

The New Aarhus Costs Rules: Financial Disclosure Requirements

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The financial disclosure requirement



Costs rules apply where a claimant who is a member of the public has

“(a) stated in the claim form that the claim is an Aarhus Convention claim; and

(b) filed and served with the claim form a schedule of the claimant's financial resources which takes into account any financial support which any person has provided or is likely to provide to the claimant and which is verified by a statement of truth.”

CPR 45.42(1)

The purpose of the financial disclosure

- Variation of the costs limits under CPR 45.44
- Variation only if Court is satisfied that:

“(a) to do so would not make the costs of the proceedings prohibitively expensive for the claimant; and

(b) in the case of a variation which would reduce a claimant's maximum costs liability or increase that of a defendant, without the variation the costs of the proceedings would be prohibitively expensive for the claimant.”

CPR 45.44(2)

Definition of “prohibitively expensive” proceedings



“their likely costs (including any court fees which are payable by the claimant) either—

- (a) exceed the financial resources of the claimant; or
- (b) are objectively unreasonable having regard to—

- (i) the situation of the parties;
- (ii) whether the claimant has a reasonable prospect of success;
- (iii) the importance of what is at stake for the claimant;
- (iv) the importance of what is at stake for the environment;
- (v) the complexity of the relevant law and procedure; and
- (vi) whether the claim is frivolous.”

CPR 45.44(3)

Changes mirror provisions of CJCA 2015



- Judicial review costs capping addressed in ss 88-90 Criminal Justice and Courts Act 2015
- New CPR 46.16-19
- PD 46 suggests that the “summary” of resources must include the “applicant’s significant assets, liabilities, income and expenditure”

What is required in practice

- “a schedule of the claimant's financial resources”
 - Currently no prescribed form
 - Unclear what is meant by “financial resources” but likely to include both cash and assets (cp PD 46)
 - Is a “schedule” more than a “summary”?
- “takes into account any financial support which any person has provided or is likely to provide to the claimant”
 - NB the position of solicitors; CFAs
 - Compare with s 89(1)(a) “the financial resources of any person who provides, or may provide, financial support to the parties”
 - Presumably financial support *in relation to the claim*

What is required (2)

- “verified by a statement of truth”
 - See CPR 22
- “filed and served with the claim form”
 - Same time limits apply for filing and service
 - “claim form” – includes any application to commence proceedings (CPR 6.2(c))
 - In practice these are short time limits for obtaining full financial information

Issues



- Level of detail
- Obtaining sufficient detail in the context of short time scales for filing
- Meaning of “financial support”
- How the disclosure requirement feeds into “prohibitively expensive” assessment



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