

SCHEDULE 1

Rule 40

“V FIXED RECOVERABLE SUCCESS FEES IN
EMPLOYER'S LIABILITY DISEASE CLAIMS

Scope and Interpretation

- 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 1st 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

- 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).

Status: This is the original version (as it was originally made).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

(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

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).

(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

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.”