
STATUTORY INSTRUMENTS

1998 No. 3132

The Civil Procedure Rules 1998

PART 48

COSTS—SPECIAL CASES

SECTION 1—COSTS PAYABLE BY OR TO PARTICULAR PERSONS

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

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

(a) for an order under—

(i) section 33 of the Supreme Court Act 1981(1); or

(ii) section 52 of the County Courts Act 1984(2),

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

(b) for an order under—

(i) section 34 of the Supreme Court Act 1981(3); or

(ii) section 53 of the County Courts Act 1984(4),

(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 his 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.

(1) 1981 c. 54. Section 33 was amended by S.I. 1998/2940.

(2) 1984 c. 28. Section 52 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 43 and by S.I. 1998/2940.

(3) 1981 c. 54. Section 34 was amended by S.I. 1998/2940.

(4) 1984 c. 28. Section 53 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 44 and by S.I. 1998/2940.

Costs orders in favour of or against non-parties

48.2.—(1) Where the court is considering whether to exercise its power under section 51 of the Supreme Court Act 1981⁽⁵⁾ (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—

- (a) that person must be added as a party to the proceedings for the purposes of costs only; and
 - (b) he must 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 Legal Aid Board;
 - (ii) make a wasted costs order (as defined in 48.7); and
 - (b) in proceedings to which rule 48.1 applies (pre-commencement disclosure and orders for disclosure against a person who is not a party).

Amount of costs where costs are payable pursuant to a contract

48.3.—(1) Where the court assesses (whether by the summary or detailed procedure) costs which are payable by the paying party to the receiving party under the terms of a contract, the costs payable under those terms are, unless the contract expressly provides otherwise, to be presumed to be costs which—

- (a) have been reasonably incurred; and
- (b) are reasonable in amount,

and the court will assess them accordingly.

(The costs practice direction sets out circumstances where the court may order otherwise)

- (2) This rule does not apply where the contract is between a solicitor and his client.

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

48.4.—(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 48.3 does not apply.

(2) The general rule is that he is entitled to the costs of those proceedings on the indemnity basis, so far as they are not recovered from or paid by any other person, out of the fund held by him as trustee or personal representative.

(3) The court may order otherwise but only if a trustee or personal representative has acted for a benefit other than that of the fund.

Costs where money is payable by or to a child or patient

48.5.—(1) This rule applies to any proceedings where a party is a child or patient 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 him or on his behalf.

(“Child” and “patient” are defined in rule 2.3)

(5) 1981 c. 54. Section 51 was substituted by section 4(1) of the Courts and Legal Services Act 1990 (c. 41).

(2) The general rule is that—

- (a) the court must order a detailed assessment of the costs payable by any party who is a child or patient to his solicitor; and
- (b) on an assessment under paragraph (a), the court must also assess any costs payable to that party in the proceedings, unless the court has issued a default costs certificate in relation to those costs under rule 47.11.

(3) The court need not order detailed assessment of costs in the circumstances set out in the costs practice direction.

(4) Where—

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

the only amount payable by the child or patient to his solicitor is the amount which the court certifies as payable.

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

Litigants in person

48.6.—(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 must 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) Costs allowed to the litigant in person shall be—

- (a) such costs which would have been allowed if the work had been done or the disbursements made by a legal representative on the litigant in person's behalf;
- (b) the payments reasonably made by him for legal services relating to the conduct of the proceedings; and
- (c) the costs of obtaining expert assistance in connection with assessing the claim for costs.

(The costs practice direction deals with who may be an expert for the purpose of paragraph (2)(c))

(4) Subject to paragraph (2), the amount of costs to be allowed to the litigant in person for any item of work to which the costs relate shall, if he fails to prove financial loss, be an amount in respect of the time spent reasonably doing the work at the rate specified in the costs practice direction.

(5) A litigant who is allowed costs for attending at court to conduct his 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) a barrister, solicitor, solicitor's employee or other authorised litigator (as defined in the Courts and Legal Services Act 1990(6)) who is acting for himself.