK

**Contents of this Part**

<i>Title</i>	<i>Number</i>
I GENERAL PROVISIONS APPLYING TO BOTH FAST TRACK AND INTERMEDIATE TRACK	
Scope of this Part	Rule 28.1
General provisions	Rule 28.2
Variation of case management timetable	Rule 28.3
Pre-trial check list (listing questionnaire)	Rule 28.4
Fixing or confirming the trial date and giving directions	Rule 28.5
Conduct of trial	Rule 28.6
II PROVISIONS APPLYING ONLY TO CASES ALLOCATED TO THE FAST TRACK	
Directions	Rule 28.7
Costs	Rule 28.8
III PROVISIONS APPLYING ONLY TO NOISE INDUCED HEARING LOSS CASES ALLOCATED TO THE FAST TRACK	
Directions	Rule 28.9

<i>Title</i>	<i>Number</i>
Limitation	Rule 28.10
Costs	Rule 28.11
IV PROVISIONS APPLYING ONLY TO CASES ALLOCATED TO THE INTERMEDIATE TRACK	
Case management conference	Rule 28.12
Agreement of directions	Rule 28.13
Directions	Rule 28.14
Costs	Rule 28.15

### SECTION I

#### *General Provisions Applying to Both Fast Track and Intermediate Track*

#### **Scope of this Part**

**28.1.** This section contains general provisions about the management of cases allocated to the fast and intermediate tracks. Section II contains further provisions about the management of cases allocated to the fast track, other than for cases of noise induced hearing loss. Section III contains provisions about the management of noise induced hearing loss cases allocated to the fast track. Section IV contains further provisions about the management of cases allocated to the intermediate 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 or intermediate track, the court shall 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 shall—

(a) make an order in relation to disclosure; and

(b) either—

(i) fix the trial date; or

(ii) fix a period, not exceeding 3 weeks, within which the trial is to take place.

(3) In claims within Section II and Section IV of this Part, other than in respect of claims which include a claim for personal injury, the court shall decide, having regard to the overriding objective and the need to limit disclosure to that which is necessary to deal with the case justly, which of the following orders to make in relation to disclosure—

(a) an order dispensing with disclosure;

(b) an order that a party disclose the documents on which it relies, and at the same time request any specific disclosure it requires from any other party;

(c) an order that directs, where practicable, the disclosure to be given by each party on an issue-by-issue basis;

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (d) an order that each party disclose any documents which it is reasonable to suppose may contain information which enables that party to advance its own case or to damage that of any other party, or which leads to an enquiry which has either of those consequences;
- (e) an order that a party give standard disclosure;
- (f) any other order in relation to disclosure that the court considers appropriate.

(Rule 31.6 explains what is meant by standard disclosure.)

(4) Unless the court otherwise orders, disclosure under Section II and Section IV of this Part in respect of claims which include a claim for personal injury shall be standard disclosure.

(5) The trial date or trial period shall be specified in the notice of allocation.

#### **Variation of case management timetable**

**28.3.**—(1) A party must apply to the court if they wish to vary any date which the court has fixed for—

- (a) any case management conference;
- (b) any pre-trial review;
- (c) filing the pre-trial check list;
- (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.)

#### **Pre-trial check list (listing questionnaire)**

**28.4.**—(1) The court shall send the parties a pre-trial check list (listing questionnaire) for completion and return by the date specified in the notice of allocation unless it considers that the claim can proceed to trial without the need for a pre-trial check list.

(2) The date specified for filing a pre-trial check list shall not be more than 8 weeks before the trial date or the beginning of the trial period.

(3) If no party files the completed pre-trial check list by the date specified, the court shall order that unless a completed pre-trial check list is filed within 7 days from service of that order, the claim, defence and any counterclaim shall be struck out without further order of the court.

(4) If—

- (a) a party files a completed pre-trial check list but another party does not;
- (b) a party has failed to give all the information requested by the pre-trial check list; 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 give such directions as it thinks appropriate.

#### **Fixing or confirming the trial date and giving directions**

**28.5.**—(1) As soon as practicable after the date specified for filing a completed pre-trial check list the court shall—

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (a) fix the date for the trial, unless it has already done so;
- (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 shall give the parties at least 3 weeks' notice of the date of the trial unless, in exceptional circumstances, the court directs that shorter notice be given.

### **Conduct of trial**

**28.6.** Unless the trial judge otherwise directs, the trial shall be conducted in accordance with any order previously made.

## *SECTION II*

### *Provisions Applying Only to Cases Allocated to the Fast Track*

#### **Directions**

**28.7.**—(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.

(Rules 28.2(3) and (4) deal with orders for disclosure.)

(Rule 26.9(6) deals with limitations in relation to expert evidence and the likely length of trial in fast track cases.)

(2) Directions to be given under rule 28.2(1) shall be in the form set out at <http://www.justice.gov.uk/courts/procedure-rules/civil>, unless the court orders otherwise.

#### **Costs**

**28.8.** The court's power to award costs is limited in accordance with Section VI and Section IX of Part 45.

## *SECTION III*

### *Provisions Applying Only to Noise Induced Hearing Loss Cases Allocated to the Fast Track*

#### **Directions**

**28.9.** Directions to be given under rule 28.2(1) shall be in the form set out at <http://www.justice.gov.uk/courts/procedure-rules/civil>, unless the court orders otherwise.

#### **Limitation**

**28.10.**—(1) The court may order a preliminary trial on limitation if satisfied that it is necessary in the interests of justice to do so.

(2) If any party seeks a direction for a preliminary trial on limitation, this must be identified in that party's directions questionnaire.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(3) Where a preliminary trial on limitation is ordered in respect of one or more, but not all, defendants, the claims against all the other defendants shall be stayed until determination of the preliminary issue.

### **Costs**

**28.11.** The court's power to award costs is limited in accordance with Section VIII and Section IX of Part 45.

## *SECTION IV*

### *Provisions Applying Only to Cases Allocated to the Intermediate Track*

### **Case management conference**

**28.12.** The court shall fix a case management conference and may fix a pre-trial review.

### **Agreement of directions**

**28.13.** The parties must endeavour to agree appropriate directions for the management of the proceedings and submit agreed directions, or their respective proposals to the court at least seven days before any case management conference. Where the court approves agreed directions, or issues its own directions, the parties shall be so notified by the court and the case management conference will be vacated accordingly.

### **Directions**

**28.14.**—(1) The matters to be dealt with by directions under rule 28.2(1) include—

- (a) disclosure of documents;
- (b) service of witness statements;
- (c) expert evidence;
- (d) whether to fix a pre-trial review; and
- (e) listing the case for trial.

(2) The following provisions apply in respect of directions in the intermediate track—

- (a) oral expert evidence is limited to one witness per party, save where the oral evidence of a second expert for any party is reasonably required and is proportionate; and
- (b) the trial time estimate must not exceed 3 days.

(3) The following provisions apply in respect of directions in the intermediate track, unless the court orders otherwise—

- (a) rules 28.2(3) and (4) apply in respect of disclosure;
- (b) the total length of all the permitted witness statements and witness summaries of a party shall not exceed 30 pages; and
- (c) any expert report shall not exceed 20 pages, excluding any necessary photographs, plans and academic or technical articles attached to the report.

### **Costs**

**28.15.** The court's power to award costs is limited in accordance with Section VII and Section IX of Part 45.”

SCHEDULE 3

Rule 15

“PART 45  
FIXED COSTS

**Contents of this Part**

<i>Title</i>	<i>Number</i>
<b>I GENERAL PROVISIONS</b>	
Scope of this Part	Rule 45.1
VAT	Rule 45.2
Additional costs for work in specified areas ('London weighting')	Rule 45.3
Litigants in person	Rule 45.4
Entitlement to costs - more than one claimant	Rule 45.5
Defendants' costs - assessment	Rule 45.6
Counterclaims	Rule 45.7
Pre-action and interim applications	Rule 45.8
Claims for an amount of costs exceeding fixed recoverable costs	Rule 45.9
Claims for an amount of costs exceeding fixed recoverable costs - vulnerability	Rule 45.10
Failure to achieve costs greater than fixed recoverable costs	Rule 45.11
Costs of the costs-only proceedings or the detailed assessment	Rule 45.12
Unreasonable behaviour	Rule 45.13
Costs consequences on reconsideration of track or complexity band	Rule 45.14
Costs consequences where rules 36.23 or 36.24 apply	Rule 45.15
<b>II COMMENCEMENT, ENTRY OF JUDGMENT AND ENFORCEMENT</b>	
Scope and application	Rule 45.16
Amount of fixed commencement costs in a claim for the recovery of money or goods	Rule 45.17
When defendant only liable for fixed commencement costs	Rule 45.18
Fixed costs on entry of judgment in a claim for the recovery of money or goods	Rule 45.19

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

<i>Title</i>	<i>Number</i>
Amount of fixed commencement costs in a claim for the recovery of land (including possession) or a demotion claim or prohibited conduct standard contract claim (Wales)	Rule 45.20
Fixed costs on entry of judgment in a claim for the recovery of land (including possession) or a demotion claim or prohibited conduct standard contract claim (Wales)	Rule 45.21
Miscellaneous fixed costs	Rule 45.22
Fixed costs of enforcement	Rule 45.23
III HM REVENUE AND CUSTOMS	
Scope, interpretation and application	Rule 45.24
Amount of fixed commencement costs in a County Court claim for the recovery of money conducted by an HMRC Officer	Rule 45.25
Fixed costs on entry of judgment in a county court claim for recovery of money conducted by an HMRC Officer	Rule 45.26
IV THE PRE ACTION PROTOCOLS FOR LOW VALUE PERSONAL INJURY CLAIMS IN ROAD TRAFFIC ACCIDENTS AND LOW VALUE PERSONAL INJURY (EMPLOYERS' LIABILITY AND PUBLIC LIABILITY) CLAIMS	
Scope and interpretation	Rule 45.27
Application of fixed costs and disbursements	Rule 45.28
Amount of fixed costs	Rule 45.29
Where the claimant obtains judgment for an amount more than the defendant's relevant Protocol offer	Rule 45.30
Settlement at Stage 2 or Stage 3 where the claimant is a child	Rule 45.31
Where the court orders that the claim is not suitable to be determined under the Stage 3 procedure and the claimant is a child	Rule 45.32
Settlement before proceedings are issued under Stage 3	Rule 45.33
Additional advice on value of claim	Rule 45.34
Failure to comply or electing not to continue with the relevant Protocol - costs consequences	Rule 45.35
Where the parties have settled after proceedings have started	Rule 45.36
Where the claimant obtains judgment for an amount equal to or less than the defendant's RTA Protocol offer	Rule 45.37



<i>Title</i>	<i>Number</i>
Adjournment	Rule 45.38
Account of payment of Stage 1 fixed costs	Rule 45.39
Costs-only application after a claim is started under Part 8 in accordance with Practice Direction 49F	Rule 45.40
V THE PRE-ACTION PROTOCOL FOR PERSONAL INJURY CLAIMS BELOW THE SMALL CLAIMS LIMIT IN ROAD TRAFFIC ACCIDENTS	
Failure to comply with, or electing not to continue under, the RTA Small Claims Protocol	Rule 45.41
Claims which do not continue under the RTA Small Claims Protocol	Rule 45.42
VI FIXED COSTS IN THE FAST TRACK	
Scope	Rule 45.43
Amount of fixed costs	Rule 45.44
Fixed costs	Rule 45.45
Specialist legal advice	Rule 45.46
Advice obtained in claims started under the RTA Protocol or the EL/PL Protocol	Rule 45.47
Preliminary issue or separate trial	Rule 45.48
VII FIXED COSTS IN THE INTERMEDIATE TRACK	
Scope	Rule 45.49
Amount of fixed costs	Rule 45.50
Preliminary issue or separate trial	Rule 45.51
VIII CLAIMS FOR NOISE INDUCED HEARING LOSS	
Scope	rule 45.52
Amount of fixed costs	rule 45.53
More than one defendant	rule 45.54
Preliminary issues trials	rule 45.55
Restoration proceedings	rule 45.56
IX DISBURSEMENTS	
Scope of this Section	rule 45.57
Disbursements - Section IV	rule 45.58
Disbursements - Section VI	rule 45.59
Disbursements - Section VII	rule 45.60
Disbursements - Section VIII	rule 45.61
Soft tissue injury and whiplash injury claims	rule 45.62

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SECTION I

### General Provisions

#### Scope of this Part

**45.1.**—(1) This Part sets out the amounts to be allowed for costs in the categories of claim to which it applies.

(2) In the categories of claim to which this Part applies, the court has a discretion as to—

- (a) whether costs are payable by one party to another;
- (b) when they are to be paid; and
- (c) whether to make an order in the form contemplated by rule 44.2(6)(a).

(3) Where—

- (a) a claim is one to which Section IV, Section VI, Section VII or Section VIII of this Part applies; and
- (b) the parties agree or the court orders that a party is entitled to costs,

subject to the application of any rule in those Sections or this Section by which costs are to be allowed, disallowed, increased or reduced, the court may only award costs in an amount that is neither more nor less than the fixed costs allowed by the applicable Section and set out in the relevant table in Practice Direction 45.

(4) Section VI and Section VII of this Part do not apply to a claim or counterclaim which relates, in whole or in part, to a residential property or dwelling and which, in respect of that property, includes a claim or counterclaim for—

- (a) possession;
- (b) disrepair; or
- (c) unlawful eviction,

save where the claim or counterclaim in respect of the residential property or dwelling arises from a boundary dispute.

(5) Where a claim relates in part to a residential property or dwelling and that part of the claim is concluded or discontinued, paragraph (4) shall continue to apply to the remainder of the claim.

(6) Section VI, Section VII and Section VIII of this Part do not apply where a party is a protected party.

(7) In this Part—

- (a) ‘an order for costs’, includes orders for costs deemed to have been made (either against the claimant or in favour of the claimant) as set out in rule 44.9;
- (b) ‘the relevant Protocol’ means—
  - (i) the Pre-Action Protocol for Personal Injury Claims in Road Traffic Accidents (‘the RTA Protocol’); or
  - (ii) the Pre-action Protocol for Low Value Personal Injury Claims (Employers’ Liability and Public Liability) Claims (‘the EL/PL Protocol’); and
- (c) a reference to a table by number alone is a reference to the corresponding table in Practice Direction 45.

(8) A reference in any rule to an amount in a table in Practice Direction 45 is a reference to the amount applicable to a claim on the date that proceedings are issued, regardless of any subsequent amendment.

## VAT

**45.2.** Where appropriate, VAT may be recovered in addition to the amount of fixed costs in Section IV, Section VI, Section VII or Section VIII of this Part and any reference to fixed costs in those Sections is a reference to those costs net of any such VAT.

### **Additional costs for work in specified areas ('London weighting')**

**45.3.—**(1) Where fixed costs are payable under Section IV, Section VI, Section VII or Section VIII of this Part and the receiving party—

- (a) lives, works or carries on business in any area set out in Section II of Practice Direction 45; and
- (b) instructs a legal representative with conduct of the litigation who practises in any of those areas,

the fixed costs shall include, in addition to the costs allowable in the relevant Section, an amount equal to 12.5% of those fixed costs ('London weighting').

(2) In this rule 'fixed costs' excludes any disbursements.

### **Litigants in person**

**45.4.—**(1) This rule applies to any claim where—

- (a) costs are payable under Section VI, Section VII or Section VIII of this Part; and
- (b) the party in whose favour the costs order is made is at any stage a litigant in person.

(2) Where this rule applies—

- (a) rule 46.5 shall apply, save that—
  - (i) where a party is a litigant in person throughout the entire claim, the costs allowed under this rule shall not exceed, except in the case of a disbursement, two-thirds of the fixed recoverable costs which would have been allowed under Section VI, Section VII or Section VIII if the litigant in person had been represented by a legal representative;
  - (ii) for any stage in Table 12, Table 14 or Table 15 during which the party is for any period a litigant in person, the costs allowed for that stage shall not exceed two thirds of the costs so specified; and
  - (iii) for any stage in Table 12, Table 14 or Table 15 during which a party is represented by a legal representative for the entire stage, the fixed recoverable costs shall apply as set out in sub-paragraph (b), provided that the total amount of costs to be allowed shall not exceed the costs which would have been allowed if the litigant in person had been represented by a legal representative for the entire claim;
- (b) where sub-paragraph (a)(iii) applies, the fixed recoverable costs shall be as follows—
  - (i) where the stage provides only for a fixed sum, the fixed sum;
  - (ii) in any other stage the difference between the fixed recoverable costs for that stage and the fixed recoverable costs for the last stage before that when the party was a litigant in person.

### **Entitlement to costs – more than one claimant**

**45.5.—**(1) Unless paragraph (2) or paragraph (4) applies, where—

- (a) fixed costs are payable under Section VI or Section VII of this Part; and

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(b) orders for costs are made in favour of two or more claimants, each claimant is entitled to the costs of their own claim in accordance with the applicable rules in this Part.

(2) Paragraph (1) does not apply where the claim is for a remedy to which the claimants are jointly entitled, and they are joined to the proceedings to comply with rule 19.3.

(3) Paragraph (4) applies where fixed costs are payable under Section VI or Section VII and—

- (a) a legal representative with conduct of the litigation acts for more than one claimant in the proceedings;
- (b) each of those claimants has a separate claim against the defendant;
- (c) an order for costs is made in favour of two or more of those claimants; and
- (d) the court has ordered that paragraph (4) shall apply.

(4) Where this paragraph applies—

- (a) the claimants in whose favour an order for costs is made shall only be entitled to one set of fixed costs;
- (b) the amount of the fixed costs to which those claimants are entitled is the sum of the allowable costs and the further amounts calculated in accordance with paragraph (5) and, where applicable, paragraph (7); and
- (c) those claimants are jointly entitled to any costs so ordered.

(5) A further amount equal to 25% of the allowable costs is to be added for each additional claimant in whose favour the order for costs is made.

(6) In paragraph (4), ‘the allowable costs’—

- (a) means—
  - (i) the applicable costs payable to the claimant in respect of whom the damages of highest value are agreed or awarded; or
  - (ii) where paragraph (i) would apply to two or more claimants, the applicable costs payable to whichever one of those claimants their legal representative chooses;
- (b) does not include any additional amounts under rule 36.24; but
- (c) may include the relevant trial advocacy fees if applicable; and
- (d) excludes any disbursements.

(7) In addition to the allowable costs under paragraph (4), those claimants who meet the criteria are entitled to London weighting.

(8) Where one or more of the claimants referred to in paragraph (4) is entitled to additional costs under rule 36.24(5) or increased costs under rule 45.13(2), the percentage increases for which those rules provide must be calculated by applying the relevant percentage to such proportion of the amount referred to in paragraph (4)(b) as reflects the proportion which each claimant so entitled bears to the total number of claimants to which paragraph (4) applies.

### **Defendants’ costs**

**45.6.**—(1) Where, in any case to which Section VI, Section VII or Section VIII of this Part applies, the court makes an order for costs in favour of the defendant, the allowable costs are—

- (a) the fixed costs set out in Section VI, Section VII or Section VIII;
- (b) the applicable disbursements set out in Section IX of this Part.

- (2) For the purpose of assessing the costs payable to a defendant by reference to the fixed costs in Table 12 and Table 14—
- (a) “value of the claim for damages” and “damages” shall be treated as references to the value of the claim, as defined in paragraph (3); and
  - (b) if the claim is discontinued, a reference in Table 12 or Table 14 to the stage at which a case is settled shall be treated as a reference to the stage at which the case is discontinued.
- (3) For the purposes of paragraph (2)(a), ‘the value of the claim’ is—
- (a) the amount specified in the claim form, without taking into account any deduction for contributory negligence, but excluding—
    - (i) any amount not in dispute;
    - (ii) interest; or
    - (iii) costs;
  - (b) if no amount is specified in the claim form, the maximum amount which the claimant reasonably expected to recover according to the statement of value included in the claim form under rule 16.3;
  - (c) if the claim form states that the claimant cannot reasonably say how much is likely to be recovered—
    - (i) £25,000 in a claim to which Section VI applies; or
    - (ii) £100,000 in a claim to which Section VII applies;
  - (d) if the claim has no monetary value—
    - (i) the applicable amount in rule 45.45(1)(a)(ii) in a claim to which Section VI applies; or
    - (ii) the applicable amount in rule 45.50(2)(b)(ii) in a claim to which Section VII applies; or
  - (e) if a claim includes both a claim for monetary relief and a claim which has no monetary value, the applicable amount in sub-paragraph (d) taken together with the applicable monetary value in sub-paragraph (a), (b) or (c).

### **Counterclaims**

**45.7.**—(1) Subject to paragraphs (2) and (3), if in any case to which Section VI or Section VII of this Part applies—

- (a) the defendant brings a counterclaim; and
- (b) the court makes an order for costs,

rules 45.5, 45.6, 45.9, 45.10, 45.11, 45.12, 45.13, 45.43, 45.45, 45.46, 45.49 and 49.50 shall apply as if the counterclaim were a claim.

(2) No costs are allowable under this rule where the only remedy sought by the counterclaimant is also a defence to the claim.

(3) Where in a claim to which the RTA Protocol applies, there is a counterclaim which does not include a claim for personal injuries, any order for costs shall be for a sum equivalent to one half of the applicable Type A and Type B costs in Table 10.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

### **Pre-action and interim applications**

**45.8.** Where, in any claim to which Section VI, Section VII or Section VIII of this Part applies, the court makes an order for the costs of a pre-action or interim application, the costs which a party may be allowed are those set out in Table 1, together with any appropriate court fee.

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

**45.9.—(1)** The court may consider a claim for an amount of costs (excluding disbursements) which is greater than the fixed recoverable costs referred to in Section VI, Section VII or Section VIII of this Part where there are exceptional circumstances making it appropriate to do so.

- (2) If the criteria in paragraph (1) are met, the court may—
- (a) summarily assess the costs; or
  - (b) make an order for the costs to be subject to detailed assessment.

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

**45.10.—(1)** The court may consider a claim for an amount of costs (excluding disbursements) which is greater than the fixed recoverable costs referred to in Section VI, Section VII or Section VIII of this Part where—

- (a) a party or witness for the party is vulnerable;
- (b) that vulnerability has required additional work to be undertaken; and
- (c) by reason of that additional work alone, the claim is for an amount that is at least 20% greater than the amount of fixed recoverable costs.

(Rule 1.6 and Practice Direction 1A make provision for how the court is to give effect to the overriding objective in relation to vulnerable parties or witnesses).

- (2) If the criteria in paragraph (1) are met, the court may—
- (a) summarily assess the costs; or
  - (b) make an order for the costs to be subject to detailed assessment.

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

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

- (a) costs are assessed in accordance with rule 45.9(2) or 45.10(2); and
- (b) the court assesses the costs (excluding any VAT) as being an amount which is in a sum less than 20% greater than the amount of the fixed recoverable costs.

- (2) The court shall make an order for the party who made the claim to be paid the lesser of—
- (a) the fixed recoverable costs; and
  - (b) the assessed costs.

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

**45.12.—(1)** If the criteria in rule 45.9(1) or rule 45.10(1) are not met, the court may make an order for the fixed recoverable costs and any permitted disbursements only.

- (2) Where—
- (a) the court makes an order for costs in accordance with paragraph (1); or

- (b) rule 45.11 applies,  
the court may decide—
- (i) to make no order as to the costs of the costs only proceedings or detailed assessment; or
  - (ii) to make an order for some or all of such costs to be paid by the party making the claim.

### **Unreasonable behaviour**

**45.13.**—(1) Where, in a claim to which Section VI, Section VII or Section VIII of this Part applies, an order for costs is made in favour of a party whom the court considers has behaved unreasonably, the other party may apply for an order that those costs be reduced by an amount equivalent to 50% of the fixed recoverable costs which would otherwise be payable.

(2) Where, in a claim to which Section VI, Section VII or Section VIII of this Part applies, an order for costs is made against a party whom the court considers has behaved unreasonably, the other party may apply for an order that those costs be increased by an amount equivalent to 50% of the fixed recoverable costs which would otherwise be payable.

- (3) In this rule—
- (a) unreasonable behaviour is conduct for which there is no reasonable explanation; and
  - (b) “fixed recoverable costs which would otherwise be payable” does not include—
    - (i) VAT;
    - (ii) any additional amounts under rules 36.17 or 36.24; or
    - (iii) any disbursements.

### **Costs consequences on reconsideration of track or complexity band**

**45.14.**—(1) Where—

- (a) the court reallocates a claim to a different track; and
- (b) before or upon reallocation, the claim is one to which Section VI, Section VII or Section VIII of this Part applies,

the costs which may be allowed are those applicable to the track to which the claim is reallocated, as if the claim been allocated to that track at the outset.

(2) Where, in any claim to which Section VI or Section VII of this Part applies, the court reassigns a claim to a different complexity band, the costs which may be allowed are those applicable to the complexity band to which the claim is reassigned, as if the claim been assigned to that band at the outset.

(3) Where in any claim to which this rule applies, the court makes an order for the costs of an application to—

- (a) reallocate the claim to a different track; or
- (b) reconsider the complexity band to which a claim is assigned,

that application shall be treated as an interim application and the costs which a party may be allowed are those set out in Table 1, together with any appropriate court fee.

### **Costs consequences where rules 36.23 or 36.24 apply**

**45.15.** In a case to which Section VI, Section VII or Section VIII of this Part applies

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (a) where a Part 36 offer is accepted, rule 36.23 applies instead of the relevant Section; and
- (b) where upon judgment being entered, the claimant fails to obtain a judgment more advantageous than the defendant's Part 36 offer, rule 36.24 applies instead of the relevant Section.

## SECTION II

### *Commencement, Entry of Judgment and Enforcement*

#### **Scope and application**

**45.16.**—(1) In any case to which this Section applies, unless the court orders otherwise, the only costs allowed in respect of a legal representative's charges are those specified in this Section.

(2) This Section applies where—

- (a) the only claim is a claim for a specified sum of money where the value of the claim exceeds £25 and—
  - (i) judgment in default is obtained under rule 12.4(1);
  - (ii) judgment on admission is obtained under rule 14.4(3);
  - (iii) judgment on admission on part of the claim is obtained under rule 14.5(6);
  - (iv) summary judgment is given under Part 24;
  - (v) the court has made an order to strike out a defence under rule 3.4(2)(a) as disclosing no reasonable grounds for defending the claim; or
  - (vi) rule 45.19 applies;
- (b) the only claim is a claim where the court gave a fixed date for the hearing when it issued the claim and judgment is given for the delivery of goods, and the value of the claim exceeds £25;
- (c) the claim is for the recovery of land, including a possession claim or recovery of a dwelling including a Renting Homes possession claim under Part 55, whether or not the claim includes a claim for a sum of money and the defendant gives up possession, pays the amount claimed, if any, and the fixed commencement costs stated in the claim form;
- (d) the claim is for the recovery of land, including a possession claim or recovery of a dwelling including a Renting Homes possession claim under Part 55, where one of the grounds for possession is arrears of rent, for which the court gave a fixed date for the hearing when it issued the claim and judgment is given for the possession (whether or not the order for possession is suspended on terms) and the defendant—
  - (i) has neither delivered a defence, or counterclaim, nor otherwise denied liability; or
  - (ii) has delivered a defence which is limited to specifying his proposals for the payment of arrears of rent;
- (e) the claim is a possession claim under Section II of Part 55 (accelerated possession claims of land let on an assured shorthold tenancy) or a claim under Section V of Part 55 (Renting Homes Wales – accelerated possession claims of dwellings let on a standard contract) and a possession order is made where the defendant has neither delivered a defence, or counterclaim, nor otherwise denied liability;



*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (f) the claim is a demotion claim or prohibited conduct standard contract order claim under Section III of Part 65 or a demotion claim or prohibited conduct standard contract order claim is made in the same claim form in which a claim for possession is made under Part 55 and that demotion claim or prohibited conduct standard contract order claim is successful;
- (g) a judgment creditor has taken steps under Parts 70 to 73 to enforce a judgment or order; or
- (h) costs are ordered under rule 27.14(2)(a).

(Practice Direction 49C sets out the types of case where a court will give a fixed date for a hearing when it issues a claim.)

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

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

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

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

**45.17.**—(1) In a claim to which rule 45.16(2)(a) or (b) applies, where the claim form includes a claim for fixed commencement costs—

- (a) the amount of fixed commencement costs is set out in Table 2; and
- (b) the amount claimed, or the value of the goods claimed if specified, in the claim form is to be used in determining the band in Table 2 that applies to the claim.

(2) The amounts shown in Table 6 are to be allowed in addition, if applicable.

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

**45.18.** Where—

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

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

#### **Fixed costs on entry of judgment in a claim for the recovery of money or goods**

**45.19.** Where—

- (a) the claimant has claimed fixed commencement costs under rule 45.17; and
- (b) judgment is entered in a claim to which rule 45.16(2)(a) or (b) applies in the circumstances specified in Table 3,

the amount to be included in the judgment for the claimant's legal representative's charges is the total of—

- (i) the fixed commencement costs; and
- (ii) the relevant amount shown in Table 3.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

**Amount of fixed commencement costs in a claim for the recovery of land (including possession) or a demotion claim or prohibited conduct standard contract claim (Wales)**

**45.20.**—(1) The amount of fixed commencement costs in a claim to which rule 45.16(2) (c), (d) or (f) applies is set out in Table 4.

(2) The amounts shown in Table 6 are to be allowed in addition, if applicable.

**Fixed costs on entry of judgment in a claim for the recovery of land (including possession) or a demotion claim or prohibited conduct standard contract claim (Wales)**

**45.21.** Table 5 sets out the amounts to be allowed in respect of a legal representative's charges in the circumstances mentioned.

**Miscellaneous fixed costs**

**45.22.** Table 6 shows the amount to be allowed in respect of legal representative's charges in the circumstances mentioned.

**Fixed costs of enforcement**

**45.23.** Table 7 shows the amount to be allowed in respect of legal representatives' costs in the circumstances mentioned. The amounts shown in Table 6 are to be allowed in addition, if applicable.

*SECTION III*

*HM Revenue and Customs*

**Scope, application and interpretation**

**45.24.**—(1) This Section applies where—

- (a) the only claim is a claim conducted by an HMRC Officer in the County Court for the recovery of a debt; and
- (b) the Commissioners obtain judgment on the claim.

(2) Where this Section applies, unless the court orders otherwise, the only costs allowed in respect of HMRC charges are those specified in this Section.

(3) For the purpose of this Section—

- (a) 'His Majesty's Revenue and Customs charges' means the fixed costs set out in Table 8 and Table 9;
- (b) 'HMRC Officer' means a person appointed by the Commissioners under section 2 of the Commissioners for Revenue and Customs Act 2005<sup>(11)</sup> and authorised to conduct County Court proceedings for recovery of debt under section 25(1A) of that Act;
- (c) 'debt' means any sum payable to the Commissioners under or by virtue of an enactment or under a contract settlement; and
- (d) 'Commissioners' means commissioners for HMRC appointed under section 1 of the Commissioners for Revenue and Customs Act 2005.

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

---

(11) 2005 c. 11.

- (5) Any appropriate court fee shall be allowed in addition to the costs set out in this Section.
- (6) The claim form may include a claim for fixed commencement costs.

**Amount of fixed commencement costs in a County Court claim for the recovery of money conducted by an HMRC Officer**

- 45.25.** The amount of fixed commencement costs in a claim to which rule 45.24 applies—
- (a) is set out in Table 8; and
  - (b) the amount claimed in the claim form is to be used for determining which claim band in Table 8 applies.

**Fixed costs on entry of judgment in a County Court claim for recovery of money conducted by an HMRC Officer**

- 45.26.** Where—
- (a) an HMRC Officer has claimed fixed commencement costs under Rule 45.25; and
  - (b) judgment is entered in a claim to which rule 45.24 applies,
- the amount to be included in the judgment for HMRC charges is the total of—
- (i) the fixed commencement costs; and
  - (ii) the amount in Table 9 relevant to the value of the claim.

*SECTION IV*

*The Pre-Action Protocols for Low Value Personal Injury Claims in Road Traffic Accidents and Low Value Personal Injury (Employers' Liability and Public Liability) Claims*

**Scope and interpretation**

- 45.27.—**(1) This Section applies to claims that have been or should have been started under Part 8 in accordance with Practice Direction 49F ('the Stage 3 Procedure').
- (2) A reference to Claim Notification Form or Court Proceedings Pack is a reference to the form used in the relevant Protocol.

**Application of fixed costs and disbursements**

- 45.28.** The only costs allowed are—
- (a) the fixed costs in accordance with Table 10 and Table 11; and
  - (b) the disbursements in accordance with Section IX of this Part.

**Amount of fixed costs**

- 45.29.—**(1) In Table 10 and Table 11—
- 'Type A fixed costs' means the legal representative's costs;
  - 'Type B fixed costs' means the advocate's costs; and
  - 'Type C fixed costs' means the costs for the advice on the amount of damages where the claimant is a child.
- (2) 'Advocate' means a person exercising a right of audience as a representative of, or on behalf of, a party.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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

- 45.30.** Where rule 36.29(1)(b) or (c) applies, the court shall order the defendant to pay
- (a) where not already paid by the defendant, the Stage 1 and 2 fixed costs;
  - (b) where the claim is determined—
    - (i) on the papers, Stage 3 Type A fixed costs;
    - (ii) at a Stage 3 hearing, Stage 3 Type A and B fixed costs; or
    - (iii) at a Stage 3 hearing and the claimant is a child, Type A, B and C fixed costs; and
  - (c) disbursements allowed in accordance with Section IX of this Part.

**Settlement at Stage 2 or Stage 3 where the claimant is a child**

- 45.31.—**(1) This rule applies where—
- (a) the claimant is a child;
  - (b) there is a settlement—
    - (i) at Stage 2 of the relevant Protocol; or
    - (ii) after proceedings are started under the Stage 3 Procedure and the settlement is more than the defendant's relevant Protocol offer; and
  - (c) an application is made to the court to approve the settlement.
- (2) Where the court approves the settlement—
- (a) where paragraph (1)(b)(i) applies, at a settlement hearing at Stage 2 of the relevant Protocol; or
  - (b) where paragraph (1)(b)(ii) applies, at the settlement hearing under the Stage 3 procedure,

it shall order the defendant to pay—

- (i) the Stage 1 and 2 fixed costs;
- (ii) the Stage 3 Type A, B and C fixed costs; and
- (iii) disbursements allowed in accordance with Section IX of this Part.

- (3) Where the court does not approve the settlement—
- (a) at a settlement hearing at Stage 2 of the relevant Protocol; or
  - (b) at the settlement hearing under the Stage 3 procedure,

it shall order the defendant to pay the Stage 1 and 2 fixed costs.

(4) Paragraphs (5) and (6) apply where the court does not approve the settlement at the first settlement hearing but does approve the settlement at—

- (a) where paragraph (1)(b)(i) applies, a second settlement hearing; or
- (b) where paragraph (1)(b)(ii) applies, the Stage 3 hearing.

(5) At the second settlement hearing or Stage 3 hearing, as appropriate, the court shall order the defendant to pay—

- (a) the Stage 3 Type A and C fixed costs for the first settlement hearing;
- (b) disbursements allowed in accordance with Section IX of this Part; and
- (c) the Stage 3 Type B fixed costs for one of the hearings.

(6) The court in its discretion may also order—

- (a) the defendant to pay an additional amount of either or both the Stage 3—
  - (i) Type A fixed costs;
  - (ii) Type B fixed costs; or
- (b) the claimant to pay an amount equivalent to either or both of the Stage 3—
  - (i) Type A fixed costs;
  - (ii) Type B fixed costs.

(7) Where paragraph (1)(b)(ii) applies and the settlement is not approved at the Stage 3 hearing the court shall order the defendant to pay the Stage 3 Type A fixed costs.

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

**45.32.** Where

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

the court shall order the defendant to pay—

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

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

**45.33.** Where

- (a) there is a settlement after the Court Proceedings Pack has been sent to the defendant but before proceedings are issued under Stage 3; and
- (b) the settlement is more than the defendant’s relevant Protocol offer,

the fixed costs shall include an additional amount equivalent to the Stage 3 Type A fixed costs.

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

**45.34.—(1)** Where—

- (a) the value of the claim for damages is more than £10,000;
- (b) an additional advice has been obtained from a specialist legal representative, and that advice—
  - (i) is within the legal representative’s specialist expertise; and
  - (ii) is reasonably required to value the claim,

the fixed costs may include an additional amount equivalent to the Stage 3 Type C fixed costs.

(2) In a claim to which the RTA Protocol applies—

- (a) vehicle related damages are excluded for the purpose of valuing a claim under paragraph (1)(a); and
- (b) ‘vehicle related damages’ has the meaning ascribed to it by paragraph 1.1(18) of the RTA Protocol.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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

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

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

and starts proceedings under Part 7.

(2) Subject to paragraph (3), where a judgment is given in favour of the claimant but—

- (a) the court determines that the defendant did not proceed with the process set out in the relevant Protocol because the claimant provided insufficient information on the Claim Notification Form;
- (b) the court considers that the claimant acted unreasonably—
  - (i) by discontinuing the process set out in the relevant Protocol and starting proceedings under Part 7;
  - (ii) by valuing the claim at more than £25,000, so that the claimant did not need to comply with the relevant Protocol; or
  - (iii) except for paragraph (2)(a), in any other way that caused the process in the relevant Protocol to be discontinued; or
- (c) the claimant did not comply with the relevant Protocol at all despite the claim falling within the scope of the relevant Protocol,

the court may order the defendant to pay no more than the fixed costs in rule 45.28 together with the disbursements allowed in accordance with Section IX of this Part.

(3) Where a judgment is given in favour of the claimant but the claimant did not comply with the process in paragraph 6.3A(2) of the RTA Protocol, the court may not order the defendant to pay the claimant’s costs and disbursements save in exceptional circumstances.

(4) Where the claimant starts proceedings under paragraph 7.28 of the RTA Protocol or paragraph 7.26 of the EL/PL Protocol and the court orders the defendant to make an interim payment of no more than the interim payment made under paragraph 7.14(2) or (3) of the RTA Protocol or paragraph 7.17(2) or (3) of the EL/PL Protocol the court shall, on the final determination of the proceedings, order the defendant to pay no more than—

- (a) the Stage 1 and 2 fixed costs; and
- (b) the disbursements allowed in accordance with Section IX of this Part.

(5) Nothing in Section VI or Section VII of this Part shall prevent the court making an order under this rule where appropriate.

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

**45.36.**—(1) This rule applies where an application is made under rule 45.40 (costs-only application after a claim is started under Part 8 in accordance with Practice Direction 49F).

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

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

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

- (a) the Stage 1 and 2 fixed costs where not already paid by the defendant; and
  - (b) disbursements allowed in accordance with Section IX of this Part.
- (4) The court may, in its discretion, order either party to pay the costs of the application.

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

- 45.37.** Where rule 36.29(1)(a) applies, the court shall order the claimant to pay
- (a) where the claim is determined—
    - (i) on the papers, Stage 3 Type A fixed costs; or
    - (i) at a hearing, Stage 3 Type A and B fixed costs;
  - (b) any Stage 3 disbursements allowed in accordance with Section IX of this Part.

**Adjournment**

- 45.38.** Where the court adjourns a settlement hearing or a Stage 3 hearing it may, in its discretion, order a party to pay
- (a) an additional amount of the Stage 3 Type B fixed costs; and
  - (b) any court fee for that adjournment.

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

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

**Costs-only application after a claim is started under Part 8 in accordance with Practice Direction 49F**

- 45.40.—**(1) This rule sets out the procedure where—
- (a) the parties to a dispute have reached an agreement on all issues (including which party is to pay the costs) which is made or confirmed in writing; but
  - (b) they have failed to agree the amount of those costs; and
  - (c) proceedings have been started under Part 8 in accordance with Practice Direction 49F.
- (2) Either party may make an application for the court to determine the costs.
- (3) Where an application is made under this rule the court shall assess the costs in accordance with the relevant provisions in rule 45.31 in so far as that rule applies to proceedings started under the Stage 3 Procedure and the settlement is more than the defendant's relevant Protocol offer or rule 45.36.
- (4) Rule 44.5 (amount of costs where costs are payable pursuant to a contract) does not apply to an application under this rule.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SECTION V

### *The Pre-Action Protocol for Personal Injury Claims Below The Small Claims Limit in Road Traffic Accidents*

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

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

(a) does not comply with the process set out in the Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents (‘the RTA Small Claims Protocol’); or

(b) either—

(i) elects not to continue with that process; or

(ii) elects not to proceed with that process having been notified by the defendant pursuant to paragraph 6.15(4)(b) of the RTA Protocol that if proceedings were issued, the small claims track would be the normal track for that claim,

and starts proceedings under Part 7 which are not allocated to the small claims track.

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

(a) the court considers that the claimant acted unreasonably—

(i) by valuing the overall claim at more than £10,000 or the claim for damages for injury at more than £5,000, so that the claimant did not need to comply with the RTA Small Claims Protocol;

(ii) by electing not to proceed under the RTA Small Claims Protocol, following notification pursuant to paragraph 6.15(4)(b) of the RTA Protocol; or

(iii) in any other way that caused the process in the RTA Small Claims Protocol to be discontinued; or

(b) the claimant did not comply with the RTA Small Claims Protocol at all despite the claim falling within the scope of the Protocol,

the court may order the defendant to pay no more than the fixed costs together with disbursements allowed in accordance with paragraphs 1.13 and 1.14 of Practice Direction 27B.

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

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

(a) a claim has been started under the RTA Small Claims Protocol, but no longer continues under that Protocol; and

(b) the claim has not subsequently proceeded under the RTA Protocol.

(2) Where this rule applies, Section VI of this Part applies as though the claim had started under the RTA Protocol, except where—

(a) the court makes an order under rule 45.41; or

(b) the claim no longer continues under the RTA Small Claims Protocol because either the claimant or defendant becomes a protected party as defined in rule 21.1(2).



## SECTION VI

### *Fixed Costs in the Fast Track*

#### **Scope**

**45.43.**—(1) This Section applies to any claim which would normally be or is allocated to the fast track.

(2) This Section does not apply where Section IV, Section VII or Section VIII of this Part applies.

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

**45.44.** For so long as the claim is allocated neither to the small claims track, the intermediate track or the multi-track, the only costs allowed in any claim which would normally be or is allocated to the fast track are

- (a) the fixed costs in Table 12; and
- (b) the disbursements as set out in Section IX of this Part.

#### **Fixed costs**

**45.45.**—(1) In Table 12—

- (a) unless stated otherwise, “damages”—
  - (i) means any form of monetary relief;
  - (ii) in a claim which has no monetary value, shall be taken to mean an amount equivalent to—
    - (aa) £10,000 in a claim assigned to complexity band 2;
    - (bb) £15,000 in a claim assigned to complexity band 3; and
    - (cc) £20,000 in a claim assigned to complexity band 4;
  - (iii) in a claim which includes both a claim for monetary relief and a claim which has no monetary value, means the applicable amount in sub-paragraph (ii) taken together with the monetary value in sub-paragraph (i); and
  - (iv) in so far as it applies to monetary relief, means—
    - (aa) agreed damages; or
    - (bb) an amount awarded following trial;

(Rule 44.2 provides that the court has a discretion as to the costs order to be made including whether an order for costs relating only to a distinct part of the proceedings is appropriate.)

- (b) the figures in each of stages A to C are the cumulative totals for costs incurred up to and including that stage;
- (c) the figures in stage D are separate sums where the claim is disposed of at trial; and
- (d) a reference to a ‘trial’ is a reference to the final hearing.

#### **Specialist legal advice**

**45.46.**—(1) Where a claim would normally be assigned to complexity band 4, under rule 26.15 in addition to the costs allowable in Table 12, the fixed costs may include an amount in accordance with Table 13.

(2) The additional costs in Table 13 are only allowable where—

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (a) the legal advice is obtained from, or a statement of case is drafted by—
    - (i) a specialist legal representative in respect of a matter within their specialist expertise; or
    - (ii) the intended trial advocate; and
  - (b) the use of that person to provide the advice or draft the statement of case is justified.
- (3) A court may only order payment for one advice in writing or in conference unless further advice is justified.
- (Rule 2.3 defines ‘legal representative’.)

#### **Advice obtained in claims started under the RTA Protocol or the EL/PL Protocol**

**45.47.**—(1) This rule applies where a claim has been started under the RTA Protocol or the EL/PL Protocol.

- (2) Where this rule applies and—
  - (a) an advice has been obtained from a legal representative as provided for in the relevant Protocol; or
  - (b) an advice has been obtained from a specialist legal representative on the amount of damages where the claimant is a child and that advice—
    - (i) is within the legal representative’s particular expertise; and
    - (ii) is reasonably required to value the claim,

the fixed costs may include an additional amount of £150.

#### **Preliminary issue or separate trial**

**45.48.**—(1) Where a costs order is made in favour of a party in respect of a preliminary issue, that party is entitled to the fixed costs in Table 12 for the stage applicable at the date the preliminary issue is concluded, together with such disbursements as are allowed in accordance with Section IX of this Part.

(2) Where a claim continues following the conclusion of a preliminary issue and a costs order is made in favour of a party on conclusion of the claim, that party shall be entitled to—

- (a) additional fixed costs, if it is the party in whose favour a costs order is made under paragraph (1); or
- (b) fixed costs, if the party is not a party in whose favour a costs order is made under paragraph (1),

being in either case the amount specified for the stage in Table 12 within which the claim concludes, less the applicable amount in stage B(1), together with such disbursements as are allowed in accordance with Section IX of this Part.

### *SECTION VII*

#### *Fixed Costs in the Intermediate Track*

#### **Scope**

**45.49.**—(1) This Section sets out the costs which are to be allowed in any claim which would normally be or is allocated to the intermediate track.

(2) This Section does not apply where Section IV, Section VI or Section VIII of this Part applies.

### **Amount of fixed costs**

**45.50.**—(1) For as long as the case is not allocated to the multi-track, the only costs allowed in any claim which would normally be or is allocated to the intermediate track are—

- (a) the fixed costs in Table 14; and
- (b) the disbursements as set out in Section IX of this Part.

(2) In Table 14—

- (a) a reference to a date set by the court means the first date so set, notwithstanding that the parties may agree an extension to a later date, unless the court orders otherwise;
- (b) unless stated otherwise, “damages”—
  - (i) means any form of monetary relief; or
  - (ii) in a claim which has no monetary value, shall be taken to mean an amount equivalent to—
    - (aa) £25,000 in a claim assigned to complexity band 1;
    - (bb) £50,000 in a claim assigned to complexity band 2;
    - (cc) £75,000 in a claim assigned to complexity band 3; and
    - (dd) £100,000 in a claim assigned to complexity band 4;
  - (iii) in a claim which includes both a claim for monetary relief and a claim which has no monetary value, means the applicable amount in sub-paragraph (ii) taken together with the monetary value in sub-paragraph (i); and
  - (iv) in so far as it applies to monetary relief, means—
    - (aa) agreed damages; or
    - (bb) an amount awarded following trial;

(Rule 44.2 provides that the court has a discretion as to the costs order to be made including whether an order for costs relating only to a distinct part of the proceedings is appropriate.)

- (c) the figures in each of stages S1, S3, S4, S5, S6 and S8 are the cumulative totals for costs incurred up to and including that stage;
- (d) the figures in stages S2, S7 and S9 to S15 are separate sums for those steps, if carried out; and
- (e) a reference to a ‘trial’ is a reference to the final hearing.

(3) The costs to be awarded for stage S1 are subject to assessment up to a maximum of the figure shown for stage S1 in Table 14, except in a claim for personal injuries where the figure shown is fixed.

(4) The costs in stages S2, S7 and S14 of Table 14 are only allowed where—

- (a) legal advice is obtained from, or a statement of case is drafted by—
- (b) a specialist legal representative in respect of a matter within their specialist expertise; or
- (c) the intended trial advocate; and
- (d) the use of that person to provide the advice or draft the statement of case is justified.

### **Preliminary issue or separate trial**

**45.51.**—(1) Subject to paragraph (3), where a costs order is made in favour of a party in respect of a preliminary issue, that party is entitled to the fixed costs in Table 14 for the stage applicable at the date the preliminary issue is concluded, together with—

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (a) if there has been a trial, those fees appropriate in stages S8 and 9; and
- (b) if appropriate, those costs specified in stages S2, S7, S9, S12, S13 and S14.

(2) Subject to paragraph (3), where a claim continues following the conclusion of a preliminary issue and a costs order is made in favour of a party on conclusion of the claim, that party shall be entitled to—

- (a) additional fixed costs, if it is the party in whose favour a costs order is made under paragraph (1); or
- (b) fixed costs, if the party is not a party in whose favour a costs order is made under paragraph (1),

being in either case the amount specified for the stage in Table 14 within which the claim concludes less the amount in stage S3, together with—

- (c) if there has been a trial, those fees appropriate in stages S8 and 9; and
- (d) if appropriate, those costs specified in stages S9, S12, S13 and S14.

(3) Only one set of fees can be recovered by any one party under stages S13 and S14 whether under paragraph (1) or (2).

(4) The parties are entitled to disbursements allowed in accordance with Section IX of this Part incurred in any period for which costs are payable to them.

## *SECTION VIII*

### *Claims for Noise Induced Hearing Loss*

#### **Scope**

**45.52.**—(1) This Section sets out the costs which are to be allowed in any claim for noise induced hearing loss which—

- (a) has been or should have been started under Annex E of the Pre-Action Protocol for Disease and Illness Claims; and
- (b) would normally be or is allocated to the fast track.

(2) Subject to rule 45.6(3), or unless a rule in this Section provides otherwise, the costs which are to be allowed are applicable to both claimants and defendants.

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

**45.53.**—(1) The only costs allowed in any claim to which this Section applies are—

- (a) the fixed costs in Table 15; and
- (b) the disbursements set out in Section IX of this Part.

(2) The cost of any additional pre-litigation advice is included within the Stage A costs and is not separately recoverable.

#### **More than one defendant**

**45.54.**—(1) ) In Table 15, the reference to the number of defendants is to the number of active defendants against whom the claimant obtains a settlement or an award of damages.

(2) Where the defendants have all admitted liability and coordinate settlement between them, only one set of Stage 2 costs is allowed.

(3) Where at least one defendant admits liability and settles pre-litigation and at least one defendant denies liability—

- (a) the fixed costs payable by those defendants who have admitted liability are 100% of the stage 2A or 2B costs for those defendants as appropriate; and
- (b) Stage 3 and any subsequent stages shall apply to the remaining defendants, provided that the claimant must give credit for the costs already payable under (a), so that the maximum entitlement under any stage is for the applicable stage costs.

#### **Preliminary issues trials**

**45.55.** Where the claimant succeeds at trial of a preliminary issue on limitation and an order for costs is made in favour of the claimant

- (a) the fixed costs may include those stages which would apply as if this was a trial of the claim, including trial advocacy fees; and
- (b) the claimant if successful in their claim for damages is entitled to additional fixed costs for the litigation stages only, starting with stage L2.

#### **Restoration proceedings**

**45.56.** Where

- (a) it is necessary for the claimant to make an application in separate proceedings to restore a defendant company to the Companies Register; and
- (b) the claimant is successful in their claim for damages for noise induced hearing loss and obtains an order for costs against that defendant,

the fixed costs may include the sum of £1,280 (inclusive of any advocate's fees incurred) in respect of the restoration proceedings, together with the disbursements set out in Section IX of this Part.

### *SECTION IX*

#### *Disbursements*

#### **Scope of this section**

**45.57.**—(1) This Section sets out the disbursements which are to be allowed in any claim to which Section IV, Section VI, Section VII or Section VIII of this Part applies.

(2) Subject to rule 45.62, the court—

- (a) may allow a claim for a disbursement of a type mentioned in rules 45.58, 45.59, 45.60 and 45.61, as applicable, and where it does so, the amount to be allowed is that which is reasonable and proportionate; but
- (b) shall not allow a claim for any other type of disbursement.

(3) Where appropriate, VAT may be recovered in addition to the cost of any disbursement allowable under this Section.

#### **Disbursements – Section IV**

**45.58.** In a claim to which Section IV applies, the disbursements to be allowed are

- (a) subject to rule 45.62, the cost of obtaining—
  - (i) medical records; and
  - (ii) expert medical reports as provided for in the relevant Protocol;

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (b) the cost of obtaining non-medical expert reports as provided for in the relevant Protocol;
- (c) court fees payable—
  - (i) as a result of Part 21 being applicable;
  - (ii) where proceedings are started as a result of a limitation period that is about to expire; and
  - (iii) in respect of the Stage 3 Procedure;
- (d) the provider cost of a telephone hearing;
- (e) additionally, in a claim to which the RTA Protocol applies—
  - (i) an engineer's report; and
  - (ii) a search of the records of—
    - (aa) the Driver Vehicle Licensing Authority; and
    - (bb) the Motor Insurance Database; and
- (f) any other disbursement reasonably incurred due to a particular feature of the dispute or any requirement of these Rules.

#### **Disbursements – Section VI**

- 45.59.** In a claim to which Section VI applies, the disbursements to be allowed are
- (a) in a claim started under a relevant Protocol to which Section IV applies—
    - (i) the applicable disbursements referred to in rule 45.58(a) and (b) and (d) to (f);
    - (ii) any court fees;
    - (iii) in a claim which arises from a road traffic accident, the cost of obtaining a police report;
    - (iv) any expert's fee for attending the trial where the court has given permission for the expert to attend;
    - (v) any interpreters' or translators' fees;
    - (vi) expenses which a party or witness has incurred in travelling to and from a hearing or in staying away from home for the purposes of attending a hearing; and
    - (vii) a sum not exceeding the amount specified in Table 16 for any loss of earnings or loss of leave by a party or witness due to attending a hearing or to staying away from home for the purpose of attending a hearing; and
  - (b) in any other claim to which Section VI applies, any disbursement which has been reasonably incurred, other than a disbursement covering work for which costs are already allowed in Section VI.

#### **Disbursements – Section VII**

**45.60.** In a claim to which Section VII applies, the court may allow any disbursement which has been reasonably incurred, other than a disbursement covering work for which costs are already allowed in Section VII.

#### **Disbursements – Section VIII**

**45.61.**—(1) Subject to paragraph (2), in a claim to which Section VIII applies, the disbursements to be allowed are—

- (a) the fees for the intended trial advocate for any step reasonably undertaken where both the use of that advocate and the cost are justified; and
  - (b) any other disbursement which has been reasonably incurred.
- (2) In a claim to which rule 45.56 applies, the disbursements to be allowed are—
- (a) any fees charged by the Government Legal Department or the solicitors to the Duchy of Lancaster or the Duchy of Cornwall;
  - (b) any court fees;
  - (c) the disc fee; and
  - (d) any adjournment fee.

### **Soft tissue injury and whiplash injury claims**

**45.62.**—(1) This rule applies—

- (a) to a soft tissue injury claim; or
- (b) a claim which consists of, or includes, a claim for a whiplash injury,

which arises from a road traffic accident.

(2) Where this rule applies, the only sums (exclusive of VAT) that are recoverable in respect of the cost of obtaining a fixed cost medical report or medical records are as follows—

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

(3) Save in exceptional circumstances, no fee may be allowed for the cost of obtaining a report to which paragraph (1) applies where the medical expert—

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

(4) The cost of obtaining a further report from an expert not listed in paragraph (2) is not fixed, but the use of that expert and the cost must be justified.

(5) In this rule, ‘accredited medical expert’, ‘associate’, ‘associated with’, ‘fixed cost medical report’ ‘MedCo’, ‘soft tissue injury claim’ and ‘whiplash injury’ have the same meaning as in paragraph 1.1(A1), (1A), (10A), (12A), and (16A) and (20), respectively, of the RTA Protocol.”

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

---

## EXPLANATORY NOTE

*(This note is not part of these Rules)*

These Rules amend the Civil Procedure Rules 1998 ('the rules') to extend the application of fixed recoverable costs ('FRC') to most civil proceedings allocated to the fast track and to the newly created intermediate track, which is also established by these Rules.

In particular, these Rules—

- (a) substitute Part 26 (*case management – preliminary stage*) with a revised Part, which—
  - (i) provides for the new intermediate track, including its scope and the matters the court shall have regard to when deciding whether to allocate a claim to that track;
  - (ii) for claims allocated to either the fast track or the intermediate track, also provides for assignment to one of four complexity bands, which will determine the amount of fixed costs allowable in respect of a claim under Part 45, and the matters the court shall have regard to when deciding the complexity band to which a claim should be assigned;
  - (iii) specifies those claims which must be allocated to the multi-track, so will not be subject to fixed costs; and
  - (iv) otherwise preserves the previous rules in Part 26, except for renumbering and minor consequential amendments;
- (b) substitute Part 28 (*the fast track and intermediate track*) with a revised Part, which makes general provision about the management of cases allocated to the fast and intermediate tracks, including provision regarding noise induced hearing loss ('NIHL') claims allocated to the fast track;
- (c) amend Part 36 (*offers to settle*), in respect of which the current provisions for offers to settle in low value personal injury claims, which are already subject to FRC, have been amended in consequence of the extension of FRC to other claims;
- (d) substitute Part 45 (*fixed costs*) with a revised Part, which—
  - (i) specifies the applicable fixed costs and disbursements to be allowed in most claims allocated to either the fast track or the intermediate track and those NIHL claims allocated to the fast track;
  - (ii) specifies those claims allocated to the fast track or the intermediate track to which FRC shall not apply; and
  - (iii) subject to what follows, and except for renumbering and minor amendments, otherwise preserves the previous rules in Part 45 in so far they apply to—
    - (aa) the fixed costs applicable to commencement, entry of judgment and enforcement;
    - (bb) the fixed costs applicable a claim conducted by an HMRC Officer in the County Court for the recovery of a debt;
    - (cc) the fixed costs applicable to claims started, or which should have been started, under the Pre-Action Protocols for Low Value Personal Injury Claims in Road Traffic Accidents and Low Value Personal Injury (Employers' Liability and Public Liability) Claims; and



(dd) the Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents.

Both the new tables of fixed costs and those previously included in Part 45 will, going forward, be set out in Practice Direction 45, to which the rules in Part 45 refer as appropriate.

Further, these Rules make consequential amendments to Parts 2, 3, 16, 21, 27, 29, 39, 44, 46, 52, 54, 55, 63 and 65 of the rules. Additionally, Part 46 now includes in section IX, as inserted by these Rules, those rules concerning costs limits in Aarhus Convention claims previously included in Section VII of Part 45.

A full impact assessment has not been produced for these Rules. An impact assessment prepared by the Ministry of Justice for its 2019 consultation on the extension of fixed recoverable costs, which was revised in 2021 on publication of its consultation response and to which these Rules give effect, is available from the Ministry of Justice at 102 Petty France, London. SW1H 9AJ, and has been published at: [Impact Assessment template \(publishing.service.gov.uk\)](#)