

The Extent of CPR 44 Following 'Williams' - Naomi McLoughlin Discusses

[Naomi McLoughlin](#) discusses the recent case of *Williams v The Secretary of State for Business, Energy & Industrial Strategy* [\[2018\] EWCA Civ 852](#). The Court of Appeal held that CPR 44 enabled a court to order that a Claimant is confined to fixed portal costs.

Facts

The claimant brought a noise-induced hearing loss claim against two former employers and commenced his claim by sending letters of claim to two former employers.

The first defendant admitted liability from the outset and the second disclosed documentation which resulted in the claimant choosing not to pursue that second defendant further.

Most importantly, the claimant did not commence his claim under the EL/PL Protocol. Before the claim was issued, the matter was settled following the claimant's acceptance of a Part 36 offer of £2,500.

Arguments before the Court

The defendant argued that the claimant should only be able to recover fixed costs because only one defendant had ever been pursued and so the claim should have commenced under the protocol.

The claimant argued that CPR 45.24 (the rule limiting a claim to fixed costs) did not apply because it only applies where a claimant '*starts proceedings under part 7*' and '*where a judgment is given in favour of the claimant*'. In this case, there were no part 7 proceedings and there was no judgment.

The defendant argued that the rule should be given an interpretation to apply in these proceedings anyway as they two conditions should be considered as a drafting mistake.

It was also argued that the Court could under CPR 44 powers reduce a claimant's costs. The claimant argued that only CPR 45.24 governed the Court's power to award fixed costs.

Decision

The Court found that rule 45.24 does not apply due to the absence of Part 7 proceedings and the absence of a judgment and accordingly, fixed costs could not be applied under this route.

The Court found that where rule 45.24 does not apply, a defendant can rely on the Part 44 conduct provisions to argue that only the EL/PL Protocol fixed costs should apply.

Conclusion

There will still need to be a finding by the Court that the Claimant acted unreasonably by not commencing his claim under the EL/PL Protocol for defendants to benefit from this decision. However pre-issue part 36 offers to claimant who have unreasonably not started a claim under the protocol can now be safely made.

[Naomi McLoughlin](#) is currently in her second six pupillage under the supervision of [Janine Wolstenholme](#). Prior to commencing pupillage, Naomi was employed as an Advocate at DWF where she regularly appeared in high value personal injury cases as well as maintaining a general personal injury practice.

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