

SCHEDULE 1

Rule 40

“V FIXED RECOVERABLE SUCCESS FEES IN
EMPLOYER'S LIABILITY DISEASE CLAIMS

Scope and Interpretation

- 45.23.**—(1) Subject to paragraph (2), this Section applies where—
- (a) the dispute is between an employee (or, if the employee is deceased, the employee’s estate or dependants) and his employer (or a person alleged to be liable for the employer’s alleged breach of statutory or common law duties of care); and
 - (b) the dispute relates to a disease with which the employee is diagnosed that is alleged to have been contracted as a consequence of the employer’s alleged breach of statutory or common law duties of care in the course of the employee’s employment; and
 - (c) the claimant has entered into a funding arrangement of a type specified in rule 43.2(1)(k)(i).
- (2) This Section does not apply where—
- (a) the claimant sent a letter of claim to the defendant containing a summary of the facts on which the claim is based and main allegations of fault before 1st October 2005; or
 - (b) rule 45.20(2)(b) applies.
- (3) For the purposes of this Section—
- (a) rule 45.15(6) applies;
 - (b) “employee” has the meaning given to it by section 2(1) of the Employers' Liability (Compulsory Insurance) Act 1969;
 - (c) “Type A claim” means a claim relating to a disease or physical injury alleged to have been caused by exposure to asbestos;
 - (d) “Type B claim” means a claim relating to—
 - (i) a psychiatric injury alleged to have been caused by work-related psychological stress;
 - (ii) a work-related upper limb disorder which is alleged to have been caused by physical stress or strain, excluding hand/arm vibration injuries; and
 - (e) “Type C claim” means a claim relating to a disease not falling within either type A or type B.

(The Table annexed to the Practice Direction supplementing Part 45 contains a non-exclusive list of diseases within Type A and Type B).

Percentage increase of solicitors' fees

- 45.24.**—(1) In the cases to which this Section applies, subject to rule 45.26, the percentage increase which is to be allowed in relation to solicitors' fees is—
- (a) 100% if the claim concludes at trial; or
 - (b) where—
 - (i) the claim concludes before a trial has commenced; or
 - (ii) the dispute is settled before a claim is issued,to be determined by rule 45.24(2).

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(2) Where rule 45.24(1)(b) applies, the percentage increase which is to be allowed in relation to solicitors' fees is—

- (a) in type A claims—
 - (i) 30% if a membership organisation has undertaken to meet the claimant's liabilities for legal costs in accordance with section 30 of the Access to Justice Act 1999; and
 - (ii) 27.5% in any other case;
- (b) in type B claims, 100%; and
- (c) in type C claims—
 - (i) 70% if a membership organisation has undertaken to meet the claimant's liabilities for legal costs in accordance with section 30 of the Access to Justice Act 1999; and
 - (ii) 62.5% in any other case.

("Membership organisation" is defined in rule 43.2(1)(n)).

Percentage increase of counsel's fees

45.25.—(1) In the cases to which this Section applies, subject to rule 45.26, the percentage increase which is to be allowed in relation to counsel's fees is—

- (a) 100% if the claim concludes at trial; or
- (b) where—
 - (i) the claim concludes before a trial has commenced; or
 - (ii) the dispute is settled before a claim is issued,
 to be determined by rule 45.25(2).

(2) Where rule 45.25(1)(b) applies, the percentage increase which is to be allowed in relation to counsel's fees is—

- (a) if the claim has been allocated to the fast track, the amount shown in Table 6; and
- (b) if the claim has been allocated to the multi-track, the amount shown in Table 7.

(3) Where a trial period has been fixed, rules 45.17(2) to 45.17(5) apply for the purposes of determining the date fixed for the commencement of the trial.

Table 6

Claims allocated to the fast track		
	If the claim concludes 14 days or less before the date fixed for commencement of the trial	If the claim concludes more than 14 days before the date fixed for commencement of the trial or before any such date has been fixed
Type A claim	50%	27.5%
Type B claim	100%	100%
Type C claim	62.5%	62.5%

Table 7

Claims allocated to the multi-track

	If the claim concludes 21 days or less before the date fixed for commencement of the trial	If the claim concludes more than 21 days before the date fixed for commencement of the trial or before any such date has been fixed
Type A claim	75%	27.5%
Type B claim	100%	100%
Type C claim	75%	62.5%

Alternative percentage increase

45.26.—(1) In cases to which this Section applies and subject to paragraph (2) below, rules 45.18(2) to (4) apply where the percentage increase is the amount allowed under rules 45.24 and 45.25.

(2) For the purposes of this section, the sum of £250,000 shall be substituted for the sum of £500,000 in rules 45.18(2)(a) to (c).

(3) Where the percentage increase of fees is assessed by the court under rule 45.18(4), as applied by paragraph 1 above, the percentage increase to be allowed shall be the amount shown in Table 8.

(4) The percentage increase cannot be varied where the case concludes at trial.

Table 8

Type of claim	Amount Allowed	
A	If the percentage increase is assessed as greater than 40% or less than 15%, the percentage increase that is assessed by the court.	If the percentage increase is assessed as no greater than 40% and no less than 15%— (i) 27.5%; and (ii) the costs of the application and assessment shall be paid by the applicant.
B	If the percentage increase is assessed as less than 75%, the percentage increase that is assessed by the court.	If the percentage increase is assessed as no less than 75%— (i) 100%; and (ii) the costs of the application and assessment shall be paid by the applicant.
C	If the percentage increase is assessed as greater than 75% or less than 50%, the percentage increase that is assessed by the court.	If the percentage increase is assessed as no greater than 75% and no less than 50%— (i) 62.5%; and (ii) the costs of the application and assessment shall be paid by the applicant.”

SCHEDULE 2

Rule 49

**“PART 66
CROWN PROCEEDINGS**

Contents of this Part

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Scope of this Part and interpretation

66.1.—(1) This Part contains rules for civil proceedings by or against the Crown, and other civil proceedings to which the Crown is a party.

(2) In this Part—

- (a) “the Act” means the Crown Proceedings Act 1947;
- (b) “civil proceedings by the Crown” means the civil proceedings described in section 23(1) of the Act, but excluding the proceedings described in section 23(3);
- (c) “civil proceedings against the Crown” means the civil proceedings described in section 23(2) of the Act, but excluding the proceedings described in section 23(3);
- (d) “civil proceedings to which the Crown is a party” has the same meaning as it has for the purposes of Parts III and IV of the Act by virtue of section 38(4).

Application of the Civil Procedure Rules

66.2 These Rules and their practice directions apply to civil proceedings by or against the Crown and to other civil proceedings to which the Crown is a party unless this Part, a practice direction or any other enactment provides otherwise.

Action on behalf of the Crown

66.3.—(1) Where by reason of a rule, practice direction or court order the Crown is permitted or required—

- (a) to make a witness statement,
- (b) to swear an affidavit,
- (c) to verify a document by a statement of truth;
- (d) to make a disclosure statement; or
- (e) to discharge any other procedural obligation,

that function shall be performed by an appropriate officer acting on behalf of the Crown.

- (2) The court may if necessary nominate an appropriate officer.

Counterclaims, other Part 20 claims, and set-off

66.4.—(1) In a claim by the Crown for taxes, duties or penalties, the defendant cannot make a counterclaim or other Part 20 claim or raise a defence of set-off.

(2) In any other claim by the Crown, the defendant cannot make a counterclaim or other Part 20 claim or raise a defence of set-off which is based on a claim for repayment of taxes, duties or penalties.

(3) In proceedings by or against the Crown in the name of the Attorney-General, no counterclaim or other Part 20 claim can be made or defence of set-off raised without the permission of the court.

(4) In proceedings by or against the Crown in the name of a government department, no counterclaim or other Part 20 claim can be made or defence of set-off raised without the permission of the court unless the subject-matter relates to that government department.

Applications in revenue matters

66.5.—(1) This rule sets out the procedure under section 14 of the Act, which allows the Crown to make summary applications in the High Court in certain revenue matters.

(2) The application must be made in the High Court using the Part 8 procedure.

(3) The title of the claim form must clearly identify the matters which give rise to the application.

Enforcement against the Crown

66.6.—(1) The following rules do not apply to any order against the Crown—

- (a) Parts 69 to 73;
- (b) RSC Orders 45 to 47 and 52; and
- (c) CCR Orders 25 to 29.

(2) In paragraph (1), “order against the Crown” means any judgment or order against the Crown, a government department, or an officer of the Crown as such, made—

- (a) in civil proceedings by or against the Crown;
- (b) in proceedings in the Administrative Court;
- (c) in connection with an arbitration to which the Crown is a party; or
- (d) in other civil proceedings to which the Crown is a party.

(3) An application under section 25(1) of the Act for a separate certificate of costs payable to the applicant may be made without notice.

Money due from the Crown

66.7.—(1) None of the following orders—

- (a) a third party debt order under Part 72;
- (b) an order for the appointment of a receiver under Part 69; or
- (c) an order for the appointment of a sequestrator under RSC Order 45,

may be made or have effect in respect of any money due from the Crown.

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(2) In paragraph (1), “money due from the Crown” includes money accruing due, and money alleged to be due or accruing due.

(3) An application for an order under section 27 of the Act—

(a) restraining a person from receiving money payable to him by the Crown; and

(b) directing payment of the money to the applicant or another person,

may be made under Part 23.

(4) The application must be supported by written evidence setting out the facts on which it is based, and in particular identifying the debt from the Crown.

(5) Where the debt from the Crown is money in a National Savings Bank account, the witness must if possible identify the number of the account and the name and address of the branch where it is held.

(6) Notice of the application, with a copy of the written evidence, must be served—

(a) on the Crown, and

(b) on the person to be restrained,

at least 7 days before the hearing.

(7) Rule 72.8 applies to an application under this rule as it applies to an application under rule 72.2 for a third party debt order, except that the court will not have the power to order enforcement to issue against the Crown.”

SCHEDULE 3

Rule 52

“V EUROPEAN ENFORCEMENT ORDERS

Interpretation

74.27 In this Section—

(a) “European Enforcement Order” has the meaning given in the EEO Regulation;

(b) “EEO” means European Enforcement Order;

(c) “judgment”, “authentic instrument”, “member state of origin”, “member state of enforcement”, and “court of origin” have the meanings given by Article 4 of the EEO Regulation; and

(d) “Regulation State” has the same meaning as “Member State” in the EEO Regulation, that is all Member States except Denmark.

Certification of Judgments of the Courts of England and Wales

74.28 An application for an EEO certificate must be made by filing the relevant practice form in accordance with Article 6 of the EEO Regulation.

Applications for a certificate of lack or limitation of enforceability

74.29 An application under Article 6(2) of the EEO Regulation for a certificate indicating the lack or limitation of enforceability of an EEO certificate must be made to the court of origin by application in accordance with Part 23.

Applications for rectification or withdrawal

74.30 An application under Article 10 of the EEO Regulation for rectification or withdrawal of an EEO certificate must be made to the court of origin and may be made by application in accordance with Part 23.

Enforcement of European Enforcement Orders in England and Wales

74.31.—(1) A person seeking to enforce an EEO in England and Wales must lodge at the court in which enforcement proceedings are to be brought the documents required by Article 20 of the EEO Regulation.

(2) Where a person applies—

(a) to the High Court for a charging order, a writ of *feri facias* or an attachment of earnings order; or

(b) to the county court for a warrant of execution or an attachment of earnings order,

to enforce an EEO expressed in a foreign currency, the application must contain a certificate of the sterling equivalent of the judgment sum at the close of business on the date nearest preceding the date of issue of the application.

(Section 1 of the Charging Orders Act 1979 provides that the High Court only has jurisdiction to make a charging order where the amount of the original judgment exceeds the county court limit.)

(Article 8 of the High Court and County Courts Jurisdiction Order 1991 provides that (1) judgments in excess of £5,000 shall only be enforced by execution against goods in the High Court (2) those in excess of £600 may be enforced in the High Court and (3) those for less than £600 shall only be enforced in the county court.).

Refusal of Enforcement

74.32.—(1) An application under Article 21 of the EEO Regulation that the court should refuse to enforce an EEO must be made by application in accordance with Part 23 to the court in which the EEO is being enforced.

(2) The judgment debtor must, as soon as practicable, serve copies of any order made under Article 21(1) on—

(a) all other parties to the proceedings and any other person affected by the order; and

(b) any court in which enforcement proceedings are pending in England and Wales.

(3) Upon service of the order on those persons all enforcement proceedings in England and Wales under the EEO, in respect of those persons upon whom, and those courts at which, the order has been served in accordance with paragraph (2), will cease.

Stay or limitation of enforcement

74.33.—(1) Where an EEO certificate has been lodged and the judgment debtor applies to stay or limit the enforcement proceedings under Article 23 of the EEO Regulation, such application must be made by application in accordance with Part 23 to the court in which the EEO is being enforced.

(2) The judgment debtor shall, as soon as practicable, serve a copy of any order made under the Article on—

(a) all other parties to the proceedings and any other person affected by the order; and

(b) any court in which enforcement proceedings are pending in England and Wales;

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and the order will not have effect on any person until it has been served in accordance with this rule and they have received it.”