

SCHEDULE

Rule 7(16)

“SECTION IIIA

*Claims Which No Longer Continue Under the RTA or EL/
PL Pre-Action Protocols – Fixed Recoverable Costs*

Scope and interpretation

45.29A.—(1) Subject to paragraph (3), this section applies where a claim is started under—

- (a) the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (“the RTA Protocol”); or
- (b) the Pre-Action Protocol for Low Value Personal Injury (Employers’ Liability and Public Liability) Claims (“the EL/PL Protocol”),

but no longer continues under the relevant Protocol or the Stage 3 Procedure in Practice Direction 8B.

(2) This section does not apply to a disease claim which is started under the EL/PL Protocol.

(3) Nothing in this section shall prevent the court making an order under rule 45.24.

Application of fixed costs and disbursements – RTA Protocol

45.29B. Subject to rules 45.29F, 45.29G, 45.29H and 45.29J, if, in a claim started under the RTA Protocol, the Claim Notification Form is submitted on or after 31st July 2013, the only costs allowed are—

- (a) the fixed costs in rule 45.29C;
- (b) disbursements in accordance with rule 45.29I.

Amount of fixed costs – RTA Protocol

45.29C.—(1) Subject to paragraph (2), the amount of fixed costs is set out in Table 6B.

(2) Where the claimant—

- (a) lives or works in an area set out in Practice Direction 45; and
- (b) instructs a legal representative who practises in that area,

the fixed costs will include, in addition to the costs set out in Table 6B, an amount equal to 12.5% of the costs allowable under paragraph (1) and set out in Table 6B.

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

(4) In Table 6B—

- (a) in Part B, “on or after” means the period beginning on the date on which the court respectively—
 - (i) issues the claim;
 - (ii) allocates the claim under Part 26; or
 - (iii) lists the claim for trial; and
- (b) unless stated otherwise, a reference to “damages” means agreed damages; and
- (c) a reference to “trial” is a reference to the final contested hearing.

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Table 6B

Fixed costs where a claim no longer continues under the RTA Protocol

A. If Parties reach a settlement prior to the claimant issuing proceedings under Part 7				
Agreed damages	At least £1,000, but not more than £5,000	More than £5,000, but not more than £10,000	More than £10,000, but not more than £25,000	
Fixed costs	The greater of— (a) £550; or (b) the total of— (i) £100; and (ii) 20% of the damages	The total of— (a) £1,100; and (b) 15% of damages over £5,000	The total of— (a) £1,930; and (b) 10% of damages over £10,000	
B. If proceedings are issued under Part 7, but the case settles before trial				
Stage at which case is settled	On or after the date of issue, but prior to the date of allocation under Part 26	On or after the date of allocation under Part 26, but prior to the date of listing	On or after the date of listing but prior the date of trial	
Fixed costs	The total of— (a) £1,160; and (b) 20% of the damages	The total of— (a) £1,880; and (b) 20% of the damages	The total of— (a) £2,655; and (b) 20% of the damages	
<i>C. If the claim is disposed of at trial</i>				
Fixed costs	The total of— (a) £2,655; and (b) 20% of the damages agreed or awarded; and (c) the relevant trial advocacy fee			
D. Trial advocacy fee				
Damages agreed or awarded	Not more than £3,000	More than £3,000, but not more than £10,000	More than £10,000, but not more than £15,000	More than £15,000
Trial advocacy fee	£500	£710	£1,070	£1,705

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Application of fixed costs and disbursements – EL/PL Protocol

45.29D. Subject to rules 45.29F, 45.29H and 45.29J, in a claim started under the EL/PL Protocol the only costs allowed are—

- (a) fixed costs in rule 45.29E; and
- (b) disbursements in accordance with rule 45.29I.

Amount of fixed costs – EL/PL Protocol

45.29E.—(1) Subject to paragraph (2), the amount of fixed costs is set out—

- (a) in respect of employers’ liability claims, in Table 6C; and
- (b) in respect of public liability claims, in Table 6D.

(2) Where the claimant—

- (a) lives or works in an area set out in Practice Direction 45; and
- (b) instructs a legal representative who practises in that area,

the fixed costs will include, in addition to the costs set out in Tables 6C and 6D, an amount equal to 12.5% of the costs allowable under paragraph (1) and set out in table 6C and 6D.

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

(4) In Tables 6C and 6D—

- (a) in Part B, “on or after” means the period beginning on the date on which the court respectively—
 - (i) issues the claim;
 - (ii) allocates the claim under Part 26; or
 - (iii) lists the claim for trial; and
- (b) unless stated otherwise, a reference to “damages” means agreed damages; and
- (c) a reference to “trial” is a reference to the final contested hearing.

Table 6C

Fixed costs where a claim no longer continues under the EL/PL Protocol – employers’ liability claims

A. If Parties reach a settlement prior to the claimant issuing proceedings under Part 7			
Agreed damages	At least £1,000, but not more than £5,000	More than £5,000, but not more than £10,000	More than £10,000, but not more than £25,000
Fixed costs	The total of— (a) £950; and (b) 17.5% of the damages	The total of— (a) £1,855; and (b) 12.5% of damages over £5,000	The total of— (a) £2,500; and (b) 10% of damages over £10,000
B. If proceedings are issued under Part 7, but the case settles before trial			

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Stage at which case is settled	On or after the date of issue, but prior to the date of allocation under Part 26	On or after the date of allocation under Part 26, but prior to the date of listing	On or after the date of listing but prior the date of trial	
Fixed costs	The total of— (a) £2,630; and (b) 20% of the damages	The total of— (a) £3,350; and (b) 25% of the damages	The total of— (a) £4,280; and (b) 30% of the damages	
C. If the claim is disposed of at trial				
Fixed costs	The total of— (a) £4,280; (b) 30% of the damages agreed or awarded; and (c) the relevant trial advocacy fee			
D. Trial advocacy fees				
Damages agreed or awarded	Not more than £3,000	More than £3,000, but not more than £10,000	More than £10,000, but not more than £15,000	More than £15,000
Trial advocacy fee	£500	£710	£1,070	£1,705

Table 6D

**Fixed costs where a claim no longer continues
under the EL/PL Protocol – public liability claims**

A. If Parties reach a settlement prior to the claimant issuing proceedings under Part 7			
Agreed damages	At least £1,000, but not more than £5,000	More than £5,000, but not more than £10,000	More than £10,000, but not more than £25,000
Fixed costs	The total of— (a) £950; and (b) 17.5% of the damages	The total of— (a) £1,855; and (b) 10.5% of damages over £5,000	The total of— (a) £2,370; and (b) 10% of damages over £10,000
B. If proceedings are issued under Part 7, but the case settles before trial			
Stage at which case is settled	On or after the date of issue, but prior to the date of allocation under Part 26	On or after the date of allocation under Part 26, but prior to the date of listing	On or after the date of listing but prior the date of trial
Fixed costs damages	The total of—	The total of—	The total of—

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A. If Parties reach a settlement prior to the claimant issuing proceedings under Part 7				
	(a) £2,450; and (b) 17.5% of the damages	(a) £3,065; and (b) 22.5% of the damages	(a) £3,790; and (b) 27.5% of the damages	
C. If the claim is disposed of at trial				
Fixed costs	The total of— (a) £3,790; (b) 27.5% of the damages agreed or awarded; and (c) the relevant trial advocacy fee			
D. Trial advocacy fees				
Damages agreed or awarded	Not more than £3,000	More than £3,000, but not more than £10,000	More than £10,000, but not more than £15,000	More than £15,000
Trial advocacy fee	£500	£710	£1,070	£1,705

Defendants’ costs

45.29F.—(1) *In this rule—*

- (a) paragraphs (8) and (9) apply to assessments of defendants’ costs under Part 36;
- (b) paragraph (10) applies to assessments to which the exclusions from qualified one way costs shifting in rules 44.15 and 44.16 apply; and
- (c) paragraphs (2) to (7) apply to all other cases under this Section in which a defendant’s costs are assessed.

(2) If, in any case to which this Section applies, the court makes an order for costs in favour of the defendant—

- (a) the court will have regard to; and
- (b) the amount of costs order to be paid shall not exceed,

the amount which would have been payable by the defendant if an order for costs had been made in favour of the claimant at the same stage of the proceedings.

(3) For the purpose of assessing the costs payable to the defendant by reference to the fixed costs in Table 6, Table 6A, Table 6B, Table 6C and Table 6D, “value of the claim for damages” and “damages” shall be treated as references to the value of the claim.

(4) For the purposes of paragraph (3), “the value of the claim” is—

- (a) the amount specified in the claim form, excluding—
 - (i) any amount not in dispute;
 - (ii) in a claim started under the RTA Protocol, any claim for vehicle related damages;
 - (iii) interest;
 - (iv) costs; and

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- (v) any contributory negligence;
 - (b) if no amount is specified in the claim form, the maximum amount which the claimant reasonably expected to recover according to the statement of value included in the claim form under rule 16.3; or
 - (c) £25,000, if the claim form states that the claimant cannot reasonably say how much is likely to be recovered.
- (5) Where the defendant—
- (a) lives, works or carries on business in an area set out in Practice Direction 45; and
 - (b) instructs a legal representative who practises in that area,

the costs will include, in addition to the costs allowable under paragraph (2), an amount equal to 12.5% of those costs.

(6) Where an order for costs is made pursuant to this rule, the defendant is entitled to disbursements in accordance with rule 45.29I

(7) Where appropriate, VAT may be recovered in addition to the amount of any costs allowable under this rule.

(8) Where, in a case to which this Section applies, a Part 36 offer is accepted, rule 36.10A will apply instead of this rule.

(9) Where, in a case to which this Section applies, upon judgment being entered, the claimant fails to obtain a judgment more advantageous than the claimant's Part 36 offer, rule 36.14A will apply instead of this rule.

(10) Where, in a case to which this Section applies, any of the exceptions to qualified one way costs shifting in rules 44.15 and 44.16 is established, the court will assess the defendant's costs without reference to this rule.

Counterclaims under the RTA Protocol

45.29G.—(1) If in any case to which this Section applies—

- (a) the defendant brings a counterclaim which includes a claim for personal injuries to which the RTA Protocol applies;
- (b) the counterclaim succeeds; and
- (c) the court makes an order for the costs of the counterclaim,

rules 45.29B, 45.29C, 45.29I, 45.29J, 45.29K and 45.29L shall apply.

(2) Where a successful counterclaim does not include a claim for personal injuries—

- (a) the order for costs of the counterclaim shall be for a sum equivalent to one half of the applicable Type A and Type B costs in Table 6;
- (b) where the defendant—
 - (i) lives, works, or carries on business in an area set out in Practice Direction 45; and
 - (ii) instructs a legal representative who practises in that area,

the costs will include, in addition to the costs allowable under paragraph (a), an amount equal to 12.5% of those costs;

- (c) if an order for costs is made pursuant to this rule, the defendant is entitled to disbursements in accordance with rule 45.29I; and
- (d) where appropriate, VAT may be recovered in addition to the amount of any costs allowable under this rule.

Interim applications

45.29H.—(1) Where the court makes an order for costs of an interim application to be paid by one party in a case to which this Section applies, the order shall be for a sum equivalent to one half of the applicable Type A and Type B costs in Table 6 or 6A.

(2) Where the party in whose favour the order for costs is made—

- (a) lives, works or carries on business in an area set out in Practice Direction 45; and
- (b) instructs a legal representative who practises in that area,

the costs will include, in addition to the costs allowable under paragraph (1), an amount equal to 12.5% of those costs.

(3) if an order for costs is made pursuant to this rule, the party in whose favour the order is made is entitled to disbursements in accordance with rule 45.29I; and

(4) Where appropriate, VAT may be recovered in addition to the amount of any costs allowable under this rule.

Disbursements

45.29I.—(1) The court—

- (a) may allow a claim for a disbursement of a type mentioned in paragraphs (2) or (3); but
- (b) will not allow a claim for any other type of disbursement.

(2) In a claim started under either the RTA Protocol or the EL/PL Protocol, the disbursements referred to in paragraph (1) are—

- (a) the cost of obtaining medical records and expert medical reports as provided for in the relevant Protocol;
- (b) the cost of any non-medical expert reports as provided for in the relevant Protocol;
- (c) the cost of any advice from a specialist solicitor or counsel as provided for in the relevant Protocol;
- (d) court fees;
- (e) any expert's fee for attending the trial where the court has given permission for the expert to attend;
- (f) expenses which a party or witness has reasonably incurred in travelling to and from a hearing or in staying away from home for the purposes of attending a hearing;
- (g) a sum not exceeding the amount specified in Practice Direction 45 for any loss of earnings or loss of leave by a party or witness due to attending a hearing or to staying away from home for the purpose of attending a hearing; and
- (h) any other disbursement reasonably incurred due to a particular feature of the dispute.

(3) In a claim started under the RTA Protocol only, the disbursements referred to in paragraph (1) are also the cost of—

- (a) an engineer's report; and
- (b) a search of the records of the—
 - (i) Driver Vehicle Licensing Authority; and
 - (ii) Motor Insurance Database.

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Claims for an amount of costs exceeding fixed recoverable costs

45.29J.—(1) If it considers that there are exceptional circumstances making it appropriate to do so, the court will consider a claim for an amount of costs (excluding disbursements) which is greater than the fixed recoverable costs referred to in rules 45.29B to 45.29H.

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

- (a) summarily assess the costs; or
- (b) make an order for the costs to be subject to detailed assessment.

(3) If the court does not consider the claim to be appropriate, it will make an order—

- (a) if the claim is made by the claimant, for the fixed recoverable costs; or
- (b) if the claim is made by the defendant, for a sum which has regard to, but which does not exceed the fixed recoverable costs,

and any permitted disbursements only.

Failure to achieve costs greater than fixed recoverable costs

45.29K.—(1) This rule applies where—

- (a) costs are assessed in accordance with rule 45.29J(2); and
- (b) the court assesses the costs (excluding any VAT) as being an amount which is in a sum less than 20% greater than the amount of the fixed recoverable costs.

(2) The court will make an order for the party who made the claim to be paid the lesser of—

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

Costs of the costs-only proceedings or the detailed assessment

45.29L.—(1) Where—

- (a) the court makes an order for costs in accordance with rule 45.29J(3); or
- (b) rule 45.29K applies,

the court may—

- (i) decide not to award the party making the claim the costs of the costs only proceedings or detailed assessment; and
- (ii) make orders in relation to costs that may include an order that the party making the claim pay the costs of the party defending those proceedings or that assessment.”