

## CPR update (April – October 2013)

### Introduction

The CPR had many updates in 2013. Some of these were substantial and were to bring into effect the Jackson Report and LASPO reforms, as well as tidying-up pre-existing rules.

#### “The Overriding Objective” (CPR 1.1)

This has a formal reference to “enforcing compliance with Rules, Practice Directions and Orders”.

#### CPR 3: Court’s Case Management Powers

This has been split into three Sections, but *Section III* is simply the old-CPR 44.18-44.20.

##### **CPR 3, Section I: Case Management**

The Court is given further powers to enforce compliance with previous orders.

##### **CPR 3, Section II: Costs Budgets**

It is an “estimate of the reasonable and proportionate costs (including disbursements) which a party intends to incur in the proceedings” (CPR Glossary).

- *CPR 3.12*: they apply in all County Court Multi-Track claims, and specified High Court claims, issued from 01/04/2013;
- *CPR 3.13*: budget must be filed (unless you are a Litigant-in-Person) 7 days before the first CMC;
- *CPR 3.14*: a party that doesn’t file a budget is “treated” as only including one for court fees;
- *CPR 3.15*: the Court will “control” the budgets after approving them;
- *CPR 3.18*: on a Standard Basis Detailed Assessment, the Court will only “depart” from the last budget if there is a “good reason”

### Practice Direction 3E

- *Para. 1*: if the budget is below £25,000, only p. 1 needs to be completed;
- *Para. 2.2*: up to £1,000/1% of the budget can be claimed for preparing it, and up to 2% of costs can be claimed for work relating to costs management;
- *Para. 2.4*: Court can’t “approve” any pre-budget costs, but can make comments and take into account for proportionality/reasonableness;
- *Para. 2.9*: costs of interim applications which the budget “reasonably” doesn’t include, are “additional” to the budget

### Small Claims Track

- *CPR 26.6; 27.1 & 63.27*: non-PI limit increased to £10,000
- *CPR 27 PD 3*: loss of earnings/witness expenses for trial increased to £90/day;

### Parties’ evidence

- *CPR 32.2(3)*: Court can limit the factual evidence required;
- *CPR 35.4*: Parties must estimate the costs and issues covered by experts

### Increased awards (CPR 36.14(3))

If Claimant at least matches their own (post-01/04/13) Part 36 offer at trial they are awarded extra amount, which “shall not exceed £75,000”:

- 10% of the award, up to £500,000; and
- Further 5% on awards up to £1 million

### Costs-Specific Rules

The old-CPR 43-48 have been replaced, but many changes are minor, i.e. little more than re-numbering and re-wording. These small changes are shown at the end.

- *CPR 43* is now *CPR 44.1*. As a result, the CPR jumps from *CPR 42* to *CPR 44*.
- Costs Practice Direction has been replaced by separate Practice Directions for *CPR 44-48*.

## **CPR 44, Section I: General**

- *CPR 44.2*: Court “will order” payment on account of costs;
- *CPR 44.9(2)*: no deemed order for costs if a Part 36 offer is accepted pre-issue;
- *CPR 44.12*: Court has formal power to offset parties’ costs
- Court can reduce disproportionate costs, even if reasonably incurred (*CPR 44.3(2)(a)*).

Costs are “proportionate” if (*CPR 44.3(5)*) they “bear a reasonable relationship to:

- The sums in issue in the proceedings;
- The value of any non-monetary relief in issue in the proceedings;
- The complexity of the litigation;
- Any additional work generated by the conduct of the paying party; and
- Any wider factors involved in the proceedings, such as reputation or public importance

Note: *Lownds v Home Office* and the old-*CPR 44.4(2)(a)* apply to work done before 01/04/13, and to cases issued before then (*CPR 44.3(7)*).

## **CPR 44, Section II: Qualified One-Way Costs-Shifting**

This applies to all post-01/04/13-CFA PI/fatal accident claims, but not to Pre-Action Disclosure applications.

If a claim qualifies, the Claimant generally won’t be liable for adverse costs.

The Defendant doesn’t need the Court’s permission to enforce costs orders against a Claimant:

- “To the extent that” it doesn’t exceed damages + interest due to be paid, and can only do so after the proceedings, including costs, have settled (*CPR 44.14*)
- At all, if Court has struck out a claim due to no reasonable grounds for it; abuse of process; or due to Claimant’s/solicitors’ misconduct (*CPR 44.15*)

The Defendant needs the Court’s permission to enforce costs orders in full if the claim is held to be “fundamentally dishonest” (*CPR 44.16*).

## **CPR 44, Section III: Damages-Based Agreements**

This is “an agreement that complies with the *Damages-Based Agreement Regulations 2013*” (*CPR Glossary*).

Parties can have costs orders in their favour, but can’t claim more than the sum that would be payable under it.

## **CPR 45, Section VII: Costs Limits in Aarhus Convention Claims**

This covers environmental policy Judicial Reviews:

- *CPR 45.42*: It doesn’t apply if the Claim Form doesn’t state the Convention applies, or if the Claimant doesn’t want it to apply;
- *CPR 45.43*: the Claimant’s costs liability limited to £5,000 (if an individual), else £10,000; the Defendant’s costs liability is limited to £35,000 (*CPR 45 PD 5.1*);
- *CPR 45.44(3)*: if the Defendant denies the Convention applies, but the Court considers it does, the Claimant’s costs on this issue are “normally” on the Indemnity Basis, with no order for costs if the Defendant was correct

## CPR 46, Section IV: Costs-Only Proceedings

- *CPR 46.14(5)*: Court can order fixed costs when making its order;
- *CPR 46.14(6)*: Party's costs will be limited to those applicable; if the procedure isn't followed, the other party may be awarded costs up to when the costs order is made

## Provisional Assessment (*CPR 47.15*)

- Applies to all DA requests under £75,000 from 01/04/13 (*CPR 47 PD 14.1*);
- PA costs limited to £1,500.00 + VAT + Court fees;
- Parties have 21 days to dispute a PA;
- Parties requesting oral hearing pay the costs unless they beat the PA figure by 20%, or Court otherwise allows

## Success fee recoverability (*CPR 48*)

Old *CPR 43-48* apply to CFAs entered into before 01/04/13, and to CFAs entered into since then in diffuse mesothelioma, defamation, breach of privacy, and insolvency cases.

If a CFA was entered into before 01/04/13, the old *CPR 43-48* apply if work was done under it before 01/04/13 (*art. 6(1)(b) CFA Order 2013*).

## Other costs-specific changes

*CPR 52.9A*: Court can limit costs in appeals if they are restricted at first instance.

## Re-numbered provisions

New CPR	Old CPR
CPR 3, Section III	CPR 44.18-44.20
CPR 44.1	CPR 43
CPR 44.4	CPR 44.5
CPR 44.5	CPR 48.3
CPR 44.6	CPR 44.7
CPR 44.7	CPR 44.8
CPR 44.8	CPR 44.2
CPR 44.9	CPR 44.12
CPR 44.10	CPR 44.13
CPR 44.11	CPR 44.14
CPR 45, Section III	CPR 45, Section VI
CPR 45, Section IV	CPR 45, Section VII
CPR 45, Section V	CPR 45, Section VIII
CPR 45, Section VI	CPR 46
CPR 46.1-46.6	CPR 48, Section I
CPR 46.7	CPR 44.3C
CPR 46, Section II	CPR 48, Section II
CPR 46, Section III	CPR 44.9-44.11
CPR 46.14(1-3) & (7)	CPR 44.12A(1-3) & (5)

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