

## SCHEDULE 1

### PART II

#### III—FIXED PERCENTAGE INCREASE IN ROAD TRAFFIC ACCIDENT CLAIMS

##### Scope and interpretation

**45.15.**—(1) This Section sets out the percentage increase which is to be allowed in the cases to which this Section applies.

(Rule 43.2(1)(l) defines 'percentage increase' as the percentage by which the amount of a legal representative's fee can be increased in accordance with a conditional fee agreement which provides for a success fee)

(2) This Section applies where—

- (a) the dispute arises from a road traffic accident; and
- (b) the claimant has entered into a funding arrangement of a type specified in rule 43.2(k)(i).

(Rule 43.2(k)(i) defines a funding arrangement as including an arrangement where a person has entered into a conditional fee agreement or collective conditional fee agreement which provides for a success fee)

(3) This Section does not apply if the proceedings are costs only proceedings to which Section II of this Part applies.

(4) This Section does not apply—

- (a) to a claim which has been allocated to the small claims track;
- (b) to a claim not allocated to a track, but for which the small claims track is the normal track; or
- (c) where the road traffic accident which gave rise to the dispute occurred before 6th October 2003.

(5) The definitions in rule 45.7(4) apply to this Section as they apply to Section II.

(6) In this Section—

- (a) a reference to 'fees' is a reference to fees for work done under a conditional fee agreement or collective conditional fee agreement;
- (b) a reference to 'trial' is a reference to the final contested hearing or to the contested hearing of any issue ordered to be tried separately;
- (c) a reference to a claim concluding at trial is a reference to a claim concluding by settlement after the trial has commenced or by judgment; and
- (d) "trial period" means a period of time fixed by the court within which the trial is to take place and where the court fixes more than one such period in relation to a claim, means the most recent period to be fixed.

##### Percentage increase of solicitors' fees

**45.16.** Subject to rule 45.18, the percentage increase which is to be allowed in relation to solicitors' fees is—

- (a) 100% where the claim concludes at trial; or
- (b) 12.5% where—

*Status: This is the original version (as it was originally made).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

- (i) the claim concludes before a trial has commenced; or
- (ii) the dispute is settled before a claim is issued.

**Percentage increase of counsel's fees**

**45.17.**—(1) Subject to rule 45.18, the percentage increase which is to be allowed in relation to counsel's fees is—

- (a) 100% where the claim concludes at trial;
- (b) if the claim has been allocated to the fast track—
  - (i) 50% if the claim concludes 14 days or less before the date fixed for the commencement of the trial; or
  - (ii) 12.5% if the claim concludes more than 14 days before the date fixed for the commencement of the trial or before any such date has been fixed;
- (c) if the claim has been allocated to the multi-track—
  - (i) 75% if the claim concludes 21 days or less before the date fixed for the commencement of the trial; or
  - (ii) 12.5% if the claim concludes more than 21 days before the date fixed for the commencement of the trial or before any such date has been fixed;
- (d) 12.5% where—
  - (i) the claim has been issued but concludes before it has been allocated to a track; or
  - (ii) in relation to costs-only proceedings, the dispute is settled before a claim is issued.

(2) Where a trial period has been fixed, if—

- (a) the claim concludes before the first day of that period; and
- (b) no trial date has been fixed within that period before the claim concludes,

the first day of that period is treated as the date fixed for the commencement of the trial for the purposes of paragraph (1).

(3) Where a trial period has been fixed, if—

- (a) the claim concludes before the first day of that period; but
- (b) before the claim concludes, a trial date had been fixed within that period,

the trial date is the date fixed for the commencement of the trial for the purposes of paragraph (1).

(4) Where a trial period has been fixed and the claim concludes—

- (a) on or after the first day of that period; but
- (b) before commencement of the trial,

the percentage increase in paragraph (1)(b)(i) or (1)(c)(i) shall apply as appropriate, whether or not a trial date has been fixed within that period.

(5) For the purposes of this rule, in calculating the periods of time, the day fixed for the commencement of the trial (or the first day of the trial period, where appropriate) is not included.

**Application for an alternative percentage increase where the fixed increase is 12.5%**

**45.18.**—(1) This rule applies where the percentage increase to be allowed—

- (a) in relation to solicitors' fees under the provisions of rule 45.16; or
- (b) in relation to counsel's fees under rule 45.17,

is 12.5%.

- (2) A party may apply for a percentage increase greater or less than that amount if—
  - (a) the parties agree damages of an amount greater than £500,000 or the court awards damages of an amount greater than £500,000; or
  - (b) the court awards damages of £500,000 or less but would have awarded damages greater than £500,000 if it had not made a finding of contributory negligence; or
  - (c) the parties agree damages of £500,000 or less and it is reasonable to expect that, but for any finding of contributory negligence, the court would have awarded damages greater than £500,000.
- (3) In paragraph (2), a reference to a lump sum of damages includes a reference to periodical payments of equivalent value.
- (4) If the court is satisfied that the circumstances set out in paragraph (2) apply it must—
  - (a) assess the percentage increase; or
  - (b) make an order for the percentage increase to be assessed.

#### **Assessment of alternative percentage increase**

**45.19.**—(1) This rule applies where the percentage increase of fees is assessed under rule 45.18(4).

(2) If the percentage increase is assessed as greater than 20% or less than 7.5%, the percentage increase to be allowed shall be that assessed by the court.

- (3) If the percentage increase is assessed as no greater than 20% and no less than 7.5%—
  - (a) the percentage increase to be allowed shall be 12.5%; and
  - (b) the costs of the application and assessment shall be paid by the applicant.