



PUMP COURT

CHAMBERS

Fixed Costs in Personal Injury Cases

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What are fixed costs?

- What do we mean by Fixed costs?
 - Fixed (or predicted or predictable) costs in litigation are specific amounts, mainly prescribed by Civil Procedure Rules (CPR) Part 45, that are recoverable by one party from another in certain circumstances in litigation (unless the court orders otherwise).
 - Either the amount, or the method of calculation of the amount, is prescribed.

Swings & Roundabouts



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Fixed costs regimes are inevitably a case of swings and roundabouts for lawyers.

CPR Part 45

CPR Part 45: Fixed Costs

- Most important part of CPR for fixed costs.
 - CPR Part 45 deals with the following relevant types of fixed costs (amongst others):
 - I – Fixed Costs
 - II – Road Traffic Accidents – Fixed Recoverable Costs
 - III - The Pre-Action Protocols for Low Value Personal Injury Claims in RTA and Low Value PI (EL and PL) Claims
 - IIIA - Claims Which No Longer Continue Under the RTA or EL/PL Pre-Action Protocols and Claims to Which the Pre-Action Protocol for Resolution of Package Travel Claims Applies—Fixed Recoverable Costs
 - IIIB – The Pre-action Protocol for Personal Injury Claims below the Small Claims Limit in Road Traffic Accidents
 - VI – Fast Track Trial Costs

CPR Part 45 – Section III

Section III - The Pre-Action Protocols for Low Value Personal Injury Claims in RTA and Low Value PI (EL and PL) Claims

- Deals with claims which start in the relevant low value PI Portal
- CPR r.45.18 Table 6:

Table 6 Fixed costs in relation to the RTA Protocol

Where the value of the claim for damages is not more than £10,000			Where the value of the claim for damages is more than £10,000		
Stage 1 fixed costs		£200	Stage 1 fixed costs		£200
Stage 2 fixed costs		£300	Stage 2 fixed costs		£600
Stage 3	- Type A fixed costs	£250	Stage 3	- Type A fixed costs	£250
	- Type B fixed costs	£250		- Type B fixed costs	£250
	- Type C fixed costs	£150		- Type C fixed costs	£150

CPR Part 45 – Section III

Stage 3 Hearings

If parties cannot agree the quantum at Stage 2, Part 8 Proceedings need to be issued and quantum determined at a hearing (i.e. determination at Stage 3).

- May recover some or all the Stage 3 Costs from Table 6
- **But:**
 - CPR r.36.29(1)(b) & (c)
 - If C beats D's offer but not own = Costs from table (r.36.29(1)(b) & r.45.20)
 - If C beats own offer = Costs from table, **plus** Part 36 bonus prizes! (r.36.29(1)(c), r.36.29(4), & r.45.20)

CPR Part 45 – Section III Stage 3 Hearings cont...

- **However beware:**
 - CPR r.36.29(1)(a)
 - If C fails to beat D's offer = C must pay D:
 - Applicable Stage 3 costs (r.45.26)
 - Interest on those costs from the deemed date of the protocol offer.

Part 45 IIIA

Section IIIA – Claims which no longer proceed within the portal.

- Claims no longer in the portal.
 - Usually because liability is not accepted

Part 45 IIIA – Profit Cost Basics

- Basics
 - Costs are fixed and awarded in line with Table 6B at CPR r45.29C or r.45.29E.
 - Identify the relevant stage that proceedings have settled/is disposed of at trial;
 - Costs calculated by reference to applicable section of Table 6B
 - Typically, costs = Fixed sum + sum equal to % of damages awarded/agreed
 - Plus: Relevant trial advocacy fee if disposed of at trial.
 - Don't forget 12.5% uplift if solicitor is based in geographic area listed within PD45 (CPR 45.29C(2))

A. If Parties reach a settlement prior to the claimant issuing proceedings under Part 7			
Agreed damages	At least £1,000, but not more than £5,000	More than £5,000, but not more than £10,000	More than £10,000
Fixed costs	The greater of— (a) £550; or (b) the total of— (i) £100; and (ii) 20% of the damages	The total of— (a) £1,100; and (b) 15% of damages over £5,000	The total of— (a) £1,930; and (b) 10% of damages over £10,000

B. If proceedings are issued under Part 7, but the case settles before trial			
Stage at which case is settled	On or after the date of issue, but prior to the date of allocation under Part 26	On or after the date of allocation under Part 26, but prior to the date of listing	On or after the date of listing but prior to the date of trial

B. If proceedings are issued under Part 7, but the case settles before trial			
Fixed costs	The total of— (a) £1,160; and (b) 20% of the damages	The total of— (a) £1,880; and (b) 20% of the damages	The total of— (a) £2,655; and (b) 20% of the damages

C. If the claim is disposed of at trial	
Fixed costs	The total of— (a) £2,655; and (b) 20% of the damages agreed or awarded; and (c) the relevant trial advocacy fee

D. Trial advocacy fees				
Damages agreed or awarded	Not more than £3,000	More than £3,000, but not more than £10,000	More than £10,000, but not more than £15,000	More than £15,000
Trial advocacy fee	£500	£710	£1,070	£1,705

Part 45 IIA – Profit Cost Basics cont.

- *Do not forget:*
 - That the figures from the tables can be increased by 12.5% if representatives practise in an area specified in PD45 para 2.6:
 - *(within London) the area served by the County Court hearing centres at Barnet, Brentford, Central London, Clerkenwell and Shoreditch, Edmonton, Ilford, Mayors and City of London, Romford, Wandsworth and Willesden, and*
 - *(outside London) the County Court hearing centres at Bromley, Croydon, Dartford, Gravesend and Uxbridge.*
 - All of those sums, including Trial Advocacy Fees, are exclusive of VAT, so if applicable this needs to be added on top.

Part 45 IIA – Disbursements

- *CPR r. 45.29I*
 - Lists permissible disbursements.
 - Examples: Medical reports, costs of obtaining medical records, engineer’s fees, court fees, expert fees etc.
- CPR 45.29I(2)(h) also permits recovery of “*any other disbursement reasonably incurred due to a particular feature of the dispute*”.
 - However this is seldom seen in action.
 - This is particularly so following *Aldred v Cham* [2020] 1 WLR 1267
 - CA confirmed that ‘particular feature of the dispute’ concerns the dispute itself, and not any characteristic of a party.

Part 45 IIA – Disbursements Multiple Claimants

- *How do fixed costs work when multiple claimants are represented by the same lawyers?*
 - Conflicting decisions:
 - *Neary v Bedspace* [2015] 12 WLUK 170 – Each C may recover a ‘set’ of fixed costs and TAF for each C.
 - *Karnicka & Anr v Zborek* [2018] 2 WLUK 295 - Each C may recover a ‘set’ of fixed costs, but only a single TAF based on aggregate damages.
 - *Melloy & Anr v UKI* [2022] EW Misc 4(CC) – Same result as *Neary*.

Offers to Settle

- CPR r.36.20 – Where a Part 36 offer is accepted.
 - C entitled to costs up to the date that the notice of acceptance was served on offeror. (CPR r.36.20(2))
 - Calculated by reference to table 6B, 6C or 6D.

Offers to Settle

- CPR r.36.21 – Cost consequences following judgment
 - Where C obtains judgment less advantageous than D's Pt36 offer:
 - C will receive fixed costs to the level applicable at the expiry of the 'relevant period' but
 - C must pay D's costs from that date until judgment.

Offers to Settle

- C recovers judgment ‘at least as advantageous’ as C’s Part 36 offer
 - *Broadhurst v Tan* [2016] EWCA Civ 94
 - The combined effect of 36.17 & 36.21 = where C makes a successful Pt36 offer, C is entitled to:
 - Fixed costs to the “last staging post” and
 - Costs assessed on the indemnity basis from the date the offer became effective.
 - Practical implication:
 - CSols must prepare a schedule of costs on the indemnity basis for each Pt36 offer made.

Offers other than under Part 36

- Recent case of *Doyle v M&D Foundations & Building Services Ltd* [2022] EWCA Civ 927 from July 2022
 - Parties settled claim by consent order (outside provisions Pt36) on terms that the defendant to pay the claimant's costs, "*such costs to be the subject of detailed assessment if not agreed*".
 - CA held that by coming to an agreement in those terms, the parties had contracted out of FRC.
 - The agreement for Detailed Assessment meant the parties had agreed that costs be assessed on the standard basis.
- Compare to decision in *Ho v Adekun* [2019] EWCA Civ 1988 re Part 36 offers.

Defendant's Costs

- CPR r. 45.29F Deals with Defendant's Costs
 - r. 45.29F(2) – If court orders costs in D's favour, court needs to have regard to the amount that would be payable to C at the same stage of proceedings and any costs awarded must not exceed that amount.
 - Court obliged to have regard, but court may award less than C would have received at the same stage.
 - **But** do not forget QOCS
- Part 36
 - As seen, D may recover costs if C fails to beat D's offer (CPR r. 45.29F(8) & (9) & CPR r36.20)
- Exception to QOCS
 - CPR r.45.29F(10) – Where one of the exceptions to QOCS apply, court may assess D's costs without reference to r. 45.29F.

Defendant's Costs

- Counterclaims
 - If counterclaim includes PI, costs apply as if they were a PI claimant (r45.29G(1))
 - If no PI involved in the counterclaim, r45.29G court will award “*a sum equivalent to one half of the applicable Type A and Type B costs in Table 6*” (r45.29G(2))

Future of Fixed Costs

- More to come [Yay!]
 - 2017 Supplementary Report - Jackson LJ
 - 2021 Government Response
 - Fixed Recoverable Costs to be introduced to all civil cases in Fast Track up to £25,000;
 - FT will be extended to include cases up to £100,000
 - Recommendation for Intermediate Track (between Fast- and Multi-) not taken up by Government.
 - Banding system – All FT cases allocated to a band, each with own level of FRC.



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Timothy Salisbury has a civil and commercial law background and undertakes a wide range of civil litigation and ADR. He predominantly practises in personal injury, Public Inquiries, business and commercial, and aviation law.

Timothy regularly appears in trials and at interim hearings for claims brought following road traffic accidents on all tracks. He has particular experience of claims relating to negligent actions of passengers and of costs arguments concerning the fixed recoverable costs regimes of CPR r.45.

He also has substantial experience of acting for both claimant and defendant in claims involving allegations of 'fundamental dishonesty' and fraud.

As a result of his Aviation practice, Timothy has dealt with a number of Montreal Convention claims for bodily injury. He also has experience of travel sickness claims.

Timothy Salisbury





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Thank you

