

The Family Groups present

## Human Rights Act applications in Children Act proceedings: An update Laura Vickers and Clare Coles

Thursday 13th July  
Provincial House, Leicester  
1 Learning Hour

 Tweet us: @No5 Chambers

Chief Executive & Director of Clerking  
Tony McDaid

Senior Practice Manager  
Russell Hobbs

Practice Group Clerks  
Adam Wadley, Lucas Bennett  
Laura Tew and Oliver Spinks

Tel: +44 (0) 845 210 5555

Email: family@no5.com



### Birmingham

Fountain Court  
Steelhouse Lane  
Birmingham B4 6DR

DX 16075

Fountain Court Birmingham

### London

Greenwood House  
4-7 Salisbury Court  
London EC4Y 8AA

DX 449

London Chancery Lane

### Bristol

38 Queen Square  
Bristol BS1 4QS

DX 7838

Bristol

### Leicester

37 New Walk  
Leicester LE1 6TU

DX 141225

Leicester 19

[www.No5.com](http://www.No5.com)





**Family Team Leicester Seminar  
Thursday 13<sup>th</sup> July  
Provincial House, Leicester**

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**Programme  
1 Learning Hour**

**17.00 – 18.00**      **Seminar 2- Human Rights applications in Children Act proceedings: An update**  
*Laura Vickers and Clare Coles, No5 Barristers' Chambers*

**18:00 onwards**      **Drinks and nibbles to follow**



**Year of Call:** 2007

## **Clerks**

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### **Senior Practice Manager**

Russell Hobbs

### **Chief Executive & Director of Clerking**

Tony McDaid

### **Contact a Clerk**

Tel: +44 (0) 845 210 5555

Fax: +44 (0) 121 606 1501

family@no5.com

## **Laura Vickers**

### **Family**

Laura is a well-regarded specialist in children law.

Laura represents Local Authorities, parents, children and other parties in care proceedings at all levels in cases often involving serious allegations of physical and sexual abuse and neglect. Laura frequently represents clients who are vulnerable through learning disabilities, mental health issues, a history of substance misuse or who are vulnerable by reason of their own lived experiences. She aims to vigorously defend her clients' interests, while at the same time balancing the other needs of the client and demands of the case: she believes that lawyers must never forget that the outcome and conduct of such cases inevitably have life-changing consequences for all involved.

Laura is also instructed in private law children disputes, with issues ranging from permission to remove the child from the jurisdiction, to disputes about with whom the child should live, to specific issues such as schooling or religious upbringing. These cases often involve significant features such as domestic violence or parental alienation. Laura also acts in applications under the Family Law Act, in which parties are seeking protection from domestic violence or to resolve the occupation of the family home.

Laura is happy to advise and assist clients who wish to avoid running up large legal bills on a public access basis. This is often a sensible option when clients wish to use a barrister for a specific piece of advice, the drafting of documents, or representation at a hearing.

Laura is a qualified mediator and hopes to build on this area of practice in the future.

Laura was a founder of LLFJB.com, the website of the Leicester and Leicestershire Family Justice Board. She is a joint administrator of the site, which aims to provide news and materials for family law practitioners and – importantly – accessible free information and advice for people involved in their own family law case.

## **QUALIFICATIONS**

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LLB Hons Law & French 1st Class University of Leeds, Université Nancy 2  
BVC Nottingham Law School, Very Competent  
Hardwicke Scholar, Lincoln's Inn

## **MEMBERSHIPS**

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FLBA  
ADRg  
Midlands Circuit  
Lincoln's Inn

## **REPORTED CASES**

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Re W[2016] EWCA Civ 793: No presumption or right of a child to be brought up by their natural family

RE T(A Child) [2016] EWCA Civ 1210 (06 December 2016)



**Year of Call:** 2003

#### **Clerks**

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**Senior Practice Manager**  
Russell Hobbs

**Practice Director**  
Tony McDaid

**Contact a Clerk**  
Tel: +44 (0) 845 210 5555  
Fax: +44 (0) 121 606 1501  
family@no5.com

## Clare Coles

### Family

Clare is a family law practitioner who specialises in public law Children Act cases.

Clare represents Local Authorities, parents, children's guardians, grandparents and other interveners in care proceedings at all levels. Clare has particular experience in cases involving the Official Solicitor and is often requested in cases involving particularly vulnerable clients, including those with learning difficulties and mental health issues. Clare has experience of cases involving serious and long term neglect, non-accidental injury and physical and sexual abuse, as well as those involving children who are beyond parental control.

In private law children proceedings Clare deals with a wide range of issues, acting for parents, grandparents and children. Clare has experience in cases involving a wide range of complex issues, including domestic and sexual abuse, implacable hostility, removal from the jurisdiction, specific issues on schooling and religion, and enforcement proceedings.

Clare also acts in applications where parties are seeking injunctive relief under the Family Law Act.

Clare provides written advice in all of these areas and will draft documents as required, including skeleton arguments, position statements, threshold documents (and responses), scott schedules, chronologies, case summaries and written submissions.

Clare has a reputation for excellent client care, giving realistic and practical advice whilst remaining entirely approachable to clients. Clare is exceptionally thorough in her preparation and is robust in pursuing her clients' interests.

#### **QUALIFICATIONS**

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LLB Hons Nottingham Trent University  
BVC Nottingham law school, Very Competent  
Clare can accept instructions directly from members of the public.

#### **MEMBERSHIPS**

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FLBA  
Association of Lawyers for Children  
Midland circuit  
Inner Temple

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## Human Rights Act Claims: The Law

Section 7(1) Human Rights Act 1998 sets out the protection afforded by the HRA:

“A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by s6(1) may

- (a) Bring proceedings against the authority under this Act in the appropriate court or tribunal, OR
- (b) Rely on the Convention right or rights concerned in any legal proceedings,

But only if he is (or would be) a victim of the unlawful act.”

Section 6(1) HRA defines an unlawful act as an act or failure to act which is incompatible with a Convention right.

Section 8 HRA sets out the remedies for a breach of the Convention rights:

- (1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.
- (2) But damages may only be awarded by a court which has power to award damages, or to order the payment of compensation in civil proceedings.
- (3) No award of damages is to be made unless, taking account of all the circumstances of the case, including:
  - (a) Any other relief or remedy is granted, or order made, in relation to the act in question (by that or any other court), and
  - (b) The consequences of any decision (of that or any other court) in respect of that act, the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour the award is made.
- (4) In determining
  - (a) Whether to award damages, or
  - (b) The amount of the award, the court must take into account the principles applied by the ECHR in relation to the award of compensation under Article 41 of the Convention.

## **Declaration or damages?**

LAA approach is to give separate consideration to HRA claims for declarations and HRA claims for damages

**Damages claims are subject to a means and merits test**

Damages claims are not meant as punishment or deterrence and so are unlikely to be large sums of money

## **Article 41**

In respect of monetary damages, the test for the court to consider is whether monetary compensation is required to provide “just satisfaction” of the claim.

Each case depends on its own facts.

Non-pecuniary damage, for example, for distress and anxiety at being separated from a child, can be claimed.

A Practice Direction issued by the President of the European Court suggests that there must be:

- (a) a clear causal link between the damage claimed and the violation alleged;
- (b) compensation for damage can be awarded in so far as the damage is as a result of a violation found;
- (c) the purpose of the courts award in respect of damages is to compensate the applicant for the actual harmful consequences of a violation. It is not intended to punish the party responsible.

In determining whether “just satisfaction” requires a monetary damages award, the court will look at whether the breach has made a difference to the overall outcome / potential outcomes of the care proceedings.

## Recent Case Law: Summaries

### ***CZ v Kirklees Council* [2017] EWFC 11**

**Cobb J, 16 February 2017**

#### Facts

- The human rights breach occurred as a result of the way in which the LA presented an interim care order application to the court, which led to an application for a declaration and damages
- The issue was whether the LA should be ordered to pay all of the Claimant's costs in the care and the HRA proceedings, on the understanding that if those costs applications by the Claimant's failed, they would receive none of their damages for the admitted breaches of their Convention rights
- Cobb J refused to make the costs order, stating that the LA had made timely and sensible efforts to settle the claim

#### Guidance

- HRA claims which arise in, and on the same facts as Children Act proceedings are to be considered by the court within the Children Act proceedings
- Every tier of the family court can deal with the claims
- Damages for non-pecuniary loss are likely to be modest
- Where a public funding certificate is granted to a party to pursue a claim under the HRA for a declaration and / or damages arising with the care proceedings, the statutory charge will apply and the LAA has the ability to recoup its costs from the damages award
- In any evaluation of the costs, whether under CPR 1998 or FPR 2010, the court is obliged to have regard to the parties' litigation conduct and whether costs are reasonably incurred or not reasonably incurred

***H (A Minor) v Northamptonshire County Council & Anor [2017] EWHC 282 (Fam)***  
**Keehan J, 17 February 2017**

Facts

- The breach was established at a time prior to the care proceedings, but not during the care proceedings
- The child issued a separate claim under the HRA, with a separate funding certificate and separate case number and the claim was listed alongside the care proceedings
- The claim was settled and damages agreed
- LAA was asked to clarify whether the statutory charge in care proceedings was applicable to the HRA proceedings
- The LAA delayed in its response until 2 days before the final hearing and the LA applied for costs against the Lord Chancellor

Guidance

- The court can make a 3<sup>rd</sup> party costs order against the Lord Chancellor
- It is essential for a court determining the quantum of the Claimant's HRA damages, where liability is admitted on an agreed basis, and determining any consequential orders for costs, to know the stance of the LAA regarding the applicability of the statutory charge
- Where damages are sought in just satisfaction of a HRA claim during the currency of public law proceedings, Keehan J provide the following guidance:
  - (a) alleged breaches of Convention rights by a local authority must be set out with particularity in a letter before action as soon as ever possible;
  - (b) every effort should be made by the claimant and the local authority to settle the issues of liability and the quantum of damages before and without the need to issue proceedings;
  - (c) where liability and quantum are agreed prior to the issue of proceedings, it will invariably be in the interests of the child to issue a Part 8 claim to secure the court's approval of the proposed settlement pursuant to CPR r 21.10;
  - (d) the local authority should, save in exceptional circumstances, pay the reasonable costs of the claimant's HRA claim/proceedings;
  - (e) where is it necessary for a party to issue a formal HRA claim, proceedings should be issued separately from the care proceedings and a separate public funding certificate should be sought from the LAA in respect of the same;

(f) well in advance of the final hearing of the HRA claim the LAA should be invited to make a decision on whether it asserts that the statutory charge will be applicable to any award of HRA damages.

If findings are made or facts agreed, no reason in law or on public policy grounds or in practical terms why the LAA could not and should not notify the court and the parties of its decision on the applicability of the statutory charge prior to the final hearing and well in advance of the submission of the claimant's solicitor's final bill(s); and

(g) with the benefit of the LAA's decision, the court should have all the necessary information to assess the quantum of damages or, as the case may be, to approve the settlement, and to consider what are the appropriate orders for costs.

**SW and TW [2017] EWHC 450 (Fam)**

**Cobb J, 8 March 2017**

Further guidance on the correct procedure to be adopted in claims that run alongside care proceedings

Guidance

- CPR applies, not FPR
- Where the Claimant is a child, CAFCASS cannot authorise its officers to act as litigation friends
- CPR part 21 applies to the procedure for appointment of a litigation friend
- Claims for declarations and / or damages need to be issued formally, not by way of a C2 or reference in a skeleton argument. Claims should be issued by way of a Part 8 claim
- Part 36 offers to settle apply
- The costs regime in Part 44 apply. Generally, costs follow the event
- The publicly funded claimant in a HRA claim who is also publicly funded in associated or connected proceedings is vulnerable to a claim for recoupment of the costs of both sets of proceedings by way of statutory charge from any award of HRA damages
- Many cases are suitable for NCDR and this should be used

## Where do we stand on Section 20?

As we know, many of the cases in respect of awards of damages for breaches of HRA claims arise out of instances in which it is said that the Local Authority has abused its power in respect of accommodating children pursuant to Section 20 Children Act 1989. A raft of decisions had built up and guidance was given by the Court of Appeal (among others) as to what should be considered “best practice” when a Local Authority is accommodating children outside of care proceedings. Sir James Munby suggested in *Re N (Adoption: Jurisdiction)* [2015] EWCA Civ 1112:

“The misuse and abuse of section 20 in this context is not just a matter of bad practice. It is wrong; it is a denial of the fundamental rights of both the parent and the child; it will no longer be tolerated; and it must stop. Judges will and must be alert to the problem and pro-active in putting an end to it. From now on, local authorities which use section 20 as a prelude to care proceedings for lengthy periods or which fail to follow the good practice I have identified, can expect to be subjected to probing questions by the court. If the answers are not satisfactory, the local authority can expect stringent criticism and possible exposure to successful claims for damages.”

The more recent decision and dicta in ***London Borough of Hackney v Williams & Anor* [2017] EWCA Civ 26** therefore came as a surprise to many.

The parents had been arrested, suspected of child abuse offences. Their children were accommodated under police protection powers and thereafter, following the lapse of this 72 hour period, by the Local Authority. The parents were subject to bail conditions which prevented the children remaining in their care.

The parents later complained that the Local Authority had not complied with good practice and that although they had signed a document giving their temporary consent to the accommodation, theirs was not true consent.

The Court of Appeal considered in detail the statute and previous cases, and decided that none of the previous dicta referring to “consent” was binding on the court. It was noted that the word “consent” does not appear in s.20 at all; the issue is objection, or lack thereof.

In this case, the parents were not able to justify their argument and the first instance decision (which had awarded them damages of £10,000) was overturned. The Court of Appeal held that the parents in this case would only have been able to object to the accommodation pursuant to s.20(7):

A local authority may not provide accommodation under this section for any child if any person who:

- (a) has parental responsibility for him; and
- (b) is willing and able to:
  - (i) provide accommodation for him; or
  - (ii) arrange for accommodation to be provided for him, objects.

However, the parents were not able to provide accommodation for the children due to their bail conditions. Therefore, they were unable to meet the criteria required to be able to “object” to the Local Authority accommodation. The Local Authority was under a duty to accommodate the children as the parents were prevented from providing them with suitable accommodation as a result of the bail conditions, pursuant to s.21(1)(c).

obtained where that parent either lacks capacity or did not have a proper understanding of the position. We would hope that the Court will still require the Local Authority to provide those pare

Sir Brian Leveson (McFarlane LJ and Burnett LJ concurring) confirmed therefore that the Local Authority had not breached Article 6 by the manner in which it provided accommodation for the children. Any claim for damages must be determined on the basis of the clear wording of the statute. It was said:

“68. The third point to make with respect to s. 20(7) is of more general application and relates to the single word 'objects'. The word 'consent' does not appear within s. 20. There is no express statutory requirement upon a local authority to obtain a positive expression of consent from a parent before accommodating a child under the various provisions in s. 20(1), (3), (4) and (5), let alone any requirement for such consent to be in writing and subject to any of the various refinements that have been described in the case-law to which I have referred. Nothing that is said in this judgment is intended in any manner to detract from or alter the terms of the good practice guidance that has been given, principally by Sir James Munby P and Hedley J, in these cases; the obvious wisdom and good sense of their words are plain to see. The present case is, however, a claim for damages pursuant to s. 8 of the Human Rights Act 1998, in relation to breach of statutory duty under s. 20 of the 1989 Act and breach of rights under Article 8 of the ECHR. Insofar as breach of statutory duty under s. 20 is concerned it is necessary, in my view, for a claimant to go further than establishing that the actions of the local authority fell short of what, subsequently identified, 'good practice' might require; the authority must be seen to have acted in breach of the terms of the statute.”

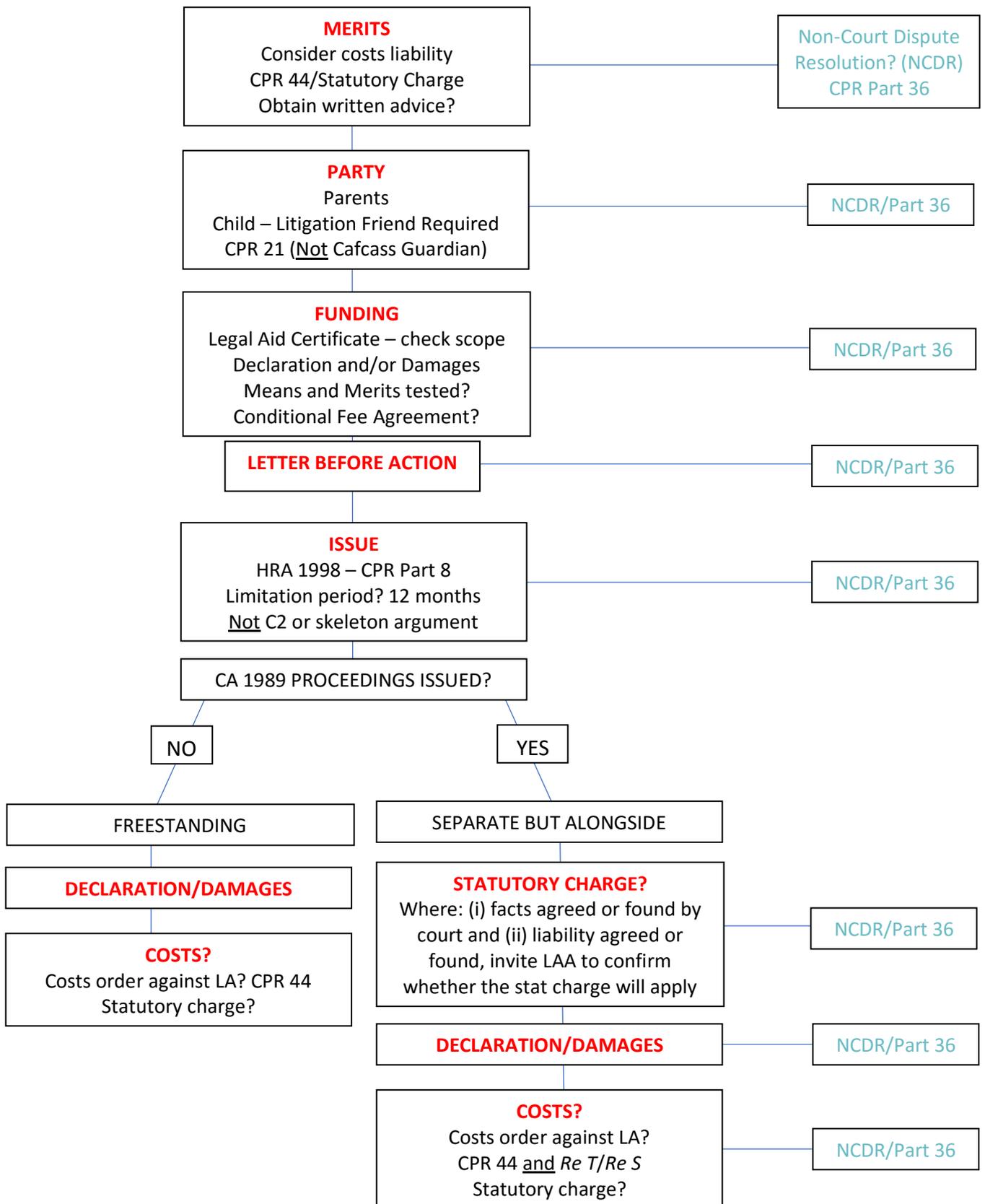
Where does that leave us? The decision has not been considered by any other authoritative case since.

It appears that the expectation is for Local Authorities to continue to conduct themselves in accordance with the judicial guidance which has been given previously, but that they should not necessarily expect to face a successful HRA claim if they fail to do so, providing they abide by the statute. Local Authorities do not need to obtain a parent’s consent to the accommodation; all that is required is that no person with parental responsibility who is willing and able to provide or arrange for suitable accommodation for the child objects.

Will this affect the prospects of success of a claim brought on the basis of inordinate delay in issuing proceedings while a child remains accommodated pursuant to s.20? The statute places no limit of time on this; these Article 6 and 8 claims only arise through the application of case law. However, this is likely to remain relatively untouched by the *Hackney* decision.

It is not clear, however, where that leaves us in respect of the cases which have considered whether a parent's consent has been validly given with sufficient information to be able to make an informed decision as to whether they object to the Local Authority providing accommodation, even if their explicit consent is not required.

**HRA Claims: Flowchart**



**Presented By**  
**Laura Vickers/Clare Coles**  
**No5 Barristers' Chambers**  
**+ 44(0) 845 210 5555**  
**[LV@no5.com](mailto:LV@no5.com)**



Association of **Lawyers for Children**  
Promoting justice for children and young people

# SCHEDULE OF CASES

## DAMAGES IN HRA CLAIMS INVOLVING CHILDREN WITHIN CARE PROCEEDINGS

### *Important points to note:*

1. This document has been created by the Association of Lawyers for Children (ALC). It remains the property of the ALC. The ALC will be responsible for maintaining the document and updating it from time to time.
2. The ALC invites practitioners to download, print, circulate and use the document but it should not be amended or changed without prior written permission of the ALC.
3. The document does not purport to be a comprehensive schedule of all cases and should not be relied on as such. The ALC hopes that the document serves as helpful reference tool. The ALC cannot regularly check that the schedule consists of all relevant cases, nor can the ALC be responsible for the accuracy of information supplied by practitioners for inclusion in the schedule.
4. The ALC, its officers and members, and contributors to this schedule do not accept liability for its contents. Use of the information contained within the schedule constitutes agreement by the user to this provision in respect of liability.
5. Practitioners are invited to contribute cases, whether reported or otherwise (including settlements reached outside of proceedings), to the schedule. To refer a case for inclusion, please provide the information that the headings of the table require to: [admin@alc.org.uk](mailto:admin@alc.org.uk).
6. For cases which already feature in the schedule, if a practitioner recognises the cases as their own and is happy for their contact details to be included in the 'further contact details' column, please email the ALC.
7. The ALC is very grateful to Mr Gordon Reed (Consultant Solicitor at Messrs Sternberg Reed and Chief Assessor of the Law Society's Children Law Accreditation Scheme) for producing a schedule of cases which the ALC has been able to lift from in order to create this schedule.

Case Name and web link	Summary	Award / settlement figure	Issues re: legal costs	Further contact details
W v UK	Art 8 – insufficient involvement in decision-making, termination	£12,000 each P		

(1987) 10 EHRR 453	of contact and length of proceedings. Art 6 – non-availability of remedy	Adjusted for 2016: £30,534*		
H v UK (1991) 13 EHRR 449	Breach of Art 6 – length of proceedings unreasonable (Nov 1978 to Jun 1981); failure of LA to notify parties of placement for adoption for 5 mths. Breach of Art 8 – delay in proceedings. Consideration of damages adjourned	£12,000 Adjusted for 2016: £28,000*		
TP & K Mother v UK [2001] 2 FLR 549	Breach of Art 6 not found. Breach of Art 8 on basis of failure to involve in decision-making by not disclosing relevant info/docs. Breach of Art 13 – non-availability of remedy to determine allegations of LA. Breach of Art 8. 1 yr period of breach	£10,000 each P Adjusted for 2016: £14,845*		
<a href="#">P, C, &amp; S v UK</a> [2002] 2 FLR 631	Breach of Art 6 – lack of representation; Breach of Art 8 – removal of C shortly after birth,; lack of involvement in decision-making	€12,000 each applicant (£13,115)		
<a href="#">Venema v The Netherlands</a> [2003] 1 FRC 13	Breach of Art 8 – non-involvement in decision-making; separation of 5 mths, distress and anxiety	€15,000 collectively to Ps (£16,153 - c£8,000 each)		
<a href="#">Coventry CC v C</a> [2012] EWHC 2190 (Fam)	Quantum of damages under s.7 agreed between recipient M and LA. Quantum not set out in transcript although there is reference to it being utilised to provide long needed therapy for M.	Unknown		
<a href="#">H (A Child - Breach of Convention Rights - Damages)</a> [2014] EWFC 38	Birth 16.5.13; Application 29.4.14; Placement agreement 3.6.13; Final order 29.10.14. Effect on P [paras 41-46]; Declarations [paras 49-50]. Quantum [para 86]. 11 mth period of breach	£6,000 each P		
<a href="#">Northamptonshire</a>	S.20 accommodation 30.1.13 (when C 15 days old); Decision to	£12,000 to C		

<p><a href="#">County Council v AS &amp; Ors (Rev 1)</a> [2015] EWHC 199 (Fam)</p>	<p>commence proceedings 23.5.13; Application 5.11.13; Family placement 17.10.14; Final Hearing 30.1.15. LA failure to comply with directions. 10 mth period of breach</p>	<p>£4000 to each P  (NB – agreed settlement figures, not award)</p>		
<p><a href="#">Williams &amp; Anor v London Borough of Hackney</a> [2015] EWHC 2629 (QB)  <a href="#">CoA decision:</a> [2017] EWCA Civ 26</p>	<p>Multiple cause of action – most dismissed. However, court found that s.20 agreement was not validly obtained or, in any event, was subsequently withdrawn. Police protection 5.7.07; Agreement 6.7.07; Withdrawal 13.7.07; children returned 11.9.07. 2 mth period of breach  <b>Note:</b> decision of High Court was successfully appealed by the LA to CoA. CoA held the claims should have been dismissed and allowed the appeal</p>	<p>£10,000 each P</p>		
<p><a href="#">Re AS (unlawful removal of a child)</a> [2015] EWFC B150</p>	<p>Unlawful removal. C into foster care - 9.10.14. Legal planning meeting decides should issue s.31 proceedings - 13.10.14. Letter sent to M first informing her of foster care and intended issue – 16.10.14. Proceedings issued - 11.11.14. 1 mth period of breach</p>	<p>£3000 to M</p>	<p>£750 costs</p>	
<p><a href="#">Medway Council v M &amp; T</a> [2015] EWFC B164</p>	<p>Breach of Art 6 by: - Failure to issue care proceedings in a timely manner – delay of 2 yrs, 3 mths AND breaches of Art 8 by: - Unlawful removal from M’s care; - Failure obtain capacitous s.20 consent; - s.20 without consent 2 yrs, 3 mths; - Failure inform M / involve her in decision making; - Failure adequately address issues re: M and C relationship and contact; - delay in addressing the above</p>	<p>£20,000 each for T &amp; M</p>	<p>Costs adjourned, then later awarded in full against LA including costs of care proceedings (no report or transcript available)</p>	<p>Kate Makepeace Grieve, Counsel for M: (E): <a href="mailto:kgrieve@36family.co.uk">kgrieve@36family.co.uk</a></p>
<p><a href="#">Worcestershire CC v mother and B (a</a></p>	<p>Breach of Arts 6 and 8 by: - delay in issue of proceedings (app to revoke placement order) for 3 yrs; - Failure to consider properly</p>	<p>£5,000 to C</p>	<p>LA to pay entire costs (care and</p>	

<a href="#">child</a> [2016] EWFC B10	contact between C and M (and maybe F) and the possibility of sibling contact		HRA proceedings).	
<a href="#">Kent CC v M &amp; K</a> [2016] EWFC 28	Breaches of Arts 6 and 8 by: - Failure issue care proceedings in a timely manner – delay of 3 yrs, 8 mths; - Failure properly assess C for 3 yrs, 4 mths; - Failure to implement care plan including failure give effect to recommendations of LAC reviews, 3 yrs, 4 mths; - As result of above, failure secure long-term placement and settled home life	£17,500 to C	LA to pay costs of HRA application only	
Thurrock BC v CW & BB 2016 Unreported	Breach of Art 6 by delay in issuing care proceedings – 13 mths from commencement of accommodation to issue of proceedings. Breach of Art 8 by: - Failure to promote contact with M; - Failure to promote sibling contact; - Failure to promote contact with extended family; - Failure to provide counselling	£7,500 to C (agreed between parties and approved by court)	LA to pay entire costs (care and HRA proceedings). PTA to LA on issue of costs, but no appeal lodged at 12.1.17	Solicitor for the child: Gordon Reed   (E): <a href="mailto:Gordon.Reed@sternberg-reed.co.uk">Gordon.Reed@sternberg-reed.co.uk</a>
Royal Borough of Greenwich v C 2015 Unreported (permission given to publish on BAILII – not yet published)	Application by respondent M within care proceedings. M's application included an application for awards of damages for two C (CG did not apply). The DJ declared: 1) LA had caused the C not to be returned to M in the interim without proper evidence or cause; and 2) LA, having become aware that the evidence upon which it had relied in achieving interim separation was unreliable, failed for a period of about 7 wks to notify the court or the parties	£1,000 to M which took into account ex gratia payment of £3,000 offered by LA and accepted by M prior to determination of quantum of HRA award. Awards of £2,500 to each C	LA to pay M and C's costs of an earlier hearing	Nicholas Horsley, Counsel for M: (E): <a href="mailto:Nicholas.Horsley@coramchambers.co.uk">Nicholas.Horsley@coramchambers.co.uk</a>

\* **Note:** for these very old and / or European cases the updated figures were arrived at using the Kemp & Kemp inflation calculator but those figures are not necessarily reliable as the calculator is a blind inflation tool. 'Remedies' (2016) edited by David Emmet (Publisher: OUP) states at para. 11.9.2.6: *"Generally speaking, awards more than ten years old are of little practical help."*

*First published:* 26.1.17

*Updated:* 27.1.17 | 30.1.17 |



# Human Rights Act 1998

## 1998 CHAPTER 42

### *Public authorities*

#### **6 Acts of public authorities.**

- (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.
- (2) Subsection (1) does not apply to an act if—
  - (a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or
  - (b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.
- (3) In this section “public authority” includes—
  - (a) a court or tribunal, and
  - (b) any person certain of whose functions are functions of a public nature,but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.
- (4) <sup>F1</sup> .....
- (5) In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private.
- (6) “An act” includes a failure to act but does not include a failure to—
  - (a) introduce in, or lay before, Parliament a proposal for legislation; or
  - (b) make any primary legislation or remedial order.

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*Changes to legislation: There are currently no known outstanding effects for the Human Rights Act 1998, Section 6. (See end of Document for details)*

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**Annotations:****Amendments (Textual)**

- F1** S. 6(4) repealed (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40, 146, 148, Sch. 9 para. 66(4), **Sch. 18 Pt. 5**; S.I. 2009/1604, **art. 2(d)(f)**

**Modifications etc. (not altering text)**

- C1** S. 6 excluded (5.3.2015) by Infrastructure Act 2015 (c. 7), **ss. 8(3)(b)**, 57(1); S.I. 2015/481, reg. 2(a)
- C2** S. 6(1) applied (2.10.2000) by 1999 c. 33, **ss. 65(2)**, 170(4); S.I. 2000/2444, art. 2, **Sch. 1** (subject to transitional provisions in arts. 3, 4, Sch. 2)
- C3** S. 6(3)(b) modified (1.12.2008 with exception in art. 2(2) of commencing S.I.) by Health and Social Care Act 2008 (c. 14), **ss. 145(1)-(4)**, 170 (with s. 145(5)); S.I. 2008/2994, **art. 2(1)**
- C4** S. 6(3)(b) applied (1.4.2015) by Care Act 2014 (c. 23), s. **73(2)(3)**127; S.I. 2015/993, art. 2(r) (with transitional provisions in S.I. 2015/995)



# Human Rights Act 1998

## 1998 CHAPTER 42

### *Public authorities*

#### **7 Proceedings.**

- (1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may—
  - (a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or
  - (b) rely on the Convention right or rights concerned in any legal proceedings, but only if he is (or would be) a victim of the unlawful act.
- (2) In subsection (1)(a) “appropriate court or tribunal” means such court or tribunal as may be determined in accordance with rules; and proceedings against an authority include a counterclaim or similar proceeding.
- (3) If the proceedings are brought on an application for judicial review, the applicant is to be taken to have a sufficient interest in relation to the unlawful act only if he is, or would be, a victim of that act.
- (4) If the proceedings are made by way of a petition for judicial review in Scotland, the applicant shall be taken to have title and interest to sue in relation to the unlawful act only if he is, or would be, a victim of that act.
- (5) Proceedings under subsection (1)(a) must be brought before the end of—
  - (a) the period of one year beginning with the date on which the act complained of took place; or
  - (b) such longer period as the court or tribunal considers equitable having regard to all the circumstances,but that is subject to any rule imposing a stricter time limit in relation to the procedure in question.
- (6) In subsection (1)(b) “legal proceedings” includes—
  - (a) proceedings brought by or at the instigation of a public authority; and
  - (b) an appeal against the decision of a court or tribunal.

*Changes to legislation: There are currently no known outstanding effects for the Human Rights Act 1998, Section 7. (See end of Document for details)*

- (7) For the purposes of this section, a person is a victim of an unlawful act only if he would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act.
- (8) Nothing in this Act creates a criminal offence.
- (9) In this section “rules” means—
- (a) in relation to proceedings before a court or tribunal outside Scotland, rules made by <sup>F1</sup> . . . [<sup>F2</sup>the Lord Chancellor or] the Secretary of State for the purposes of this section or rules of court,
  - (b) in relation to proceedings before a court or tribunal in Scotland, rules made by the Secretary of State for those purposes,
  - (c) in relation to proceedings before a tribunal in Northern Ireland—
    - (i) which deals with transferred matters; and
    - (ii) for which no rules made under paragraph (a) are in force,
 rules made by a Northern Ireland department for those purposes, and includes provision made by order under section 1 of the <sup>M1</sup>Courts and Legal Services Act 1990.
- (10) In making rules, regard must be had to section 9.
- (11) The Minister who has power to make rules in relation to a particular tribunal may, to the extent he considers it necessary to ensure that the tribunal can provide an appropriate remedy in relation to an act (or proposed act) of a public authority which is (or would be) unlawful as a result of section 6(1), by order add to—
- (a) the relief or remedies which the tribunal may grant; or
  - (b) the grounds on which it may grant any of them.
- (12) An order made under subsection (11) may contain such incidental, supplemental, consequential or transitional provision as the Minister making it considers appropriate.
- (13) “The Minister” includes the Northern Ireland department concerned.

#### Annotations:

#### Amendments (Textual)

- F1** Words in s. 7(9)(a) repealed (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S. I. 2003/1887), art. 9, **Sch. 2 para. 10(2)**
- F2** Words in s. 7(9)(a) inserted (12.1.2006) by The Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429), art. 8, **Sch. para. 3**,

#### Modifications etc. (not altering text)

- C1** S. 7 amended (2.10.2000) by Regulation of Investigatory Powers Act 2000 (c. 23), ss. **65(2)(a)**, 83 (with s. 82(3); S.I. 2000/2543, **art. 3**)
- C2** S. 7: referred to (11.3.2005) by Prevention of Terrorism Act 2005 (c. 2), {s. 11(2)}
- C3** S. 7(9)(a): functions of the Secretary of State to be exercisable concurrently with the Lord Chancellor (12.1.2006) by The Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429), **art. 3(2)** (with arts. 4, 5)
- C4** S. 7(11): functions of the Secretary of State to be exercisable concurrently with the Lord Chancellor (12.1.2006) by The Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429), **art. 3(2)** (with arts. 4, 5)

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*Changes to legislation: There are currently no known outstanding effects  
for the Human Rights Act 1998, Section 7. (See end of Document for details)*

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**Marginal Citations**

**M1** 1990 c. 41.



# Human Rights Act 1998

## 1998 CHAPTER 42

### *Public authorities*

#### **8 Judicial remedies.**

- (1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.
- (2) But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.
- (3) No award of damages is to be made unless, taking account of all the circumstances of the case, including—
  - (a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and
  - (b) the consequences of any decision (of that or any other court) in respect of that act,the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.
- (4) In determining—
  - (a) whether to award damages, or
  - (b) the amount of an award,the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.
- (5) A public authority against which damages are awarded is to be treated—
  - (a) in Scotland, for the purposes of section 3 of the <sup>M1</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 as if the award were made in an action of damages in which the authority has been found liable in respect of loss or damage to the person to whom the award is made;

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*Changes to legislation: There are currently no known outstanding effects  
for the Human Rights Act 1998, Section 8. (See end of Document for details)*

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(b) for the purposes of the <sup>M2</sup>Civil Liability (Contribution) Act 1978 as liable in respect of damage suffered by the person to whom the award is made.

(6) In this section—

“court” includes a tribunal;

“damages” means damages for an unlawful act of a public authority; and

“unlawful” means unlawful under section 6(1).

**Annotations:**

**Marginal Citations**

M1 1940 c. 42.

M2 1978 c. 47.

## PART 8 - ALTERNATIVE PROCEDURE FOR CLAIMS

### Contents of this Part

Title	Number
Types of claim in which Part 8 procedure may be followed	Rule 8.1
Contents of the claim form	Rule 8.2
Issue of claim form without naming defendants	Rule 8.2A
Acknowledgment of service	Rule 8.3
Consequence of not filing an acknowledgment of service	Rule 8.4
Filing and serving written evidence	Rule 8.5
Evidence – general	Rule 8.6
Part 20 claims	Rule 8.7
Procedure where defendant objects to use of the Part 8 procedure	Rule 8.8
Modifications to the general rules	Rule 8.9

### Types of claim in which Part 8 procedure may be followed

#### 8.1

(1) The Part 8 procedure is the procedure set out in this Part.

(2) A claimant may use the Part 8 procedure where –

(a) he seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact; or

(b) paragraph (6) applies.

(2A) In the County Court, a claim under the Part 8 procedure may be made at any County Court hearing centre unless an enactment, rule or practice direction provides otherwise.

(Practice Direction 8A includes further direction in respect of claims which are not made at the appropriate County Court hearing centre in the first instance.

(3) The court may at any stage order the claim to continue as if the claimant had not used the Part 8 procedure and, if it does so, the court may give any directions it considers appropriate.

(4) Paragraph (2) does not apply if a practice direction provides that the Part 8 procedure may not be used in relation to the type of claim in question.

(5) Where the claimant uses the Part 8 procedure he may not obtain default judgment under Part 12.

(6) A rule or practice direction may, in relation to a specified type of proceedings –

(a) require or permit the use of the Part 8 procedure; and

(b) disapply or modify any of the rules set out in this Part as they apply to those proceedings.

(Rule 8.9 provides for other modifications to the general rules where the Part 8 procedure is being used)

(Part 78 provides procedures for European orders for payment and for the European small claims procedure. It also provides procedures for applications for mediation settlement enforcement orders in relation to certain cross-border disputes.)

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## Contents of the claim form

**8.2** Where the claimant uses the Part 8 procedure the claim form must state –

(a) that this Part applies;

(b)

(i) the question which the claimant wants the court to decide; or

(ii) the remedy which the claimant is seeking and the legal basis for the claim to that remedy;

(c) if the claim is being made under an enactment, what that enactment is;

(d) if the claimant is claiming in a representative capacity, what that capacity is; and

(e) if the defendant is sued in a representative capacity, what that capacity is.

(Part 22 provides for the claim form to be verified by a statement of truth)

(Rule 7.5 provides for service of the claim form)

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## Issue of claim form without naming defendants

### **8.2A**

(1) A practice direction may set out circumstances in which a claim form may be issued under this Part without naming a defendant.

(2) The practice direction may set out those cases in which an application for permission must be made by application notice before the claim form is issued.

(3) The application notice for permission –

- (a) need not be served on any other person; and
  - (b) must be accompanied by a copy of the claim form that the applicant proposes to issue.
- (4) Where the court gives permission it will give directions about the future management of the claim.

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## Acknowledgment of service

### 8.3

(1) The defendant must –

(a) file an acknowledgment of service in the relevant practice form not more than 14 days after service of the claim form; and

(b) serve the acknowledgment of service on the claimant and any other party.

(2) The acknowledgment of service must state –

(a) whether the defendant contests the claim; and

(b) if the defendant seeks a different remedy from that set out in the claim form, what that remedy is.

(3) The following rules of Part 10 (acknowledgment of service) apply –

(a) rule 10.3(2) (exceptions to the period for filing an acknowledgment of service); and

(b) rule 10.5 (contents of acknowledgment of service).

(4) Omitted

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## Consequence of not filing an acknowledgment of service

### 8.4

(1) This rule applies where –

(a) the defendant has failed to file an acknowledgment of service; and

(b) the time period for doing so has expired.

(2) The defendant may attend the hearing of the claim but may not take part in the hearing unless the court gives permission.

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## Filing and serving written evidence

## **8.5**

- (1) The claimant must file any written evidence on which he intends to rely when he files his claim form.
- (2) The claimant's evidence must be served on the defendant with the claim form.
- (3) A defendant who wishes to rely on written evidence must file it when he files his acknowledgment of service.
- (4) If he does so, he must also, at the same time, serve a copy of his evidence on the other parties.
- (5) The claimant may, within 14 days of service of the defendant's evidence on him, file further written evidence in reply.
- (6) If he does so, he must also, within the same time limit, serve a copy of his evidence on the other parties.
- (7) The claimant may rely on the matters set out in his claim form as evidence under this rule if the claim form is verified by a statement of truth.

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## **Evidence – general**

### **8.6**

- (1) No written evidence may be relied on at the hearing of the claim unless –
  - (a) it has been served in accordance with rule 8.5; or
  - (b) the court gives permission.
- (2) The court may require or permit a party to give oral evidence at the hearing.
- (3) The court may give directions requiring the attendance for cross-examination<sup>(GL)</sup> of a witness who has given written evidence.

(Rule 32.1 contains a general power for the court to control evidence)

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## **Part 20 claims**

**8.7** Where the Part 8 procedure is used, Part 20 (counterclaims and other additional claims) applies except that a party may not make a Part 20 claim (as defined by rule 20.2) without the court's permission.

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## **Procedure where defendant objects to use of the Part 8 procedure**

### **8.8**

- (1) Where the defendant contends that the Part 8 procedure should not be used because –
  - (a) there is a substantial dispute of fact; and

(b) the use of the Part 8 procedure is not required or permitted by a rule or practice direction,

he must state his reasons when he files his acknowledgment of service.

(Rule 8.5 requires a defendant who wishes to rely on written evidence to file it when he files his acknowledgment of service)

(2) When the court receives the acknowledgment of service and any written evidence it will give directions as to the future management of the case.

(Rule 8.1(3) allows the court to make an order that the claim continue as if the claimant had not used the Part 8 procedure)

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## Modifications to the general rules

### 8.9 Where the Part 8 procedure is followed –

(a) provision is made in this Part for the matters which must be stated in the claim form and the defendant is not required to file a defence and therefore –

(i) Part 16 (statements of case) does not apply;

(ii) Part 15 (defence and reply) does not apply;

(iii) any time limit in these Rules which prevents the parties from taking a step before a defence is filed does not apply;

(iv) the requirement under rule 7.8 to serve on the defendant a form for defending the claim does not apply;

(b) the claimant may not obtain judgment by request on an admission and therefore –

(i) rules 14.4 to 14.7 do not apply; and

(ii) the requirement under rule 7.8 to serve on the defendant a form for admitting the claim does not apply; and

(c) the claim shall be treated as allocated to the multi-track and therefore Part 26 does not apply.

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## PART 21 - CHILDREN AND PROTECTED PARTIES

### Contents of this Part

Title	Number
Scope of this Part	Rule 21.1
Requirement for a litigation friend in proceedings by or against children and protected parties	Rule 21.2
Stage of proceedings at which a litigation friend becomes necessary	Rule 21.3
Who may be a litigation friend without a court order	Rule 21.4
How a person becomes a litigation friend without a court order	Rule 21.5
How a person becomes a litigation friend by court order	Rule 21.6
Court's power to change a litigation friend and to prevent person acting as a litigation friend	Rule 21.7
Appointment of a litigation friend by court order – supplementary	Rule 21.8
Procedure where appointment of a litigation friend ceases	Rule 21.9
Compromise etc. by or on behalf of a child or protected party	Rule 21.10
Control of money recovered by or on behalf of a child or protected party	Rule 21.11
Expenses incurred by a litigation friend	Rule 21.12
Appointment of a guardian of a child's estate	Rule 21.13

### Scope of this Part

#### 21.1

(1) This Part –

(a) contains special provisions which apply in proceedings involving children and protected parties;

(b) sets out how a person becomes a litigation friend; and

(c) does not apply to—

(i) proceedings under Part 75;

(ii) enforcement of specified debts by taking control of goods; or

(iii) applications in relation to enforcement of specified debts by taking control of goods,

where one of the parties to the proceedings is a child.

(2) In this Part –

(a) 'the 2005 Act' means the Mental Capacity Act 2005;

(b) 'child' means a person under 18;

(c) 'lacks capacity' means lacks capacity within the meaning of the 2005 Act;

(d) 'protected party' means a party, or an intended party, who lacks capacity to conduct the proceedings;

(e) 'protected beneficiary' means a protected party who lacks capacity to manage and control any money recovered by him or on his behalf or for his benefit in the proceedings.

(f) 'specified debts' has the same meaning as in rule 75.1(2)(e); and

(g) 'taking control of goods' means using the procedure to take control of goods contained in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007<sup>1</sup>.

(Rules 6.13 and 6.25 contain provisions about the service of documents on children and protected parties.)

(Rule 46.4 deals with costs where money is payable by or to a child or protected party.)

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## Requirement for a litigation friend in proceedings by or against children and protected parties

### 21.2

(1) A protected party must have a litigation friend to conduct proceedings on his behalf.

(2) A child must have a litigation friend to conduct proceedings on his behalf unless the court makes an order under paragraph (3).

(3) The court may make an order permitting a child to conduct proceedings without a litigation friend.

(4) An application for an order under paragraph (3) –

(a) may be made by the child;

(b) if the child already has a litigation friend, must be made on notice to the litigation friend; and

(c) if the child has no litigation friend, may be made without notice.

(5) Where –

(a) the court has made an order under paragraph (3); and

(b) it subsequently appears to the court that it is desirable for a litigation friend to conduct the proceedings on behalf of the child,

the court may appoint a person to be the child's litigation friend.

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## Stage of proceedings at which a litigation friend becomes necessary

### 21.3

(1) This rule does not apply where the court has made an order under rule 21.2(3).

(2) A person may not, without the permission of the court –

(a) make an application against a child or protected party before proceedings have started; or

(b) take any step in proceedings except –

(i) issuing and serving a claim form; or

(ii) applying for the appointment of a litigation friend under rule 21.6,

until the child or protected party has a litigation friend.

(3) If during proceedings a party lacks capacity to continue to conduct proceedings, no party may take any further step in the proceedings without the permission of the court until the protected party has a litigation friend.

(4) Any step taken before a child or protected party has a litigation friend has no effect unless the court orders otherwise.

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## Who may be a litigation friend without a court order

### 21.4

(1) This rule does not apply if the court has appointed a person to be a litigation friend.

(2) A deputy appointed by the Court of Protection under the 2005 Act with power to conduct proceedings on the protected party's behalf is entitled to be the litigation friend of the protected party in any proceedings to which his power extends.

(3) If nobody has been appointed by the court or, in the case of a protected party, has been appointed as a deputy as set out in paragraph (2), a person may act as a litigation friend if he –

(a) can fairly and competently conduct proceedings on behalf of the child or protected party;

(b) has no interest adverse to that of the child or protected party; and

(c) where the child or protected party is a claimant, undertakes to pay any costs which the child or protected party may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the child or protected party.

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## How a person becomes a litigation friend without a court order

### 21.5

(1) If the court has not appointed a litigation friend, a person who wishes to act as a litigation friend must follow the procedure set out in this rule.

(2) A deputy appointed by the Court of Protection under the 2005 Act with power to conduct proceedings on the protected party's behalf must file an official copy<sup>(GL)</sup> of the order of the Court of Protection which confers his power to act either –

(a) where the deputy is to act as a litigation friend for a claimant, at the time the claim is made; or

(b) where the deputy is to act as a litigation friend for a defendant, at the time when he first takes a step in the proceedings on behalf of the defendant.

(3) Any other person must file a certificate of suitability stating that he satisfies the conditions specified in rule 21.4(3) either –

(a) where the person is to act as a litigation friend for a claimant, at the time when the claim is made; or

(b) where the person is to act as a litigation friend for a defendant, at the time when he first takes a step in the proceedings on behalf of the defendant.

(4) The litigation friend must –

(a) serve the certificate of suitability on every person on whom, in accordance with rule 6.13 (service on a parent, guardian etc.), the claim form should be served; and

(b) file a certificate of service when filing the certificate of suitability.

(Rules 6.17 and 6.29 set out the details to be contained in a certificate of service.)

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## How a person becomes a litigation friend by court order

### 21.6

(1) The court may make an order appointing a litigation friend.

(2) An application for an order appointing a litigation friend may be made by –

(a) a person who wishes to be the litigation friend; or

(b) a party.

(3) Where –

(a) a person makes a claim against a child or protected party;

(b) the child or protected party has no litigation friend;

(c) the court has not made an order under rule 21.2(3) (order that a child can conduct proceedings without a litigation friend); and

(d) either –

(i) someone who is not entitled to be a litigation friend files a defence; or

(ii) the claimant wishes to take some step in the proceedings,

the claimant must apply to the court for an order appointing a litigation friend for the child or protected party.

(4) An application for an order appointing a litigation friend must be supported by evidence.

(5) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed satisfies the conditions in rule 21.4(3).

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## Court's power to change a litigation friend and to prevent person acting as a litigation friend

### **21.7**

(1) The court may –

(a) direct that a person may not act as a litigation friend;

(b) terminate a litigation friend's appointment; or

(c) appoint a new litigation friend in substitution for an existing one.

(2) An application for an order under paragraph (1) must be supported by evidence.

(3) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed satisfies the conditions in rule 21.4(3).

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## Appointment of a litigation friend by court order – supplementary

### **21.8**

(1) An application for an order under rule 21.6 or 21.7 must be served on every person on whom, in accordance with rule 6.13 (service on parent, guardian etc.), the claim form must be served.

(2) Where an application for an order under rule 21.6 is in respect of a protected party, the application must also be served on the protected party unless the court orders otherwise.

(3) An application for an order under rule 21.7 must also be served on –

(a) the person who is the litigation friend, or who is purporting to act as the litigation friend, when the application is made; and

(b) the person who it is proposed should be the litigation friend, if he is not the applicant.

(4) On an application for an order under rule 21.6 or 21.7, the court may appoint the person proposed or any other person who satisfies the conditions specified in rule 21.4(3).

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## Procedure where appointment of a litigation friend ceases

### 21.9

(1) When a child who is not a protected party reaches the age of 18, the litigation friend's appointment ceases.

(2) Where a protected party regains or acquires capacity to conduct the proceedings, the litigation friend's appointment continues until it is ended by court order.

(3) An application for an order under paragraph (2) may be made by –

(a) the former protected party;

(b) the litigation friend; or

(c) a party.

(4) The child or protected party in respect of whom the appointment to act has ceased must serve notice on the other parties –

(a) stating that the appointment of his litigation friend to act has ceased;

(b) giving his address for service; and

(c) stating whether or not he intends to carry on the proceedings.

(5) If the child or protected party does not serve the notice required by paragraph (4) within 28 days after the day on which the appointment of the litigation friend ceases the court may, on application, strike out<sup>(GL)</sup> any claim brought by or defence raised by the child or protected party.

(6) The liability of a litigation friend for costs continues until –

(a) the person in respect of whom his appointment to act has ceased serves the notice referred to in paragraph (4); or

(b) the litigation friend serves notice on the parties that his appointment to act has ceased.

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## Compromise etc. by or on behalf of a child or protected party

### 21.10

(1) Where a claim is made –

(a) by or on behalf of a child or protected party; or

(b) against a child or protected party,

no settlement, compromise or payment (including any voluntary interim payment) and no acceptance of money paid into court shall be valid, so far as it relates to the claim by, on behalf of or against the child or protected party, without the approval of the court.

(2) Where –

(a) before proceedings in which a claim is made by or on behalf of, or against, a child or protected party (whether alone or with any other person) are begun, an agreement is reached for the settlement of the claim; and

(b) the sole purpose of proceedings is to obtain the approval of the court to a settlement or compromise of the claim,

the claim must –

(i) be made using the procedure set out in Part 8 (alternative procedure for claims); and

(ii) include a request to the court for approval of the settlement or compromise.

(3) In proceedings to which Section II or Section III of Part 45 applies, the court will not make an order for detailed assessment of the costs payable to the child or protected party but will assess the costs in the manner set out in that Section.

(Rule 46.4 contains provisions about costs where money is payable to a child or protected party.)

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## Control of money recovered by or on behalf of a child or protected party

### 21.11

(1) Where in any proceedings –

(a) money is recovered by or on behalf of or for the benefit of a child or protected party; or

(b) money paid into court is accepted by or on behalf of a child or protected party,

the money will be dealt with in accordance with directions given by the court under this rule and not otherwise.

(2) Directions given under this rule may provide that the money shall be wholly or partly paid into court and invested or

otherwise dealt with.

(3) Where money is recovered by or on behalf of a protected party or money paid into court is accepted by or on behalf of a protected party, before giving directions in accordance with this rule, the court will first consider whether the protected party is a protected beneficiary.

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## Expenses incurred by a litigation friend

### 21.12

(1) Subject to paragraph (1A), in proceedings to which rule 21.11 applies, a litigation friend who incurs costs or expenses on behalf of a child or protected party in any proceedings is entitled on application to recover the amount paid or payable out of any money recovered or paid into court to the extent that it –

(a) has been reasonably incurred; and

(b) is reasonable in amount.

(1A) Costs recoverable under this rule are limited to—

(a) costs incurred by or on behalf of a child and which have been assessed by way of detailed assessment pursuant to rule 46.4(2); or

(b) costs incurred by or on behalf of a child by way of success fee under a conditional fee agreement or sum payable under a damages based agreement in a claim for damages for personal injury where the damages agreed or ordered to be paid do not exceed £25,000, where such costs have been assessed summarily pursuant to rule 46.4(5).

(2) Expenses may include all or part of –

(a) a premium in respect of a costs insurance policy (as defined by section 58C(5) of the Courts and Legal Services Act 1990); or

(b) interest on a loan taken out to pay a premium in respect of a costs insurance policy or other recoverable disbursement.

(3) No application may be made under this rule for costs or expenses that –

(a) are of a type that may be recoverable on an assessment of costs payable by or out of money belonging to a child or protected party; but

(b) are disallowed in whole or in part on such an assessment.

(Costs and expenses which are also “costs” as defined in rule 44.1(1) are subject to rule 46.4(2) and (3).)

(4) In deciding whether the costs or expenses were reasonably incurred and reasonable in amount, the court will have regard to all the circumstances of the case including the factors set out in rule 44.4(3) and 46.9.

(5) When the court is considering the factors to be taken into account in assessing the reasonableness of the costs or expenses, it will have regard to the facts and circumstances as they reasonably appeared to the litigation friend or to the child’s or protected party’s legal representative when the cost or expense was incurred.

(6) Subject to paragraph (7), where the claim is settled or compromised, or judgment is given, on terms that an amount not exceeding £5,000 is paid to the child or protected party, the total amount the litigation friend may recover under paragraph (1) must not exceed 25% of the sum so agreed or awarded, unless the court directs otherwise. Such total amount must not exceed 50% of the sum so agreed or awarded.

(7) The amount which the litigation friend may recover under paragraph (1) in respect of costs must not (in proceedings at first instance) exceed 25% of the amount of the sum agreed or awarded in respect of—

(a) general damages for pain, suffering and loss of amenity; and

(b) damages for pecuniary loss other than future pecuniary loss,

net of any sums recoverable by the Compensation Recovery Unit of the Department for Work and Pensions.

(8) Except in a case in which the costs payable to a child or protected party are fixed by these rules, no application may be made under this rule for a payment out of the money recovered by the child or protected party until the costs payable to the child or protected party have been assessed or agreed.

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## Appointment of a guardian of a child's estate

### 21.13

(1) The court may appoint the Official Solicitor to be a guardian of a child's estate where –

(a) money is paid into court on behalf of the child in accordance with directions given under rule 21.11 (control of money received by a child or protected party);

(b) the Criminal Injuries Compensation Authority notifies the court that it has made or intends to make an award to the child;

(c) a court or tribunal outside England and Wales notifies the court that it has ordered or intends to order that money be paid to the child;

(d) the child is absolutely entitled to the proceeds of a pension fund; or

(e) in any other case, such an appointment seems desirable to the court.

(2) The court may not appoint the Official Solicitor under this rule unless –

(a) the persons with parental responsibility (within the meaning of section 3 of the Children Act 1989<sup>2</sup>) agree; or

(b) the court considers that their agreement can be dispensed with.

(3) The Official Solicitor's appointment may continue only until the child reaches 18.

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[Footnotes](#)

1. 2007 c.15. Schedule 12 is amended by the Crime and Courts Act 2013 (c.22), section 17(5) and Schedule 9, paragraph 52(1)(b) and (2). Back to text
2. 1989 c. 41. Back to text

# PRACTICE DIRECTION 21 – CHILDREN AND PROTECTED PARTIES

## This Practice Direction supplements CPR Part 21

### Contents of this Practice Direction

Title
General
The litigation friend
Application for a court order appointing a litigation friend
Procedure where the need for a litigation friend has come to an end
Settlement or compromise by or on behalf of a child or protected party before the issue of proceedings
Settlement or compromise by or on behalf of a child or protected party after proceedings have been issued
Apportionment under the Fatal Accidents Act 1976
Control of money recovered by or on behalf of a child or protected party
Investment on behalf of a child
Investment on behalf of a protected beneficiary
Expenses incurred by a litigation friend
Guardian's account
Payment out of funds in court

### General

**1.1** In proceedings where one of the parties is a protected party, the protected party should be referred to in the title to the proceedings as 'A.B. (a protected party by C.D. his litigation friend)'.

**1.2** In proceedings where one of the parties is a child, where –

(1) the child has a litigation friend, the child should be referred to in the title to the proceedings as 'A.B. (a child by C.D. his litigation friend)'; or

(2) the child is conducting the proceedings on his own behalf, the child should be referred to in the title as 'A.B. (a child)'.

**1.3** A settlement of a claim by a child includes an agreement on a sum to be apportioned to a dependent child under the

Fatal Accidents Act 1976<sup>1</sup>.

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## The litigation friend

**2.1** A person may become a litigation friend –

(a) without a court order under rule 21.5, or

(b) by a court order under rule 21.6.

**2.2** A person who wishes to become a litigation friend without a court order pursuant to rule 21.5(3) must file a certificate of suitability in Practice Form N235 –

(a) stating that he consents to act,

(b) stating that he knows or believes that the [claimant] [defendant] [is a child][lacks capacity to conduct the proceedings],

(c) in the case of a protected party, stating the grounds of his belief and, if his belief is based upon medical opinion or the opinion of another suitably qualified expert, attaching any relevant document to the certificate,

(d) stating that he can fairly and competently conduct proceedings on behalf of the child or protected party and has no interest adverse to that of the child or protected party, and

(e) where the child or protected party is a claimant, undertaking to pay any costs which the child or protected party may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the child or protected party.

**2.3** The certificate of suitability must be verified by a statement of truth.

(Part 22 contains provisions about statements of truth.)

**2.4** The litigation friend is not required to serve the document referred to in paragraph 2.2(c) when he serves a certificate of suitability on the person to be served under rule 21.5(4)(a).

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## Application for a court order appointing a litigation friend

**3.1** Rule 21.6 sets out who may apply for an order appointing a litigation friend.

**3.2** An application must be made in accordance with Part 23 and must be supported by evidence.

**3.3** The evidence in support must satisfy the court that the proposed litigation friend –

(1) consents to act,

(2) can fairly and competently conduct proceedings on behalf of the child or protected party,

(3) has no interest adverse to that of the child or protected party, and

(4) where the child or protected party is a claimant, undertakes to pay any costs which the child or protected party may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the child or protected party.

**3.4** Where it is sought to appoint the Official Solicitor as the litigation friend, provision must be made for payment of his charges.

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## Procedure where the need for a litigation friend has come to an end

**4.1** Rule 21.9 deals with the situation where the need for a litigation friend comes to an end during the proceedings because either –

- (1) a child who is not also a protected party reaches the age of 18 (full age) during the proceedings, or
- (2) a protected party regains or acquires capacity to conduct the proceedings.

**4.2** A child on reaching full age must serve on the other parties to the proceedings and file with the court a notice –

- (1) stating that he has reached full age,
- (2) stating that his litigation friend's appointment has ceased,
- (3) giving an address for service, and
- (4) stating whether or not he intends to carry on with or continue to defend the proceedings.

**4.3** If the notice states that the child intends to carry on with or continue to defend the proceedings he must subsequently be described in the proceedings as 'A.B. (formerly a child but now of full age)'.

**4.4** Whether or not a child having reached full age serves a notice in accordance with rule 21.9(4) and paragraph 4.2 above, a litigation friend may, at any time after the child has reached full age, serve a notice on the other parties that his appointment has ceased.

**4.5** Where a protected party regains or acquires capacity to conduct the proceedings, an application under rule 21.9(3) must be made for an order under rule 21.9(2) that the litigation friend's appointment has ceased.

**4.6** The application must be supported by the following evidence –

- (1) a medical report or other suitably qualified expert's report indicating that the protected party has regained or acquired capacity to conduct the proceedings,
- (2) a copy of any relevant order or declaration of the Court of Protection, and
- (3) if the application is made by the protected party, a statement whether or not he intends to carry on with or continue to defend the proceedings.

**4.7** An order under rule 21.9(2) must be served on the other parties to the proceedings. The former protected party must file with the court a notice –

- (1) stating that his litigation friend's appointment has ceased,
- (2) giving an address for service, and
- (3) stating whether or not he intends to carry on with or continue to defend the proceedings.

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## Settlement or compromise by or on behalf of a child or protected party before the issue of proceedings

**5.1** Where a claim by or on behalf of a child or protected party has been dealt with by agreement before the issue of proceedings and only the approval of the court to the agreement is sought, the claim must, in addition to containing the details of the claim and satisfying the requirements of rule 21.10(2), include the following –

- (1) subject to paragraph 5.3, the terms of the settlement or compromise or have attached to it a draft consent order in Practice Form N292;
- (2) details of whether and to what extent the defendant admits liability;
- (3) the age and occupation (if any) of the child or protected party;
- (4) the litigation friend's approval of the proposed settlement or compromise,
- (5) a copy of any financial advice relating to the proposed settlement; and
- (6) in a personal injury case arising from an accident –
  - (a) details of the circumstances of the accident,
  - (b) medical and quantum reports and joint statements material to the opinion required by paragraph 5.2,
  - (c) where appropriate, a schedule of any past and future expenses and losses claimed and any other relevant information relating to the personal injury as set out in Practice Direction 16 (statements of case), and
  - (d) where considerations of liability are raised –
    - (i) any evidence or reports in any criminal proceedings or in an inquest, and
    - (ii) details of any prosecution brought.

### **5.2**

- (1) An opinion on the merits of the settlement or compromise given by counsel or solicitor acting for the child or protected party must, except in very clear cases, be obtained.
- (2) A copy of the opinion and, unless the instructions on which it was given are sufficiently set out in it, a copy of the instructions, must be supplied to the court.

**5.3** Where in any personal injury case a claim for damages for future pecuniary loss is settled, the provisions in paragraphs 5.4 and 5.5 must in addition be complied with.

**5.4** The court must be satisfied that the parties have considered whether the damages should wholly or partly take the form of periodical payments.

**5.5** Where the settlement includes provision for periodical payments, the claim must –

(1) set out the terms of the settlement or compromise; or

(2) have attached to it a draft consent order,

which must satisfy the requirements of rules 41.8 and 41.9 as appropriate.

**5.6** Applications for the approval of a settlement or compromise will normally be heard by –

(1) a Master or a district judge in proceedings involving a child; and

(2) a Master, designated civil judge or his nominee in proceedings involving a protected party.

(For information about provisional damages claims see Part 41 and Practice Direction 41A.)

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## Settlement or compromise by or on behalf of a child or protected party after proceedings have been issued

**6.1** Where in any personal injury case a claim for damages for future pecuniary loss, by or on behalf of a child or protected party, is dealt with by agreement after proceedings have been issued, an application must be made for the court's approval of the agreement.

**6.2** The court must be satisfied that the parties have considered whether the damages should wholly or partly take the form of periodical payments.

**6.3** Where the settlement includes provision for periodical payments, an application under paragraph 6.1 must –

(1) set out the terms of the settlement or compromise; or

(2) have attached to it a draft consent order,

which must satisfy the requirements of rules 41.8 and 41.9 as appropriate.

**6.4** The court must be supplied with –

(1) an opinion on the merits of the settlement or compromise given by counsel or solicitor acting for the child or protected party, except in very clear cases; and

(2) a copy of any financial advice; and

(3) documentary evidence material to the opinion referred to at paragraph 6.4(1).

**6.5** Applications for the approval of a settlement or compromise, except at the trial, will normally be heard by –

(1) a Master or a district judge in proceedings involving a child; and

(2) a Master, designated civil judge or his nominee in proceedings involving a protected party.

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## Apportionment under the Fatal Accidents Act 1976

**7.1** A judgment on or settlement in respect of a claim under the Fatal Accidents Act 1976 must be apportioned between the persons by or on whose behalf the claim has been brought.

**7.2** Where a claim is brought on behalf of a dependent child or children, any settlement (including an agreement on a sum to be apportioned to a dependent child under the Fatal Accidents Act 1976) must be approved by the court.

**7.3** The money apportioned to any dependent child must be invested on the child's behalf in accordance with rules 21.10 and 21.11 and paragraphs 8 and 9 below.

**7.4** In order to approve an apportionment of money to a dependent child, the court will require the following information:

(1) the matters set out in paragraphs 5.1(2) and (3), and

(2) in respect of the deceased –

(a) where death was caused by an accident, the matters set out in paragraphs 5.1(6)(a), (b) and (c), and

(b) his future loss of earnings, and

(3) the extent and nature of the dependency.

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## Control of money recovered by or on behalf of a child or protected party

**8.1** When giving directions under rule 21.11, the court –

(1) may direct the money to be paid into court for investment,

(2) may direct that certain sums be paid direct to the child or protected beneficiary, his litigation friend or his legal representative for the immediate benefit of the child or protected beneficiary or for expenses incurred on his behalf, and

(3) may direct that the application in respect of the investment of the money be transferred to a local district registry.

**8.2** The court will consider the general aims to be achieved for the money in court (the fund) by investment and will give directions as to the type of investment.

**8.3** Where a child also lacks capacity to manage and control any money recovered by him or on his behalf in the proceedings, and is likely to remain so on reaching full age, his fund should be administered as a protected beneficiary's fund.

**8.4** Where a child or protected beneficiary is in receipt of publicly funded legal services the fund will be subject to a first charge under section 10 of the Access to Justice Act 1999<sup>2</sup> (statutory charge) and an order for the investment of money on the child's or protected beneficiary's behalf must contain a direction to that effect.

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## Investment on behalf of a child

**9.1** At the hearing of an application for the approval of a settlement or compromise the litigation friend or his legal representative must provide, in addition to the information required by paragraphs 5 and 6 –

- (1) a CFO form 320 (initial application for investment of damages) for completion by the judge hearing the application; and
- (2) any evidence or information which the litigation friend wishes the court to consider in relation to the investment of the award for damages.

**9.2** Following the hearing in paragraph 9.1, the court will forward to the Court Funds Office a request for investment decision (form 212) and the Court Funds Office will make the appropriate investment.

**9.3** Where an award for damages for a child is made at trial, unless paragraph 9.7 applies, the trial judge will –

- (1) direct the money to be paid into court and placed into the special investment account until further investment directions have been given by the court;
- (2) direct the litigation friend to make an application to a Master or district judge for further investment directions; and
- (3) give such other directions as the trial judge thinks fit, including a direction that the hearing of the application for further investment directions will be fixed for a date within 28 days from the date of the trial.

**9.4** The application under paragraph 9.3(2) must be made by filing with the court –

- (1) a completed CFO form 320; and
- (2) any evidence or information which the litigation friend wishes the court to consider in relation to the investment of the award for damages.

**9.5** The application must be sent in proceedings in the Royal Courts of Justice to the Masters' Support Unit (Room E16) at the Royal Courts of Justice.

**9.6** If the application required by paragraph 9.3(2) is not made to the court, the money paid into court in accordance with paragraph 9.3(1) will remain in the special investment account subject to any further order of the court or paragraph 9.8.

**9.7** If the money to be invested is very small the court may order it to be paid direct to the litigation friend to be put into a building society account (or similar) for the child's use.

**9.8** If the money is invested in court, it must be paid out to the child on application when he reaches full age.

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## Investment on behalf of a protected beneficiary

**10.1** The Court of Protection has jurisdiction to make decisions in the best interests of a protected beneficiary. Fees may be charged for the administration of funds and these must be provided for in any settlement.

**10.2**

(1) Where the sum to be invested for the benefit of the protected beneficiary is £50,000 or more, (save where under paragraph 10.2A the Court of Protection has authorised a sum of £50,000 or more to be dealt with under subparagraph (2) below), unless a person with authority as –

(a) the attorney under a registered enduring power of attorney;

(b) the donee of a lasting power of attorney; or

(c) the deputy appointed by the Court of Protection,

to administer or manage the protected beneficiary's financial affairs has been appointed, the order approving the settlement will contain a direction to the litigation friend to apply to the Court of Protection for the appointment of a deputy, after which the fund will be dealt with as directed by the Court of Protection; or

(2) Where the sum to be invested for the benefit of the protected party is under £50,000, or such sum as may be authorised by the Court of Protection under paragraph 10.2A, it may be retained in court and invested in the same way as the fund of a child.

**10.2A** The Court of Protection may authorise a sum of £50,000 or more to be retained in court and invested in the same way as the fund of a child under subparagraph 10.2(2), either of its own initiative or at the request of the judge giving investment directions in respect of the protected beneficiary.

**10.3** A form of order transferring the fund to the Court of Protection is set out in practice form N292.

**10.4** In order for the Court Funds Office to release a fund which is subject to the statutory charge, the litigation friend or his legal representative or the person with authority referred to in paragraph 10.2(1) must provide the appropriate regional office of the Legal Services Commission with an undertaking in respect of a sum to cover their costs, following which the regional office will advise the Court Funds Office in writing of that sum, enabling them to transfer the balance to the Court of Protection on receipt of a CFO form 200 payment schedule authorised by the court.

**10.5** The CFO form 200 should be completed and presented to the court where the settlement or trial took place for authorisation, subject to paragraphs 10.6 and 10.7.

**10.6** Where the settlement took place in the Royal Courts of Justice the CFO form 200 must be completed and presented for authorisation –

(1) on behalf of a child, in the Masters' Support Unit, Room E105, and

(2) on behalf of a protected beneficiary, in the Judgment and Orders Section in the Action Department, Room E17.

**10.7** Where the trial took place in the Royal Courts of Justice, the CFO form 200 is completed and authorised by the court officer.

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## Costs or expenses incurred by a litigation friend

**11.1** A litigation friend may make a claim for costs or expenses under rule 21.12(1) –

(1) where the court has ordered an assessment of costs under rule 46.4(2), at the detailed assessment hearing;

(1A) where the court has assessed the costs to be paid by the child by way of summary assessment under rule 46.4(5)(b), at the conclusion of the hearing at which damages to be paid to the child are assessed or at the hearing to approve the compromise or settlement under Part 21, or at any time thereafter;

(2) where the litigation friend's expenses are not of a type which would be recoverable as costs on an assessment of costs between the parties, to the Master or district judge at the hearing to approve the settlement or compromise under Part 21 (the Master or district judge may adjourn the matter to the costs judge); or

(3) where an assessment of costs under Part rule 46.4(2) is not required, and no approval under Part 21 is necessary, by a Part 23 application supported by a witness statement to a Costs Judge or district judge as appropriate.

**11.2** In all circumstances, the litigation friend must support a claim for payment out in relation to costs or expenses by filing a witness statement setting out—

(1) the nature and amount of the costs or expense; and

(2) the reason the costs or expense were incurred.

**11.3** Where the application is for payment out of the damages in respect of costs pursuant to rule 21.12(1A) the witness statement must also include (or be accompanied by)—

(1) a copy of the conditional fee agreement or damages based agreement;

(2) the risk assessment by reference to which the success fee was determined;

(3) the reasons why the particular funding model was selected;

(4) the advice given to the litigation friend in relation to funding arrangements;

(5) details of any costs agreed, recovered or fixed costs recoverable by the child; and

(6) confirmation of the amount of the sum agreed or awarded in respect of—

(a) general damages for pain, suffering and loss of amenity; and

(b) damages for pecuniary loss other than future pecuniary loss, net of any sums recoverable by the Compensation Recovery Unit of the Department for Work and Pensions.

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## Guardian's account

**12** Paragraph 8 of Practice Direction 40A deals with the approval of the accounts of a guardian of assets of a child.

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## Payment out of funds in court

**13.1** Applications to a Master or district judge

(1) for payment out of money from the fund for the benefit of the child, or

(2) to vary an investment strategy,

may be dealt with without a hearing unless the court directs otherwise.

**13.2** When the child reaches full age –

(1) where his fund in court is a sum of money, it will be paid out to him on application; or

(2) where his fund is in the form of investments other than money (for example shares or unit trusts), the investments will on application be

(a) sold and the proceeds of sale paid out to him; or

(b) transferred into his name.

**13.3** Where the fund is administered by the Court of Protection, any payment out of money from that fund must be in accordance with any decision or order of the Court of Protection.

**13.4** If an application is required for the payment out of money from a fund administered by the Court of Protection, that application must be made to the Court of Protection.

(For further information on payments out of court, see Practice Direction 37.)

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**Footnotes**

1. 1976 c.30. [Back to text](#)
2. 1999 c.22. [Back to text](#)

## PART 36 - OFFERS TO SETTLE

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## Scope of this Part

### 36.1

(1) This Part contains a self-contained procedural code about offers to settle made pursuant to the procedure set out in this Part (“Part 36 offers”).

(2) Section I of this Part contains general rules about Part 36 offers.

(3) Section II of this Part contains rules about offers to settle where the parties have followed the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (“the RTA Protocol”) or the Pre-Action Protocol for Low Value

Personal Injury (Employers' Liability and Public Liability) Claims ("the EL/PL Protocol") and have started proceedings under Part 8 in accordance with Practice Direction 8B.

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## I PART 36 OFFERS TO SETTLE

### General

#### Scope of this Section

##### **36.2**

(1) This Section does not apply to an offer to settle to which Section II of this Part applies.

(2) Nothing in this Section prevents a party making an offer to settle in whatever way that party chooses, but if the offer is not made in accordance with rule 36.5, it will not have the consequences specified in this Section.

(Rule 44.2 requires the court to consider an offer to settle that does not have the costs consequences set out in this Section in deciding what order to make about costs.)

(3) A Part 36 offer may be made in respect of the whole, or part of, or any issue that arises in—

(a) a claim, counterclaim or other additional claim; or

(b) an appeal or cross-appeal from a decision made at a trial.

(Rules 20.2 and 20.3 provide that counterclaims and other additional claims are treated as claims and that references to a claimant or a defendant include a party bringing or defending an additional claim.)

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### Definitions

##### **36.3** In this Section—

(a) the party who makes an offer is the "offeror";

(b) the party to whom an offer is made is the "offeree";

(c) a "trial" means any trial in a case whether it is a trial of all issues or a trial of liability, quantum or some other issue in the case;

(d) a trial is "in progress" from the time when it starts until the time when judgment is given or handed down;

(e) a case is "decided" when all issues in the case have been determined, whether at one or more trials;

(f) "trial judge" includes the judge (if any) allocated in advance to conduct a trial; and

(g) "the relevant period" means—

(i) in the case of an offer made not less than 21 days before a trial, the period specified under rule 36.5(1)(c) or such longer period as the parties agree;

(ii) otherwise, the period up to the end of such trial.

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## Application of Part 36 to appeals

### 36.4

(1) Except where a Part 36 offer is made in appeal proceedings, it shall have the consequences set out in this Section only in relation to the costs of the proceedings in respect of which it is made, and not in relation to the costs of any appeal from a decision in those proceedings.

(2) Where a Part 36 offer is made in appeal proceedings, references in this Section to a term in the first column below shall be treated, unless the context requires otherwise, as references to the corresponding term in the second column—

Term	Corresponding term
Claim	Appeal
Counterclaim	Cross-appeal
Case	Appeal proceedings
Claimant	Appellant
Defendant	Respondent
Trial	Appeal hearing
Trial judge	Appeal judge

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## Making offers

### Form and content of a Part 36 offer

#### 36.5

(1) A Part 36 offer must—

(a) be in writing;

(b) make clear that it is made pursuant to Part 36;

(c) specify a period of not less than 21 days within which the defendant will be liable for the claimant's costs in accordance with rule 36.13 or 36.20 if the offer is accepted;

(d) state whether it relates to the whole of the claim or to part of it or to an issue that arises in it and if so to which part or issue; and

(e) state whether it takes into account any counterclaim.

(Rule 36.7 makes provision for when a Part 36 offer is made.)

(2) Paragraph (1)(c) does not apply if the offer is made less than 21 days before the start of a trial.

(3) In appropriate cases, a Part 36 offer must contain such further information as is required by rule 36.18 (personal injury claims for future pecuniary loss), rule 36.19 (offer to settle a claim for provisional damages), and rule 36.22 (deduction of benefits).

(4) A Part 36 offer which offers to pay or offers to accept a sum of money will be treated as inclusive of all interest until—

(a) the date on which the period specified under rule 36.5(1)(c) expires; or

(b) if rule 36.5(2) applies, a date 21 days after the date the offer was made.

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## Part 36 offers – defendant’s offer

### 36.6

(1) Subject to rules 36.18(3) and 36.19(1), a Part 36 offer by a defendant to pay a sum of money in settlement of a claim must be an offer to pay a single sum of money.

(2) A defendant’s offer that includes an offer to pay all or part of the sum at a date later than 14 days following the date of acceptance will not be treated as a Part 36 offer unless the offeree accepts the offer.

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## Time when a Part 36 offer is made

### 36.7

(1) A Part 36 offer may be made at any time, including before the commencement of proceedings.

(2) A Part 36 offer is made when it is served on the offeree.

(Part 6 provides detailed rules about service of documents.)

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## Clarifying, withdrawing and changing the terms of offers

### Clarification of a Part 36 offer

#### 36.8

(1) The offeree may, within 7 days of a Part 36 offer being made, request the offeror to clarify the offer.

(2) If the offeror does not give the clarification requested under paragraph (1) within 7 days of receiving the request, the offeree may, unless the trial has started, apply for an order that the offeror do so.

(Part 23 contains provisions about making an application to the court.)

(3) If the court makes an order under paragraph (2), it must specify the date when the Part 36 offer is to be treated as having been made.

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## Withdrawing or changing the terms of a Part 36 offer generally

### 36.9

(1) A Part 36 offer can only be withdrawn, or its terms changed, if the offeree has not previously served notice of acceptance.

(2) The offeror withdraws the offer or changes its terms by serving written notice of the withdrawal or change of terms on the offeree.

(Rule 36.17(7) deals with the costs consequences following judgment of an offer which is withdrawn.)

(3) Subject to rule 36.10, such notice of withdrawal or change of terms takes effect when it is served on the offeree.

(Rule 36.10 makes provision about when permission is required to withdraw or change the terms of an offer before the expiry of the relevant period.)

(4) Subject to paragraph (1), after expiry of the relevant period—

(a) the offeror may withdraw the offer or change its terms without the permission of the court; or

(b) the offer may be automatically withdrawn in accordance with its terms.

(5) Where the offeror changes the terms of a Part 36 offer to make it more advantageous to the offeree—

(a) such improved offer shall be treated, not as the withdrawal of the original offer; but as the making of a new Part 36 offer on the improved terms; and

(b) subject to rule 36.5(2), the period specified under rule 36.5(1)(c) shall be 21 days or such longer period (if any) identified in the written notice referred to in paragraph (2).

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## Withdrawing or changing the terms of a Part 36 offer before the expiry of the relevant period

### 36.10

(1) Subject to rule 36.9(1), this rule applies where the offeror serves notice before expiry of the relevant period of withdrawal of the offer or change of its terms to be less advantageous to the offeree.

(2) Where this rule applies—

(a) if the offeree has not served notice of acceptance of the original offer by the expiry of the relevant period, the offeror's notice has effect on the expiry of that period; and

(b) if the offeree serves notice of acceptance of the original offer before the expiry of the relevant period, that acceptance has effect unless the offeror applies to the court for permission to withdraw the offer or to change its terms—

(i) within 7 days of the offeree's notice of acceptance; or

(ii) if earlier, before the first day of trial.

(3) On an application under paragraph (2)(b), the court may give permission for the original offer to be withdrawn or its terms changed if satisfied that there has been a change of circumstances since the making of the original offer and that it is in the interests of justice to give permission.

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## Accepting offers

### Acceptance of a Part 36 offer

#### **36.11**

(1) A Part 36 offer is accepted by serving written notice of acceptance on the offeror.

(2) Subject to paragraphs (3) and (4) and to rule 36.12, a Part 36 offer may be accepted at any time (whether or not the offeree has subsequently made a different offer), unless it has already been withdrawn.

(Rule 21.10 deals with compromise, etc. by or on behalf of a child or protected party.)

(Rules 36.9 and 36.10 deal with withdrawal of Part 36 offers.)

(3) The court's permission is required to accept a Part 36 offer where—

(a) rule 36.15(4) applies;

(b) rule 36.22(3)(b) applies, the relevant period has expired and further deductible amounts have been paid to the claimant since the date of the offer;

(c) an apportionment is required under rule 41.3A; or

(d) a trial is in progress.

(Rule 36.15 deals with offers by some but not all of multiple defendants.)

(Rule 36.22 defines “deductible amounts”.)

(Rule 41.3A requires an apportionment in proceedings under the Fatal Accidents Act 1976<sup>1</sup> and Law Reform (Miscellaneous Provisions) Act 1934<sup>2</sup>.)

(4) Where the court gives permission under paragraph (3), unless all the parties have agreed costs, the court must make an order dealing with costs, and may order that the costs consequences set out in rule 36.13 apply.

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## Acceptance of a Part 36 offer in a split-trial case

### 36.12

(1) This rule applies in any case where there has been a trial but the case has not been decided within the meaning of rule 36.3.

(2) Any Part 36 offer which relates only to parts of the claim or issues that have already been decided can no longer be accepted.

(3) Subject to paragraph (2) and unless the parties agree, any other Part 36 offer cannot be accepted earlier than 7 clear days after judgment is given or handed down in such trial.

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## Costs consequences of acceptance of a Part 36 offer

### 36.13

(1) Subject to paragraphs (2) and (4) and to rule 36.20, where a Part 36 offer is accepted within the relevant period the claimant will be entitled to the costs of the proceedings (including their recoverable pre-action costs) up to the date on which notice of acceptance was served on the offeror.

(Rule 36.20 makes provision for the costs consequences of accepting a Part 36 offer in certain personal injury claims where the claim no longer proceeds under the RTA or EL/PL Protocol.)

(2) Where—

(a) a defendant's Part 36 offer relates to part only of the claim; and

(b) at the time of serving notice of acceptance within the relevant period the claimant abandons the balance of the claim, the claimant will only be entitled to the costs of such part of the claim unless the court orders otherwise.

(3) Except where the recoverable costs are fixed by these Rules, costs under paragraphs (1) and (2) are to be assessed on the standard basis if the amount of costs is not agreed.

(Rule 44.3(2) explains the standard basis for the assessment of costs.)

(Rule 44.9 contains provisions about when a costs order is deemed to have been made and applying for an order under section 194(3) of the Legal Services Act 2007<sup>3</sup>.)

(Part 45 provides for fixed costs in certain classes of case.)

(4) Where—

(a) a Part 36 offer which was made less than 21 days before the start of a trial is accepted; or

(b) a Part 36 offer which relates to the whole of the claim is accepted after expiry of the relevant period; or

(c) subject to paragraph (2), a Part 36 offer which does not relate to the whole of the claim is accepted at any time,

the liability for costs must be determined by the court unless the parties have agreed the costs.

(5) Where paragraph (4)(b) applies but the parties cannot agree the liability for costs, the court must, unless it considers it unjust to do so, order that—

(a) the claimant be awarded costs up to the date on which the relevant period expired; and

(b) the offeree do pay the offeror's costs for the period from the date of expiry of the relevant period to the date of acceptance.

(6) In considering whether it would be unjust to make the orders specified in paragraph (5), the court must take into account all the circumstances of the case including the matters listed in rule 36.17(5).

(7) The claimant's costs include any costs incurred in dealing with the defendant's counterclaim if the Part 36 offer states that it takes it into account.

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## Other effects of acceptance of a Part 36 offer

### 36.14

(1) If a Part 36 offer is accepted, the claim will be stayed.

(2) In the case of acceptance of a Part 36 offer which relates to the whole claim, the stay will be upon the terms of the offer.

(3) If a Part 36 offer which relates to part only of the claim is accepted, the claim will be stayed as to that part upon the terms of the offer.

(4) If the approval of the court is required before a settlement can be binding, any stay which would otherwise arise on the acceptance of a Part 36 offer will take effect only when that approval has been given.

(5) Any stay arising under this rule will not affect the power of the court—

(a) to enforce the terms of a Part 36 offer; or

(b) to deal with any question of costs (including interest on costs) relating to the proceedings.

(6) Unless the parties agree otherwise in writing, where a Part 36 offer that is or includes an offer to pay or accept a single sum of money is accepted, that sum must be paid to the claimant within 14 days of the date of—

(a) acceptance; or

(b) the order when the court makes an order under rule 41.2 (order for an award of provisional damages) or rule 41.8 (order for an award of periodical payments), unless the court orders otherwise.

(7) If such sum is not paid within 14 days of acceptance of the offer, or such other period as has been agreed, the claimant may enter judgment for the unpaid sum.

(8) Where—

(a) a Part 36 offer (or part of a Part 36 offer) which is not an offer to which paragraph (6) applies is accepted; and

(b) a party alleges that the other party has not honoured the terms of the offer,

that party may apply to enforce the terms of the offer without the need for a new claim.

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## Acceptance of a Part 36 offer made by one or more, but not all, defendants

### 36.15

(1) This rule applies where the claimant wishes to accept a Part 36 offer made by one or more, but not all, of a number of defendants.

(2) If the defendants are sued jointly or in the alternative, the claimant may accept the offer if—

(a) the claimant discontinues the claim against those defendants who have not made the offer; and

(b) those defendants give written consent to the acceptance of the offer.

(3) If the claimant alleges that the defendants have a several liability<sup>(GL)</sup> to the claimant, the claimant may—

(a) accept the offer; and

(b) continue with the claims against the other defendants if entitled to do so.

(4) In all other cases the claimant must apply to the court for permission to accept the Part 36 offer.

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## Unaccepted offers

### Restriction on disclosure of a Part 36 offer

#### 36.16

(1) A Part 36 offer will be treated as “without prejudice except as to costs”.

(2) The fact that a Part 36 offer has been made and the terms of such offer must not be communicated to the trial judge until the case has been decided.

(3) Paragraph (2) does not apply—

(a) where the defence of tender before claim has been raised;

(b) where the proceedings have been stayed under rule 36.14 following acceptance of a Part 36 offer;

(c) where the offeror and the offeree agree in writing that it should not apply; or

(d) where, although the case has not been decided—

(i) any part of, or issue in, the case has been decided; and

(ii) the Part 36 offer relates only to parts or issues that have been decided.

(4) In a case to which paragraph (3)(d)(i) applies, the trial judge—

(a) may be told whether or not there are Part 36 offers other than those referred to in paragraph (3)(d)(ii); but

(b) must not be told the terms of any such other offers unless any of paragraphs (3)(a) to (c) applies.

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## Costs consequences following judgment

### 36.17

(1) Subject to rule 36.21, this rule applies where upon judgment being entered—

(a) a claimant fails to obtain a judgment more advantageous than a defendant's Part 36 offer; or

(b) judgment against the defendant is at least as advantageous to the claimant as the proposals contained in a claimant's Part 36 offer.

(Rule 36.21 makes provision for the costs consequences following judgment in certain personal injury claims where the claim no longer proceeds under the RTA or EL/PL Protocol.)

(2) For the purposes of paragraph (1), in relation to any money claim or money element of a claim, "more advantageous" means better in money terms by any amount, however small, and "at least as advantageous" shall be construed accordingly.

(3) Subject to paragraphs (7) and (8), where paragraph (1)(a) applies, the court must, unless it considers it unjust to do so, order that the defendant is entitled to—

(a) costs (including any recoverable pre-action costs) from the date on which the relevant period expired; and

(b) interest on those costs.

(4) Subject to paragraph (7), where paragraph (1)(b) applies, the court must, unless it considers it unjust to do so, order that the claimant is entitled to—

(a) interest on the whole or part of any sum of money (excluding interest) awarded, at a rate not exceeding 10% above base rate for some or all of the period starting with the date on which the relevant period expired;

(b) costs (including any recoverable pre-action costs) on the indemnity basis from the date on which the relevant period expired;

(c) interest on those costs at a rate not exceeding 10% above base rate; and

(d) provided that the case has been decided and there has not been a previous order under this sub-paragraph, an additional amount, which shall not exceed £75,000, calculated by applying the prescribed percentage set out below to an amount which is—

(i) the sum awarded to the claimant by the court; or

(ii) where there is no monetary award, the sum awarded to the claimant by the court in respect of costs—

Amount awarded by the court	Prescribed percentage
Up to £500,000	10% of the amount awarded
Above £500,000	10% of the first £500,000 and (subject to the limit of £75,000) 5% of any amount above that figure.

(5) In considering whether it would be unjust to make the orders referred to in paragraphs (3) and (4), the court must take into account all the circumstances of the case including—

(a) the terms of any Part 36 offer;

(b) the stage in the proceedings when any Part 36 offer was made, including in particular how long before the trial started the offer was made;

(c) the information available to the parties at the time when the Part 36 offer was made;

(d) the conduct of the parties with regard to the giving of or refusal to give information for the purposes of enabling the offer to be made or evaluated; and

(e) whether the offer was a genuine attempt to settle the proceedings.

(6) Where the court awards interest under this rule and also awards interest on the same sum and for the same period under any other power, the total rate of interest must not exceed 10% above base rate.

(7) Paragraphs (3) and (4) do not apply to a Part 36 offer—

(a) which has been withdrawn;

(b) which has been changed so that its terms are less advantageous to the offeree where the offeree has beaten the less advantageous offer;

(c) made less than 21 days before trial, unless the court has abridged the relevant period.

(8) Paragraph (3) does not apply to a soft tissue injury claim to which rule 36.21 applies.

(Rule 44.2 requires the court to consider an offer to settle that does not have the costs consequences set out in this Section in deciding what order to make about costs.)

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## Personal injury claims

### Personal injury claims for future pecuniary loss

### 36.18

- (1) This rule applies to a claim for damages for personal injury which is or includes a claim for future pecuniary loss.
- (2) An offer to settle such a claim will not have the consequences set out in this Section unless it is made by way of a Part 36 offer under this rule.
- (3) A Part 36 offer to which this rule applies may contain an offer to pay, or an offer to accept—
  - (a) the whole or part of the damages for future pecuniary loss in the form of—
    - (i) a lump sum;
    - (ii) periodical payments; or
    - (iii) both a lump sum and periodical payments;
  - (b) the whole or part of any other damages in the form of a lump sum.
- (4) A Part 36 offer to which this rule applies—
  - (a) must state the amount of any offer to pay or to accept the whole or part of any damages in the form of a lump sum;
  - (b) may state—
    - (i) what part of the lump sum, if any, relates to damages for future pecuniary loss; and
    - (ii) what part relates to other damages to be paid or accepted in the form of a lump sum;
  - (c) must state what part of the offer relates to damages for future pecuniary loss to be paid or accepted in the form of periodical payments and must specify—
    - (i) the amount and duration of the periodical payments;
    - (ii) the amount of any payments for substantial capital purchases and when they are to be made; and
    - (iii) that each amount is to vary by reference to the retail prices index (or to some other named index, or that it is not to vary by reference to any index); and
  - (d) must state either that any damages which take the form of periodical payments will be funded in a way which ensures that the continuity of payments is reasonably secure in accordance with section 2(4) of the Damages Act 1996<sup>4</sup> or how such damages are to be paid and how the continuity of their payment is to be secured.
- (5) Rule 36.6 applies to the extent that a Part 36 offer by a defendant under this rule includes an offer to pay all or part of any damages in the form of a lump sum.
- (6) Where the offeror makes a Part 36 offer to which this rule applies and which offers to pay or to accept damages in the form of both a lump sum and periodical payments, the offeree may only give notice of acceptance of the offer as a whole.
- (7) If the offeree accepts a Part 36 offer which includes payment of any part of the damages in the form of periodical payments, the claimant must, within 7 days of the date of acceptance, apply to the court for an order for an award of

damages in the form of periodical payments under rule 41.8.

(Practice Direction 41B contains information about periodical payments under the Damages Act 1996.)

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## Offer to settle a claim for provisional damages

### **36.19**

(1) An offeror may make a Part 36 offer in respect of a claim which includes a claim for provisional damages.

(2) Where the offeror does so, the Part 36 offer must specify whether or not the offeror is proposing that the settlement shall include an award of provisional damages.

(3) Where the offeror is offering to agree to the making of an award of provisional damages, the Part 36 offer must also state—

(a) that the sum offered is in satisfaction of the claim for damages on the assumption that the injured person will not develop the disease or suffer the type of deterioration specified in the offer;

(b) that the offer is subject to the condition that the claimant must make any claim for further damages within a limited period; and

(c) what that period is.

(4) Rule 36.6 applies to the extent that a Part 36 offer by a defendant includes an offer to agree to the making of an award of provisional damages.

(5) If the offeree accepts the Part 36 offer, the claimant must, within 7 days of the date of acceptance, apply to the court for an award of provisional damages under rule 41.2.

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## Costs consequences of acceptance of a Part 36 offer where Section IIIA of Part 45 applies

### **36.20**

(1) This rule applies where a claim no longer continues under the RTA or EL/PL Protocol pursuant to rule 45.29A(1).

(2) Where a Part 36 offer is accepted within the relevant period, the claimant is entitled to the fixed costs in Table 6B, Table 6C or Table 6D in Section IIIA of Part 45 for the stage applicable at the date on which notice of acceptance was served on the offeror.

(3) Where—

(a) a defendant's Part 36 offer relates to part only of the claim; and

(b) at the time of serving notice of acceptance within the relevant period the claimant abandons the balance of the claim, the claimant will be entitled to the fixed costs in paragraph (2).

(4) Subject to paragraphs (5), (6) and (7), where a defendant's Part 36 offer is accepted after the relevant period—

(a) the claimant will be entitled to the fixed costs in Table 6B, Table 6C or Table 6D in Section IIIA of Part 45 for the stage applicable at the date on which the relevant period expired; and

(b) the claimant will be liable for the defendant's costs for the period from the date of expiry of the relevant period to the date of acceptance.

(5) Subject to paragraphs (6) and (7), where the claimant accepts the defendant's Protocol offer after the date on which the claim leaves the Protocol—

(a) the claimant will be entitled to the applicable Stage 1 and Stage 2 fixed costs in Table 6 or Table 6A in Section III of Part 45; and

(b) the claimant will be liable for the defendant's costs from the date on which the Protocol offer is deemed to have been made to the date of acceptance.

(6) In a soft tissue injury claim, if the defendant makes a Part 36 offer before the defendant receives a fixed cost medical report, paragraphs (4) and (5) will only have effect if the claimant accepts the offer more than 21 days after the defendant received the report.

(7) In this rule, "fixed cost medical report" and "soft tissue injury claim" have the same meaning as in paragraph 1.1(10A) and (16A) respectively of the RTA Protocol.

(8) For the purposes of this rule a defendant's Protocol offer is either—

(a) defined in accordance with rules 36.25 and 36.26; or

(b) if the claim leaves the Protocol before the Court Proceedings Pack Form is sent to the defendant—

(i) the last offer made by the defendant before the claim leaves the Protocol; and

(ii) deemed to be made on the first business day after the claim leaves the Protocol.

(9) A reference to—

(a) the "Court Proceedings Pack Form" is a reference to the form used in the Protocol; and

(b) "business day" is a reference to a business day as defined in rule 6.2.

(10) Fixed costs shall be calculated by reference to the amount of the offer which is accepted.

(11) Where the parties do not agree the liability for costs, the court must make an order as to costs.

(12) Where the court makes an order for costs in favour of the defendant—

(a) the court must have regard to; and

(b) the amount of costs ordered must not exceed,

the fixed costs in Table 6B, Table 6C or Table 6D in Section IIIA of Part 45 applicable at the date of acceptance, less the

fixed costs to which the claimant is entitled under paragraph (4) or (5).

(13) The parties are entitled to disbursements allowed in accordance with rule 45.29I incurred in any period for which costs are payable to them.

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## Costs consequences following judgment where section IIIA of Part 45 applies

### 36.21

(1) Where a claim no longer continues under the RTA or EL/PL Protocol pursuant to rule 45.29A(1), rule 36.17 applies with the following modifications.

(2) Subject to paragraphs (3), (4) and (5), where an order for costs is made pursuant to rule 36.17(3)—

(a) the claimant will be entitled to the fixed costs in Table 6B, 6C or 6D in Section IIIA of Part 45 for the stage applicable at the date on which the relevant period expired; and

(b) the claimant will be liable for the defendant's costs from the date on which the relevant period expired to the date of judgment.

(3) Subject to paragraphs (4) and (5), where the claimant fails to obtain a judgment more advantageous than the defendant's Protocol offer—

(a) the claimant will be entitled to the applicable Stage 1 and Stage 2 fixed costs in Table 6 or 6A in Section III of Part 45; and

(b) the claimant will be liable for the defendant's costs from the date on which the Protocol offer is deemed to be made to the date of judgment; and

(c) in this rule, the amount of the judgment is less than the Protocol offer where the judgment is less than the offer once deductible amounts identified in the judgment are deducted.

("Deductible amount" is defined in rule 36.22(1)(d).)

(4) In a soft tissue injury claim, if the defendant makes a Part 36 offer or Protocol offer before the defendant receives a fixed cost medical report, paragraphs (2) and (3) will only have effect in respect of costs incurred by either party more than 21 days after the defendant received the report.

(5) In this rule "fixed cost medical report" and "soft tissue injury claim" have the same meaning as in paragraph 1.1(10A) and (16A) respectively of the RTA Protocol.

(6) For the purposes of this rule a defendant's Protocol offer is either—

(a) defined in accordance with rules 36.25 and 36.26; or

(b) if the claim leaves the Protocol before the Court Proceedings Pack Form is sent to the defendant—

(i) the last offer made by the defendant before the claim leaves the Protocol; and

(ii) deemed to be made on the first business day after the claim leaves the Protocol.

(7) A reference to—

(a) the “Court Proceedings Pack Form” is a reference to the form used in the Protocol; and

(b) “business day” is a reference to a business day as defined in rule 6.2.

(8) Fixed costs must be calculated by reference to the amount which is awarded.

(9) Where the court makes an order for costs in favour of the defendant—

(a) the court must have regard to; and

(b) the amount of costs ordered shall not exceed,

the fixed costs in Table 6B, 6C or 6D in Section IIIA of Part 45 applicable at the date of judgment, less the fixed costs to which the claimant is entitled under paragraph (2) or (3).

(10) The parties are entitled to disbursements allowed in accordance with rule 45.29I incurred in any period for which costs are payable to them.

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## Deduction of benefits and lump sum payments

### 36.22

(1) In this rule and rule 36.11—

(a) “the 1997 Act” means the Social Security (Recovery of Benefits) Act 1997<sup>5</sup>;

(b) “the 2008 Regulations” means the Social Security (Recovery of Benefits)(Lump Sum Payments) Regulations 2008<sup>6</sup>;

(c) “recoverable amount” means—

(i) “recoverable benefits” as defined in section 1(4)(c) of the 1997 Act; and

(ii) “recoverable lump sum payments” as defined in regulation 1 of the 2008 Regulations;

(d) “deductible amount” means—

(i) any benefits by the amount of which damages are to be reduced in accordance with section 8 of, and Schedule 2 to the 1997 Act<sup>7</sup> (“deductible benefits”); and

(ii) any lump sum payment by the amount of which damages are to be reduced in accordance with regulation 12 of the 2008 Regulations (“deductible lump sum payments”); and

(e) “certificate”—

(i) in relation to recoverable benefits, is construed in accordance with the provisions of the 1997 Act; and

(ii) in relation to recoverable lump sum payments, has the meaning given in section 29 of the 1997 Act, as applied by regulation 2 of, and modified by Schedule 1 to, the 2008 Regulations.

(2) This rule applies where a payment to a claimant following acceptance of a Part 36 offer would be a compensation payment as defined in section 1(4)(b) or 1A(5)(b)<sup>8</sup> of the 1997 Act.

(3) A defendant who makes a Part 36 offer must, where relevant, state either—

(a) that the offer is made without regard to any liability for recoverable amounts; or

(b) that it is intended to include any deductible amounts.

(4) Where paragraph (3)(b) applies, paragraphs (5) to (9) will apply to the Part 36 offer.

(5) Before making the Part 36 offer, the offeror must apply for a certificate.

(6) Subject to paragraph (7), the Part 36 offer must state—

(a) the gross amount of compensation;

(b) the name and amount of any deductible amounts by which the gross amount is reduced; and

(c) the net amount of compensation.

(7) If at the time the offeror makes the Part 36 offer, the offeror has applied for, but has not received, a certificate, the offeror must clarify the offer by stating the matters referred to in paragraph (6)(b) and (c) not more than 7 days after receipt of the certificate.

(8) For the purposes of rule 36.17(1)(a), a claimant fails to recover more than any sum offered (including a lump sum offered under rule 36.6) if the claimant fails upon judgment being entered to recover a sum, once deductible amounts identified in the judgment have been deducted, greater than the net amount stated under paragraph (6)(c).

(Section 15(2) of the 1997 Act provides that the court must specify the compensation payment attributable to each head of damage. Schedule 1 to the 2008 Regulations modifies section 15 of the 1997 Act in relation to lump sum payments and provides that the court must specify the compensation payment attributable to each or any defendant who has received a lump sum payment.)

(9) Where—

(a) further deductible amounts have accrued since the Part 36 offer was made; and

(b) the court gives permission to accept the Part 36 offer,

the court may direct that the amount of the offer payable to the offeree shall be reduced by a sum equivalent to the deductible amounts paid to the claimant since the date of the offer.

(Rule 36.11(3)(b) states that permission is required to accept an offer where the relevant period has expired and further deductible amounts have been paid to the claimant.)

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## Miscellaneous

### Cases in which the offeror's costs have been limited to court fees

#### **36.23**

(1) This rule applies in any case where the offeror is treated as having filed a costs budget limited to applicable court fees, or is otherwise limited in their recovery of costs to such fees.

(Rule 3.14 provides that a litigant may be treated as having filed a budget limited to court fees for failure to file a budget.)

(2) "Costs" in rules 36.13(5)(b), 36.17(3)(a) and 36.17(4)(b) shall mean—

(a) in respect of those costs subject to any such limitation, 50% of the costs assessed without reference to the limitation; together with

(b) any other recoverable costs.

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## II RTA PROTOCOL AND EL/PL OFFERS TO SETTLE

### Scope of this Section

#### **36.24**

(1) Where this Section applies, Section I does not apply.

(2) This Section applies to an offer to settle where the parties have followed the RTA Protocol or the EL/PL Protocol and started proceedings under Part 8 in accordance with Practice Direction 8B ("the Stage 3 Procedure").

(3) A reference to the Court Proceedings Pack Form is a reference to the form used in the relevant Protocol.

(4) Nothing in this Section prevents a party making an offer to settle in whatever way that party chooses, but if the offer is not made in accordance with this Section, it will not have any costs consequences.

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### Form and content of a Protocol offer

#### **36.25**

(1) An offer to settle which is made in accordance with this rule is called a Protocol offer.

(2) A Protocol offer must—

(a) be set out in the Court Proceedings Pack (Part B) Form; and

(b) contain the final total amount of the offers from both parties.

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## Time when a Protocol offer is made

### 36.26

(1) The Protocol offer is deemed to be made on the first business day after the Court Proceedings Pack (Part A and Part B) Form is sent to the defendant.

(2) In this Section "business day" has the same meaning as in rule 6.2.

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## General provisions

### 36.27 A Protocol offer—

(a) is treated as exclusive of all interest; and

(b) has the consequences set out in this Section only in relation to the fixed costs of the Stage 3 Procedure as provided for in rule 45.18, and not in relation to the costs of any appeal from the final decision of those proceedings.

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## Restrictions on the disclosure of a Protocol offer

### 36.28

(1) The amount of the Protocol offer must not be communicated to the court until the claim is determined.

(2) Any other offer to settle must not be communicated to the court at all.

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## Costs consequences following judgment

### 36.29

(1) This rule applies where, on any determination by the court, the claimant obtains judgment against the defendant for an amount of damages that is—

(a) less than or equal to the amount of the defendant's Protocol offer;

(b) more than the defendant's Protocol offer but less than the claimant's Protocol offer; or

(c) equal to or more than the claimant's Protocol offer.

(2) Where paragraph (1)(a) applies, the court must order the claimant to pay—

(a) the fixed costs in rule 45.26; and

(b) interest on those fixed costs from the first business day after the deemed date of the Protocol offer under rule 36.26.

(3) Where paragraph (1)(b) applies, the court must order the defendant to pay the fixed costs in rule 45.20.

(4) Where paragraph (1)(c) applies, the court must order the defendant to pay—

(a) interest on the whole of the damages awarded at a rate not exceeding 10% above base rate for some or all of the period starting with the date specified in rule 36.26;

(b) the fixed costs in rule 45.20;

(c) interest on those fixed costs at a rate not exceeding 10% above base rate; and

(d) an additional amount calculated in accordance with rule 36.17(4)(d).

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## Deduction of benefits

**36.30** For the purposes of rule 36.29(1)(a) the amount of the judgment is less than the Protocol offer where the judgment is less than that offer once deductible amounts identified in the judgment are deducted.

(“Deductible amount” is defined in rule 36.22(1)(d).)

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## Footnotes

1. 1976 c. 30. [Back to text](#)
2. 1934 c. 41. [Back to text](#)
3. 2007 c. 29. [Back to text](#)
4. 1996 c. 48. Section 2 was substituted by the Crime and Courts Act 2003 (c. 39), section 100(1). [Back to text](#)
5. 1997 c. 27. [Back to text](#)
6. S.I. 2008/1596. Relevant amendments were made by S.I. 2014/1456, regulation 2, Schedule, paragraphs 1, 2(e), 9. [Back to text](#)
7. Schedule 12 was amended by the Welfare Reform Act 2012 (c. 5), section 31, Schedule 2 paragraphs 40, 42; section 91, Schedule 9, paragraphs 34, 36; and section 147, Schedule 14, Parts 1 and 9. [Back to text](#)
8. Section 1A was inserted by the Child Maintenance and Other Payments Act 2008 (c. 6), section 54. [Back to text](#)

## PRACTICE DIRECTION 36 – OFFERS TO SETTLE

### This Practice Direction supplements CPR Part 36

#### Contents of this practice direction

Title	Number
Formalities of Part 36 offers and other notices under this Part	Para.1
Application for permission to withdraw or change the terms of a Part 36 offer	Para.2
Acceptance of a Part 36 offer	Para.3

#### 1. Formalities of Part 36 offers and other notices under this Part

**1.1** A Part 36 offer may be made and accepted using Form N242A.

**1.2** Where a Part 36 offer, notice of acceptance or notice of withdrawal or change of terms is to be served on a party who is legally represented, the document to be served must be served on the legal representative.

#### 2. Application for permission to withdraw or change the terms of a Part 36 offer

**2.1** Rule 36.10 makes provision as to the circumstances in which the offer or must seek the permission of the court in order to withdraw a Part 36 offer or change its terms to be less advantageous to the offeree before expiry of the relevant period.

**2.2** The permission of the court must, unless the parties agree otherwise, be sought—

(1) by making an application under Part 23, which must be dealt with by a judge other than the trial judge;

(2) at a trial or other hearing, provided that it is not to the trial judge.

(Rule 36.3 defines “the trial judge”.)

#### 3. Acceptance of a Part 36 offer

**3.1** Where a Part 36 offer is accepted in accordance with rule 36.11(1), the notice of acceptance must be served on the offeror and filed with the court where the case is proceeding.

**3.2** Where the court’s permission is required to accept a Part 36 offer, the permission of the court must, unless the parties

agree otherwise, be sought—

(1) by making an application under Part 23, which must be dealt with by a judge other than the trial judge;

(2) at a trial or other hearing, provided that it is not to the trial judge.

(Rule 36.3 defines “the trial judge”.)

**3.3** Where rule 36.11(3)(b) applies, the application for permission to accept the offer must—

(1) state—

(a) the net amount offered in the Part 36 offer;

(b) the deductible amounts that had accrued at the date the offer was made;

and

(c) the deductible amounts that have subsequently accrued; and

(2) be accompanied by a copy of the current certificate.

## PART 44 - GENERAL RULES ABOUT COSTS

### Contents of this Part

Title	Number
<b>I GENERAL</b>	
Interpretation and application	Rule 44.1
Court's discretion as to costs	Rule 44.2
Basis of assessment	Rule 44.3
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Legal representative's duty to notify the party	Rule 44.8
Cases where costs orders deemed to have been made	Rule 44.9
Where the court makes no order for costs	Rule 44.10
Court's powers in relation to misconduct	Rule 44.11
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<b>II QUALIFIED ONE-WAY COSTS SHIFTING</b>	
Qualified one-way costs shifting: scope and interpretation	Rule 44.13
Effect of qualified one-way costs shifting	Rule 44.14
Exceptions to qualified one-way costs shifting where permission not required	Rule 44.15
Exceptions to qualified one-way costs shifting where permission required	Rule 44.16
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<b>III DAMAGES-BASED AGREEMENTS</b>	
Award of costs where there is a damages-based agreement	Rule 44.18

### I GENERAL

# Interpretation and application

## 44.1

(1) In Parts 44 to 47, unless the context otherwise requires –

‘authorised court officer’ means any officer of –

(i) the County Court;

(ii) a district registry;

(iii) the Family Court;

(iiia) the High Court; or

(iv) the Costs Office,

whom the Lord Chancellor has authorised to assess costs;

‘conditional fee agreement’ means an agreement enforceable under section 58 of the Courts and Legal Services Act 1990<sup>1</sup>;

‘costs’ includes fees, charges, disbursements, expenses, remuneration, reimbursement allowed to a litigant in person under rule 46.5 and any fee or reward charged by a lay representative for acting on behalf of a party in proceedings allocated to the small claims track;

‘costs judge’ means a taxing master of the Senior Courts;

‘Costs Office’ means the Senior Courts Costs Office;

‘costs officer’ means –

(i) a costs judge;

(ii) a District Judge; or

(iii) an authorised court officer;

‘detailed assessment’ means the procedure by which the amount of costs is decided by a costs officer in accordance with Part 47;

‘the Director (legal aid)’ means the person designated as the Director of Legal Aid Casework pursuant to section 4 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012<sup>2</sup>, or a person entitled to exercise the functions of the Director;

‘fixed costs’ means costs the amounts of which are fixed by these rules whether or not the court has a discretion to allow some other or no amount, and include –

(i) the amounts which are to be allowed in respect of legal representatives’ charges in the circumstances set out in Section I of Part 45;

(ii) fixed recoverable costs calculated in accordance with rule 45.11;

(iii) the additional costs allowed by rule 45.18;

(iv) fixed costs determined under rule 45.21;

(v) costs fixed by rules 45.37 and 45.38;

'free of charge' has the same meaning as in section 194(10) of the 2007 Act;

'fund' includes any estate or property held for the benefit of any person or class of person and any fund to which a trustee or personal representative is entitled in that capacity;

'HMRC' means HM Revenue and Customs;

'legal aid' means civil legal services made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

'paying party' means a party liable to pay costs;

'the prescribed charity' has the same meaning as in section 194(8) of the 2007 Act;

'pro bono representation' means legal representation provided free of charge;

'receiving party' means a party entitled to be paid costs;

'summary assessment' means the procedure whereby costs are assessed by the judge who has heard the case or application;

'VAT' means Value Added Tax;

'the 2007 Act' means the Legal Services Act 2007<sup>3</sup>.

('Legal representative' has the meaning given in rule 2.3).

(2) The costs to which Parts 44 to 47 apply include –

(a) the following costs where those costs may be assessed by the court –

(i) costs of proceedings before an arbitrator or umpire;

(ii) costs of proceedings before a tribunal or other statutory body; and

(iii) costs payable by a client to their legal representative; and

(b) costs which are payable by one party to another party under the terms of a contract, where the court makes an order for an assessment of those costs.

(3) Where advocacy or litigation services are provided to a client under a conditional fee agreement, costs are recoverable under Parts 44 to 47 notwithstanding that the client is liable to pay the legal representative's fees and expenses only to the extent that sums are recovered in respect of the proceedings, whether by way of costs or otherwise.

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## Court's discretion as to costs

### 44.2

(1) The court has discretion as to –

- (a) whether costs are payable by one party to another;
- (b) the amount of those costs; and
- (c) when they are to be paid.

(2) If the court decides to make an order about costs –

- (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but
- (b) the court may make a different order.

(3) The general rule does not apply to the following proceedings –

- (a) proceedings in the Court of Appeal on an application or appeal made in connection with proceedings in the Family Division; or
- (b) proceedings in the Court of Appeal from a judgment, direction, decision or order given or made in probate proceedings or family proceedings.

(4) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including –

- (a) the conduct of all the parties;
- (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and
- (c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.

(5) The conduct of the parties includes –

- (a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;
- (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
- (c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and
- (d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.

(6) The orders which the court may make under this rule include an order that a party must pay –

- (a) a proportion of another party's costs;

- (b) a stated amount in respect of another party's costs;
- (c) costs from or until a certain date only;
- (d) costs incurred before proceedings have begun;
- (e) costs relating to particular steps taken in the proceedings;
- (f) costs relating only to a distinct part of the proceedings; and
- (g) interest on costs from or until a certain date, including a date before judgment.

(7) Before the court considers making an order under paragraph (6)(f), it will consider whether it is practicable to make an order under paragraph (6)(a) or (c) instead.

(8) Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so.

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## Basis of assessment

### 44.3

(1) Where the court is to assess the amount of costs (whether by summary or detailed assessment) it will assess those costs –

(a) on the standard basis; or

(b) on the indemnity basis,

but the court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount.

(Rule 44.5 sets out how the court decides the amount of costs payable under a contract.)

(2) Where the amount of costs is to be assessed on the standard basis, the court will –

(a) only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and

(b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party.

(Factors which the court may take into account are set out in rule 44.4.)

(3) Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party.

(4) Where –

(a) the court makes an order about costs without indicating the basis on which the costs are to be assessed; or

(b) the court makes an order for costs to be assessed on a basis other than the standard basis or the indemnity basis, the costs will be assessed on the standard basis.

(5) Costs incurred are proportionate if they bear a reasonable relationship to –

(a) the sums in issue in the proceedings;

(b) the value of any non-monetary relief in issue in the proceedings;

(c) the complexity of the litigation;

(d) any additional work generated by the conduct of the paying party; and

(e) any wider factors involved in the proceedings, such as reputation or public importance.

(6) Where the amount of a solicitor's remuneration in respect of non-contentious business is regulated by any general orders made under the Solicitors Act 1974<sup>4</sup>, the amount of the costs to be allowed in respect of any such business which falls to be assessed by the court will be decided in accordance with those general orders rather than this rule and rule 44.4.

(7) Paragraphs (2)(a) and (5) do not apply in relation to –

(a) cases commenced before 1st April 2013; or

(b) costs incurred in respect of work done before 1st April 2013,

and in relation to such cases or costs, rule 44.4.(2)(a) as it was in force immediately before 1st April 2013 will apply instead.

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## Factors to be taken into account in deciding the amount of costs

### **44.4**

(1) The court will have regard to all the circumstances in deciding whether costs were –

(a) if it is assessing costs on the standard basis –

(i) proportionately and reasonably incurred; or

(ii) proportionate and reasonable in amount, or

(b) if it is assessing costs on the indemnity basis –

(i) unreasonably incurred; or

(ii) unreasonable in amount.

(2) In particular, the court will give effect to any orders which have already been made.

(3) The court will also have regard to –

(a) the conduct of all the parties, including in particular –

(i) conduct before, as well as during, the proceedings; and

(ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;

(b) the amount or value of any money or property involved;

(c) the importance of the matter to all the parties;

(d) the particular complexity of the matter or the difficulty or novelty of the questions raised;

(e) the skill, effort, specialised knowledge and responsibility involved;

(f) the time spent on the case;

(g) the place where and the circumstances in which work or any part of it was done; and

(h) the receiving party's last approved or agreed budget.

(Rule 35.4(4) gives the court power to limit the amount that a party may recover with regard to the fees and expenses of an expert.)

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## Amount of costs where costs are payable under a contract

### 44.5

(1) Subject to paragraphs (2) and (3), where the court assesses (whether by summary or detailed assessment) costs which are payable by the paying party to the receiving party under the terms of a contract, the costs payable under those terms are, unless the contract expressly provides otherwise, to be presumed to be costs which –

(a) have been reasonably incurred; and

(b) are reasonable in amount,

and the court will assess them accordingly.

(2) The presumptions in paragraph (1) are rebuttable. Practice Direction 44 – General rules about costs sets out circumstances where the court may order otherwise.

(3) Paragraph (1) does not apply where the contract is between a solicitor and client.

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## Procedure for assessing costs

### 44.6

(1) Where the court orders a party to pay costs to another party (other than fixed costs) it may either –

- (a) make a summary assessment of the costs; or
- (b) order detailed assessment of the costs by a costs officer,

unless any rule, practice direction or other enactment provides otherwise.

(Practice Direction 44 – General rules about costs sets out the factors which will affect the court's decision under paragraph (1).)

(2) A party may recover the fixed costs specified in Part 45 in accordance with that Part.

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## Time for complying with an order for costs

### **44.7**

(1) A party must comply with an order for the payment of costs within 14 days of –

- (a) the date of the judgment or order if it states the amount of those costs;
- (b) if the amount of those costs (or part of them) is decided later in accordance with Part 47, the date of the certificate which states the amount; or
- (c) in either case, such other date as the court may specify.

(Part 47 sets out the procedure for detailed assessment of costs.)

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## Legal representative's duty to notify the party

### **44.8** Where –

- (a) the court makes a costs order against a legally represented party; and
- (b) the party is not present when the order is made,

the party's legal representative must notify that party in writing of the costs order no later than 7 days after the legal representative receives notice of the order.

(Paragraph 10.1 of Practice Direction 44 defines 'party' for the purposes of this rule.)

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## Cases where costs orders deemed to have been made

### **44.9**

(1) Subject to paragraph (2), where a right to costs arises under –

(a) rule 3.7 or 3.7A1 (defendant's right to costs where claim is struck out for non-payment of fees);

(a1) rule 3.7B (sanctions for dishonouring cheque);

(b) rule 36.13(1) or (2) (claimant's entitlement to costs where a Part 36 offer is accepted); or

(c) rule 38.6 (defendant's right to costs where claimant discontinues),

a costs order will be deemed to have been made on the standard basis.

(2) Paragraph 1(b) does not apply where a Part 36 offer is accepted before the commencement of proceedings.

(3) Where such an order is deemed to be made in favour of a party with pro bono representation, that party may apply for an order under section 194(3) of the 2007 Act.

(4) Interest payable under section 17 of the Judgments Act 1838<sup>5</sup> or section 74 of the County Courts Act 1984<sup>6</sup> on the costs deemed to have been ordered under paragraph (1) will begin to run from the date on which the event which gave rise to the entitlement to costs occurred.

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## Where the court makes no order for costs

### 44.10

(1) Where the court makes an order which does not mention costs –

(a) subject to paragraphs (2) and (3), the general rule is that no party is entitled –

(i) to costs; or

(ii) to seek an order under section 194(3) of the 2007 Act,

in relation to that order; but

(b) this does not affect any entitlement of a party to recover costs out of a fund held by that party as trustee or personal representative, or under any lease, mortgage or other security.

(2) Where the court makes –

(a) an order granting permission to appeal;

(b) an order granting permission to apply for judicial review; or

(c) any other order or direction sought by a party on an application without notice,

and its order does not mention costs, it will be deemed to include an order for applicant's costs in the case.

(3) Any party affected by a deemed order for costs under paragraph (2) may apply at any time to vary the order.

(4) The court hearing an appeal may, unless it dismisses the appeal, make orders about the costs of the proceedings

giving rise to the appeal as well as the costs of the appeal.

(5) Subject to any order made by the transferring court, where proceedings are transferred from one court to another, the court to which they are transferred may deal with all the costs, including the costs before the transfer.

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## Court's powers in relation to misconduct

### 44.11

(1) The court may make an order under this rule where –

(a) a party or that party's legal representative, in connection with a summary or detailed assessment, fails to comply with a rule, practice direction or court order; or

(b) it appears to the court that the conduct of a party or that party's legal representative, before or during the proceedings or in the assessment proceedings, was unreasonable or improper.

(2) Where paragraph (1) applies, the court may –

(a) disallow all or part of the costs which are being assessed; or

(b) order the party at fault or that party's legal representative to pay costs which that party or legal representative has caused any other party to incur.

(3) Where –

(a) the court makes an order under paragraph (2) against a legally represented party; and

(b) the party is not present when the order is made,

the party's legal representative must notify that party in writing of the order no later than 7 days after the legal representative receives notice of the order.

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## Set Off

### 44.12

(1) Where a party entitled to costs is also liable to pay costs, the court may assess the costs which that party is liable to pay and either –

(a) set off the amount assessed against the amount the party is entitled to be paid and direct that party to pay any balance; or

(b) delay the issue of a certificate for the costs to which the party is entitled until the party has paid the amount which that party is liable to pay

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## II QUALIFIED ONE-WAY COSTS SHIFTING

### Qualified one-way costs shifting: scope and interpretation

#### 44.13

(1) This Section applies to proceedings which include a claim for damages –

(a) for personal injuries;

(b) under the Fatal Accidents Act 1976<sup>7</sup>; or

(c) which arises out of death or personal injury and survives for the benefit of an estate by virtue of section 1(1) of the Law Reform (Miscellaneous Provisions) Act 1934<sup>8</sup>,

but does not apply to applications pursuant to section 33 of the Senior Courts Act 1981<sup>9</sup> or section 52 of the County Courts Act 1984<sup>10</sup> (applications for pre-action disclosure), or where rule 44.17 applies.

(2) In this Section, 'claimant' means a person bringing a claim to which this Section applies or an estate on behalf of which such a claim is brought, and includes a person making a counterclaim or an additional claim.

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### Effect of qualified one-way costs shifting

#### 44.14

(1) Subject to rules 44.15 and 44.16, orders for costs made against a claimant may be enforced without the permission of the court but only to the extent that the aggregate amount in money terms of such orders does not exceed the aggregate amount in money terms of any orders for damages and interest made in favour of the claimant.

(2) Orders for costs made against a claimant may only be enforced after the proceedings have been concluded and the costs have been assessed or agreed.

(3) An order for costs which is enforced only to the extent permitted by paragraph (1) shall not be treated as an unsatisfied or outstanding judgment for the purposes of any court record.

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### Exceptions to qualified one-way costs shifting where permission not required

**44.15** Orders for costs made against the claimant may be enforced to the full extent of such orders without the permission of the court where the proceedings have been struck out on the grounds that –

(a) the claimant has disclosed no reasonable grounds for bringing the proceedings;

(b) the proceedings are an abuse of the court's process; or

(c) the conduct of –

(i) the claimant; or

(ii) a person acting on the claimant's behalf and with the claimant's knowledge of such conduct,

is likely to obstruct the just disposal of the proceedings.

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## Exceptions to qualified one-way costs shifting where permission required

### **44.16**

(1) Orders for costs made against the claimant may be enforced to the full extent of such orders with the permission of the court where the claim is found on the balance of probabilities to be fundamentally dishonest.

(2) Orders for costs made against the claimant may be enforced up to the full extent of such orders with the permission of the court, and to the extent that it considers just, where –

(a) the proceedings include a claim which is made for the financial benefit of a person other than the claimant or a dependant within the meaning of section 1(3) of the Fatal Accidents Act 1976 (other than a claim in respect of the gratuitous provision of care, earnings paid by an employer or medical expenses); or

(b) a claim is made for the benefit of the claimant other than a claim to which this Section applies.

(3) Where paragraph (2)(a) applies, the court may, subject to rule 46.2, make an order for costs against a person, other than the claimant, for whose financial benefit the whole or part of the claim was made.

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## Transitional provision

**44.17** This Section does not apply to proceedings where the claimant has entered into a pre-commencement funding arrangement (as defined in rule 48.2).

## III DAMAGES-BASED AGREEMENTS

### Award of costs where there is a damages-based agreement

#### **44.18**

(1) The fact that a party has entered into a damages-based agreement will not affect the making of any order for costs which otherwise would be made in favour of that party.

(2) Where costs are to be assessed in favour of a party who has entered into a damages-based agreement –

(a) the party's recoverable costs will be assessed in accordance with rule 44.3; and

(b) the party may not recover by way of costs more than the total amount payable by that party under the damages-based agreement for legal services provided under that agreement.

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## Footnotes

1. 1990 c.41. Section 58 was substituted by the Access to Justice Act 1990 section 27(1) and was amended by S.I. 2005/3429 article 8, Schedule paragraph 2 and the Legal Aid, Sentencing and Punishment of Offenders Act section 44(1) and (2). Back to text
2. 2012 c.10. Back to text
3. 2007 c.29. Back to text
4. 1974 c.47. Back to text
5. 1838 c.110. Section 17 was amended by the Civil Procedure Acts Repeal Act 1879 (c.59) section 2, Schedule Part I; Statute Law Revision (no 2) Act 1888 (c. 57); S.I. 1993/564 article 2; S.I. 1998/2940 article 3(a), (c). Back to text
6. 1984 c.28. Section 5A was inserted by the Private International Law (Miscellaneous Provisions) Act 1995 (c.42) section 2. Back to text
7. 1976 c.30. A new section 1 was substituted by the Administration of Justice Act 1982 (c. 53), section 3, and subsequently amended by the Civil Partnership Act 2004 (c. 33), section 83. Back to text
8. 1934 c.41. Section 1(1) was amended by the Law Reform (Miscellaneous Provisions) Act 1970 (c. 33) section 7, Schedule, and by the Administration of Justice Act 1982 (c. 53) section 75, Schedule 9 Part 1. Back to text
9. 1981 c.54. Back to text 10. 1984 c. 28. Section 52 was amended by the Civil Procedure Act 1997 (c. 12) section 10, Schedule 2 paragraph 2(2) and by the Courts and Legal Services Act 1990 (c. 41) section 125(3), Schedule 18 paragraph 43. Back to text
10. 1984 c. 28. Section 52 was amended by the Civil Procedure Act 1997 (c. 12) section 10, Schedule 2 paragraph 2(2) and by the Courts and Legal Services Act 1990 (c. 41) section 125(3), Schedule 18 paragraph 43. Back to text