

# PART 46

## FAST TRACK TRIAL COSTS

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### SCOPE OF THIS PART

- 46.1 | (1) This Part deals with the amount of costs which the court may award as the costs of an advocate for preparing for and appearing at the trial of a claim in the fast track (referred to in this rule as ‘fast track trial costs’).
- (2) For the purposes of this Part –
- (a) ‘advocate’ means a person exercising a right of audience as a representative of, or on behalf of, a party;
  - (b) ‘fast track trial costs’ means the costs of a party’s advocate for preparing for and appearing at the trial, but does not include –
    - (i) any other disbursements; or
    - (ii) any value added tax payable on the fees of a party’s advocate; and
  - (c) ‘trial’ includes a hearing where the court decides an amount of money or the value of goods following a judgment under Part 12 (default judgment) or Part 14 (admissions) but does not include –
    - (i) the hearing of an application for summary judgment under Part 24; or
    - (ii) the court’s approval of a settlement or other compromise under rule 21.10.

(Part 21 deals with claims made by or on behalf of, or against, children and patients)

### AMOUNT OF FAST TRACK TRIAL COSTS

- 46.2 | (1) The following table shows the amount of fast track trial costs which the court may award (whether by summary or detailed assessment).

VALUE OF THE CLAIM	AMOUNT OF FAST TRACK TRIAL COSTS WHICH THE COURT MAY AWARD
Up to £3,000	£350
More than £3,000 but not more than £10,000	£500
More than £10,000	£750

- (2) The court may not award more or less than the amount shown in the table except where –
- (a) it decides not to award any fast track trial costs; or
  - (b) rule 46.3 applies,
- but the court may apportion the amount awarded between the parties to reflect their respective degrees of success on the issues at trial.
- (3) Where the only claim is for the payment of money –
- (a) for the purpose of quantifying fast track trial costs awarded to a claimant, the value of the claim is the total amount of the judgment excluding –
    - (i) interest and costs; and
    - (ii) any reduction made for contributory negligence.
  - (b) for the purpose of the quantifying fast track trial costs awarded to a defendant, the value of the claim is –
    - (i) the amount specified in the claim form (excluding interest and costs);
    - (ii) if no amount is specified, 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
    - (iii) more than £10,000, if the claim form states that the claimant cannot reasonably say how much he expects to recover.
- (4) Where the claim is only for a remedy other than the payment of money the value of the claim is deemed to be more than £3,000 but not more than £10,000, unless the court orders otherwise.
- (5) Where the claim includes both a claim for the payment of money and for a remedy other than the payment of money, the value of the claim is deemed to be the higher of –
- (a) the value of the money claim decided in accordance with paragraph (3); or
  - (b) the deemed value of the other remedy decided in accordance with paragraph (4),
- unless the court orders otherwise.

## (6) Where –

- (a) a defendant has made a counterclaim against the claimant;
- (b) the counterclaim has a higher value than the claim; and
- (c) the claimant succeeds at trial both on his claim and the counterclaim,

for the purpose of quantifying fast track trial costs awarded to the claimant, the value of the claim is the value of the defendant's counterclaim calculated in accordance with this rule.

(Rule 20.4 sets out how a defendant may make a counterclaim)

## POWER TO AWARD MORE OR LESS THAN THE AMOUNT OF FAST TRACK TRIAL COSTS

46.3

## (1) This rule sets out when a court may award –

- (a) an additional amount to the amount of fast track trial costs shown in the table in rule 46.2(1); and
- (b) less than those amounts.

## (2) If –

- (a) in addition to the advocate, a party's legal representative attends the trial;
- (b) the court considers that it was necessary for a legal representative to attend to assist the advocate; and
- (c) the court awards fast track trial costs to that party,

the court may award an additional £250 in respect of the legal representative's attendance at the trial.

(Legal representative is defined in rule 2.3)

## (2A) The court may in addition award a sum representing an additional liability.

(The requirements to provide information about a funding arrangement where a party wishes to recover any additional liability under a funding arrangement are set out in the costs practice direction)

("Additional liability" is defined in rule 43.2)

- (3) If the court considers that it is necessary to direct a separate trial of an issue then the court may award an additional amount in respect of the separate trial but that amount is limited in accordance with paragraph (4) of this rule.
- (4) The additional amount the court may award under paragraph 3 must not exceed two-thirds of the amount payable for that claim, subject to a minimum award of £350.

- (5) Where the party to whom fast track trial costs are to be awarded is a litigant in person, the court will award –
  - (a) if the litigant in person can prove financial loss, two-thirds of the amount that would otherwise be awarded; or
  - (b) if the litigant in person fails to prove financial loss, an amount in respect of the time spent reasonably doing the work at the rate specified in the costs practice direction.
- (6) Where a defendant has made a counterclaim against the claimant, and –
  - (a) the claimant has succeeded on his claim; and
  - (b) the defendant has succeeded on his counterclaim,
 the court will quantify the amount of the award of fast track trial costs to which –
  - (i) but for the counterclaim, the claimant would be entitled for succeeding on his claim; and
  - (ii) but for the claim, the defendant would be entitled for succeeding on his counterclaim,
 and make one award of the difference, if any, to the party entitled to the higher award of costs.
- (7) Where the court considers that the party to whom fast track trial costs are to be awarded has behaved unreasonably or improperly during the trial, it may award that party an amount less than would otherwise be payable for that claim, as it considers appropriate.
- (8) Where the court considers that the party who is to pay the fast track trial costs has behaved improperly during the trial the court may award such additional amount to the other party as it considers appropriate.

## FAST TRACK TRIAL COSTS WHERE THERE IS MORE THAN ONE CLAIMANT OR DEFENDANT

### 46.4

- (1) Where the same advocate is acting for more than one party –
  - (a) the court may make only one award in respect of fast track trial costs payable to that advocate; and
  - (b) the parties for whom the advocate is acting are jointly entitled to any fast track trial costs awarded by the court.
- (2) Where –
  - (a) the same advocate is acting for more than one claimant; and
  - (b) each claimant has a separate claim against the defendant,
 the value of the claim, for the purpose of quantifying the award in respect of fast track trial costs is to be ascertained in accordance with paragraph (3).

- (3) The value of the claim in the circumstances mentioned in paragraph (2) is –
- (a) where the only claim of each claimant is for the payment of money –
    - (i) if the award of fast track trial costs is in favour of the claimants, the total amount of the judgment made in favour of all the claimants jointly represented; or
    - (ii) if the award is in favour of the defendant, the total amount claimed by the claimants,
 and in either case, quantified in accordance with rule 46.2(3);
  - (b) where the only claim of each claimant is for a remedy other than the payment of money, deemed to be more than £3,000 but not more than £10,000; and
  - (c) where claims of the claimants include both a claim for the payment of money and for a remedy other than the payment of money, deemed to be –
    - (i) more than £3,000 but not more than £10,000; or
    - (ii) if greater, the value of the money claims calculated in accordance with sub paragraph (a) above.
- (4) Where –
- (a) there is more than one defendant; and
  - (b) any or all of the defendants are separately represented,
- the court may award fast track trial costs to each party who is separately represented.
- (5) Where –
- (a) there is more than one claimant; and
  - (b) a single defendant,
- the court may make only one award to the defendant of fast track trial costs, for which the claimants are jointly and severally liable <sup>(GL)</sup>.
- (6) For the purpose of quantifying the fast track trial costs awarded to the single defendant under paragraph (5), the value of the claim is to be calculated in accordance with paragraph (3) of this rule.