
STATUTORY INSTRUMENTS

1998 No. 3132

The Civil Procedure Rules 1998

[^{F1}PART 45 **E+W**

FIXED COSTS

[^{F1}SECTION IV

The Pre-Action Protocols for Low Value Personal Injury Claims in Road Traffic Accidents and Low Value Personal Injury (Employers' Liability and Public Liability) Claims

Textual Amendments

F1 Pt. 45 substituted (1.10.2023) by [The Civil Procedure \(Amendment No. 2\) Rules 2023 \(S.I. 2023/572\)](#), rule 1(1), [Sch. 3](#) (with rule 2)

Scope and interpretation **E+W**

45.27.—(1) This Section applies to claims that have been or should have been started under Part 8 in accordance with Practice Direction 49F ('the Stage 3 Procedure').

(2) A reference to Claim Notification Form or Court Proceedings Pack is a reference to the form used in the relevant Protocol.

Application of fixed costs and disbursements **E+W**

45.28. The only costs allowed are—

- (a) the fixed costs in accordance with Table 10 and Table 11; and
- (b) the disbursements in accordance with Section IX of this Part.

Amount of fixed costs **E+W**

45.29.—(1) In Table 10 and Table 11—

'Type A fixed costs' means the legal representative's costs;

'Type B fixed costs' means the advocate's costs; and

'Type C fixed costs' means the costs for the advice on the amount of damages where the claimant is a child.

(2) 'Advocate' means a person exercising a right of audience as a representative of, or on behalf of, a party.

Where the claimant obtains judgment for an amount more than the defendant's relevant Protocol offer **E+W**

- 45.30.** Where rule 36.29(1)(b) or (c) applies, the court shall order the defendant to pay
- (a) where not already paid by the defendant, the Stage 1 and 2 fixed costs;
 - (b) where the claim is determined—
 - (i) on the papers, Stage 3 Type A fixed costs;
 - (ii) at a Stage 3 hearing, Stage 3 Type A and B fixed costs; or
 - (iii) at a Stage 3 hearing and the claimant is a child, Type A, B and C fixed costs; and
 - (c) disbursements allowed in accordance with Section IX of this Part.

Settlement at Stage 2 or Stage 3 where the claimant is a child **E+W**

- 45.31.**—(1) This rule applies where—
- (a) the claimant is a child;
 - (b) there is a settlement—
 - (i) at Stage 2 of the relevant Protocol; or
 - (ii) after proceedings are started under the Stage 3 Procedure and the settlement is more than the defendant's relevant Protocol offer; and
 - (c) an application is made to the court to approve the settlement.
- (2) Where the court approves the settlement—
- (a) where paragraph (1)(b)(i) applies, at a settlement hearing at Stage 2 of the relevant Protocol; or
 - (b) where paragraph (1)(b)(ii) applies, at the settlement hearing under the Stage 3 procedure,
- it shall order the defendant to pay—
- (i) the Stage 1 and 2 fixed costs;
 - (ii) the Stage 3 Type A, B and C fixed costs; and
 - (iii) disbursements allowed in accordance with Section IX of this Part.
- (3) Where the court does not approve the settlement—
- (a) at a settlement hearing at Stage 2 of the relevant Protocol; or
 - (b) at the settlement hearing under the Stage 3 procedure,
- it shall order the defendant to pay the Stage 1 and 2 fixed costs.
- (4) Paragraphs (5) and (6) apply where the court does not approve the settlement at the first settlement hearing but does approve the settlement at—
- (a) where paragraph (1)(b)(i) applies, a second settlement hearing; or
 - (b) where paragraph (1)(b)(ii) applies, the Stage 3 hearing.
- (5) At the second settlement hearing or Stage 3 hearing, as appropriate, the court shall order the defendant to pay—
- (a) the Stage 3 Type A and C fixed costs for the first settlement hearing;
 - (b) disbursements allowed in accordance with Section IX of this Part; and
 - (c) the Stage 3 Type B fixed costs for one of the hearings.
- (6) The court in its discretion may also order—
- (a) the defendant to pay an additional amount of either or both the Stage 3—

- (i) Type A fixed costs;
- (ii) Type B fixed costs; or
- (b) the claimant to pay an amount equivalent to either or both of the Stage 3—
 - (i) Type A fixed costs;
 - (ii) Type B fixed costs.

(7) Where paragraph (1)(b)(ii) applies and the settlement is not approved at the Stage 3 hearing the court shall order the defendant to pay the Stage 3 Type A fixed costs.

Where the court orders that the claim is not suitable to be determined under the Stage 3 Procedure and the claimant is a child **E+W**

45.32. Where

- (a) the claimant is a child; and
- (b) at a settlement hearing or the Stage 3 hearing the court orders that the claim is not suitable to be determined under the Stage 3 Procedure,

the court shall order the defendant to pay—

- (i) the Stage 1 and 2 fixed costs; and
- (ii) the Stage 3 Type A, B and C fixed costs.

Settlement before proceedings are issued under Stage 3 **E+W**

45.33. Where

- (a) there is a settlement after the Court Proceedings Pack has been sent to the defendant but before proceedings are issued under Stage 3; and
- (b) the settlement is more than the defendant's relevant Protocol offer,

the fixed costs shall include an additional amount equivalent to the Stage 3 Type A fixed costs.

Additional advice on the value of the claim **E+W**

45.34.—(1) Where—

- (a) the value of the claim for damages is more than £10,000;
- (b) an additional advice has been obtained from a specialist legal representative, and that advice—
 - (i) is within the legal representative's specialist expertise; and
 - (ii) is reasonably required to value the claim,

the fixed costs may include an additional amount equivalent to the Stage 3 Type C fixed costs.

(2) In a claim to which the RTA Protocol applies—

- (a) vehicle related damages are excluded for the purpose of valuing a claim under paragraph (1)(a); and
- (b) 'vehicle related damages' has the meaning ascribed to it by paragraph 1.1(18) of the RTA Protocol.

Failure to comply or electing not to continue with the relevant Protocol – costs consequences **E+W**

45.35.—(1) This rule applies where the claimant—

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

- (a) does not comply with the process set out in the relevant Protocol; or
 - (b) elects not to continue with that process,
- and starts proceedings under Part 7.
- (2) Subject to paragraph (3), where a judgment is given in favour of the claimant but—
 - (a) the court determines that the defendant did not proceed with the process set out in the relevant Protocol because the claimant provided insufficient information on the Claim Notification Form;
 - (b) the court considers that the claimant acted unreasonably—
 - (i) by discontinuing the process set out in the relevant Protocol and starting proceedings under Part 7;
 - (ii) by valuing the claim at more than £25,000, so that the claimant did not need to comply with the relevant Protocol; or
 - (iii) except for paragraph (2)(a), in any other way that caused the process in the relevant Protocol to be discontinued; or
 - (c) the claimant did not comply with the relevant Protocol at all despite the claim falling within the scope of the relevant Protocol,

the court may order the defendant to pay no more than the fixed costs in rule 45.28 together with the disbursements allowed in accordance with Section IX of this Part.

(3) Where a judgment is given in favour of the claimant but the claimant did not comply with the process in paragraph 6.3A(2) of the RTA Protocol, the court may not order the defendant to pay the claimant's costs and disbursements save in exceptional circumstances.

(4) Where the claimant starts proceedings under paragraph [F²7.29] of the RTA Protocol or paragraph [F³7.27] of the EL/PL Protocol and the court orders the defendant to make an interim payment of no more than the interim payment made under paragraph [F⁴7.19(2) or (3)] of the RTA Protocol or paragraph [F⁵7.18(2) or (3)] of the EL/PL Protocol the court shall, on the final determination of the proceedings, order the defendant to pay no more than—

- (a) the Stage 1 and 2 fixed costs; and
- (b) the disbursements allowed in accordance with Section IX of this Part.

(5) Nothing in Section VI or Section VII of this Part shall prevent the court making an order under this rule where appropriate.

Textual Amendments

- F2** Word in rule 45.35(4) substituted (1.10.2023 immediately after S.I. 2023/572 comes into force) by [The Civil Procedure \(Amendment No. 3\) Rules 2023 \(S.I. 2023/788\)](#), rules 1(1), **23(3)(a)**
- F3** Word in rule 45.35(4) substituted (1.10.2023 immediately after S.I. 2023/572 comes into force) by [The Civil Procedure \(Amendment No. 3\) Rules 2023 \(S.I. 2023/788\)](#), rules 1(1), **23(3)(b)**
- F4** Words in rule 45.35(4) substituted (1.10.2023 immediately after S.I. 2023/572 comes into force) by [The Civil Procedure \(Amendment No. 3\) Rules 2023 \(S.I. 2023/788\)](#), rules 1(1), **23(3)(c)**
- F5** Words in rule 45.35(4) substituted (1.10.2023 immediately after S.I. 2023/572 comes into force) by [The Civil Procedure \(Amendment No. 3\) Rules 2023 \(S.I. 2023/788\)](#), rules 1(1), **23(3)(d)**

Where the parties have settled after proceedings have started **E+W**

45.36.—(1) This rule applies where an application is made under rule 45.40 (costs-only application after a claim is started under Part 8 in accordance with Practice Direction 49F).

(2) Where the settlement is more than the defendant's relevant Protocol offer the court shall order the defendant to pay—

- (a) the Stage 1 and 2 fixed costs where not already paid by the defendant;
- (b) the Stage 3 Type A fixed costs; and
- (c) disbursements allowed in accordance with Section IX of this Part.

(3) Where the settlement is less than or equal to the defendant's relevant Protocol offer the court shall order the defendant to pay—

- (a) the Stage 1 and 2 fixed costs where not already paid by the defendant; and
- (b) disbursements allowed in accordance with Section IX of this Part.

(4) The court may, in its discretion, order either party to pay the costs of the application.

Where the claimant obtains judgment for an amount equal to or less than the defendant's relevant Protocol offer **E+W**

45.37. Where rule 36.29(1)(a) applies, the court shall order the claimant to pay

- (a) where the claim is determined—
 - (i) on the papers, Stage 3 Type A fixed costs; or
 - (i) at a hearing, Stage 3 Type A and B fixed costs;
- (b) any Stage 3 disbursements allowed in accordance with Section IX of this Part.

Adjournment **E+W**

45.38. Where the court adjourns a settlement hearing or a Stage 3 hearing it may, in its discretion, order a party to pay

- (a) an additional amount of the Stage 3 Type B fixed costs; and
- (b) any court fee for that adjournment.

Account of payment of Stage 1 and Stage 2 fixed costs **E+W**

45.39. Where a claim no longer continues under the relevant Protocol the court shall, when making any order as to costs including an order for fixed recoverable costs under Section VI or Section VII of this Part, take into account the Stage 1 and Stage 2 fixed costs that have been paid by the defendant.

Costs-only application after a claim is started under Part 8 in accordance with Practice Direction 49F **E+W**

45.40.—(1) This rule sets out the procedure where—

- (a) the parties to a dispute have reached an agreement on all issues (including which party is to pay the costs) which is made or confirmed in writing; but
- (b) they have failed to agree the amount of those costs; and
- (c) proceedings have been started under Part 8 in accordance with Practice Direction 49F.

(2) Either party may make an application for the court to determine the costs.

(3) Where an application is made under this rule the court shall assess the costs in accordance with the relevant provisions in rule 45.31 in so far as that rule applies to proceedings started under the Stage 3 Procedure and the settlement is more than the defendant's relevant Protocol offer or rule 45.36.

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(4) Rule 44.5 (amount of costs where costs are payable pursuant to a contract) does not apply to an application under this rule.]

Status:

Point in time view as at 01/10/2023.

Changes to legislation:

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