

STATUTORY INSTRUMENTS

1998 No. 3132

The Civil Procedure Rules 1998

[^{F1}PART 44 **E+W**

General Rules about Costs

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](#))

Modifications etc. (not altering text)

- C1** Pt. 44 applied (with modifications) (1.7.2015) by [S.I. 2007/1744](#), [rule 160](#) (as substituted by [The Court of Protection \(Amendment\) Rules 2015 \(S.I. 2015/548\)](#), rules 1(2)(b), [52](#))
- C2** Pt. 44 applied (5.7.2018) by [The Housing Administration \(England and Wales\) Rules 2018 \(S.I. 2018/719\)](#), rules 1.1, [4.29\(3\)](#) (with [rule 1.2](#))
- C3** Pt. 44 applied (31.1.2019) by [The Education Administration Rules 2018 \(S.I. 2018/1135\)](#), rules 1, [4.27\(3\)](#) (with [rule 1.2](#))
- C4** Pt. 44 applied (1.8.2020) by [The Smart Meter Communication Licensee Administration \(England and Wales\) Rules 2020 \(S.I. 2020/629\)](#), rules 1, [120\(3\)](#) (with [rule 4\(1\)](#))
- C5** Pt. 44 applied (with modifications) (12.11.2021) by [The Payment and Electronic Money Institution Insolvency \(England and Wales\) Rules 2021 \(S.I. 2021/1178\)](#), rules 2, [187](#), 223-231 (with [rule 5](#))

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SECTION I

General

Interpretation and application **E+W**

44.1.—(1) In Parts 44 to 47, unless the context otherwise requires—

“authorised court officer” means any officer of—

- (i) [^{F2}the County Court];
- (ii) a district registry;
- (iii) the [^{F3}the Family Court;]
- (iiia) [^{F4}the High Court; or]
- (v) the Costs Office,

whom the Lord Chancellor has authorised to assess costs;

“conditional fee agreement” means an agreement enforceable under section 58 of the Courts and Legal Services Act 1990 ;

“costs” includes fees, charges, disbursements, expenses, remuneration, reimbursement allowed to a litigant in person under rule 46.5 and any fee or reward charged by a lay representative for acting on behalf of a party in proceedings allocated to the small claims track;

“costs judge” means a taxing master of the Senior Courts;

“Costs Office” means the Senior Courts Costs Office;

“costs officer” means—

- (i) a costs judge;
- (ii) a [^{F5}District Judge]; or
- (iii) an authorised court officer;

“detailed assessment” means the procedure by which the amount of costs is decided by a costs officer in accordance with Part 47;

“the Director (legal aid)” means the person designated as the Director of Legal Aid Casework pursuant to section 4 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or a person entitled to exercise the functions of the Director;

“fixed costs” means costs the amounts of which are fixed by these rules whether or not the court has a discretion to allow some other or no amount, and include—

- (i) the amounts which are to be allowed in respect of legal representatives’ charges in the circumstances set out in Section I of Part 45;
- (ii) fixed recoverable costs calculated in accordance with rule 45.11;
- (iii) the additional costs allowed by rule 45.18;
- (iv) fixed costs determined under rule 45.21;
- (v) costs fixed by rules 45.37 and 45.38;

“free of charge” has the same meaning as in section 194(10) of the 2007 Act;

“fund” includes any estate or property held for the benefit of any person or class of person and any fund to which a trustee or personal representative is entitled in that capacity;

“HMRC” means HM Revenue and Customs;

“legal aid” means civil legal services made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“paying party” means a party liable to pay costs;

“the prescribed charity” has the same meaning as in section 194(8) of the 2007 Act;

“pro bono representation” means legal representation provided free of charge;

“receiving party” means a party entitled to be paid costs;

“summary assessment” means the procedure whereby costs are assessed by the judge who has heard the case or application;

“VAT” means Value Added Tax;

“the 2007 Act” means the Legal Services Act 2007 .

(“Legal representative” has the meaning given in rule 2.3).

(2) The costs to which Parts 44 to 47 apply include—

(a) the following costs where those costs may be assessed by the court—

- (i) costs of proceedings before an arbitrator or umpire;
- (ii) costs of proceedings before a tribunal or other statutory body; and
- (iii) costs payable by a client to their legal representative; and

(b) costs which are payable by one party to another party under the terms of a contract, where the court makes an order for an assessment of those costs.

(3) Where advocacy or litigation services are provided to a client under a conditional fee agreement, costs are recoverable under Parts 44 to 47 notwithstanding that the client is liable to pay the legal representative’s fees and expenses only to the extent that sums are recovered in respect of the proceedings, whether by way of costs or otherwise.

Textual Amendments

F2 Words in Rules substituted (22.4.2014) by The Civil Procedure (Amendment) Rules 2014 (S.I. 2014/407), rules 2(1), 4(a)(i); S.I. 2014/954, art. 2(a)

F3 Words in rule 44.1(1) substituted (22.4.2014) by The Civil Procedure (Amendment) Rules 2014 (S.I. 2014/407), rules 2(1), 18(a); S.I. 2014/954, art. 2(a)

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*Changes to legislation: There are currently no known outstanding effects for the
The Civil Procedure Rules 1998, PART 44. (See end of Document for details)*

- F4** Words in rule 44.1(1) inserted (22.4.2014) by The Civil Procedure (Amendment) Rules 2014 (S.I. 2014/407), rules 2(1), **18(b)**; S.I. 2014/954, art. 2(a)
- F5** Words in Rules substituted (22.4.2014) by The Civil Procedure (Amendment) Rules 2014 (S.I. 2014/407), rules 2(1), **4(a)(iv)**; S.I. 2014/954, art. 2(a)

Court's discretion as to costs **E+W**

- 44.2.**—(1) The court has discretion as to—
- (a) whether costs are payable by one party to another;
 - (b) the amount of those costs; and
 - (c) when they are to be paid.
- (2) If the court decides to make an order about costs—
- (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but
 - (b) the court may make a different order.
- (3) The general rule does not apply to the following proceedings—
- (a) proceedings in the Court of Appeal on an application or appeal made in connection with proceedings in the Family Division; or
 - (b) proceedings in the Court of Appeal from a judgment, direction, decision or order given or made in probate proceedings or family proceedings.
- (4) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including—
- (a) the conduct of all the parties;
 - (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and
 - (c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.
- (5) The conduct of the parties includes—
- (a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;
 - (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
 - (c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and
 - (d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.
- (6) The orders which the court may make under this rule include an order that a party must pay—
- (a) a proportion of another party's costs;
 - (b) a stated amount in respect of another party's costs;
 - (c) costs from or until a certain date only;
 - (d) costs incurred before proceedings have begun;
 - (e) costs relating to particular steps taken in the proceedings;
 - (f) costs relating only to a distinct part of the proceedings; and

(g) interest on costs from or until a certain date, including a date before judgment.

(7) Before the court considers making an order under paragraph (6)(f), it will consider whether it is practicable to make an order under paragraph (6)(a) or (c) instead.

(8) Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so.

Basis of assessment **E+W**

44.3.—(1) Where the court is to assess the amount of costs (whether by summary or detailed assessment) it will assess those costs—

- (a) on the standard basis; or
- (b) on the indemnity basis,

but the court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount.

(Rule 44.5 sets out how the court decides the amount of costs payable under a contract.)

(2) Where the amount of costs is to be assessed on the standard basis, the court will—

- (a) only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and
- (b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party.

(Factors which the court may take into account are set out in rule 44.4.)

(3) Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party.

(4) Where—

- (a) the court makes an order about costs without indicating the basis on which the costs are to be assessed; or
- (b) the court makes an order for costs to be assessed on a basis other than the standard basis or the indemnity basis,

the costs will be assessed on the standard basis.

(5) Costs incurred are proportionate if they bear a reasonable relationship to—

- (a) the sums in issue in the proceedings;
- (b) the value of any non-monetary relief in issue in the proceedings;
- (c) the complexity of the litigation;
- (d) any additional work generated by the conduct of the paying party; ^{F6}...
- (e) any wider factors involved in the proceedings, such as reputation or public importance [^{F7}; and]

[^{F8}(f) any additional work undertaken or expense incurred due to the vulnerability of a party or any witness.]

(6) Where the amount of a solicitor's remuneration in respect of non-contentious business is regulated by any general orders made under the Solicitors Act 1974, the amount of the costs to be allowed in respect of any such business which falls to be assessed by the court will be decided in accordance with those general orders rather than this rule and rule 44.4.

Status: Point in time view as at 12/11/2021.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998, PART 44. (See end of Document for details)

[^{F9}(7) Paragraphs (2)(a) and (5) do not apply in relation to—

- (a) cases commenced before 1st April 2013; or
- (b) costs incurred in respect of work done before 1st April 2013,

and in relation to such cases or costs, rule 44.4.(2)(a) as it was in force immediately before 1st April 2013 will apply instead.]

Textual Amendments

- F6** Word in rule 44.3(5)(d) omitted (6.4.2021) by virtue of [The Civil Procedure \(Amendment\) Rules 2021 \(S.I. 2021/117\)](#), rules 1(1), **11(1)(a)**
- F7** Word in rule 44.3(5)(e) inserted (6.4.2021) by [The Civil Procedure \(Amendment\) Rules 2021 \(S.I. 2021/117\)](#), rules 1(1), **11(1)(b)**
- F8** Rule 44.3(5)(f) inserted (6.4.2021) by [The Civil Procedure \(Amendment\) Rules 2021 \(S.I. 2021/117\)](#), rules 1(1), **11(1)(c)**
- F9** Rule 44.3(7) substituted (1.4.2013) by [The Civil Procedure \(Amendment No.2\) Rules 2013 \(S.I. 2013/515\)](#), rules 2, **5**

Factors to be taken into account in deciding the amount of costs **E+W**

44.4.—(1) The court will have regard to all the circumstances in deciding whether costs were—

- (a) if it is assessing costs on the standard basis—
 - (i) proportionately and reasonably incurred; or
 - (ii) proportionate and reasonable in amount, or
- (b) if it is assessing costs on the indemnity basis—
 - (i) unreasonably incurred; or
 - (ii) unreasonable in amount.

(2) In particular, the court will give effect to any orders which have already been made.

(3) The court will also have regard to—

- (a) the conduct of all the parties, including in particular—
 - (i) conduct before, as well as during, the proceedings; and
 - (ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;
- (b) the amount or value of any money or property involved;
- (c) the importance of the matter to all the parties;
- (d) the particular complexity of the matter or the difficulty or novelty of the questions raised;
- (e) the skill, effort, specialised knowledge and responsibility involved;
- (f) the time spent on the case;
- (g) the place where and the circumstances in which work or any part of it was done; and
- (h) the receiving party's last approved or agreed budget.

(Rule 35.4(4) gives the court power to limit the amount that a party may recover with regard to the fees and expenses of an expert.)

Amount of costs where costs are payable under a contract **E+W**

44.5.—(1) [^{F10}Subject to paragraphs (2) and (3)], where the court assesses (whether by summary or detailed assessment) 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.

(2) The presumptions in paragraph (1) are rebuttable. Practice Direction 44 – General rules about costs sets out circumstances where the court may order otherwise.

(3) Paragraph (1) does not apply where the contract is between a solicitor and client.

Textual Amendments

F10 Words in [rule 44.5\(1\)](#) substituted (6.4.2016) by [The Civil Procedure \(Amendment\) Rules 2016 \(S.I. 2016/234\)](#), [rules 2, 8](#)

Procedure for assessing costs **E+W**

44.6.—(1) Where the court orders a party to pay costs to another party (other than fixed costs) it may either—

- (a) make a summary assessment of the costs; or
- (b) order detailed assessment of the costs by a costs officer,

unless any rule, practice direction or other enactment provides otherwise.

(Practice Direction 44 – General rules about costs sets out the factors which will affect the court’s decision under paragraph (1).)

(2) A party may recover the fixed costs specified in Part 45 in accordance with that Part.

Time for complying with an order for costs **E+W**

44.7.—(1) A party must comply with an order for the payment of costs within 14 days of—

- (a) the date of the judgment or order if it states the amount of those costs;
- (b) if the amount of those costs (or part of them) is decided later in accordance with Part 47, the date of the certificate which states the amount; or
- (c) in either case, such other date as the court may specify.

(Part 47 sets out the procedure for detailed assessment of costs.)

Legal representative’s duty to notify the party **E+W**

44.8. Where—

- (a) the court makes a costs order against a legally represented party; and
- (b) the party is not present when the order is made,

the party’s legal representative must notify that party in writing of the costs order no later than 7 days after the legal representative receives notice of the order.

(Paragraph 10.1 of Practice Direction 44 defines “party” for the purposes of this rule.)

Status: Point in time view as at 12/11/2021.

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The Civil Procedure Rules 1998, PART 44. (See end of Document for details)*

Cases where costs orders deemed to have been made **E+W**

44.9.—(1) Subject to paragraph (2), where a right to costs arises under—

- (a) rule 3.7 [^{F11}or 3.7A1] (defendant’s right to costs where claim is struck out for non-payment of fees);
- [^{F12}(a1) rule 3.7B (sanctions for dishonouring cheque);]
- (b) rule [^{F13}36.13] (1) or (2) (claimant’s entitlement to costs where a Part 36 offer is accepted); or
- (c) rule 38.6 (defendant’s right to costs where claimant discontinues),

a costs order will be deemed to have been made on the standard basis.

(2) Paragraph 1(b) does not apply where a Part 36 offer is accepted before the commencement of proceedings.

(3) Where such an order is deemed to be made in favour of a party with *pro bono* representation, that party may apply for an order under section 194(3) of the 2007 Act.

(4) Interest payable under section 17 of the Judgments Act 1838 or section 74 of the County Courts Act 1984 on the costs deemed to have been ordered under paragraph (1) will begin to run from the date on which the event which gave rise to the entitlement to costs occurred.

Textual Amendments

- F11** Words in rule 44.9(1)(a) inserted (6.3.2017) by [The Civil Procedure \(Amendment\) Rules 2017 \(S.I. 2017/95\)](#), rules 2(b), 7 (with rule 13(1)(2))
- F12** Rule 44.9(1)(a1) inserted (1.10.2013) by [The Civil Procedure \(Amendment No.7\) Rules 2013 \(S.I. 2013/1974\)](#), rules 2, 19
- F13** Word in rule 44.9(1)(b) substituted (6.4.2015) by [The Civil Procedure \(Amendment No. 8\) Rules 2014 \(S.I. 2014/3299\)](#), rules 2(c), 9 (with rule 18)

Where the court makes no order for costs **E+W**

44.10.—(1) Where the court makes an order which does not mention costs—

- (a) subject to paragraphs (2) and (3), the general rule is that no party is entitled—
 - (i) to costs; or
 - (ii) to seek an order under section 194(3) of the 2007 Act, in relation to that order; but
 - (b) this does not affect any entitlement of a party to recover costs out of a fund held by that party as trustee or personal representative, or under any lease, mortgage or other security.
- (2) Where the court makes—
- (a) an order granting permission to appeal;
 - (b) an order granting permission to apply for judicial review; or
 - (c) any other order or direction sought by a party on an application without notice, and its order does not mention costs, it will be deemed to include an order for applicant’s costs in the case.

(3) Any party affected by a deemed order for costs under paragraph (2) may apply at any time to vary the order.

(4) The court hearing an appeal may, unless it dismisses the appeal, make orders about the costs of the proceedings giving rise to the appeal as well as the costs of the appeal.

(5) Subject to any order made by the transferring court, where proceedings are transferred from one court to another, the court to which they are transferred may deal with all the costs, including the costs before the transfer.

Court's powers in relation to misconduct **E+W**

44.11.—(1) The court may make an order under this rule where—

- (a) a party or that party's legal representative, in connection with a summary or detailed assessment, fails to comply with a rule, practice direction or court order; or
- (b) it appears to the court that the conduct of a party or that party's legal representative, before or during the proceedings or in the assessment proceedings, was unreasonable or improper.

(2) Where paragraph (1) applies, the court may—

- (a) disallow all or part of the costs which are being assessed; or
- (b) order the party at fault or that party's legal representative to pay costs which that party or legal representative has caused any other party to incur.

(3) Where—

- (a) the court makes an order under paragraph (2) against a legally represented party; and
- (b) the party is not present when the order is made,
the party's legal representative must notify that party in writing of the order no later than 7 days after the legal representative receives notice of the order.

Set Off **E+W**

44.12.—(1) Where a party entitled to costs is also liable to pay costs, the court may assess the costs which that party is liable to pay and either—

- (a) set off the amount assessed against the amount the party is entitled to be paid and direct that party to pay any balance; or
- (b) delay the issue of a certificate for the costs to which the party is entitled until the party has paid the amount which that party is liable to pay.

SECTION II

Qualified One-Way Costs Shifting

Qualified one-way costs shifting: scope and interpretation **E+W**

44.13.—(1) This Section applies to proceedings which include a claim for damages—

- (a) for personal injuries;
- (b) under the Fatal Accidents Act 1976; or
- (c) which arises out of death or personal injury and survives for the benefit of an estate by virtue of section 1(1) of the Law Reform (Miscellaneous Provisions) Act 1934,

but does not apply to applications pursuant to section 33 of the Senior Courts Act 1981 or section 52 of the County Courts Act 1984 (applications for pre-action disclosure), or where rule 44.17 applies.

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The Civil Procedure Rules 1998, PART 44. (See end of Document for details)*

(2) In this Section, “claimant” means a person bringing a claim to which this Section applies or an estate on behalf of which such a claim is brought, and includes a person making a counterclaim or an additional claim.

Effect of qualified one-way costs shifting **E+W**

44.14.—(1) Subject to rules 44.15 and 44.16, orders for costs made against a claimant may be enforced without the permission of the court but only to the extent that the aggregate amount in money terms of such orders does not exceed the aggregate amount in money terms of any orders for damages and interest made in favour of the claimant.

(2) Orders for costs made against a claimant may only be enforced after the proceedings have been concluded and the costs have been assessed or agreed.

(3) An order for costs which is enforced only to the extent permitted by paragraph (1) shall not be treated as an unsatisfied or outstanding judgment for the purposes of any court record.

Exceptions to qualified one-way costs shifting where permission not required **E+W**

44.15. Orders for costs made against the claimant may be enforced to the full extent of such orders without the permission of the court where the proceedings have been struck out on the grounds that—

- (a) the claimant has disclosed no reasonable grounds for bringing the proceedings;
- (b) the proceedings are an abuse of the court’s process; or
- (c) the conduct of—
 - (i) the claimant; or
 - (ii) a person acting on the claimant’s behalf and with the claimant’s knowledge of such conduct,

is likely to obstruct the just disposal of the proceedings.

Exceptions to qualified one-way costs shifting where permission required **E+W**

44.16.—(1) Orders for costs made against the claimant may be enforced to the full extent of such orders with the permission of the court where the claim is found on the balance of probabilities to be fundamentally dishonest.

(2) Orders for costs made against the claimant may be enforced up to the full extent of such orders with the permission of the court, and to the extent that it considers just, where—

- (a) the proceedings include a claim which is made for the financial benefit of a person other than the claimant or a dependant within the meaning of section 1(3) of the Fatal Accidents Act 1976 (other than a claim in respect of the gratuitous provision of care, earnings paid by an employer or medical expenses); or
- (b) a claim is made for the benefit of the claimant other than a claim to which this Section applies.

(3) Where paragraph (2)(a) applies, the court may, subject to rule 46.2, make an order for costs against a person, other than the claimant, for whose financial benefit the whole or part of the claim was made.

Transitional provision **E+W**

44.17. This Section does not apply to proceedings where the claimant has entered into a pre-commencement funding arrangement (as defined in rule 48.2).

SECTION III

Damages-Based Agreements

Award of costs where there is a damages-based agreement **E+W**

44.18.—(1) The fact that a party has entered into a damages-based agreement will not affect the making of any order for costs which otherwise would be made in favour of that party.

(2) Where costs are to be assessed in favour of a party who has entered into a damages-based agreement—

- (a) the party's recoverable costs will be assessed in accordance with rule 44.3; and
- (b) the party may not recover by way of costs more than the total amount payable by that party under the damages-based agreement for legal services provided under that agreement.]

Status:

Point in time view as at 12/11/2021.

Changes to legislation:

There are currently no known outstanding effects for the The Civil Procedure Rules 1998, PART 44.