

STATUTORY INSTRUMENTS

1998 No. 3132

The Civil Procedure Rules 1998

[^{F1}PART 46

COSTS –SPECIAL CASES

[^{F1}SECTION I

Costs Payable by or to Particular Persons

Textual Amendments

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

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

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

- (a) for an order under—
 - (i) section 33 of the Senior Courts Act 1981; or
 - (ii) section 52 of the County Courts Act 1984,

(which give the court powers exercisable before commencement of proceedings); or

- (b) for an order under—
 - (i) section 34 of the Senior Courts Act 1981; or
 - (ii) section 53 of the County Courts Act 1984,

(which give the court power to make an order against a non-party for disclosure of documents, inspection of property etc.).

(2) The general rule is that the court will award the person against whom the order is sought that person's costs—

- (a) of the application; and
- (b) of complying with any order made on the application.

(3) The court may however make a different order, having regard to all the circumstances, including—

- (a) the extent to which it was reasonable for the person against whom the order was sought to oppose the application; and
- (b) whether the parties to the application have complied with any relevant pre-action protocol.

Costs orders in favour of or against non-parties

46.2.—(1) Where the court is considering whether to exercise its power under section 51 of the Senior Courts Act 1981 (costs are in the discretion of the court) to make a costs order in favour of or against a person who is not a party to proceedings, that person must—

- (a) be added as a party to the proceedings for the purposes of costs only; and
 - (b) be given a reasonable opportunity to attend a hearing at which the court will consider the matter further.
- (2) This rule does not apply—
- (a) where the court is considering whether to—
 - (i) make an order against the Lord Chancellor in proceedings in which the Lord Chancellor has provided legal aid to a party to the proceedings;
 - (ii) make a wasted costs order (as defined in rule 46.8); and
 - (b) in proceedings to which rule 46.1 applies (pre-commencement disclosure and orders for disclosure against a person who is not a party).

Modifications etc. (not altering text)

- C1** Rule 46.2(2)(a)(i) modified (1.4.2013) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Consequential, Transitional and Saving Provisions\) Regulations 2013 \(S.I. 2013/534\)](#), regs. 1, [14\(4\)\(b\)](#)

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

46.3.—(1) This rule applies where—

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

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

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

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

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

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

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

(2) The general rule is that—

- (a) the court must order a detailed assessment of the costs payable by, or out of money belonging to, any party who is a child or protected party; and
- (b) on an assessment under paragraph (a), the court must also assess any costs payable to that party in the proceedings, unless—

- (i) the court has issued a default costs certificate in relation to those costs under rule 47.11; or

(ii) the costs are payable in proceedings to which [F²Section IV] of Part 45 applies.

(3) The court need not order detailed assessment of costs in the circumstances set out in [F³paragraph (5) or in] Practice Direction 46.

(4) Where—

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

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

[F⁴(5) Where the costs payable comprise only the success fee claimed by the child's or protected party's legal representative under a conditional fee agreement or the balance of any payment under a damages based agreement, the court may direct that—

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

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

Textual Amendments

- F2** Words in rule 46.4(2)(b)(ii) substituted (1.10.2023) by [The Civil Procedure \(Amendment No. 2\) Rules 2023 \(S.I. 2023/572\)](#), rules 1(1), **16(2)** (with rule 2)
- F3** Words in rule 46.4(3) inserted (6.4.2015) by [The Civil Procedure \(Amendment No. 2\) Rules 2015 \(S.I. 2015/670\)](#), rules 2(2), **5(a)**
- F4** Rule 46.4(5) inserted (6.4.2015) by [The Civil Procedure \(Amendment No. 2\) Rules 2015 \(S.I. 2015/670\)](#), rules 2(2), **5(b)**

Litigants in person

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

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

(3) The litigant in person shall be allowed—

- (a) costs for the same categories of—
 - (i) work; and
 - (ii) disbursements,

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

- (b) the payments reasonably made by the litigant in person for legal services relating to the conduct of the proceedings; and
- (c) the costs of obtaining expert assistance in assessing the costs claim.

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

- (a) where the litigant can prove financial loss, the amount that the litigant can prove to have been lost for time reasonably spent on doing the work; or
 - (b) where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate set out in Practice Direction 46.
- (5) A litigant who is allowed costs for attending at court to conduct the case is not entitled to a witness allowance in respect of such attendance in addition to those costs.
- (6) For the purposes of this rule, a litigant in person includes—
- (a) a company or other corporation which is acting without a legal representative; and
 - (b) any of the following who acts in person (except where any such person is represented by a firm in which that person is a partner)—
 - (i) a barrister;
 - (ii) a solicitor;
 - (iii) a solicitor’s employee;
 - (iv) a manager of a body recognised under section 9 of the Administration of Justice Act 1985 ; or
 - (v) a person who, for the purposes of the 2007 Act, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act).

Costs where the court has made a group litigation order

- 46.6.**—(1) This rule applies where the court has made a Group Litigation Order (“GLO”).
- (2) In this rule—
- “individual costs” means costs incurred in relation to an individual claim on the group register;
- “common costs” means—
- (i) costs incurred in relation to the GLO issues;
 - (ii) individual costs incurred in a claim while it is proceeding as a test claim, and
 - (iii) costs incurred by the lead legal representative in administering the group litigation; and
- ‘group litigant’ means a claimant or defendant, as the case may be, whose claim is entered on the group register.
- (3) Unless the court orders otherwise, any order for common costs against group litigants imposes on each group litigant several liability for an equal proportion of those common costs.
- [^{F5}(4) The general rule is that a group litigant who is the paying party will, in addition to any liability to pay the receiving party, be liable for—
- (a) the individual costs of that group litigant’s claim; and
 - (b) an equal proportion, together with all the other group litigants, of the common costs.]
- (5) Where the court makes an order about costs in relation to any application or hearing which involved—
- (a) one or more GLO issues; and
 - (b) issues relevant only to individual claims,
- the court will direct the proportion of the costs that is to relate to common costs and the proportion that is to relate to individual costs.
- (6) Where common costs have been incurred before a claim is entered on the group register, the court may order the group litigant to be liable for a proportion of those costs.

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

(Part 19 sets out rules about group litigation.)

Textual Amendments

F5 Rule 46.6(4) substituted (1.10.2013) by [The Civil Procedure \(Amendment No.7\) Rules 2013 \(S.I. 2013/1974\)](#), rules 2, **21(a)**

Orders in respect of pro bono representation

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

- (a) [^{F6}the] court may order the payment to the prescribed charity of a sum no greater than the costs specified in Part 45 to which the party with pro bono representation would have been entitled in accordance with that Part and in respect of that representation had it not been provided free of charge; or
- (b) where Part 45 does not apply, the court may determine the amount of the payment (other than a sum equivalent to fixed costs) to be made by the paying party to the prescribed charity by—
 - (i) making a summary assessment; or
 - (ii) making an order for detailed assessment,

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

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

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

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

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

Textual Amendments

F6 Word in [rule 46.7\(1\)\(a\)](#) substituted (1.10.2013) by [The Civil Procedure \(Amendment No.7\) Rules 2013 \(S.I. 2013/1974\)](#), rules 2, **21(b)**

Changes to legislation:

There are currently no known outstanding effects for the The Civil Procedure Rules 1998, Cross
Heading: SECTION I.