

# FIXED COSTS

## Contents of this Part

### I FIXED COSTS

- Rule 45.1 Scope of this Section
- Rule 45.2 Amount of fixed commencement costs in a claim for the recovery of money or goods
- Rule 45.2A Amount of fixed commencement costs in a claim for the recovery of land or a demotion claim
- Rule 45.3 When defendant only liable for fixed commencement costs
- Rule 45.4 Costs on entry of judgment in a claim for the recovery of money or goods
- Rule 45.4A Costs on entry of judgment in a claim for the recovery of land or a demotion claim
- Rule 45.5 Miscellaneous fixed costs
- Rule 45.6 Fixed enforcement costs

### II ROAD TRAFFIC ACCIDENTS – FIXED RECOVERABLE COSTS

- Rule 45.7 Scope and interpretation
- Rule 45.8 Application of fixed recoverable costs
- Rule 45.9 Amount of fixed recoverable costs
- Rule 45.10 Disbursements
- Rule 45.11 Success fee
- Rule 45.12 Claims for an amount of costs exceeding fixed recoverable costs
- Rule 45.13 Failure to achieve costs greater than fixed recoverable costs
- Rule 45.14 Costs of the costs-only proceedings or the detailed assessment

### III FIXED PERCENTAGE INCREASE IN ROAD TRAFFIC ACCIDENT CLAIMS

- Rule 45.15 Scope and interpretation
- Rule 45.16 Percentage increase of solicitors' fees
- Rule 45.17 Percentage increase of counsel's fees
- Rule 45.18 Application for an alternative percentage increase where the fixed increase is 12.5%
- Rule 45.19 Assessment of alternative percentage increase

### IV FIXED PERCENTAGE INCREASE IN EMPLOYERS LIABILITY CLAIMS

- Rule 45.20 Scope and interpretation
- Rule 45.21 Percentage increase of solicitors' and counsel's fees
- Rule 45.22 Alternative percentage increase

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

- Rule 45.23 Scope and Interpretation
- Rule 45.24 Percentage increase of solicitors' fees
- Rule 45.25 Percentage increase of counsel's fees
- Rule 45.26 Alternative percentage increase

## **VI PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY CLAIMS IN ROAD TRAFFIC ACCIDENTS**

- Rule 45.27 Scope and interpretation
- Rule 45.28 Application of fixed costs, disbursements and success fee
- Rule 45.29 Amount of fixed costs
- Rule 45.30 Disbursements
- Rule 45.31 Success fee
- Rule 45.32 Where the claimant obtains judgment for an amount more than the defendant's RTA Protocol offer
- Rule 45.33 Settlement at Stage 2 where the claimant is a child
- Rule 45.34 Settlement at Stage 3 where the claimant is a child
- Rule 45.35 Where the court orders the claim is not suitable to be determined under the Stage 3 Procedure and the claimant is a child
- Rule 45.36 Failure to comply or electing not to continue with the RTA Protocol – costs consequences
- Rule 45.37 Where the parties have settled after proceedings have started
- Rule 45.38 Where the claimant obtains judgment for an amount equal to or less than the defendant's RTA Protocol offer
- Rule 45.39 Adjournment
- Rule 45.40 Account of payment of Stage 1 fixed costs

## **VII SCALE COSTS FOR CLAIMS IN A PATENTS COUNTY COURT**

- Rule 45.41 Scope and interpretation
  - Rule 45.42 Amount of scale costs
  - Rule 45.43 Summary assessment of the costs of an application where a party has behaved unreasonably
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## **I FIXED COSTS**

### **45.1 Scope of this Section**

- (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.
- (Practice Direction 7B 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.

#### **45.2 Amount of fixed commencement costs in a claim for the recovery of money or goods**

- (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.

#### **45.2A Amount of fixed commencement costs in a claim for the recovery of land or a demotion claim**

- (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.

**Table 1 Fixed costs on commencement of a claim for the recovery of money or goods**

<i>Relevant band</i>	<i>Where the claim form is served by the court or by any method other than personal service by the claimant</i>	<i>Where – ● the claim form is served personally by the claimant; and ● there is only one defendant</i>	<i>Where there is more than one defendant, for each additional defendant personally served at separate addresses by the claimant</i>
Where – ● the value of the claim exceeds £25 but does not exceed £500	£50	£60	£15

<i>Relevant band</i>	<i>Where the claim form is served by the court or by any method other than personal service by the claimant</i>	<i>Where – ● the claim form is served personally by the claimant; and ● there is only one defendant</i>	<i>Where there is more than one defendant, for each additional defendant personally served at separate addresses by the claimant</i>
Where – ● the value of the claim exceeds £500 but does not exceed £1,000	£70	£80	£15
Where – ● the value of the claim exceeds £1,000 but does not exceed £5,000; or ● the only claim is for delivery of goods and no value is specified or stated on the claim form	£80	£90	£15
Where – ● the value of the claim exceeds £5,000	£100	£110	£15

**Table 2 Fixed costs on commencement of a claim for the recovery of land or a demotion claim**

<i>Where the claim form is served by the court or by any method other than personal service by the claimant</i>	<i>Where – ● the claim form is served personally by the claimant; and ● there is only one defendant</i>	<i>Where there is more than one defendant, for each additional defendant personally served at separate addresses by the claimant</i>
£69.50	£77.00	£15.00

### 45.3 When defendant only liable for fixed commencement costs

- (1) Where –
- the only claim is for a specified sum of money; and
  - 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.

### 45.4 Costs on entry of judgment in a claim for the recovery of money or goods

Where –

- the claimant has claimed fixed commencement costs under rule 45.2; and
- 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-
  - the fixed commencement costs; and
  - the relevant amount shown in Table 3.

#### 45.4A Costs on entry of judgment in a claim for the recovery of land or a demotion claim

- (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.

**Table 3 Fixed Costs on Entry of Judgment in a claim for the recovery of money or goods**

	<i>Where the amount of the judgment exceeds £25 but does not exceed £5,000</i>	<i>Where the amount of the judgment exceeds £5,000</i>
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

## 45.5 Miscellaneous fixed costs

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

*Table 4 Miscellaneous Fixed Costs*

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 or at an alternative place is permitted by an order under rule 6.15 for each individual served	£53.25
Where a document is served out of the jurisdiction –	
(a) in Scotland, Northern Ireland, the Isle of Man or the Channel Islands;	£68.25
(b) in any other place	£77.00

## 45.6 Fixed enforcement costs

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 Fixed Enforcement Costs*

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 payment to the judgment creditor of money in court under rule 72.10(1)(b):	
if the amount recovered is less than £150	one-half of the amount recovered
otherwise	£98.50
On the making of a final charging order under rule 73.8(2)(a):	£110.00
	The court may also allow reasonable disbursements in respect of search fees and the registration of the order.

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Where a certificate is issued and registered under Schedule 6 to the Civil Jurisdiction and Judgments Act 1982, the costs of registration	£39.00
Where permission is given under RSC Order 45, rule 3 to enforce a judgment or order giving possession of land and costs are allowed on the judgment or order, the amount to be added to the judgment or order for costs –	
(a) basic costs	£42.50
(b) where notice of the proceedings is to be to more than one person, for each additional person	£2.75
Where a writ of execution as defined in the RSC Order 46, rule 1, is issued against any party	£51.75
Where a request is filed for the issue of a warrant of execution under CCR Order 26, rule 1, for a sum exceeding £25	£2.25
Where an application for an attachment of earnings order is made and costs are allowed under CCR Order 27, rule 9 or CCR Order 28, rule 10, for each attendance on the hearing of the application	£8.50

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## II ROAD TRAFFIC ACCIDENTS – FIXED RECOVERABLE COSTS

### 45.7 Scope and interpretation

- (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.
- (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 –
  - (a) the claimant is a litigant in person; or
  - (b) Section VI of this Part applies.
- (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.

## 45.8 Application of fixed recoverable costs

Subject to rule 45.12, the only costs which are to be allowed are –

- (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)

## 45.9 Amount of fixed recoverable costs

(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 Costs 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.

## 45.10 Disbursements

(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; or, where a 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;

(‘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 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)



#### **45.11 Success fee**

- (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).
- (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).

(Rule 43.2(k)(i) defines as funding arrangement as including a conditional fee agreement or collective conditional fee agreement which provides for a success fee)

#### **45.12 Claims for an amount of costs exceeding fixed recoverable costs**

- (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.

#### **45.13 Failure to achieve costs greater than fixed recoverable costs**

- (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.

#### **45.14 Costs of the costs-only proceedings or the detailed assessment**

Where –

- (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.

### **III FIXED PERCENTAGE INCREASE IN ROAD TRAFFIC ACCIDENT CLAIMS**

#### **45.15 Scope and interpretation**

- (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;
- (c) where the road traffic accident which gave rise to the dispute occurred before 6th October 2003; or
- (d) to a claim to which Section VI of this Part applies.

(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.

#### **45.16 Percentage increase of solicitors’ fees**

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.

#### **45.17 Percentage increase of counsel’s fees**

(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 –
  - (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.

#### **45.18 Application for an alternative percentage increase where the fixed increase is 12.5%**

- (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
  - (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.

#### **45.19 Assessment of alternative percentage increase**

- (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.

### **IV FIXED PERCENTAGE INCREASE IN EMPLOYERS LIABILITY CLAIMS**

#### **45.20 Scope and interpretation**

- (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
    - (iv) relates to an injury to which Section V of this Part applies; or
  - (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<sup>1</sup>; and
  - (b) a reference to ‘fees’ is a reference to fees for work done under a conditional fee agreement or collective conditional fee agreement.

#### **45.21 Percentage increase of solicitors’ and counsel’s fees**

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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<sup>1</sup> 1969 c.57.

- (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))

#### **45.22 Alternative percentage increase**

- (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.

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

#### **45.23 Scope and Interpretation**

- (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 Costs Practice Direction contains a non-exclusive list of diseases within Type A and Type B).

#### 45.24 Percentage increase of solicitors' fees

- (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)).

#### 45.25 Percentage increase of counsel's fees

- (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**

	<i>If the claim concludes 14 days or less before the date fixed for commencement of the trial</i>	<i>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</i>
Type A claim	50%	27.5%
Type B claim	100%	100%

	<i>If the claim concludes 14 days or less before the date fixed for commencement of the trial</i>	<i>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</i>
Type C claim	62.5%	62.5%

**Table 7 Claims allocated to the multi-track**

	<i>If the claim concludes 21 days or less before the date fixed for commencement of the trial</i>	<i>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</i>
Type A claim	75%	27.5%
Type B claim	100%	100%
Type C claim	75%	62.5%

#### **45.26 Alternative percentage increase**

- (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**

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

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*Amount Allowed*

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.
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## VI PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY CLAIMS IN ROAD TRAFFIC ACCIDENTS

### 45.27 Scope and interpretation

- (1) This Section applies to claims that have been or should have been started under Part 8 in accordance with Practice Direction 8B ('the Stage 3 Procedure').
- (2) Where a party has not complied with the RTA Protocol rule 45.36 will apply.
- (3) 'RTA Protocol' means the Pre-Action Protocol for Personal Injury Claims in Road Traffic Accidents.
- (4) A reference to 'Claim Notification Form' is a reference to the form used in the RTA Protocol.

### 45.28 Application of fixed costs, disbursements and success fee

The only costs allowed are –

- (a) fixed costs in rule 45.29;
- (b) disbursements in accordance with rule 45.30; and
- (c) a success fee in accordance with rule 45.31.

### 45.29 Amount of fixed costs

- (1) Subject to paragraph (4), the amount of fixed costs is set out in Table 1.
- (2) In Table 1 –
  - (a) 'Type A fixed costs' means the legal representative's costs;
  - (b) 'Type B fixed costs' means the advocate's costs; and
  - (c) 'Type C fixed costs' means the costs for the advice on the amount of damages where the claimant is a child.
- (3) Advocate has the same meaning as in rule 46.1(2)(a).
- (4) Subject to rule 45.36(2) the court will not award more or less than the amounts shown in Table 1.
- (5) Where the claimant –
  - (a) lives or works in an area set out in the Costs Practice Direction; and
  - (b) instructs a legal representative who practices in that area,



the fixed costs will include, in addition to the costs set out in Table 1, an amount equal to 12.5% of the Stage 1 and 2 and Stage 3 Type A fixed costs.

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

*Table 1 Fixed costs in relation to the RTA Protocol*

Stage 1 fixed costs	£400
Stage 2 fixed costs	£800
Stage 3 –	
Type A fixed costs	£250
Type B fixed costs	£250
Type C fixed costs	£150

### 45.30 Disbursements

- (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 or reports as provided for in the RTA Protocol;
    - (iii) an engineer's report;
    - (iv) a search of the records of the –
      - (aa) Driver Vehicle Licensing Authority;
      - (bb) Motor Insurance Database;
  - (b) the amount of the insurance premium or, where a 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 of the Access to Justice Act 1999<sup>1</sup> in respect of provision made against the risk of having to meet such liabilities;
  - (c) court fees as a result of Part 21 being applicable;
  - (d) court fees payable where proceedings are started as a result of a limitation period that is about to expire;
  - (e) court fees in respect of the Stage 3 Procedure;
  - (f) any other disbursement that has arisen due to a particular feature of the dispute.  
(insurance premium is defined in rule 43.2(1)(m).)  
(membership organisation is defined in rule 43.2(1)(n).)

### 45.31 Success fee

- (1) A party who has entered into a funding arrangement of a type specified in rule 43.2(1)(k)(i) in respect of any element of the fixed costs in rule 45.29 may recover a success fee on that element of the fixed costs.

<sup>1</sup> 1999 c. 22.

(2) A reference to a success fee in this Section is a reference to a success fee in accordance with paragraph (1).

(3) Where the court –

- (a) determines the claim at a Stage 3 hearing or on the papers; and
- (b) awards an amount of damages that is more than the defendant's RTA Protocol offer, the amount of the claimant's success fee is –
  - (i) 12.5% of the Stage 1 and 2 fixed costs; and
  - (ii) 100% of the relevant Stage 3 fixed costs.

(RTA Protocol offer is defined in rule 36.17.)

(4) Where the court –

- (a) determines the claim at a Stage 3 hearing or on the papers; and
- (b) awards an amount of damages that is equal to or less than the defendant's RTA Protocol offer, the amount of the defendant's success fee is 100% of the relevant Stage 3 fixed costs.

(5) Where the claimant is a child and the court –

- (a) does not approve a settlement at a settlement hearing;
- (b) determines the claim at a Stage 3 hearing; and
- (c) awards an amount of damages that is more than the amount of the settlement considered by the court at the first settlement hearing; the amount of the claimant's success fee is –
  - (i) 12.5% of the Stage 1 and 2 fixed costs;
  - (ii) 100% of the relevant Stage 3 fixed costs.

(6) Where paragraphs (3) to (5) do not apply the success fee is –

- (a) 12.5% of Stage 1 and 2 fixed costs; and
- (b) 12.5% of the relevant Stage 3 fixed costs.

(7) The amount of the success fee set out in paragraphs (3) to (6) will be calculated without regard to any additional amount which may be included in the fixed costs by virtue of rule 45.29(5).

#### **45.32 Where the claimant obtains judgment for an amount more than the defendant's RTA Protocol offer**

(1) Where rule 36.21(1)(b) or (c) applies, the court will 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;
- (c) disbursements allowed in accordance with rule 45.30; and
- (d) a success fee in accordance with rule 45.31(3).

#### **45.33 Settlement at Stage 2 where the claimant is a child**

(1) This rule applies where –

- (a) the claimant is a child;
- (b) there is a settlement at Stage 2 of the RTA Protocol; and
- (c) an application is made to the court to approve the settlement.

- (2) Where the court approves the settlement at a settlement hearing it will order the defendant to pay –
  - (a) the Stage 1 and 2 fixed costs;
  - (b) the Stage 3 Type A, B and C fixed costs;
  - (c) disbursements allowed in accordance with rule 45.30; and
  - (d) a success fee in accordance with rule 45.31(6).
- (3) Where the court does not approve the settlement at a settlement hearing it will 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 second settlement hearing.
- (5) At the second settlement hearing the court will 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 rule 45.30;
  - (c) the Stage 3 Type B fixed costs for one of the hearings; and
  - (d) a success fee in accordance with rule 45.31(6) on the Stage 1 and 2 fixed costs and the Stage 3 Type A, B and C fixed costs.
- (6) The court in its discretion may also order –
  - (a) the defendant to pay –
    - (i) an additional amount of either or both the Stage 3 –
      - (aa) Type A fixed costs;
      - (bb) Type B fixed costs; and
    - (ii) a success fee in accordance with rule 45.31(6) on the additional Stage 3 fixed costs in sub-paragraph (a)(i); or
  - (b) the claimant to pay an amount equivalent to either or both the Stage 3 –
    - (i) Type A fixed costs;
    - (ii) Type B fixed costs.

#### **45.34 Settlement at Stage 3 where the claimant is a child**

- (1) This rule applies where –
  - (a) the claimant is a child;
  - (b) there is a settlement after proceedings are started under the Stage 3 Procedure;
  - (c) the settlement is more than the defendant's RTA Protocol offer; and
  - (d) an application is made to the court to approve the settlement.
- (2) Where the court approves the settlement at the settlement hearing it will order the defendant to pay –
  - (a) the Stage 1 and 2 fixed costs;
  - (b) the Stage 3 Type A, B and C fixed costs;
  - (c) disbursements allowed in accordance with rule 45.30; and
  - (d) a success fee in accordance with rule 45.31(6).
- (3) Where the court does not approve the settlement at the settlement hearing it will 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 the Stage 3 hearing.
- (5) At the Stage 3 hearing the court will order the defendant to pay –

- (a) the Stage 3 Type A and C fixed costs for the settlement hearing;
  - (b) disbursements allowed in accordance with rule 45.30;
  - (c) the Stage 3 Type B fixed costs for one of the hearings; and
  - (d) a success fee in accordance with rule 45.31(6) on the Stage 1 and 2 fixed costs and the Stage 3 Type A, B and C fixed costs.
- (6)** The court in its discretion may also order –
- (a) the defendant to pay –
    - (i) an additional amount of either or both the Stage 3 –
      - (aa) Type A fixed costs;
      - (bb) Type B fixed costs; and
    - (ii) a success fee in accordance with rule 45.31(6) on the additional Stage 3 fixed costs in subparagraph (a)(i); 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 the settlement is not approved at the Stage 3 hearing the court will order the defendant to pay the Stage 3 Type A fixed costs.

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

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 will 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.

**45.36 Failure to comply or electing not to continue with the RTA Protocol – costs consequences**

- (1)** This rule applies where the claimant –
  - (a) does not comply with the process set out in the RTA Protocol; or
  - (b) elects not to continue with that process,  
and starts proceedings under Part 7.
- (2)** 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 RTA 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 RTA Protocol and starting proceedings under Part 7;
    - (ii) by valuing the claim at more than £10,000, so that the claimant did not need to comply with the RTA Protocol; or
    - (iii) except for paragraph (2)(a), in any other way that caused the process in the RTA Protocol to be discontinued; or

- (c) the claimant did not comply with the RTA Protocol at all despite the claim falling within the scope of the RTA Protocol;  
the court may order the defendant to pay no more than the fixed costs in rule 45.29 together with the disbursements allowed in accordance with rule 45.30 and success fee in accordance with rule 45.31(3).
- (3) Where the claimant starts proceedings under paragraph 7.22 of the RTA Protocol and the court orders the defendant to make an interim payment of no more than the interim payment made under paragraph 7.14(2) or (3) of that Protocol the court will, on the final determination of the proceedings, order the defendant to pay no more than –
  - (a) the Stage 1 and 2 fixed costs;
  - (b) the disbursements allowed in accordance with rule 45.30; and
  - (c) a success fee in accordance with rule 45.31(3).

#### **45.37 Where the parties have settled after proceedings have started**

- (1) This rule applies where an application is made under rule 44.12C (costs-only application after a claim is started under Part 8 in accordance with Practice Direction 8B).
- (2) Where the settlement is more than the defendant's RTA Protocol offer the court will 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;
  - (c) disbursements allowed in accordance with rule 45.30; and
  - (d) a success fee in accordance with rule 45.31(6).
- (3) Where the settlement is less than or equal to the defendant's RTA Protocol offer the court will order the defendant to pay –
  - (a) the Stage 1 and 2 fixed costs where not already paid by the defendant;
  - (b) disbursements allowed in accordance with rule 45.30; and
  - (c) success fee in accordance with rule 45.31(6).
- (4) The court may, in its discretion, order either party to pay the costs of the application.

#### **45.38 Where the claimant obtains judgment for an amount equal to or less than the defendant's RTA Protocol offer**

Where rule 36.21(1)(a) applies, the court will order the claimant to pay –

- (a) where the claim is determined –
  - (i) on the papers, Stage 3 Type A fixed costs; or
  - (ii) at a hearing, Stage 3 Type A and B fixed costs;
- (b) disbursements allowed in accordance with rule 45.30; and
- (c) a success fee in accordance with rule 45.31(4).

#### **45.39 Adjournment**

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.

#### **45.40 Account of payment of Stage 1 fixed costs**

Where a claim no longer continues under the RTA Protocol the court will, when making any order as to costs including an order for fixed recoverable costs under Section II of this Part, take into account the Stage 1 fixed costs together with any success fee on those costs that have been paid by the defendant.

### **VII SCALE COSTS FOR CLAIMS IN A PATENTS COUNTY COURT**

#### **45.41 Scope and interpretation**

- (1) Subject to paragraph (2) this Section applies to proceedings in a patents county court.
- (2) This Section does not apply where –
  - (a) the court considers that a party has behaved in a manner which amounts to an abuse of the court's process; or
  - (b) the claim concerns the infringement or revocation of a patent or registered design the validity of which has been certified by a court in earlier proceedings.
- (3) The court will make a summary assessment of the costs of the party in whose favour any order for costs is made. Rules 44.3(8), 44.3A(2)(b) and (c), 44.7(b) and Part 47 do not apply to this Section.
- (4) 'Scale costs' means costs as defined in rule 43.2(1)(a).

#### **45.42 Amount of scale costs**

- (1) Subject to rule 45.43 the court will not order a party to pay total costs of more than –
  - (a) £50,000 on the final determination of a claim in relation to liability; and
  - (b) £25,000 on an inquiry as to damages or account of profits.
- (2) The amounts in paragraph (1) apply after the court has applied the provision on set off in accordance with rule 44.3(9)(a).
- (3) The maximum amount of scale costs that the court will award for each stage of the claim is set out in the Costs Practice Direction.
- (4) The amount of the scale costs awarded by the court in accordance with paragraph (3) will depend on the nature and complexity of the claim.
- (5) Where appropriate, value added tax (VAT) may be recovered in addition to the amount of the scale costs and any reference in this Section to scale costs is a reference to those costs net of any such VAT.

#### **45.43 Summary assessment of the costs of an application where a party has behaved unreasonably**

Costs awarded to a party under rule 63.26(2) are in addition to the total costs that may be awarded to that party under rule 45.42.