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STATUTORY INSTRUMENTS

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**1998 No. 3132**

The Civil Procedure Rules 1998

PART 45 **E+W**

FIXED COSTS

**Modifications etc. (not altering text)**

**C1** Pt. 45 applied (with modifications) (7.10.2001) by [The Railway Administration Order Rules 2001 \(S.I. 2001/3352\)](#), rules 1.1, **6.21**

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*Changes to legislation: There are currently no known outstanding effects for the  
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### [<sup>F6</sup>I FIXED COSTS

#### Textual Amendments

**F6** Pt. 45 Section 1 substituted (1.4.2005) by [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), rule 1, [Sch. 1 Pt. 2](#)

#### Scope of this Section **E+W**

**45.1.**—(1) This Section sets out the amounts which, unless the court orders otherwise, are to be allowed in respect of solicitors' charges in the cases to which this Section applies.

(2) This Section applies where—

- (a) the only claim is a claim for a specified sum of money where the value of the claim exceeds £25 and—
  - (i) judgment in default is obtained under rule 12.4(1);
  - (ii) judgment on admission is obtained under rule 14.4(3);
  - (iii) judgment on admission on part of the claim is obtained under rule 14.5(6);
  - (iv) summary judgment is given under Part 24;

- (v) the court has made an order to strike out<sup>(GL)</sup> a defence under rule 3.4(2)(a) as disclosing no reasonable grounds for defending the claim; or
  - (vi) rule 45.3 applies;
  - (b) the only claim is a claim where the court gave a fixed date for the hearing when it issued the claim and judgment is given for the delivery of goods, and the value of the claim exceeds £25;
  - (c) the claim is for the recovery of land, including a possession claim under Part 55, whether or not the claim includes a claim for a sum of money and the defendant gives up possession, pays the amount claimed, if any, and the fixed commencement costs stated in the claim form;
  - (d) the claim is for the recovery of land, including a possession claim under Part 55, where one of the grounds for possession is arrears of rent, for which the court gave a fixed date for the hearing when it issued the claim and judgment is given for the possession of land (whether or not the order for possession is suspended on terms) and the defendant—
    - (i) has neither delivered a defence, or counterclaim, nor otherwise denied liability; or
    - (ii) has delivered a defence which is limited to specifying his proposals for the payment of arrears of rent;
  - (e) the claim is a possession claim under Section II of Part 55 (accelerated possession claims of land let on an assured shorthold tenancy) and a possession order is made where the defendant has neither delivered a defence, or counterclaim, nor otherwise denied liability;
  - (f) the claim is a demotion claim under Section III of Part 65 or a demotion claim is made in the same claim form in which a claim for possession is made under Part 55 and that demotion claim is successful; or
  - (g) a judgment creditor has taken steps under Parts 70 to 73 to enforce a judgment or order.
- (The practice direction supplementing rule 7.9 sets out the types of case where a court will give a fixed date for a hearing when it issues a claim)
- (3) Any appropriate court fee will be allowed in addition to the costs set out in this Section.
  - (4) The claim form may include a claim for fixed commencement costs.

**Amount of fixed commencement costs in a claim for the recovery of money or goods** **E+W**

- 45.2.**—(1) The amount of fixed commencement costs in a claim to which rule 45.1(2)(a) or (b) applies—
- (a) shall be calculated by reference to Table 1; and
  - (b) the amount claimed, or the value of the goods claimed if specified, in the claim form is to be used for determining the band in Table 1 that applies to the claim.
- (2) The amounts shown in Table 4 are to be allowed in addition, if applicable.

**Amount of fixed commencement costs in a claim for the recovery of land or a demotion claim** **E+W**

- 45.2A.**—(1) The amount of fixed commencement costs in a claim to which rule 45.1(2)(c), (d) or (f) applies shall be calculated by reference to Table 2.
- (2) The amounts shown in Table 4 are to be allowed in addition, if applicable.

*Status: Point in time view as at 01/10/2007.*

*Changes to legislation: There are currently no known outstanding effects for the Civil Procedure Rules 1998, PART 45. (See end of Document for details)*

TABLE 1

<b>FIXED COSTS ON COMMENCEMENT OF A CLAIM FOR THE RECOVERY OF MONEY OR GOODS</b>			
Relevant band	Where the claim form is served by the court or by any method other than personal service by the claimant	Where— <ul style="list-style-type: none"> <li>the claim form is served personally by the claimant; and</li> <li>there is only one defendant</li> </ul>	Where there is more than one defendant, for each additional defendant personally served at separate addresses by the claimant
Where— <ul style="list-style-type: none"> <li>the value of the claim exceeds £25 but does not exceed £500</li> </ul>	£50	£60	£15
Where— <ul style="list-style-type: none"> <li>the value of the claim exceeds £500 but does not exceed £1,000</li> </ul>	£70	£80	£15
Where— <ul style="list-style-type: none"> <li>the value of the claim exceeds £1,000 but does not exceed £5,000; or</li> <li>the only claim is for delivery of goods and no value is specified or stated on the claim form</li> </ul>	£80	£90	£15
Where— <ul style="list-style-type: none"> <li>the value of the claim exceeds £5,000</li> </ul>	£100	£110	£15

TABLE 2

<b>FIXED COSTS ON COMMENCEMENT OF A CLAIM FOR THE RECOVERY OF LAND OR A DEMOTION CLAIM</b>		
Where the claim form is served by the court or by any method other than personal service by the claimant	Where— <ul style="list-style-type: none"> <li>the claim form is served personally by the claimant; and</li> <li>there is only one defendant</li> </ul>	Where there is more than one defendant, for each additional defendant personally served at separate addresses by the claimant

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**FIXED COSTS ON COMMENCEMENT OF A CLAIM FOR THE RECOVERY OF  
LAND OR A DEMOTION CLAIM**

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£69.50	£77.00	£15.00
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**When defendant only liable for fixed commencement costs** **E+W**

**45.3.**—(1) Where—

- (a) the only claim is for a specified sum of money; and
- (b) the defendant pays the money claimed within 14 days after service of particulars of claim on him, together with the fixed commencement costs stated in the claim form,

the defendant is not liable for any further costs unless the court orders otherwise.

<sup>F7</sup>(2) .....

**Textual Amendments**

**F7** [Rule 45.3\(2\)](#) omitted (6.4.2007) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2006 \(S.I. 2006/3435\)](#), [rules 1, 11](#)

**Costs on entry of judgment in a claim for the recovery of money or goods** **E+W**

**45.4** Where—

- (a) the claimant has claimed fixed commencement costs under rule 45.2; and
- (b) judgment is entered in a claim to which rule 45.1(2)(a) or (b) applies in the circumstances specified in Table 3, the amount to be included in the judgment for the claimant’s solicitor’s charges is the total of—
  - (i) the fixed commencement costs; and
  - (ii) the relevant amount shown in Table 3.

**Costs on entry of judgment in a claim for the recovery of land or a demotion claim** **E+W**

**45.4A.**—(1) Where—

- (a) the claimant has claimed fixed commencement costs under rule 45.2A; and
- (b) judgment is entered in a claim to which rule 45.1(2)(d) or (f) applies, the amount to be included in the judgment for the claimant’s solicitor’s charges is the total of—
  - (i) the fixed commencement costs; and
  - (ii) the sum of £57.25.

(2) Where an order for possession is made in a claim to which rule 45.1(2)(e) applies, the amount allowed for the claimant’s solicitor’s charges for preparing and filing—

- (a) the claim form;
- (b) the documents that accompany the claim form; and
- (c) the request for possession,

is £79.50.

*Status: Point in time view as at 01/10/2007.*

*Changes to legislation: There are currently no known outstanding effects for the Civil Procedure Rules 1998, PART 45. (See end of Document for details)*

**TABLE 3**

**FIXED COSTS ON ENTRY OF JUDGMENT IN A CLAIM FOR THE RECOVERY OF MONEY OR GOODS**

	<b>Where the amount of the judgment exceeds £25 but does not exceed £5,000</b>	<b>Where the amount of the judgment exceeds £5,000</b>
Where judgment in default of an acknowledgment of service is entered under rule 12.4(1) (entry of judgment by request on claim for money only)	£22	£30
Where judgment in default of a defence is entered under rule 12.4(1) (entry of judgment by request on claim for money only)	£25	£35
Where judgment is entered under rule 14.4 (judgment on admission), or rule 14.5 (judgment on admission of part of claim) and claimant accepts the defendant's proposal as to the manner of payment	£40	£55
Where judgment is entered under rule 14.4 (judgment on admission), or rule 14.5 (judgment on admission of part of claim) and court decides the date or time of payment	£55	£70
Where summary judgment is given under Part 24 or the court strikes out a defence under rule 3.4(2)(a), in either case, on application by a party	£175	£210
Where judgment is given on a claim for delivery of goods under a regulated agreement within the meaning of the Consumer Credit Act 1974 and no other entry in this table applies	£60	£85

**Miscellaneous fixed costs** **E+W**

**45.5** Table 4 shows the amount to be allowed in respect of solicitor's charges in the circumstances mentioned.

**TABLE 4**

<b>MISCELLANEOUS FIXED COSTS</b>	
For service by a party of any document required to be served personally including preparing and copying a certificate of service for each individual served	£15.00
Where service by an alternative method is permitted by an order under rule 6.8 for each individual served	£53.25
Where a document is served out of the jurisdiction—	
(a) (a) in Scotland, Northern Ireland, the Isle of Man or the Channel Islands;	£68.25
(b) (b) in any other place	£77.00

**Fixed enforcement costs** E+W

**45.6** Table 5 shows the amount to be allowed in respect of solicitors' costs in the circumstances mentioned. The amounts shown in Table 4 are to be allowed in addition, if applicable.

**TABLE 5**

<b>FIXED ENFORCEMENT COSTS</b>	
For an application under rule 70.5(4) that an award may be enforced as if payable under a court order, where the amount outstanding under the award:	
exceeds £25 but does not exceed £250	£30.75
exceeds £250 but does not exceed £600	£41.00
exceeds £600 but does not exceed £2,000	£69.50
exceeds £2,000	£75.50
On attendance to question a judgment debtor (or officer of a company or other corporation) who has been ordered to attend court under rule 71.2 where the questioning takes place before a court officer, including attendance by a responsible representative of the solicitor	
	for each half hour or part, £15.00
	(When the questioning takes place before a judge, he may summarily assess any costs allowed.)
On the making of a final third party debt order under rule 72.8(6)(a) or an order for the	





<sup>F8</sup><sup>F9</sup> **II ROAD TRAFFIC ACCIDENTS—FIXED RECOVERABLE COSTS ...**

**Textual Amendments**

- F8** Words in Pt. 45 Section 2 heading omitted (1.4.2005) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), rules 1, **10**
- F9** Pt. 45 Section 2 inserted (6.10.2003) by [The Civil Procedure \(Amendment No. 4\) Rules 2003 \(S.I. 2003/2113\)](#), rule 1(c), **Sch. 2 Pt. II** (with rule 18)

**Scope and interpretation** **E+W**

**45.7.**—<sup>F10</sup>(1) This Section sets out the costs which are to be allowed in—

- (a) costs-only proceedings under the procedure set out in rule 44.12A; or
- (b) proceedings for approval of a settlement or compromise under rule 21.10(2),

in cases to which this Section applies.]

<sup>F11</sup>  
...

- (2) This Section applies where—
- (a) the dispute arises from a road traffic accident;
  - (b) the agreed damages include damages in respect of personal injury, damage to property, or both;
  - (c) the total value of the agreed damages does not exceed £10,000; and
  - (d) if a claim had been issued for the amount of the agreed damages, the small claims track would not have been the normal track for that claim.
- (3) This Section does not apply where the claimant is a litigant in person.  
(Rule 2.3 defines “personal injuries” as including any disease and any impairment of a person’s physical or mental condition)  
(Rule 26.6 provides for when the small claims track is the normal track)
- (4) In this Section—
- (a) “road traffic accident” means an accident resulting in bodily injury to any person or damage to property caused by, or arising out of, the use of a motor vehicle on a road or other public place in England and Wales;
  - (b) “motor vehicle” means a mechanically propelled vehicle intended for use on roads; and
  - (c) “road” means any highway and any other road to which the public has access and includes bridges over which a road passes.

**Textual Amendments**

- F10** [Rule 45.7\(1\)](#) substituted (1.4.2005) by [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), rules 1, **11(a)**
- F11** Words in [rule 45.7\(1\)](#) omitted (1.4.2005) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), rules 1, **11(b)**

**Application of fixed recoverable costs** **E+W**

**45.8** Subject to rule 45.12, the only costs which are to be allowed are—

*Status: Point in time view as at 01/10/2007.*

*Changes to legislation: There are currently no known outstanding effects for the  
The Civil Procedure Rules 1998, PART 45. (See end of Document for details)*

- (a) fixed recoverable costs calculated in accordance with rule 45.9;
  - (b) disbursements allowed in accordance with rule 45.10; and
  - (c) a success fee allowed in accordance with rule 45.11.
- (Rule 45.12 provides for where a party issues a claim for more than the fixed recoverable costs).

#### **Amount of fixed recoverable costs** **E+W**

**45.9.**—(1) Subject to paragraphs (2) and (3), the amount of fixed recoverable costs is the total of—

- (a) £800;
- (b) 20% of the damages agreed up to £5,000; and
- (c) 15% of the damages agreed between £5,000 and £10,000.

(2) Where the claimant—

- (a) lives or works in an area set out in the relevant practice direction; and
- (b) instructs a solicitor or firm of solicitors who practise in that area,

the fixed recoverable costs shall include, in addition to the costs specified in paragraph (1), an amount equal to 12.5% of the costs allowable under that paragraph.

(3) Where appropriate, value added tax (VAT) may be recovered in addition to the amount of fixed recoverable costs and any reference in this Section to fixed recoverable costs is a reference to those costs net of any such VAT.

#### **Disbursements** **E+W**

**45.10.**—(1) The court—

- (a) may allow a claim for a disbursement of a type mentioned in paragraph (2); but
- (b) must not allow a claim for any other type of disbursement.

(2) The disbursements referred to in paragraph (1) are—

- (a) the cost of obtaining—
  - (i) medical records;
  - (ii) a medical report;
  - (iii) a police report;
  - (iv) an engineer’s report; or
  - (v) a search of the records of the Driver Vehicle Licensing Authority;
- (b) the amount of an insurance premium [<sup>F12</sup>or, where a [<sup>F13</sup>membership organisation] undertakes to meet liabilities incurred to pay the costs of other parties to proceedings, a sum not exceeding such additional amount of costs as would be allowed under section 30 in respect of provision made against the risk of having to meet such liabilities];

[<sup>F14</sup>(“membership organisation” is defined in rule 43.2(1)(n))]

- (c) where they are necessarily incurred by reason of one or more of the claimants being a child or [<sup>F15</sup>protected party] as defined in Part 21—

- (i) fees payable for instructing counsel; or
- (ii) court fees payable on an application to the court;

- (d) any other disbursement that has arisen due to a particular feature of the dispute.

(“insurance premium” is defined in rule 43.2)

#### Textual Amendments

- F12** Words in rule 45.10(2)(b) inserted (1.2.2004) by [The Civil Procedure \(Amendment No. 5\) Rules 2003 \(S.I. 2003/3361\)](#), rules 1(a), **8**
- F13** Words in rule 45.10(2)(b) substituted (1.10.2004) by [The Civil Procedure \(Amendment No.2\) Rules 2004 \(S.I. 2004/2072\)](#), rules 1(b), **11(a)**
- F14** Words in rule 45.10(2) inserted (1.10.2004) by [The Civil Procedure \(Amendment No.2\) Rules 2004 \(S.I. 2004/2072\)](#), rules 1(b), **11(b)**
- F15** Words in rule 45.10(2)(c) substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **13**

#### Success fee **E+W**

**45.11.**—(1) A claimant may recover a success fee if he has entered into a funding arrangement of a type specified in rule 43.2(k)(i).

[<sup>F16</sup>(2) The amount of the success fee shall be 12.5% of the fixed recoverable costs calculated in accordance with rule 45.9(1), disregarding any additional amount which may be included in the fixed recoverable costs by virtue of rule 45.9(2).]

#### Textual Amendments

- F16** [Rule 45.11\(2\)](#) substituted (1.3.2004) by [The Civil Procedure \(Amendment No. 5\) Rules 2003 \(S.I. 2003/3361\)](#), rules 1(b), **9**

#### Claims for an amount of costs exceeding fixed recoverable costs **E+W**

**45.12.**—(1) The court will entertain a claim for an amount of costs (excluding any success fee or disbursements) greater than the fixed recoverable costs but only if it considers that there are exceptional circumstances making it appropriate to do so.

(2) If the court considers such a claim appropriate, it may—

- (a) assess the costs; or
- (b) make an order for the costs to be assessed.

(3) If the court does not consider the claim appropriate, it must make an order for fixed recoverable costs only.

#### Failure to achieve costs greater than fixed recoverable costs **E+W**

**45.13.**—(1) This rule applies where—

- (a) costs are assessed in accordance with rule 45.12(2); and
- (b) the court assesses the costs (excluding any VAT) as being an amount which is less than 20% greater than the amount of the fixed recoverable costs.

(2) The court must order the defendant to pay to the claimant the lesser of—

- (a) the fixed recoverable costs; and
- (b) the assessed costs.

#### Costs of the costs-only proceedings [<sup>F17</sup>or the detailed assessment] **E+W**

**45.14** Where—

*Status: Point in time view as at 01/10/2007.*

*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998, PART 45. (See end of Document for details)*

- (a) the court makes an order for fixed recoverable costs in accordance with rule 45.12(3); or
- (b) rule 45.13 applies,

the court must—

- (i) make no award for the payment of the claimant’s costs in bringing the proceedings under rule 44.12A; and
- (ii) order that the claimant pay the defendant’s costs of defending those proceedings.]

#### Textual Amendments

**F17** Words in [rule 45.14](#) heading inserted (1.4.2005) by [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), [rules 1, 12](#)

### <sup>F18</sup>III—FIXED PERCENTAGE INCREASE IN ROAD TRAFFIC ACCIDENT CLAIMS

#### Textual Amendments

**F18** [Pt. 45](#) Section 3 inserted (1.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), [rule 1\(a\)](#), [Sch. 1 Pt. 2](#)

#### Scope and interpretation **E+W**

**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** **E+W**

**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—
  - (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** **E+W**

**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—

*Status: Point in time view as at 01/10/2007.*

*Changes to legislation: There are currently no known outstanding effects for the  
The Civil Procedure Rules 1998, PART 45. (See end of Document for details)*

- (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%** E+W

**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
- [<sup>F19</sup>(c) the parties agree damages of £500,000 or less and it is reasonable to expect that if the court had made an award of damages, it would have awarded damages greater than £500,000, disregarding any reduction the court may have made in respect of contributory negligence.]

(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.

#### **Textual Amendments**

**F19** Rule 45.18(2)(c) substituted (1.4.2005) by [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), rules 1, 13

#### **Assessment of alternative percentage increase** E+W

**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.]

## <sup>F20</sup>IV – FIXED PERCENTAGE INCREASE IN EMPLOYERS LIABILITY CLAIMS

### Textual Amendments

**F20** Pt. 45 Section 4 inserted (1.10.2004) by [The Civil Procedure \(Amendment No.2\) Rules 2004 \(S.I. 2004/2072\)](#), rule 1(b), **Sch. Pt. 2**

### Scope and interpretation **E+W**

- 45.20.**—(1) Subject to paragraph (2), this Section applies where—
- (a) the dispute is between an employee and his employer arising from a bodily injury sustained by the employee in the course of his employment; and
  - (b) the claimant has entered into a funding arrangement of a type specified in rule 43.2(1)(k)(i).
- (2) This Section does not apply—
- (a) where the dispute—
    - (i) relates to a disease;
    - (ii) relates to an injury sustained before 1<sup>st</sup> October 2004; or
    - (iii) arises from a road traffic accident (as defined in rule 45.7(4)(a)); or
    - [ relates to an injury to which Section V of this Part applies; or]
  - <sup>F21</sup>(iv)
  - (b) to a claim—
    - (i) which has been allocated to the small claims track; or
    - (ii) not allocated to a track, but for which the small claims track is the normal track.
- (3) For the purposes of this Section—
- (a) “employee” has the meaning given to it by section 2(1) of the Employers' Liability (Compulsory Insurance) Act 1969; and
  - (b) a reference to “fees” is a reference to fees for work done under a conditional fee agreement or collective conditional fee agreement.

### Textual Amendments

**F21** Rule 45.20(2)(a)(iv) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **39**

### Percentage increase of solicitors' and counsel's fees **E+W**

**45.21.** In the cases to which this Section applies, subject to rule 45.22 the percentage increase which is to be allowed in relation to solicitors' and counsel's fees is to be determined in accordance with rules 45.16 and 45.17, subject to the modifications that—

- (a) the percentage increase which is to be allowed in relation to solicitors' fees under rule 45.16(b) is—
  - (i) 27.5% if a membership organisation has undertaken to meet the claimant's liabilities for legal costs in accordance with section 30 of the Access to Justice Act 1999; and
  - (ii) 25% in any other case; and

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- (b) the percentage increase which is to be allowed in relation to counsel's fees under rule 45.17(1)(b)(ii), (1)(c)(ii) or (1)(d) is 25%.

("membership organisation" is defined in rule 43.2(1)(n))

### Alternative percentage increase **E+W**

**45.22.**—(1) In the cases to which this Section applies, rule 45.18(2)-(4) applies where—

- (a) the percentage increase of solicitors' fees to be allowed in accordance with rule 45.21 is 25% or 27.5%; or  
(b) the percentage increase of counsel's fees to be allowed is 25%.

(2) Where the percentage increase of fees is assessed by the court under rule 45.18(4) as applied by paragraph (1) above—

- (a) if the percentage increase is assessed as greater than 40% or less than 15%, the percentage increase to be allowed shall be that assessed by the court; and  
(b) if the percentage increase is assessed as no greater than 40% and no less than 15%—  
(i) the percentage increase to be allowed shall be 25% or 27.5% (as the case may be);  
and  
(ii) the costs of the application and assessment shall be paid by the applicant.]

### *<sup>F22</sup>V FIXED RECOVERABLE SUCCESS FEES IN EMPLOYER'S LIABILITY DISEASE CLAIMS*

#### Textual Amendments

**F22** Pt. 45 Section 5 inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rule 1(c), [Sch. 1](#)

### Scope and Interpretation **E+W**

**45.23.**—(1) Subject to paragraph (2), this Section applies where—

- (a) the dispute is between an employee (or, if the employee is deceased, the employee's estate or dependants) and his employer (or a person alleged to be liable for the employer's alleged breach of statutory or common law duties of care); and  
(b) the dispute relates to a disease with which the employee is diagnosed that is alleged to have been contracted as a consequence of the employer's alleged breach of statutory or common law duties of care in the course of the employee's employment; and  
(c) the claimant has entered into a funding arrangement of a type specified in rule 43.2(1)(k)(i).

(2) This Section does not apply where—

- (a) the claimant sent a letter of claim to the defendant containing a summary of the facts on which the claim is based and main allegations of fault before 1<sup>st</sup> October 2005; or  
(b) rule 45.20(2)(b) applies.

(3) For the purposes of this Section—

- (a) rule 45.15(6) applies;  
(b) "employee" has the meaning given to it by section 2(1) of the Employers' Liability (Compulsory Insurance) Act 1969;



- (c) “Type A claim” means a claim relating to a disease or physical injury alleged to have been caused by exposure to asbestos;
- (d) “Type B claim” means a claim relating to—
  - (i) a psychiatric injury alleged to have been caused by work-related psychological stress;
  - (ii) a work-related upper limb disorder which is alleged to have been caused by physical stress or strain, excluding hand/arm vibration injuries; and
- (e) “Type C claim” means a claim relating to a disease not falling within either type A or type B.

(The Table annexed to the Practice Direction supplementing Part 45 contains a non-exclusive list of diseases within Type A and Type B).

#### Percentage increase of solicitors' fees **E+W**

**45.24.**—(1) In the cases to which this Section applies, subject to rule 45.26, the percentage increase which is to be allowed in relation to solicitors' fees is—

- (a) 100% if the claim concludes at trial; or
- (b) where—
  - (i) the claim concludes before a trial has commenced; or
  - (ii) the dispute is settled before a claim is issued,to be determined by rule 45.24(2).

(2) Where rule 45.24(1)(b) applies, the percentage increase which is to be allowed in relation to solicitors' fees is—

- (a) in type A claims—
  - (i) 30% if a membership organisation has undertaken to meet the claimant's liabilities for legal costs in accordance with section 30 of the Access to Justice Act 1999; and
  - (ii) 27.5% in any other case;
- (b) in type B claims, 100%; and
- (c) in type C claims—
  - (i) 70% if a membership organisation has undertaken to meet the claimant's liabilities for legal costs in accordance with section 30 of the Access to Justice Act 1999; and
  - (ii) 62.5% in any other case.

(“Membership organisation” is defined in rule 43.2(1)(n)).

#### Percentage increase of counsel's fees **E+W**

**45.25.**—(1) In the cases to which this Section applies, subject to rule 45.26, the percentage increase which is to be allowed in relation to counsel's fees is—

- (a) 100% if the claim concludes at trial; or
- (b) where—
  - (i) the claim concludes before a trial has commenced; or
  - (ii) the dispute is settled before a claim is issued,to be determined by rule 45.25(2).

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(2) Where rule 45.25(1)(b) applies, the percentage increase which is to be allowed in relation to counsel's fees is—

- (a) if the claim has been allocated to the fast track, the amount shown in Table 6; and
- (b) if the claim has been allocated to the multi-track, the amount shown in Table 7.

(3) Where a trial period has been fixed, rules 45.17(2) to 45.17(5) apply for the purposes of determining the date fixed for the commencement of the trial.

**Table 6**

Claims allocated to the fast track

	If the claim concludes 14 days or less before the date fixed for commencement of the trial	If the claim concludes more than 14 days before the date fixed for commencement of the trial or before any such date has been fixed
Type A claim	50%	27.5%
Type B claim	100%	100%
Type C claim	62.5%	62.5%

**Table 7**

Claims allocated to the multi-track

	If the claim concludes 21 days or less before the date fixed for commencement of the trial	If the claim concludes more than 21 days before the date fixed for commencement of the trial or before any such date has been fixed
Type A claim	75%	27.5%
Type B claim	100%	100%
Type C claim	75%	62.5%

#### Alternative percentage increase **E+W**

**45.26.**—(1) In cases to which this Section applies and subject to paragraph (2) below, rules 45.18(2) to (4) apply where the percentage increase is the amount allowed under rules 45.24 and 45.25.

(2) For the purposes of this section, the sum of £250,000 shall be substituted for the sum of £500,000 in rules 45.18(2)(a) to (c).

(3) Where the percentage increase of fees is assessed by the court under rule 45.18(4), as applied by paragraph 1 above, the percentage increase to be allowed shall be the amount shown in Table 8.

(4) The percentage increase cannot be varied where the case concludes at trial.

**Table 8**

Type of claim	Amount Allowed	
A	If the percentage increase is assessed as greater than 40% or less than 15%, the percentage increase that is assessed by the court.	If the percentage increase is assessed as no greater than 40% and no less than 15%— (i) 27.5%; and (ii) the costs of the application and assessment shall be paid by the applicant.
B	If the percentage increase is assessed as less than 75%, the percentage increase that is assessed by the court.	If the percentage increase is assessed as no less than 75%— (i) 100%; and (ii) the costs of the application and assessment shall be paid by the applicant.
C	If the percentage increase is assessed as greater than 75% or less than 50%, the percentage increase that is assessed by the court.	If the percentage increase is assessed as no greater than 75% and no less than 50%— (i) 62.5%; and (ii) the costs of the application and assessment shall be paid by the applicant.]

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the The Civil Procedure Rules 1998, PART 45.