
STATUTORY INSTRUMENTS

2020 No. 759

The Criminal Procedure Rules 2020

PART 45

COSTS

OTHER COSTS ORDERS

Costs against a legal representative

45.9.—(1) This rule applies where—

- (a) a party has incurred costs—
 - (i) as a result of an improper, unreasonable or negligent act or omission by a legal or other representative or representative’s employee, or
 - (ii) which it has become unreasonable for that party to have to pay because of such an act or omission occurring after those costs were incurred; and
 - (b) the court can—
 - (i) order the representative responsible to pay such costs, or
 - (ii) prohibit the payment of costs to that representative.
- (2) In this rule, costs include costs met by legal aid.
- (3) The court may make an order—
- (a) on application by the party who incurred such costs; or
 - (b) on its own initiative.
- (4) A party who wants the court to make an order must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so, and in any event no later than the end of the case;
 - (b) serve the application on—
 - (i) the court officer (or, in the Court of Appeal, the Registrar),
 - (ii) the representative responsible,
 - (iii) each other party, and
 - (iv) any other person directly affected; and
 - (c) in that application specify—
 - (i) the representative responsible,
 - (ii) the relevant act or omission,
 - (iii) the reasons why that act or omission meets the criteria for making an order,
 - (iv) the amount claimed, and

- (v) those on whom the application has been served.
- (5) Where the court considers making an order on its own initiative, it must—
 - (a) identify the representative against whom it proposes making that order; and
 - (b) specify—
 - (i) the relevant act or omission,
 - (ii) the reasons why that act or omission meets the criteria for making an order, and
 - (iii) with the assistance of the party who incurred the costs, the amount involved.
- (6) A representative who wants to oppose an order must—
 - (a) make representations as soon as practicable; and
 - (b) in reply to an application, serve representations on the applicant and on the court officer (or Registrar) not more than 5 business days after it was served.
- (7) If the court makes an order—
 - (a) the general rule is that it must do so without waiting until the end of the case, but it may postpone making the order; and
 - (b) it must assess the amount itself.
- (8) To help assess the amount, the court may direct an enquiry by—
 - (a) the Lord Chancellor, where the assessment is by a magistrates' court or by the Crown Court; or
 - (b) the Registrar, where the assessment is by the Court of Appeal.
- (9) In deciding whether to direct such an enquiry, the court must have regard to all the circumstances including—
 - (a) any agreement between the parties about the amount to be paid;
 - (b) the amount likely to be allowed;
 - (c) the delay and expense that may be incurred in the conduct of the enquiry; and
 - (d) the particular complexity of the assessment, or the difficulty or novelty of any aspect of the assessment.
- (10) If the court directs such an enquiry—
 - (a) paragraphs (3) to (8) inclusive of rule 45.11 (Assessment and re-assessment) apply as if that enquiry were an assessment under that rule (but rules 45.12 (Appeal to a costs judge) and 45.13 (Appeal to a High Court judge) do not apply);
 - (b) the authority that carries out the enquiry must serve its conclusions on the court officer as soon as reasonably practicable after following that procedure; and
 - (c) the court must then assess the amount to be paid.
- (11) Instead of making an order, the court may make adverse observations about the representative's conduct for use in an assessment where—
 - (a) a party's costs are—
 - (i) to be met by legal aid, or
 - (ii) to be paid out of central funds; or
 - (b) there is to be an assessment under rule 45.11.

[Note. See—

- (a) rule 45.2;

(b) *section 19A of the Prosecution of Offences Act 1985*(1);

(c) *article 17 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008*(2).

Under section 19A(1) of the 1985 Act, the court's power to make a costs order to which this rule applies can only be exercised during the proceedings.

The Criminal Costs Practice Direction sets out a form of application for use in connection with this rule.

Part 34 (Appeal to the Crown Court) and Part 39 (Appeal to the Court of Appeal about conviction or sentence) contain rules about appeals against a costs order to which this rule applies.]

(1) 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).

(2) S.I. 2008/1863.