CHANCERY GUIDE

October, 2005

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Abbreviations used in this Guide:

Civil Procedure Rules	CPR
HM Courts Service	HMCS
Practice Direction supplementing a Civil Procedure Rule	PD
Rules of the Supreme Court 1965	RSC
Pre-trial review	PTR

Part 1 means CPR Part 1
rule 1.1 means CPR Part 1 rule 1.1
PD 52 means the PD supplementing CPR Part 52

The Civil Procedure Rules (comprising Rules, Practice Directions, Pre-Action Protocols and Forms) are published by the Stationery Office. They are also published on the Department of Constitutional Affairs' website: www.dca.gov.uk/. This Guide will also be found on the Chancery Division section of the Courts Service website: www.hmcourts-service.gov.uk.

As from October 2005, the effective head of the Chancery Division is the Chancellor of the High Court, formerly the Vice-Chancellor.

Preface

This is the fifth edition of the Chancery Guide. It is published ten years after the publication of the first. The changes made in the conduct of civil proceedings generally and in the Chancery Division in particular in the intervening period have been profound. The substitution of the old Rules of the Supreme Court with the Civil Procedure Rules is now virtually complete and amendments to the first editions of the Civil Procedure Rules are coming through.

As I wrote in the Preface to the fourth edition, the Chancery Guide is no substitute for the Civil Procedure Rules and associated Practice Directions. It seeks to give practical guidance on the conduct of cases in the Chancery Division within the framework of those rules and practice directions.

This edition has been produced under the supervision of Sir Lawrence Collins. I am very grateful to him for undertaking the task. The amount of work involved is considerable. It is additional to the normal workload of a judge of the Chancery Division and, in his case, to the editorial responsibility for Dicey and Morris on the Conflict of Laws. He has been assisted with regard to various topics by many others to whom I send my thanks too. It is always dangerous to mention them by name lest someone is inadvertently omitted; nevertheless I would like to pay particular tribute to: Chief Master Winegarten; Master Bragge; Registrar Derrett; Mrs V C Bell; Mr A D Parkinson; Miss R Warner; Mr J Smethurst; Mr S Adamyk.

The pattern of the last ten years has been for a new edition to appear every two to three years. The proposals for changes to civil litigation now under consideration suggest that this pattern, at least, will continue in the future. In the meantime I hope and believe that this edition will be of considerable use to all those who, in whatever capacity, have occasion to participate in litigation in the Chancery Division.

Andrew Morritt
Chancellor of the High Court
October 2005

CHAPTER 1 INTRODUCTORY

The overriding objective

1.1 The aim of the Civil Procedure Rules and the Practice Directions which supplement them is to remove excessive delay and expense, and to improve access to justice through quicker, cheaper and more proportionate justice. As an integral part of the process, cases are closely monitored through to trial by the judiciary.

1.2 To achieve these aims, all procedural decisions under the CPR are guided by the overriding objective stated in rule 1.1. The court must deal with cases justly; dealing justly with a case includes, so far as practicable, ensuring that the parties are on an equal footing, saving expense, dealing with the case in ways which are proportionate to the sum at stake, to the importance of the case, to its complexity and to each party's financial position, ensuring expedition and fairness and allotting to each case an appropriate share of the court's resources.

About the Chancery Division

1.3 The Chancery Division is one of the three parts, or Divisions, of the High Court of Justice, the other two being the Queen's Bench Division and the Family Division. The effective head of the Chancery Division is the Chancellor of the High Court ("the Chancellor"). There are currently seventeen High Court judges attached to the Division. In addition, in the Royal Courts of Justice in London, there are six judges who are referred to as Masters (one of whom is the Chief Master), and six judges who are referred to as Bankruptcy Registrars (one of whom is the Chief Registrar). In the District Registries (see Chapter 12) the work done by Masters in London is performed by District Judges. References in this Guide to a Master include, in the case of proceedings in a District Registry, references to a District Judge. Deputies sit on a regular basis for both judges and Masters. Any reference to a judge or Master in the Guide includes a reference to a person sitting as a deputy.

1.4 In general, trials of claims are heard by the judges, as are interim applications involving injunctions (including applications for freezing and search orders), while the majority of other work, including most procedural work and most post-trial work (eg accounts and inquiries) is conducted by the Masters. Masters may, however, direct that a matter be listed before a judge although they have jurisdiction, for example in the case of lengthy inquiries as to damages (see paragraphs 3.2 and 9.20 below).

1.5 The Chancery Division undertakes civil work of many kinds, including specialist work such as companies, patents and contentious probate. The range of cases heard in the Chancery Division is wide and varied. The

major part of the case-load today involves business disputes of one kind or another. Often these are complex and involve substantial sums of money.

1.6 In many types of case (e.g. claims for professional negligence against solicitors, accountants, valuers or other professionals) the claimant has a choice whether to bring the claim in the Chancery Division or elsewhere in the High Court. But there are other types of case which, in the High Court, must be brought in the Chancery Division including claims (other than claims in the Commercial Court) relating to the application of Articles 81 and 82 of the EC Treaty and the equivalent provisions in the Competition Act 1998. The specialist work of the Chancery Division is dealt with in Section B of this Guide. There are also certain claims which must be started in the Chancery Division either in the High Court or in a District Registry where there is a Chancery District Registry or in the Central London Trial Centre (Chancery List).

About this Guide

1.7 The aim of this Guide is to provide additional practical information not already contained in the CPR or the Practice Directions supplementing them. Litigants and their advisers are expected to be familiar with the CPR. It is not the function of this Guide to summarise the CPR, nor should it be regarded as a substitute for them.

1.8 This Guide is published as part of a series of Guides to various civil courts. Where information is more readily available in another guide, this Guide may simply refer to it. A separate book contains Practice Forms for use in the Chancery Division and in the Queen's Bench Division. Some of the forms most commonly used in the Chancery Division are found in the Appendices to this Guide. Forms may also be downloaded from the HMCS website and may be found in the main procedural reference books.

1.9 Section A of this Guide is concerned with general civil work. Section B deals with specialist work. Some subjects are covered in more detail in the Appendices, and Appendix 1 sets out some contact details which may be useful.

1.10 Material which used to be contained in the Chancery Division Practice Directions and which remains relevant has been incorporated into either Section A or Section B of this Guide, as appropriate.

1.11 A reference in this Guide to a Part is to that Part of the CPR, to a rule is to the relevant rule in the CPR, unless otherwise stated, and to PD [number] is to the PD supplementing the Part so numbered, the title being given if necessary to distinguish one from another. The PD about costs, supplementing Parts 43 to 48, is called the Costs PD.

1.12 This Guide states the position as at September 2005. During the currency of the Guide, and even in some cases before publication, there are likely to be changes in matters covered in the text, including room numbers and other contact details; these should be checked as necessary. The Guide will be kept under review in the light of practical experience and of changes to the rules and practice directions. Any comments on the text of the Guide are welcome and should be addressed to the clerk to the Chancellor.

1.13 The text of the Guide is also to be found, together with other Court Guides and other useful information concerning the administration of justice in the Chancery Division and elsewhere, on the HMCS website. Amendments will appear on the Guide on the website as appropriate: *www.hmcourts-service.gov.uk*. The Guide is also printed in the main procedural reference books.

SECTION A GENERAL CIVIL WORK

CHAPTER 2 STARTING PROCEEDINGS, SERVICE, ALLOCATION AND STATEMENTS OF CASE

Key Rules: CPR Parts 6, 7, 8, 9, 10, 15, 16, 18, 20 and 26 and CPR Schedule 1

How to start a claim

2.1 Claims are issued out of the High Court of Justice, Chancery Division, either in the Royal Courts of Justice (Chancery Chambers) or in a District Registry. There is no Production Centre for Chancery claims.

2.2 The claim form must be issued either as a Part 7 claim under Part 7, or as a Part 8 claim under the alternative procedure for claims in Part 8.

2.3 When issuing proceedings, the general rule is that the title of the claim should contain only the names of the parties to the proceedings. To this there are four exceptions: (a) proceedings relating to the administration of an estate, which should be entitled "In the estate of AB deceased" (some cases relating to the estates of deceased Lloyd's names require additional wording: see paragraph 26.53 below); (b) contentious probate proceedings, which should be entitled "In the estate of AB deceased (probate)"; (c) proceedings under the Inheritance (Provision for Family and Dependants) Act 1975, which should be entitled "In the Matter of the Inheritance (Provision for Family and Dependants) Act 1975"; and (d) proceedings relating to pension schemes, which may be entitled "In the Matter of the [ ] Pension Scheme". In addition, proceedings in the Companies Court are entitled in the matter of the relevant company or other person and of the relevant legislation: see paragraph 20.5.

Service

2.4 Part 6 applies to the service of documents, including claim forms. Unless the claimant notifies the court that he or she wishes to serve the claim form, or the court directs otherwise, it will be served by the court. Many solicitors, however, will prefer to serve the claim form themselves and will notify the court that they wish to do so.

Allocation

2.5 The vast majority of claims issued, and all those retained, in the Chancery Division will be either expressly allocated to the multi-track or in the case of Part 8 claims, deemed allocated to that track. Chapter 13 deals with transfer to county courts.

Statements of case

2.6 In addition to the matters which PD 16 requires to be set out specifically in the particulars of claim, a party must set out in any statement of case:

(1) full particulars of any allegation of fraud, dishonesty, malice or illegality;

(2) where any inference of fraud or dishonesty is alleged, the facts on the basis of which the inference is alleged.

2.7 A party should not set out allegations of fraud or dishonesty unless there is material admissible in evidence to support the contentions made. Setting out such matters without such material being available may result in the particular allegations being struck out and may result in wasted costs orders being made against the legal advisers responsible.

2.8 Points of law may be set out in any statement of case, and any point to be taken under the Human Rights Act 1998 must be so set out.

2.9 In the preparation of statements of case, the guidelines in Appendix 2 should be followed.

2.10 The guidelines apply to: the claim form (unless no particulars are given in it); particulars of claim; defence; additional claims under Part 20; reply to a defence; and a response to a request for further information under Part 18.

2.11 Parties should not attach copies of documents or any expert's report to their statement of case if they are bulky.

2.12 Notwithstanding rule 15.8, claimants should if possible serve any reply before they file their allocation questionnaire. This will enable other parties to consider the reply before they file their allocation questionnaire.

Part 8 claims

2.13 This procedure is appropriate in particular where there is no substantial dispute of fact, such as where the case raises only questions of the construction of a document or a statute. Additionally, however, a large number of particular claims must be brought under Part 8 pursuant to PD 8. Of particular relevance will be applications to enforce charging orders by sale, contested applications with respect to funds in court, claims under the Inheritance (Provision for Family and Dependants) Act 1975 relating to solicitors. Subject to jurisdiction, applications to enforce charging orders are now issued in the court in which the charging order was made. Proceedings to enforce charging orders made in any division of the High Court and the Court of Appeal are issued in the Chancery Division.

2.14 Provision is also made in Part 8 for a claim form to be issued without naming a defendant with the permission of the court. No separate application for permission is required where personal representatives seek permission to distribute the estate of a deceased Lloyd's name nor for applications under section 48 of the Administration of Justice Act 1985 (see further Chapter 26 – Trusts). Where permission is needed, it is to be sought by application notice under Part 23.

2.15 Part 8 claims will generally be disposed of on written evidence. The features of the Part 8 procedure are:

(1) no particulars of claim

(2) no defence

(3) no allocation questionnaire

(4) no judgment in default

(5) normally no oral evidence.

2.16 Defendants who wish to contest a Part 8 claim or to take part in the proceedings should complete and file the acknowledgment of service in form N210 which accompanies the claim form. Alternatively the information required to be contained in the acknowledgment of service can be provided by letter. A party who does not wish to contest a claim should indicate that fact on the form acknowledging service or by letter.

2.17 Claimants must file the written evidence, namely evidence by witness statement, on which they intend to rely with the claim form. Defendants are required to file and serve their evidence when they file their acknowledgment of service, namely within 14 days after service of the claim form (rule 8.5(3)). By paragraph 5.6 of PD 8, Alternative Procedure for Claims, a defendant's time for filing evidence may be extended by agreement for not more than 14 days from the filing of the acknowledgment of service. Any such agreement must be filed with the court by the defendant at the same time as he or she files an acknowledgment of service. The claimant has 14 days for filing evidence in reply but this period may be extended by agreement for not more than 28 days from service of the defendant's evidence. Again, any such agreement must be filed with the court. Any longer extension either for the defendant or the claimant requires an application to the court. It is recognised that in substantial matters the provisions in Part 8 may be burdensome upon defendants and in such matters the court will readily grant an extension. If the parties are in agreement that such an extension should be granted the application should be made in writing by letter. The parties should at all times act co-operatively.

2.18 Defendants who acknowledge service but do not intend to file evidence should notify the court in writing when they file their acknowledgment of service that they do not intend to file evidence. This enables the court to know what each defendant's intention is when it considers the file.

2.19 The general rule (exceptions include, for example, some claims under the Variation of Trusts Act 1958 or where a party has made a Part 24 application) is that the court file will be considered by the court after the time for acknowledgment of service has expired, or, if the time for serving the defendant's evidence has been extended, after the expiry of that period.

2.20 In some cases if the papers are in order the court will not require any oral hearing, but will be able to deal with the matter on paper by making a final order. In other cases the court will direct that the Part 8 claim is listed either for a disposal hearing or for a case management conference.

CHAPTER 3 THE COURT'S CASE MANAGEMENT POWERS

Key Rules: CPR rule 1.4, and Parts 3, 18, 19, 26, 29, 31, 39

3.1 A key feature of the CPR is that cases are closely monitored by the court. Case management by the court includes: identifying disputed issues at an early stage; fixing timetables; dealing with as many aspects of the case as possible on the same occasion; controlling costs; disposing of cases summarily where they disclose no case or defence; dealing with the case without the parties having to attend court; and giving directions to ensure that the trial of a case proceeds quickly and efficiently. The court will expect the parties to co-operate with each other. Where appropriate the court will encourage the parties to use alternative dispute resolution (on which see Chapter 17) or otherwise help them settle the case. In particular, the court will readily grant a short stay at allocation or at any other stage to accommodate mediation or any other form of settlement negotiations. The court will not, however, normally, grant an open-ended stay for such purposes and if, for any reason, a lengthy stay is granted it will be on terms that the parties report to the court on a regular basis in respect of their negotiations.

3.2 In the Chancery Division case management is normally carried out by the Masters, but a judge may be nominated by the Chancellor to hear the case and to deal with the case management where it is appropriate due to the size or complexity of the case or for other reasons. A request by any or all parties for such a nomination should be addressed to the Chancellor.

Directions

3.3 It is expected that parties and their advisers will endeavour to agree proposals for management of the case at the allocation stage in accordance with rule 29.4 and paragraphs 4.6 to 4.8 of PD 29. In particular, the parties should act co-operatively and seek to agree directions and a list of the issues to be tried. The court will approve the parties' proposals, if they are suitable, and give directions accordingly without a hearing. If it does not approve the agreed directions it may give modified directions or its own directions or, more usually, direct a case management conference. If the parties cannot agree directions then each party should put forward its own proposals for the future management of the case for consideration by the court. Draft orders commonly made by the Masters on allocation and at case management conferences are set out at Appendix 3, and parties drafting proposed directions for submission to a Master on allocation or at a case management conference should have regard to and make use, as appropriate, of those draft orders.

3.4 If parties do not, at the allocation stage, agree or attempt to agree directions and if, in consequence, the court is unable to give directions without

ordering a case management conference, the parties should not expect to recover any costs in respect of such a case management conference.

3.5 In many claims the court will give directions without holding a case management conference.

3.6 Any party who considers that a case management conference should be held before any directions are given should so state in his or her allocation questionnaire (or, in the case of a Part 8 claim, inform the court in writing) and give reasons why he or she considers that a case management conference is required. The court when sending out allocation questionnaires will also send out a questionnaire inviting the parties to give their time estimate for any case management conference and to specify any dates or times inconvenient for the holding of a case management conference.

3.7 Wherever possible, the advocate(s) instructed or expected to be instructed to appear at the trial should attend any hearing at which case management directions are likely to be given. To this end the court when ordering a case management conference, otherwise than upon allocation, will normally send out questionnaires to the parties in respect of their availability. Parties must not, however, expect that a case management conference will be held in abeyance for a substantial length of time in order to accommodate the advocates' convenience.

3.8 Case management conferences are intended to deal with the general management of the case. They are not an opportunity to make controversial interim applications without appropriate notice to the opposing party. Accordingly, as provided by paragraph 5.8(1) of PD 29, where a party wishes to obtain an order not routinely made at a case management conference (such as an order for specific disclosure or summary disposal) such application should be made by separate Part 23 application to be heard at the case management conference and the case management conference should be listed for a sufficient period of time to allow the application to be heard. Where parties fail to comply with this paragraph it is highly unlikely that the court will entertain, other than by consent, an application which is not of a routine nature. It is the obligation of the parties to ensure that a realistic time estimate for hearings is given to the court.

3.9 Even where routine orders are sought (i.e. orders falling within the topics set out in paragraph 5.3 of PD 29) care should be taken to ensure that the opposing party is given notice of the orders intended to be sought.

Applications for information and disclosure

3.10 Before a party applies to the court for an order that another party provides him or her with any further information or specific disclosure of documents he or she must communicate directly with the other party in an attempt to

reach agreement or narrow the issues before the matter is raised with the court. If not satisfied that the parties have taken steps to reach agreement or narrow the issues, the court will normally require such steps to be taken before hearing the application.

Preliminary issues

3.11 Costs can sometimes be saved by identifying decisive issues, or potentially decisive issues, and ordering that they are tried first. The decision of one issue, although not itself decisive in law of the whole case, may enable the parties to settle the remainder of the dispute. In such cases a preliminary issue may be appropriate.

3.12 At the allocation stage, at any case management conference and again at any PTR, consideration will be given to the possibility of the trial of preliminary issues the resolution of which is likely to shorten proceedings. The court may suggest the trial of a preliminary issue, but it will rarely make an order without the concurrence of at least one of the parties.

Group Litigation Orders

3.13 Under rule 19.11, where there are likely to be a number of claims giving rise to common or related issues of fact, the court may make a Group Litigation Order ("GLO") for their case management. Such orders may be appropriate in chancery proceedings and there are a number in existence. A list of GLOs is published on the HMCS website. An application for a GLO is made under Part 23. The procedure is set out in PD 19 Group Litigation, which provides that the application should be made to the Chief Master, except for claims in a specialist list (such as the business of the Patents Court), when the application should be made to the senior judge of that list.

3.14 Claimants wishing to join in group litigation should issue proceedings in the normal way and should then apply (by letter) to be entered on the Group Register set up by a GLO. The details required for entry will be specified in the GLO. In the Chancery Division the Register is usually kept by the management court and is maintained either by the court or by the lead solicitors, as specified in the GLO. Where the Register is kept in the Chancery Division at the Royal Courts of Justice, it is kept by Mrs VC Bell, Chancery Lawyer (Room TM5.06, tel. 020 7947 6080). Any initial enquiries regarding GLOs may be addressed to her.

Trial timetable

3.15 The judge at trial, or sometimes at the PTR, may determine the timetable for the trial. The advocates for the parties should be ready to assist the court in this respect if so required. The time estimate given for the trial should have been based on an approximate forecast of the trial timetable, and must be reviewed by each party at the stage of the PTR and as preparation for trial

proceeds thereafter. If that review requires a change in the estimate the other parties' advocates and the court must be informed.

3.16 When a trial timetable is set by the court, it will ordinarily fix the time for the oral submissions and factual and expert evidence, and it may do so in greater or lesser detail. Trial timetables are always subject to any further order by the trial judge.

Pre-Trial Review

3.17 In cases estimated to take more than 10 days and in other cases where the circumstances warrant it, the court may direct that a PTR be held (see rule 29.7).

3.18 Such a PTR will normally be heard by a judge. The date and time should be fixed with the Chancery Judges' Listing Officer**.** If the trial judge has already been nominated, the application will if possible be heard by that judge. The advocates' clerks must attend the Chancery Judges' Listing Officer in sufficient time so that the PTR can be fixed between four and eight weeks before the trial date.

3.19 A PTR should be attended by advocates who are to represent the parties at the trial.

3.20 Not less than 7 days before the date fixed for the PTR the claimant, or another party if so directed by the court, must circulate a list of matters to be considered at the PTR, including proposals as to how the case should be tried, to the other parties, who must respond with their comments at least 2 days before the PTR.

3.21 The claimant, or another party if so directed by the court, should deliver a bundle containing the lists of matters to be considered and proposals served by the parties on each other and the trial timetable, together with the results of the discussions between the parties as to those matters, and any other documents the court is likely to need in order to deal with the PTR, to the Chancery Judges' Listing Office by 10am on the day before the day fixed for the hearing of the PTR.

3.22 At the PTR the court will review the state of preparation of the case, and deal with outstanding procedural matters, not limited to those apparent from the lists of matters lodged by the parties. The court may give directions as to how the case is to be tried, including directions as to the order in which witnesses are to be called (for example all witnesses of fact before all expert witnesses) or as to the time to be allowed for particular stages in the trial.

CHAPTER 4 DISCLOSURE OF DOCUMENTS AND EXPERT EVIDENCE

Key Rules: CPR Parts 18, 29, 31 and 35; PDs supplementing Parts 31 and 35

4.1 As part of its management of a case, the court will give directions about the disclosure of documents and any expert evidence. Attention is drawn to paragraphs 3.8 to 3.10 above. An application for specific disclosure should be made by a specific Part 23 application and is not to be regarded as a matter routinely dealt with at a case management conference.

DISCLOSURE OF DOCUMENTS

4.2 Under the CPR, the normal order for disclosure is an order for standard disclosure, which requires disclosure of:

(1) *a party's own documents* - that is, the documents on which a party relies;

(2) *adverse documents* - that is, documents which adversely affect his or her own or another party's case or support another party's case; and

(3) *required documents* - that is, documents which a practice direction requires him or her to disclose.

4.3 The court may make an order for specific disclosure going beyond the limits of standard disclosure if it is satisfied that standard disclosure is inadequate.

4.4 The court will not make such an order readily. One of the clear principles underlying the CPR is that the burden and cost of disclosure should be reduced. The court will, therefore, seek to ensure that any specific disclosure ordered is proportionate in the sense that the cost of such disclosure does not outweigh the benefits to be obtained from such disclosure. The court will, accordingly, seek to tailor the order for disclosure to the requirements of the particular case. The financial position of the parties, the importance of the case and the complexity of the issues will be taken into account when considering whether more than standard disclosure should be ordered.

4.5 If specific disclosure is sought, the parties should give careful thought to the ways in which such disclosure can be limited, for example by requiring disclosure in stages or by requiring disclosure simply of sufficient documents to show a specified matter and so on. They should also consider whether the need for disclosure could be avoided by requiring a party to provide information under Part 18.

EXPERT EVIDENCE

General

4.6 Part 35 contains particular provisions designed to limit the amount of expert evidence to be placed before the court and to reinforce the obligation of impartiality which is imposed upon an expert witness. The key question now in relation to expert evidence is the question as to what added value such evidence will provide to the court in its determination of a given case.

4.7 Fundamentally, Part 35 states that expert evidence must be restricted to what is reasonably required to resolve the proceedings and makes provision for the court to direct that expert evidence is given by a single joint expert. The parties should consider from the outset of the proceedings whether appointment of a single joint expert is appropriate.

Duties of an expert

4.8 It is the duty of an expert to help the court on the matters within his or her expertise; this duty overrides any obligation to the person from whom the expert has received instructions or by whom he or she is paid (rule 35.3). Attention is drawn to PD 35.

4.9 In fulfilment of this duty, an expert must for instance make it clear if a particular question or issue falls outside his or her expertise or he or she considers that insufficient data are available on which to express an opinion. Any material change of view by an expert should be communicated in writing (through legal representatives) to the other parties without delay, and when appropriate to the court.

Single joint expert

4.10 The introduction to PD 35 states that, where possible, matters requiring expert evidence should be dealt with by a single expert.

4.11 In very many cases it is possible for the question of expert evidence to be dealt with by a single expert. Single experts are, for example, often appropriate to deal with questions of quantum in cases where the primary issues are as to liability. Likewise, where expert evidence is required in order to acquaint the court with matters of expert fact, as opposed to opinion, a single expert will usually be appropriate. There remains, however, a substantial body of cases where liability will turn upon expert opinion evidence or where quantum is a primary issue and where it will be appropriate for the parties to instruct their own experts. For example, in cases where the issue for determination is as to whether a party acted in accordance with proper professional standards, it will often be of value to the court to hear the opinions of more than one expert as to the proper standard in order that the court becomes acquainted with the range of views

existing upon the question and in order that the evidence can be tested in cross-examination.

4.12 It is not necessarily a sufficient objection to the making by the court of an order for a single joint expert that the parties have already appointed their own experts. An order for a single joint expert does not prevent a party from having his or her own expert to advise him or her, but he or she may well be unable to recover the cost of employing his or her own expert from the other party. The duty of an expert who is called to give evidence is to help the court.

4.13 When the use of a single joint expert is contemplated the court will expect the parties to co-operate in developing, and agreeing to the greatest possible extent, terms of reference for the expert. In most cases the terms of reference will (in particular) detail what the expert is asked to do, identify any documentary material he or she is asked to consider and specify any assumptions he or she is asked to make.

More than one expert – exchange of reports

4.14 In an appropriate case the court will direct that experts' reports are delivered sequentially. Sequential reports may, for example, be appropriate if the service of the first expert's report would help to define and limit the issues on which such evidence may be relevant.

Discussion between experts

4.15 The court will normally direct discussion between experts before trial. Sometimes it may be useful for there to be further discussions during the trial itself. The purpose of these discussions is to give the experts the opportunity:

(1) to discuss the expert issues; and

(2) to identify the expert issues on which they share the same opinion and those on which there remains a difference of opinion between them (and what that difference is).

4.16 Unless the court otherwise directs, the procedure to be adopted at these discussions is a matter for the experts. It may be sufficient if the discussion takes place by telephone.

4.17 Parties must not seek to restrict their expert's participation in any discussion directed by the court, but they are not bound by any agreement on any issue reached by their expert unless they expressly so agree.

Written questions to experts

4.18 It is emphasised that this procedure is only for the purpose (generally) of seeking clarification of an expert's report where the other party is unable to understand it. Written questions going beyond this can only be put with the agreement of the parties or with the permission of the court. The procedure of putting written questions to experts is not intended to interfere with the procedure for an exchange of professional opinion in discussions between experts or to inhibit that exchange of professional opinion. If questions that are oppressive in number or content are put or questions are put without permission for any purpose other than clarification of an expert's report, the court will not hesitate to disallow the questions and to make an appropriate order for costs against the party putting them.

Request by an expert to the court for directions

4.19 An expert may file with the court a written request for directions to assist him or her in carrying out his or her function as expert: rule 35.14. Copies of any such request must be provided to the parties in accordance with rule 35.14(2) save where the court orders otherwise. The expert should guard against accidentally informing the court about, or about matters connected with, communications or potential communications between the parties that are without prejudice or privileged. The expert may properly be privy to the content of these communications because he or she has been asked to assist the party instructing him or her to evaluate them.

Assessors

4.20 Under rule 35.15 the court may appoint an assessor to assist it in relation to any matter in which the assessor has skill and experience. The report of the assessor is made available to the parties. The remuneration of the assessor is determined by the court and forms part of the costs of the proceedings.

CHAPTER 5 APPLICATIONS

Key Rules: CPR Parts 23 and 25, PDs 23 and 25

5.1 This Chapter deals with applications to a judge, including applications for interim remedies, and applications to a Master. As regards the practical arrangements for making, listing and adjourning applications, the Chapter is primarily concerned with hearings at the Royal Courts of Justice. Hearings before Chancery judges outside London are dealt with in Chapter 12.

5.2 It is most important that applications which need to be heard by a judge (e.g. most applications for an injunction) should be made to a judge. Any procedural application (e.g. for directions) should be made to a Master unless there is some special reason for making it to a judge. Otherwise the application may be dismissed with costs. If an application is to be made to a judge, the application notice should state that it is a judge's application.

5.3 Part 23 contains rules as to how an application may be made. In some circumstances it may be dealt with without a hearing, or by a telephone hearing.

Applications without notice

5.4 Generally it is wrong to make an application without giving prior notice to the respondent. There are, however, two classes of exceptions.

(1) First, there are cases where the giving of notice might frustrate the order (e.g. a search order) or where there is such urgency that there has not been time to give notice. Even in an urgent case, however, the applicant should notify the respondent informally of the application if possible, unless secrecy is essential.

(2) Secondly, there are in the Chancery Division some procedural applications normally made without notice relating to such matters as service out of the jurisdiction, service, extension of the validity of claim forms, permission to issue writs of possession etc. All of these are properly made without notice but will be subjected by the rules to an express provision in any order made that the absent party will be entitled to apply to set aside or vary the order provided that application is so made within a given number of days of service of the order.

(3) Thirdly, there are cases in which the defendant can only be identified by description and not by name: *Bloomsbury Publishing Group Ltd v News Group Newspapers Ltd* [2003] EWHC 1205 (Ch), [2003] 3 All ER 736.

An application made without giving notice which does not fall within the classes of cases where absence of notice is justified may be dismissed or adjourned until proper notice has been given.

Applications without a hearing

5.5 Part 23 makes provision for applications to be dealt with without a hearing. This is a useful provision in cases where the parties consent to the terms of the order sought or agree that a hearing is not necessary (often putting in written representations by letter or otherwise). It is also a useful provision in cases where, although the parties have not agreed to dispense with a hearing and the order is not consented to, the order sought by the application is, essentially, non-contentious. In such circumstances, the order made will, in any event, be treated as being made on the court's own initiative and will set out the right of any party affected by the application who has not been heard to apply to vary or set aside the order.

5.6 These provisions should not be used to deal with contentious matters without notice to the opposing party and without a hearing. Usually, this will result in delay since the court will simply order a hearing. It may also give rise to adverse costs orders. It will normally be wrong to seek an order which imposes sanctions in the event of non-compliance without notice and without a hearing. An application seeking such an order may well be dismissed.

Applications to a judge

5.7 If an application is made to a judge in existing proceedings, e.g. for an injunction, it should be made by application notice. This is called an Interim Application. Normally three clear days' notice to the other party is required but in an emergency or for other good reason the application can be made without giving notice, or the full 3 days' notice, to the other side. Permission to serve on short notice may be obtained on application without notice to the Interim Applications judge. Such permission will not be given by the Master. Except in an emergency a party notifies the court of his or her wish to bring an application by delivering the requisite documents to the Chancery Judges' Listing Office (Room WG4) and paying the appropriate fee. He or she should at the same time deliver a completed "Judge's Application Information Form" in the form set out in Part 1 of Appendix 4. An application will only be listed if (1) two copies of the claim form and (2) two copies of the application notice (one stamped with the appropriate fee) are lodged in the Chancery Judges' Listing Office before 12 noon on the working day before the date for which notice of the application has been given.

5.8 The current practice is that one judge combines the functions of Interim Applications judge and Companies judge. His or her name will be found in the Daily Cause List and also in the Chancery Division Term List.

5.9 The Interim Applications judge is available to hear applications each day in term and an application notice can be served for any day in term except the last. If the volume of applications requires it, any other judge who is available to assist with Interim Applications will hear such applications as the Interim Applications judge may direct. Special arrangements are made for hearing applications out of hours and in vacation, for which see paragraphs 5.28 to 5.34 below.

5.10 At the beginning of each day's hearing the Interim Applications judge calls on each of the applications to be made that day in turn. This enables him or her to establish the identity of the parties, their state of readiness, their estimates of the duration of the hearing, and where relevant the degree of urgency of the case. On completion of this process, the judge decides the order in which he or she will hear applications and gives any other directions that may be necessary. Sometimes cases are released to other judges at this point. If cases are likely to take 2 hours or more (including pre-reading and oral delivery of judgment), the judge may order that they are given a subsequent fixed date for hearing (they are then called "Interim Applications by Order") and hears any application for a court order to last until the application is heard fully. Where on or before the day preceding the hearing it becomes likely that the time required for the application (including pre-reading and oral delivery of judgment) will exceed 2 hours, the Chancery Judges' Listing Officer (or, in appropriate cases, the clerk to the Applications Judge) must be notified immediately.

5.11 In such a case the solicitors or the clerks to counsel concerned should apply to the Chancery Judges' Listing Officer for a date for the hearing. Before so doing there must be lodged with the Chancery Judges' Listing Office a certificate signed by the advocate stating the estimated length of the hearing. Applications by order may be entered in the Interim Hearings List and, if not fixed by arrangement with the Chancery Judges' Listing Officer, will be liable to be listed for hearing in accordance with the timetable fixed by the judge.

5.12 Parties and their representatives should arrive at least ten minutes before the court sits. This will assist the usher to take a note of the names of those proposing to address the court and of their estimate of the hearing time. This information is given to the judge before he or she sits. Parties should also allow time before the court sits to agree any form of order with any other party if this has not already been done. If the form of the order is not agreed before the court sits, the parties may have to wait until there is a convenient break in the list before they can ask the court to make any agreed order. If an application, not being an Interim Application by Order, is adjourned the Associate in attendance will notify the Chancery Judges' Listing Office of the date to which it has been adjourned so that it may be relisted for the new date.

Agreed Adjournment of Interim Applications

5.13 If all parties to an Interim Application agree, it can be adjourned for not more than 14 days by counsel or solicitors attending the Chancery Judges' Listing Officer in Room WG4 at any time before 4pm on the day before the hearing of the application and producing consents signed by solicitors or counsel for all parties agreeing to the adjournment. A litigant in person must attend before the Chancery Judges' Listing Officer as well as signing a consent. This procedure may not be used for more than three successive adjournments and no adjournment may be made by this procedure to the last two days of any sitting.

Interim Applications by Order by agreement

5.14 This procedure should also be used where the parties agree that the application will take two hours or more and that, in consequence, the application should be adjourned to be heard as an Interim Application by Order. In that event, the consents set out above should also contain an agreed timetable for the filing of evidence or confirmation that no further evidence is to be filed. Any application arising from the failure of a party to abide by the timetable and any application to extend the timetable must be made to the judge. Interim Applications by Order will, initially at least, enter the Interim Hearings warned list on the first Monday after close of evidence.

5.15 Undertakings given to the court may be continued unchanged over any adjournment. If, however, on an adjournment an undertaking is to be varied or a new undertaking given then that must be dealt with by the court.

The duty of disclosure

5.16 On all applications made in the absence of the respondent the applicant and his or her legal representatives owe a duty to the court to disclose fully all matters relevant to the application, including matters, whether of fact or law, which are, or may be, adverse to it. If there is a failure to comply with this duty and an order is made, the court may subsequently set aside the order on that ground alone. The disclosure, if made orally, must be confirmed by witness statement or affidavit. The representatives for the applicant must specifically direct the court to passages in the evidence which disclose matters adverse to the application.

5.17 A party wishing to apply urgently to a judge for remedies without notice to the Respondent must notify the clerk to the Interim Applications judge by telephone (the number will be set out in the Daily Cause List). Where such an urgent application is made, two copies of the order sought and an electronic copy on disk (in Word for Windows) and a completed judge's Application Information Form in the form in Part 1 of Appendix 4 should, where possible, be included with the papers handed to the judge's clerk.

Where an application is very urgent and the Interim Applications judge is unable to hear it promptly, it may be heard by any judge who is available, though the request for this must be made to the clerk to the Interim Applications judge, or, in default, to the Chancery Judges' Listing Officer. Every effort should be made to issue the claim form before the application is made. If this is not practicable, the party making the application must give an undertaking to the court to issue the claim form forthwith even if the court makes no order, unless the court orders otherwise. A party making an urgent application must ensure that all necessary fees are paid.

Freezing Injunctions and Search Orders

5.18 The grant of freezing injunctions (both domestic and world-wide) and search orders is a staple feature of the work of the Interim Applications judge. Applications for such orders are invariably made without notice in the first instance; and in a proper case the court will sit in private in order to hear them. Where such an application is to be listed, two copies of the order sought, together with the application notice, should be lodged with the Chancery Judges' Listing Office. If the application is to be made in private, it will be listed as 'Application without notice' without naming the parties. The judge will consider, in each case, whether publicity might defeat the object of the hearing and, if so, may hear the application in private.

5.19 Freezing injunctions and search orders are never granted as a matter of course. A strong case must be made out, and applications need to be prepared with great care. The application should always be accompanied by a draft of the order which the court is to be invited to make.

Period for which an injunction or an order appointing a receiver is granted if the application was without notice

5.20 When an application for an injunction is heard without notice, and the judge decides that an injunction should be granted, it will normally be granted for a limited period only – usually not more than seven days. The same applies to an interim order appointing a receiver. The applicant will be required to give the respondent notice of his or her intention to apply to the court at the expiration of that period for the order to be continued. In the meantime the respondent will be entitled to apply, though generally only after giving notice to the applicant, for the order to be varied or discharged.

Opposed applications without notice

5.21 These are applications of which proper notice has not been given to the respondents but which are made in the presence of both parties in advance of a full hearing of the application. The judge may impose time limits on the parties if, having regard to the pressure of business or for any other reason, he or she considers it appropriate to do so. On these applications,

the judge may, in an appropriate case, make an order which will have effect until trial or further order as if proper notice had been given.

Implied cross-undertakings in damages where undertakings are given to the court

5.22 Often the party against whom an injunction is sought gives to the court an undertaking which avoids the need for the court to grant the injunction. In these cases, there is an implied undertaking in damages by the party applying for the injunction in favour of the other. The position is less clear where the party applying for the injunction also gives an undertaking to the court. The parties should consider and, if necessary, raise with the judge whether the party in whose favour the undertaking is given must give a cross-undertaking in damages in those circumstances.

Orders on applications

5.23 The judge may direct the parties to agree, sign and deliver to the court a statement of the terms of the order made by the court (commonly still referred to as a minute of order), particularly where complex undertakings are given.

Consents by parties not attending hearing

5.24 It is commonly the case that on an interim application the respondent does not appear either in person or by solicitors or counsel but the applicant seeks a consent order based upon a letter of consent from the respondent or his or her solicitors or a draft statement of agreed terms signed by the respondent's solicitors. This causes no difficulty where the agreed relief falls wholly within the relief claimed in the application notice.

5.25 If, however, the agreed relief goes outside that which is claimed in the application notice or even in the claim form or when undertakings are offered then difficulties can arise. A procedure has been established for this purpose to be applied to all applications in the Chancery Division.

5.26 Subject always to the discretion of the court, no order will be made in such cases unless a consent signed by or on behalf of the respondent to an application is put before the court in accordance with the following provisions:

(1) Where there are solicitors on the record for the respondent the court will normally accept as sufficient a written consent signed by those solicitors on their headed notepaper.

(2) Where there are solicitors for the respondent who are not on the record, the court will normally accept as sufficient a written consent signed by those solicitors on their headed notepaper only if in the

consent (or some other document) the solicitors certify that they have fully explained to the respondent the effect of the order and that the respondent appeared to have understood the explanation.

(3) Where there is a written consent signed by a respondent acting in person the court will not normally accept it as sufficient unless the court is satisfied that the respondent understands the effect of the order either by reason of the circumstances (for example the respondent is himself a solicitor or barrister) or by means of other material (for example, the respondent's consent is given in reply to a letter explaining in simple terms the effect of the order).

(4) Where the respondent offers any undertaking to the court (a) the document containing the undertaking must be signed by the respondent personally, (b) solicitors must certify on their headed notepaper that the signature is that of the respondent and (c) if the case falls within (2) or (3) above, solicitors must certify that they have explained to the respondent the consequences of giving the undertaking and that the respondent appeared to understand the explanation.

Bundles and Skeleton Arguments

5.27 See Chapter 7 below.

Out of hours emergency arrangements

5.28 An application should not be made out of hours unless it is essential. An explanation will be required as to why it was not made or could not be made during normal court hours. Applications made during legal vacations must also constitute vacation business.

5.29 There is always a Duty Chancery Judge available to hear urgent out of hours applications. The following is a summary of the procedure:

(1) All requests for the Duty Chancery Judge to hear urgent matters are to be made through the judge's clerk. There may be occasions when the Duty Chancery Judge is not immediately available. The clerk will be able to inform the applicant of the judge's likely availability.

(2) Initial contact should be through the Security Office at the Royal Courts of Justice (tel: 020 7947 6260), who should be requested to contact the Duty Chancery Judge's clerk. The applicant must give a telephone number for the return call.

(3) When the clerk contacts the applicant, he or she will need to know:

(a) the name of the party on whose behalf the application is to be made;

(b) the name of the person who is to make the application and his or her status (counsel or solicitor);

(c) the nature of the application;

(d) the degree of urgency;

(e) the contact telephone numbers.

(4) The Duty Judge will indicate to his or her clerk whether he or she is prepared to deal with the matter by telephone or whether it will be necessary for the matter to be dealt with by a hearing, in court or elsewhere. The clerk will inform the applicant and make the necessary arrangements.

(5) Applications for interim remedies will (normally) be heard by telephone only where the applicant is represented by counsel or solicitors (PD 25, Interim Injunctions, paragraph 4.5). If, however, an applicant not so represented indicates reasons why, exceptionally, the application should be heard by telephone, the judge may require that the applicant be attended by a responsible person who can confirm the identity of the applicant and the accuracy of what is said: see PD 23 paragraphs 6.3 and 8. If satisfied that it is really necessary, the judge may grant an injunction on such an application, but it is likely to be granted for as short a time as possible pending a hearing on notice to the respondent.

5.30 Which judge will, in appropriate cases, hear an out of hours application varies according to when the application is made.

(1) Weekdays. Out of hours duty, during term time, is the responsibility of the Applications Judge. He or she is normally available from 4.15pm until 10.15am Monday to Thursday.

(2) Weekends. A Duty Chancery Judge is nominated by rota for weekends, commencing 4.15pm Friday until 10.15am Monday.

(3) Vacation. The Vacation Judge also undertakes out of hours applications.

5.31 Sealing orders out of hours. In normal circumstances it is not possible to issue a sealed order out of hours. The judge may direct the applicant to lodge a draft of the order made at Chancery Chambers Registry by 10am on the following working day.

5.32 County court matters. Similar arrangements exist for making urgent applications out of hours in county court matters in certain parts of England and Wales. Contact with the Circuit judge on duty for the London County Courts can be made through the Security Office of the Royal Courts of Justice.

Vacation arrangements

5.33 There is a Chancery judge available to hear applications in vacation. Applications must generally constitute vacation business in that, in particular, they require to be immediately or promptly heard. Special arrangements exist, however, in the Companies Court for certain schemes of arrangement and reductions of capital to be heard in the Long Vacation (see paragraph 8 of PD 49 – Applications under the Companies Act 1985).

5.34 In the Long Vacation, the Vacation judge sits each day to hear vacation business. In other vacations there are no regular sittings. Mondays and Thursdays are made available for urgent Interim Applications on notice. The judge is available on the remaining days for urgent business.

Applications to a Master

5.35 Applications to a Master should be made by application notice. Application notices are issued by the Masters' Appointments section in Room TM7.09. If the Master has already directed a case management conference the parties should ensure that all applications in the proceedings are properly issued and listed to be heard at the case management conference. If the available listed time is likely to be insufficient to give directions and hear any application the parties should co-operate and invite the court to arrange a longer appointment. It is the duty of the parties to seek to agree directions if possible and to provide a draft of the order for consideration by the Master.

5.36 Applications to a Master estimated to last in excess of two hours will require serious co-operation between the parties and will require the Master's directions before they are listed. The Master will normally give his permission to list such an application on condition that there is compliance with directions given by the Master.

5.37 Those directions are likely to require:

(1) that the applicant agrees the time estimate (see below) with his opponent;

(2) that, if the time allowed subsequently becomes insufficient, the court is informed and a new and longer appointment given;

(3) that the parties agree an appropriate timetable for filing evidence such that the hearing will be effective on the date listed;

(4) that positive confirmation is to be given to the Master five working days before the hearing date that the hearing remains effective; and

(5) that, in the event of settlement, the Master be informed of that fact.

5.38 The agreed time estimate must take into account not only the hearing time of the application but the time for the Master to give any judgment at the conclusion of the hearing. It should also take into account any further time that may be required for the Master to assess costs, and for any application for permission to appeal.

5.39 Failure to comply with the Master's directions given in respect of the listing of an appointment in excess of two hours may result, depending upon the circumstances, in the application not being heard or in adverse costs orders being made.

5.40 On any matter of substance, the Master is likely to require a bundle and skeleton arguments to be provided before the hearing, as detailed in paragraphs 7.40 to 7.50 below. Where directions are given in respect of an application to which paragraph 5.36 applies, the provision of a bundle and skeleton arguments should form part of the agreed timetable.

5.41 The Masters may also allow applications to be made to them informally. The Masters are normally listed to hear oral applications without notice between 2.15pm and 2.45pm (see paragraph 6.32 below). Such applications should not be used in place of a Part 23 application and care must be taken to notify in appropriate cases parties likely to be affected by any order made on the application. Letters should not be used in place of a Part 23 application, and parties should be particularly careful to keep any correspondence with the Masters to a minimum and to ensure that opposing parties receive copies of any correspondence. Failure in this regard will mean that the Master will refuse to deal with the correspondence. Correspondence should state that it has been copied to the other parties (or should state why it has not been copied). Unless the matter is one of urgency correspondence and any other documents should be sent by post. If, in a case of real urgency, a letter is sent by fax, it should not be followed by a hard copy, unless it contains an original document which needs to be filed. Further guidance is set out in the Chief Master's Practice Note reproduced at Appendix 5.

5.42 There is no distinction between term time and vacation so far as business before the Chancery Masters is concerned. They will deal with all types of business throughout the year. When a Master is on holiday, his or her list will normally be taken by a deputy Master.

Applications for payment out of court

5.43 Applications for payment out of money held in court under paragraph 4.2 of PD 37 (for example, where money has been paid into court following compulsory purchase or repossession of property) must be made by Part 23 Application Notice (Form N244). The required documents should be sent to Room TM5.04. The following must be included:

(1) the reasons why the payment should be made (in Part C of the application notice)

(2) any relevant documents such as birth, marriage or death certificate, title deeds etc. (exhibited to the application notice)

(3) a statement whether or not anyone else has any claim to the money (in the Statement of Truth)

(4) bank details, ie the name and address of the relevant bank/building society branch, its Sort Code, and the Account Title and Number

(5) the Court fee of £50.

5.44 If there is a dispute as to entitlement to money in court, the Master may order the matter to proceed by Part 8 claim (see paragraph 2.13 above). In all other cases the Master will consider the file without a hearing and make an order for payment.

CHAPTER 6 LISTING ARRANGEMENTS

Key Rules: CPR Parts 29 and 39

6.1 This Chapter deals with listing arrangements for hearings before judges and Masters in the Royal Courts of Justice.

HEARINGS BEFORE JUDGES

Responsibility for listing

6.2 Subject to the direction of the Chancellor the Clerk of the Lists (Room WG3, Royal Courts of Justice) has overall responsibility for listing. Day by day management of Chancery listing is dealt with by the Chancery Judges' Listing Officer (Room WG4). All applications relating to listing should, in the first instance, be made to the Chancery Judges' Listing Officer, who will refer matters, as necessary, to the Clerk of the Lists. Any party dissatisfied with any decision of the Clerk of the Lists may, on one clear day's notice to all other parties, apply to the judge in charge of the list. Any such application should be made within seven days of the decision of the Clerk of the Lists and be arranged through the Chancery Judges' Listing Office.

6.3 There are three main lists in the Chancery Division: the Trial List, the General List and the Interim Hearings List. In addition there is a separate Patents List which is also controlled on a day-to-day basis by the Chancery Judges' Listing Officer in Room WG4 (see Chapter 23).

The Trial List

6.4 This comprises a list of all trials to be heard with witnesses.

The Interim Hearings List

6.5 This list comprises interim applications and appeals from Masters.

The General List

6.6 This list comprises other matters including revenue, bankruptcy and pension appeals, Part 8 proceedings, applications for judgment and all company matters.

6.7 The procedure for listing Chancery cases to be heard in the Royal Courts of Justice and listed in the Trial List is that at an early stage in the claim the court will give directions with a view to fixing the period during which the case will be heard. In a Part 7 claim that period (the Trial Window) will be determined by the court either when the case is allocated or subsequently at any case management conference or other directions hearing. In a Part 8

claim covered by this procedure, that is to say a Part 8 claim to be heard with witnesses, similar directions will be given when the Part 8 claim is listed for preliminary directions or for a case management conference. It is only in a small minority of Part 8 claims that the claim is tried by a judge in the Trial List and the Trial Window procedure applies. The bulk of Part 8 claims are heard on written evidence either by the Master or by the judge. Additionally, many Part 8 claims, even where oral evidence is to be called, will be heard by the Master pursuant to the jurisdiction set out in paragraph 4.1 of PD 2B – Allocation of Cases to Levels of Judiciary.

Allocation of Cases to Levels of Judiciary

6.8 In determining the Trial Window the court will have regard to the listing constraints created by the existing court list and will determine a Trial Window which provides the parties with enough time to complete their preparations for trial. A Trial Window, once fixed, will not readily be altered. A list of current trial windows is published on the HMCS website. When determining the Trial Window the court will direct that one party, normally the claimant, makes an appointment to attend on the Chancery Judges' Listing Officer (Room WG4) to fix a trial date within the Trial Window, by such date as may be specified in the order and gives notice of that appointment to all other parties. It is to be understood that an order to attend on the Chancery Judges' Listing Officer imposes a strict obligation of compliance, without which the Trial Window that has been given will be lost.

6.9 At the listing appointment, the Chancery Judges' Listing Officer will take account, insofar as it is practical to do so, of any difficulties the parties may have as to the availability of counsel, experts and witnesses. The Chancery Judges' Listing Officer will, nevertheless, try to ensure the speedy disposal of the trial by arranging a firm trial date as soon as possible within the Trial Window. If a Case Summary has been prepared (see PD 29 paragraphs 5.6 and 5.7) the claimant must produce a copy at the listing appointment together with a copy of the particulars of claim and any orders relevant to the fixing of the trial date. If, exceptionally, at the listing appointment, it appears to the Chancery Judges' Listing Officer that a trial date cannot be provided by the court within the trial window, he may fix the trial date outside the trial window at the first available date.

6.10 A party wishing to appeal a date allocated by the Chancery Judge's Listing Officer must, within 7 days of the allocation, make an application to the judge nominated to hear such applications. The application notice should be filed in the Chancery Judges' Listing Office and served, giving one clear day's notice to the other parties.

6.11 A trial date once fixed will, like a Trial Window, only rarely be altered or vacated. An application to adjourn a trial date will normally be made to the judge nominated to hear such applications (see further paragraph 7.38).

Such an application will however be entertained by the Master if, for example, on the hearing of an interim application or case management conference it becomes clear that the trial date cannot stand without injustice to one or both parties.

Warned List - General and Interim Hearings Lists

6.12 On each Friday of term and on such other days as may be appropriate, the Chancery Judges' Listing Officer will publish a Warned List, showing the matters that are liable to be heard in the following week. Any matters for which no date has been arranged will be liable to appear in the list for hearing with no warning save that given by the next day's list of cases, posted each afternoon outside Room WG4. Where a case is listed in the Warned List, the parties may agree to offer the case for a specified date, in accordance with the statement of Chancery Judges' Listing Office practice on offering cases issued by the Clerk of the Lists.

Estimate of duration

6.13 If after a case is listed the estimated length of the hearing is varied, or if the case is settled, withdrawn or discontinued, the solicitors for the parties must forthwith inform the Chancery Judges Listing Officer in writing. Failure so to do may result in an adverse costs order being made. If the case is settled but the parties wish the Master to make a consent order, the solicitor must notify the Chancery Judges' Listing Officer in writing, whereupon he or she will take the case out of the list and notify the Master. The Master may then make the consent order.

6.14 Seven days before the date for the hearing, the claimant's solicitors must inform the Chancery Judges' Listing Officer whether there is any variation in the estimate of duration, and, in particular, whether the case is likely to be disposed of in some summary way. If the claimant is a litigant in person, this must be done by the solicitor for the first-named defendant who has instructed a solicitor. If a summary disposal is likely, the solicitor must keep the Chancery Listing Officer informed of any developments as soon as they occur.

Applications after listing

6.15 Where a case has been listed for hearing and because of the timing of the hearing an application is urgent, any application in the case may be made to the Interim Applications judge if the application cannot be heard by a Master without the hearing being delayed. Parties should not however list an application before the Interim Applications judge without first consulting the Masters' clerks (Room TM7.09) as to the availability of the assigned Master or, in an appropriate case, applying to the Master himself. Provision can be made for urgent applications to be dealt with by the Chief Master or a deputy (see further paragraph 6.29).

Appeals

6.16 All appeals for hearing by High Court judges in the Division are issued by the Clerk of the Lists, High Court Appeals Office (Room WG8). Enquiries relating to such appeals are to be made in the first instance to that office, except as provided by paragraph 6.18 below.

Daily list of cases

6.17 This list, known as the Daily Cause List, is available on the Courts Service website: *www.hmcourts-service.gov.uk.*

Listing of Particular Business

6.18 Appeals from Masters

(1) Appeals from Masters, where permission has been given, will appear in the Appeals Warned List. Such appeals (stamped with the appropriate fee) must be filed with the Clerk of the Lists' Office in Room WG7. When an appeal is filed an appeal number will be allocated and any future order will bear both the original claim number and the appeal number. On being satisfied that the case has been placed in the Warned List, solicitors should forthwith inform the Chancery Judges' Listing Officer whether they intend to instruct counsel and, if so, the name or names of counsel.

(2) Any order made on appeal from a Master will be placed on the court file. However, practitioners should co-operate by ensuring that a copy of any relevant order is available to the Master at any subsequent hearing.

6.19 Applications for permission to appeal from Masters

Applications for permission to appeal from a decision of a Master (stamped with the appropriate fee) must be lodged in the clerk of the Lists' Office in Room WG7. If permission to appeal is granted the appeal will appear in the Interim Hearings List and the procedure set out above will apply.

6.20 Bankruptcy Appeals

Notice of appeal from the decision of a Registrar or of a county court should be lodged in the Clerk of the Lists' Office, Room WG7. The appeal will be entered in the Appeals Warned List, usually with a fixed date. The date of the hearing will be fixed by the Chancery Judges' Listing Officer in the usual way.

6.21 Bankruptcy Applications

All originating applications to the judge should be lodged with the Deputy Court Manager in Bankruptcy. Urgent applications without notice for (i) the committal of any person to prison for contempt or (ii) injunctions or the modification or discharge of injunctions will be passed directly to the clerk to the Interim Applications judge for hearing by that judge. All applications on notice for (i) and (ii) above, and applications referred to the judge by the Registrar, will be listed by the Chancery Judges' Listing Officer. Applications estimated not to exceed two hours will be heard by the Interim Applications judge. The Chancery Judges' Listing Officer is to give at least three clear days' notice of the hearing to the applicant and to any respondent who attended before the Registrar. Applications over two hours will be placed in the General List and listed accordingly.

6.22 Companies Court

Matters for hearing before the Companies judge, such as petitions for an administration order, petitions for approval by the court of schemes of arrangement and applications for the appointment of provisional liquidators, may be issued for hearing on any day of the week in term time (other than the last day of each term) and will be dealt with by the Interim Applications judge as Companies judge. Applications or petitions which are estimated to exceed two hours are liable to be stood over to a date to be fixed by the Chancery Judges' Listing Officer. Urgent applications will also be dealt with by the Interim Applications judge. Applications and petitions referred to the judge by the Registrar will be placed in the General List and listed accordingly.

6.23 Applications referred to the judge

Applications referred by the Master to the judge will be added to the Interim Hearings List. The power to refer applications made to the Master and in respect of which the Master has jurisdiction is now very sparingly exercised. The proper use of judicial resources dictates that where the Master has jurisdiction in respect of an interlocutory matter he should ordinarily exercise that jurisdiction.

6.24 Judge's Applications

Reference should be made to Chapter 5.

6.25 Revenue Appeals

Appeals will be entered in the Appeals Warned List, usually with fixed dates, and will be heard by such judges as are available. The dates for hearing are settled in the usual way on application to the Chancery Judges' Listing Officer. Where it would assist counsel and solicitor with their other

commitments, the Chancery Listing Officer, if requested, will endeavour to fix two or more revenue appeals so that they will come on consecutively.

6.26 Short Applications

An application for judgment in default made to a judge (because the Master has no jurisdiction) should be made to the Interim Applications judge.

6.27 Summary Judgment

Where an application for summary judgment includes an application for an injunction, it usually has to be made to a judge because in most cases the Master cannot grant an injunction save in terms agreed by the parties. In such cases the application should be made returnable before the judge instead of the Master and will be listed in the General List. The return date to be inserted in the application notice should be a Monday at least 14 clear days after the application notice has been served. The application notice should be issued in the Chancery Judges' Listing Office (Room WG4) when there must be lodged two copies of the application notice and the witness statements or affidavits in support together with their exhibits. On the return date the application will normally be adjourned to a date to be fixed if the hearing is likely to take longer than thirty minutes. The adjourned date will be fixed in the usual way through the Chancery Judges' Listing Officer, and a certificate signed by an advocate as to the estimated length of the hearing must be lodged with the Chancery Judges' Listing Officer.

If the applicant informs the Chancery Judges' Listing Officer at the time of issue of an application notice for summary judgment returnable before a judge that directions have been agreed, or are not necessary, the application will be listed for a substantive hearing without being listed for directions.

If, subsequent to issue, the parties agree directions the Chancery Judges' Listing Officer will, on application, re-list the application for a substantive hearing and any directions hearing will be vacated. Time estimates should be agreed.

6.28 Variation of Trusts: Application to a judge

Applications under the Variation of Trusts Act 1958 for a hearing before the judge may be listed for hearing in the General List without any direction by a Master on the lodgment in Room WG4 of a certificate signed by advocates for all the parties, stating (i) that the evidence is complete and has been filed; (ii) that the application is ready for hearing; and (iii) the estimated length of the hearing.

HEARINGS BEFORE MASTERS

Assignment of cases before Masters

6.29 The general rule is that cases are assigned to the Masters in accordance with the last digit of the claim number. At present cases are allocated as follows:

0 and 1 Master Bragge	6 and 7 Master Price
2 and 3 Master Teverson	8 and 9 Master Moncaster
4 and 5 Master Bowles	

In view of administrative responsibilities, the Chief Master does not have assigned cases. He will take individual cases or classes of case in his own discretion and arrangements will be made accordingly through the Court Manager. Where an application is required to be heard at short notice or is urgent but the assigned Master's list cannot accommodate an early date for the length of hearing necessary, arrangements can often be made for it to be listed before the Chief Master. Application should first be made to the assigned Master, who will determine whether the case is one which it is appropriate to release to the Chief Master. In that event arrangements are made by the Court Manager (Room TM6.06)

Applications by the Official Solicitor under rule 21.12 to be appointed a guardian of a minor's estate are normally dealt with by the Chief Master. All applications for a Group Litigation Order in the Chancery Division have to be made to the Chief Master: see paragraph 3.13.

6.30 An important exception to the general rule is that all registered trade mark claims are assigned to Master Bragge. Practitioners must, therefore, ensure, both at the date of issue of proceedings and when any application is to be made, that the court staff are aware that the claim is a registered trade mark claim and that, irrespective of the claim number, the claim and any application in the claim is assigned to and should be listed before Master Bragge. Each month in term time a day or more is usually set aside in Master Bragge's list specifically for trade mark applications and practitioners should, if possible, seek to have applications listed on that day. If the provisions of this paragraph are ignored and an application in a registered trade mark claim is listed other than before Master Bragge, it is likely that the Master before whom it is listed will refuse to hear it. If Master Bragge is away it is to be expected that the claim will be heard by the Deputy sitting for him.

6.31 In addition, from time to time, the Chief Master assigns particular classes of case to particular Masters. This will normally relate to managed litigation where the particular parties will be aware that their cases have been specifically assigned.

Oral applications without notice to the Masters

6.32 Masters are normally available to hear short oral applications without notice at Applications without Notice time between 2.15pm and 2.45pm on working days. Notice should be given to the Master's Appointments section in Room TM7.09, or by telephone or fax, by 4.30pm on the previous working day (except in cases of real emergency when notice may be given at any time) so that the file will be before the Master. If this procedure is not followed the Master will be likely to refuse to deal with the application. The Master will expect notice of such an application to have been given in an appropriate case to the other party. Applications without Notice time must not be used as a substitute for cases where the issue and service of an Application Notice is appropriate. (See paragraph 5.41 above).

6.33 If the assigned Master is not available on any particular day, the applicant will be informed and (except in cases of emergency) asked to come when the assigned Master is next available. Applications will only be heard by another Master in cases of emergency or when the assigned Master is on vacation.

6.34 See also Chapter 5, paragraphs 5.35 to 42 (Applications to Masters).

CHAPTER 7 PREPARATION FOR HEARINGS

Key Rules: CPR Parts 29 and 39

7.1 This Chapter contains guidance on the preparation of cases for hearings before judges and Masters. Guidelines about the conduct of trials are given in Chapter 8 of this Guide. When an affidavit or witness statement (or other document) is filed in Chancery Chambers in preparation for a hearing or for any other purpose, it should be accompanied by a written evidence lodgment form as set out in Part 2 of Appendix 4, unless it accompanies an application notice. The preparation of witness statements is covered in Chapter 8.

HEARINGS BEFORE JUDGES

7.2 To ensure court time is used efficiently there must be adequate preparation of cases prior to the hearing. This covers, among other things, the preparation and exchange of skeleton arguments, compiling bundles of documents and dealing out of court with queries which need not concern the court. The parties should also use their best endeavours to agree before any hearing what are the issues or the main issues.

Estimates

7.3 Realistic estimates of the length of time a hearing is expected to take must be given.

7.4 In estimating the length of a hearing, sufficient time must be allowed for reading any documents required to be read, the length of the speeches, the time required to examine witnesses (if any), and, if appropriate, an immediate judgment, together with the summary assessment of costs, in cases where that may arise, and any application for permission to appeal.

7.5 Except as mentioned below, a written estimate signed by the advocates for all the parties is required in the case of any hearing before a judge. This should be delivered to the Chancery Judges' Listing Officer:

(1) in the case of a trial, on the application to fix the trial date; and

(2) in any other case, as soon as possible after the application notice or case papers have been lodged with the Chancery Judges' Listing Office.

7.6 If the estimate given in the application notice for an application to the Interim Applications judge (other than applications by order) or for an application listed before the Companies judge requires to be revised, the revised estimate should be given to the court orally when the application is called on.

Changes in Estimate

7.7 The parties must inform the court immediately of any material change in a time estimate. They should keep each other informed of any such change. In any event a further time estimate signed by the advocates to the parties must be lodged when bundles are lodged (see paragraph 7.17 below).

Inaccurate estimates

7.8 Where estimates prove inaccurate, a hearing may have to be adjourned to a later date and the party responsible for the adjournment is likely to be ordered to pay the costs thrown away.

Bundles

7.9 Bundles of documents for use in court will generally be required for all hearings if more than 25 pages are involved (and may be appropriate even if fewer pages are involved). The efficient preparation of bundles of documents is very important. Where bundles have been properly prepared, the case will be easier to understand and present, and time and costs are likely to be saved. Where documents are copied unnecessarily or bundled incompetently the cost may be disallowed.

7.10 Where the provisions of this Guide as to the preparation or delivery of bundles are not followed, the bundle may be rejected by the court or be made the subject of a special costs order.

7.11 The claimant or applicant (as the case may be) should begin his or her preparation of the bundles in sufficient time to enable:

(1) the bundles to be agreed with the other parties (so far as possible);

(2) references to the bundles to be used in skeleton arguments; and

(3) the bundles to be delivered to the court at the required time.

7.12 The representatives for all parties involved must co-operate in agreeing bundles for use in court. The court and the advocates should all have exactly the same bundles.

7.13 When agreeing bundles for trial, the parties should establish through their legal representatives, and record in correspondence, whether the agreement of bundles:

(1) extends no further than agreement of the composition and preparation of the bundles; or

(2) includes agreement that the documents in the bundles are authentic (see rule 32.19); or

(3) includes agreement that the documents may be treated as evidence of the facts stated in them.

The court will normally expect parties to agree that the documents, or at any rate the great majority of them, may be treated as evidence of the facts stated in them. A party not willing to agree should, when the trial bundles are lodged, write a letter to the court (with a copy to all other parties) stating that it is not willing to agree, and explaining why.

7.14 Documents disclosed are in general deemed to be admitted to be authentic under rule 32.19.

7.15 Detailed guidelines on the preparation of bundles are set out in Appendix 6, in addition to those in PD 39, Miscellaneous Provisions relating to Hearings, paragraph 3. These should always be followed unless there is good reason not to do so. Particular attention is drawn to the need to consider the preparation of a core bundle.

7.16 The general rule is that the claimant/applicant must ensure that one copy of a properly prepared bundle is delivered at the Chancery Judges' Listing Office not less than two clear days (and not more than seven days) before a trial or application by order. However, the court may direct the delivery of bundles earlier than this. Where oral evidence is to be given a second copy of the bundle must be available in court for the use of the witnesses. In the case of bundles to be used on judge's Applications (other than applications by order) the bundles must be delivered to the clerk to the Interim Applications judge by 10am on the morning preceding the day of the hearing unless the court directs otherwise. A bundle delivered to the court should always be in final form and parties should not make a request to alter the bundle after it has been delivered to the court save for good reason.

7.17 When lodging the agreed bundles there should also be lodged a further agreed time estimate, together with an agreed reading list and an agreed time estimate in respect of that reading list. The time estimates and reading list must be signed by the advocates for the parties. Failing agreement as to the time estimates or reading list then separate reading lists and time estimates must be submitted signed by the appropriate advocate. See Appendix 7 as to reading lists.

7.18 If the case is one which does not require the preparation of a bundle, the advocate should check before the hearing starts that all the documents to which he or she wishes to refer and which ought to have been filed have been filed, and, if possible, indicate to the associate which they are.

7.19 Bundles provided for the use of the court should be removed promptly after the conclusion of the hearing unless the court directs otherwise.

Skeleton Arguments

7.20 The general rule is that for the purpose of all hearings before a judge skeleton arguments should be prepared. The exceptions to this general rule are where the application does not warrant one, for example because it is likely to be short, or where the application is so urgent that preparation of a skeleton argument is impracticable or where an application is ineffective and the order is agreed by all parties (see also paragraphs 26.26 and 26.33).

Time for delivery of skeleton arguments

7.21 **In the more substantial matters (e.g. trials and applications by order)** - not less than two clear days before the date or first date on which the application or trial is due to come on for hearing.

7.22 **On judge's applications without notice** - with the papers which the judge is asked to read on the application.

7.23 **On all other applications to a judge, including interim applications** - as soon as possible and not later than 10am on the day preceding the hearing.

7.24 Where a case is liable to be placed in the Warned List, consideration should be given to the preparation of skeleton arguments as soon as the case is placed in the Warned List, so that the skeleton arguments are ready to be delivered to the court on time. Preparation of skeleton arguments should not be left until notice is given that the case is to be heard. Notice may be given that the case is to be heard the next day.

Place to which skeleton arguments should be delivered

7.25 If the name of the judge is not known, or the judge is a Deputy Judge, skeleton arguments should be delivered to the Chancery Judges' Listing Office (Room WG4).

7.26 If the name of the judge (other than a Deputy Judge) is known, skeleton arguments should be delivered to the judge's clerk.

Content of skeleton arguments

7.27 Appendix 7 contains guidelines which should be followed on the content of skeleton arguments and chronologies, as well as indices and reading lists.

7.28 In most cases before a judge, a list of the persons involved in the facts of the case, a chronology and a list of issues will also be required. The chronology and list of issues should be agreed where possible. The

claimant/applicant is responsible for preparing the list of persons involved and the chronology, and he or she should deliver these and his or her list of issues (if required) to the court with his or her skeleton argument.

7.29 Unless the court gives any other direction, the parties shall, as between themselves, arrange for the delivery, exchange, or sequential service of skeleton arguments and any list of persons involved, list of issues or chronology. Where there are no such arrangements, all such documents should, where possible, be given to the other parties (if any) in sufficient time before the hearing to enable them properly to consider them.

Failure to lodge bundles or skeleton arguments on time

7.30 Failure to lodge skeleton arguments and bundles in accordance with this Guide may result in:

(1) the matter not being heard on the date in question;

(2) the costs of preparation being disallowed; and

(3) an adverse costs order being made.

7.31 In the Royal Courts of Justice, a log will be maintained of all late skeletons and bundles. The log will regularly be inspected by the Chancellor who will consider such further action as appropriate in relation to any recurrent failure by any chambers, barrister, or solicitors firm to comply with the requirements of the CPR and the Guide.

Authorities

7.32 Unless photocopies of authorities are provided, lists of authorities should be supplied to the usher by 9am on the first day of the hearing. Delivery of skeleton arguments does not relieve a party of his or her duty to deliver his or her list of authorities to the usher by the time stated.

7.33 Advocates should exchange lists of authorities by 4pm on the day before the hearing. Any failure in this regard which has the effect of increasing the length of a hearing or of giving rise to delay in the hearing of an application may give rise to an adverse costs order.

7.34 Excessive citation of authority should be avoided and practitioners must have full regard to the matters contained in *Practice Note (citation of cases: restrictions and rules)* [2001] 1 WLR 1001. In particular, the citation of authority should be restricted to the expression of legal principle rather than the application of such principle to particular facts. Practitioners must also, when citing authority, seek to ensure that their citations comply with *Practice Direction (Judgments: Neutral Citations)* [2002] 1 WLR 346.

Oral Argument

7.35 The court may indicate the issues on which it wishes to be addressed and those on which it wishes to be addressed only briefly.

Documents and Authorities

7.36 Only the key part of any document or authority should be read aloud in court.

7.37 At any hearing, handing in written material designed to reduce or remove the need for the court to take a manuscript note will assist the court and save time.

Adjournments

7.38 As a timetable for the case will have been fixed at an early stage, applications for adjournment of a trial should only be necessary where there has been a change of circumstances not known when the timetable was fixed.

When to apply

(1) A party who seeks to have a hearing before a judge adjourned must inform the Chancery Judges' Listing Officer of his or her application as soon as possible.

(2) Applications for an adjournment immediately before a hearing begins should be avoided as they take up valuable time which could be used for dealing with effective business and, if successful, they may result in a loss of court time altogether.

How to apply

(3) If the application is agreed, the parties should, in writing, apply to the Chancery Judges' Listing Officer. The Officer will consult the judge nominated for such matters. The judge may grant the application on conditions and give directions as to a new hearing date. But the judge may direct that the application be listed for a hearing and that all parties attend.

(4) If the adjournment is opposed the party asking for it should apply to the judge nominated for such matters or to the judge to whom the matter has been allocated. A hearing should be arranged, at the first opportunity, through the Chancery Judges' Listing Office.

(5) A short summary of the reasons for the adjournment should be delivered to the Chancery Judges' Listing Office, where possible by

12 noon on the day before the application is made. A witness statement or affidavit is not generally required.

(6) The party requesting an adjournment will, in general, be expected to show that he or she has conducted his or her own case diligently. Parties should take all reasonable steps to ensure that their cases are adequately prepared in sufficient time to enable a hearing before the court to proceed. Likewise, they should take reasonable steps to prepare and serve any document (including any written evidence) required to be served on any other party in sufficient time to enable the other party similarly to be adequately prepared.

(7) If a failure to take reasonable steps necessitates an adjournment, the court may disallow costs as between solicitor and client, or order the person responsible to pay the costs under rule 48.7, or dismiss the application, or make any other order (including an order for the payment of costs on an indemnity basis).

(8) A trial date may, on occasion, also be vacated by the Master in the circumstances envisaged in paragraph 6.11.

HEARINGS BEFORE MASTERS AND REGISTRARS

7.39 As in the case of hearings before judges, there must be adequate preparation of cases prior to a hearing before the Masters and Registrars. Parties must ensure when issuing applications to be heard by the Masters and Registrars that time estimates are realistic and make proper allowance for the time taken to read any documents required to be read, give judgment and deal with the summary assessment of costs and any application for permission to appeal. The parties must inform the court and all other parties immediately of any material change in a time estimate. Where estimates prove inaccurate, the hearing may have to be adjourned to a later date and the party responsible for the adjournment is likely to be ordered to pay the costs thrown away.

7.40 In the case of a hearing before a Master or Registrar which is listed for one hour or more and in any other hearing before a Master or Registrar such as a case management conference, where a bundle would assist, a bundle should be provided.

7.41 Bundles must be provided for a trial or equivalent hearing (such as an account or inquiry or a Part 8 claim with oral evidence) which is listed before a Master or a Registrar. Such bundles must comply with Appendix 6 and contain or be accompanied by a reading list and an estimate of reading time as set out in paragraph 7.17 above.

7.42 Bundles provided for the use of the Master and Registrars should be removed promptly after the conclusion of the hearing unless the Master or Registrar directs otherwise.

7.43 ***Delivery of Bundles for hearings before Masters***

(1) Bundles should be delivered to Masters' Appointments, Room TM7.09, not less than 2 (and not more than 7) clear working days before the hearing. They should be clearly marked "For hearing on ….. *[date]* before Master …….. ." They must not be taken to the Registry (Room TM5.04) or the Chancery Judges' Listing Office, and no document required for any hearing must be taken to the RCJ post room. Documents delivered to the wrong place are unlikely to reach the Master in time for the hearing, resulting in probable postponement and the party responsible for the adjournment is likely to be ordered to pay the costs thrown away.

(2) Detailed guidance on where to deliver documents in Chancery Chambers is at Appendix 8.

(3) Where no bundle is provided for the use of the Master, but a party intends to rely on the exhibits to a witness statement or affidavit, that party must ensure that those documents are filed with the court in sufficient time to be available to be read by the Master in advance of the hearing. Documents filed less than 10 days before a hearing must be taken to Masters' Appointments, Room TM7.09, for filing and marked "For hearing on …… *[date]* before Master ……. ." (Documents filed before that time should be filed in the Registry, Room TM5.04, in the normal way). Exhibits should not be placed in lever arch files but should be fastened securely, for example by treasury tags.

7.44 ***Delivery of bundles for hearings before Bankruptcy Registrars***

Bundles should be delivered to Room TM1.10 not less than 2 (and not more than 7) clear working days before the hearing. The should be clearly marked "For hearing on ……..*[date]* before Registrar …..…...."

7.45 ***Delivery of bundles for hearings before Companies Court Registrars***

Bundles should be delivered to Room TM4.04 not less than 2 (and not more than 7) clear working days before the hearing. They should be clearly marked "For hearing on ….…..*[date]* before Registrar …..…... ."

7.46 ***Late delivery of bundles for hearings before Masters and Registrars***

Parties delivering bundles should note that a log will be kept recording the time of their delivery to Rooms TM1.10, TM4.04 and TM7.09. Any failure

to comply with these requirements which results in the postponement of a hearing may render that party liable to pay the costs occasioned by the adjournment.

Note: Bundles for hearings before a Chancery judge must be delivered to the Chancery Judges' Listing Office (Room WG4).

Skeleton arguments

7.47 Skeleton arguments should normally be prepared in respect of any application before the Master or Registrar of one or more hours' duration and certainly for any trial or similar hearing. They are to be delivered to the same place and at the same time as bundles. The contents of the skeleton argument should be in accordance with Appendix 7.

7.48 Where a skeleton argument is required, photocopies of any authorities to be relied upon should be attached to the skeleton argument.

7.49 If pursuant to the e-mail protocol for communications with the Chancery Division (paragraph 14.8 below), a skeleton argument is sent electronically, then the provisions of the protocol as well as the time limits set out above must be followed. In particular, any authorities relied on should be delivered in hard form and, where it would assist, be accompanied by a copy of the skeleton argument in hard form.

7.50 Failure to deliver skeleton arguments or bundles in accordance with this Guide is likely to result in the matter not being heard on the date fixed, the costs of preparation being disallowed and an adverse costs order being made.

Compromise or settlement of hearings

7.51 When hearings before Masters are compromised or settled, Masters' Appointments (Room TM7.09) should be informed in writing immediately and in any event no later than 4pm on the day preceding the hearing. In the case of substantial hearings involving pre-reading Masters' Appointments should be informed immediately if it appears likely that a hearing will be ineffective, with a request that the Master is immediately notified. Written notification must be given to Room TM1.10 for Bankruptcy hearings and Room TM4.04 for Companies hearings. Failure to notify and consequent waste of court time may result in an adverse costs order being made.

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CHAPTER 8 CONDUCT OF A TRIAL

Key Rules: CPR Parts 32 and 39

8.1 An important aim of all concerned must be to ensure that at trial court time is used as efficiently as possible. Thorough preparation of the case prior to trial is the key to this.

8.2 Chapter 7 of this Guide applies to preparation for a trial as well as for other hearings in court. This Chapter contains matters which principally affect trials.

Time limits

8.3 The court may, either at the outset of the trial or at any time thereafter, fix time limits for oral submissions, and the examination and cross-examination of witnesses. (See paragraphs 3.15 - 16.)

Oral submissions

8.4 In general, and subject to any direction to the contrary by the trial judge, there should be a short opening statement on behalf of the claimant, at the conclusion of which the judge will invite short opening statements on behalf of the other parties.

8.5 Unless notified otherwise, advocates should assume that the judge will have read their skeleton arguments and the principal documents referred to in the reading list lodged in advance of the hearing (see paragraph 7.17). The judge will state at an early stage how much he or she has read and what arrangements are to be made about reading any documents not already read, for which an adjournment of the trial after opening speeches may be appropriate. If the judge needs to read any documents additional to those mentioned in the reading list lodged in advance of the hearing, a list should be provided during the opening.

8.6 It is normally convenient for any outstanding procedural matters to be dealt with in the course of, or immediately after, the opening statements.

8.7 After the evidence is concluded, and subject to any direction to the contrary by the trial judge, oral closing submissions will be made on behalf of the claimant first, followed by the defendant(s) in the order in which they appear on the claim form, followed by a reply on behalf of the claimant. In a lengthy and complex case each party should provide written summaries of their closing submissions.

8.8 The court may require the written summaries to set out the principal findings of fact for which a party contends.

Witness Statements

8.9 In the preparation of witness statements for use at trial, the guidelines in Appendix 9 should be followed.

8.10 Unless the court orders otherwise, a witness statement will stand as the witness' evidence in chief if he or she is called and confirms that he or she believes the facts stated in the statement are true: rule 32.5.

8.11 A witness may be allowed to supplement his or her witness statement orally at the trial before submitting to cross-examination, for example to deal with events occurring, or matters discovered, after his or her statement was served, or in response to matters dealt with by another party's witness, but a party seeking to examine in chief a witness who has provided a witness statement must satisfy the judge that there is good reason not to confine the evidence to the contents of his or her witness statement: see rule 32.5(3) and (4). Where practicable a supplementary witness statement should be prepared and served on the other parties, as soon as possible, to deal with matters not dealt with in the original witness statement. Permission is required to adduce a supplementary witness statement at trial if any other party objects to it. This need not be sought prior to service; it can be sought at a case management conference if convenient or, if need be, at trial.

8.12 Witnesses are expected to have re-read their witness statements shortly before they are called to give evidence.

8.13 Where a party decides not to call a witness whose witness statement has been served to give oral evidence at trial, prompt notice of this decision should be given to all other parties. The party should make plain when he or she gives this notice whether he or she proposes to put, or seek to put, the witness statement in as hearsay evidence. If he or she does not put the witness statement in as hearsay evidence, rule 32.5(5) allows any other party to put it in as hearsay evidence.

8.14 Facilities may be available to assist parties or witnesses with special needs, whether as regards access to the court, or audibility in court, or otherwise. The Chancery Judges' Listing Office should be notified of any such needs prior to the hearing. The Customer Service Officer (tel 020 7947 7731) can also assist with parking, access etc.

Cross-examination

8.15 The party cross-examining is not necessarily obliged to put his or her case to each witness even if they deal in chief with the same point. It may be sufficient if he or she puts it to one of the other side's witnesses. If that witness makes any admission or expresses any opinion or otherwise adds a qualification to his or her evidence, the party cross-examining can rely on it in argument but he or she cannot assume that other witnesses would have

made the same admission or qualification and expressed the same opinion: see *Re Yarn Spinners' Agreement* [1959] 1 All ER 299 at 309 per Devlin J.

Expert Evidence

8.16 The trial judge may disallow expert evidence which either is not relevant for any reason, or which he or she regards as excessive and disproportionate in all the circumstances, even though permission for the evidence has been given.

8.17 The evidence of experts (or of the experts on a particular topic) is commonly taken together at the same time and after the factual evidence has been given. If this is to be done it should be agreed by the parties before the trial and should be raised with the judge at the PTR, if there is one, or otherwise at the start of the trial. Expert evidence should as far as possible be given by reference to the reports exchanged.

8.18 The evidence of experts must be impartial, complying with rule 35.3. If it is not it may be disregarded.

Physical exhibits

8.19 Some cases involve a number of physical exhibits. The parties should endeavour to agree the exhibits in advance and their system of labelling. Where it would be desirable, a scheme of display should be agreed (e.g. on a board with labels readable from a distance). Where witness statements refer to these, a note in the margin (which can be handwritten) of the exhibit number should be added.

CHAPTER 9 JUDGMENTS, ORDERS AND PROCEEDINGS AFTER JUDGMENT

Key Rules: CPR Part 40, and PDs 40, 40B, 40D and 40E

Judgments

9.1 Where judgment is reserved, the judge will normally deliver his or her judgment by handing down the written text without reading it out in open court. Where this course is adopted, the advocates will be supplied with the full text of the judgment in advance of delivery. In such cases, the advocates should familiarise themselves with the text of the judgment and be ready to deal with any points which may arise when judgment is delivered. The parties should seek to agree any consequential orders: see paragraph 3.1 of PD 40E.

9.2 The text may be shown, in confidence, to the parties, but only for the purpose of obtaining instructions and on the strict understanding that the judgment, or its effect, is not to be disclosed to any other person, or used in the public domain, and that no action is taken (other than internally) in response to the judgment. Advocates should notify the judge's clerk of any obvious errors or omissions.

9.3 The judgment does not take effect until formally delivered in court, when, if requested and so far as practicable, it will be made available to the law reporters and the press. The judge will normally direct that the written judgment may be used for all purposes as the text of the judgment, and that no transcript of the judgment need be made. Where such a direction is made, copies of the judgment may be obtained from the Mechanical Recording Department.

Orders

9.4 It may often be possible for the court to prepare and seal an order more quickly if a draft of the order is handed in. Speed may be particularly important where the order involves the grant of an interim injunction or the appointment of a receiver without notice. In all but the most simple cases a draft order should be prepared and brought to the hearing.

9.5 The court may in any case direct the parties to agree and sign a statement of the terms of the order made by the court (still commonly called a minute of order). Where the proceedings are in the Royal Courts of Justice, the statement should, when agreed and signed, be delivered to Chancery Chambers Registry and Issue Section (Room TM5.04) unless otherwise requested. The statement must, under PD 40B, be filed no later than 7 days from the date of the order, unless the court directs otherwise. In the case of any dispute or difficulty as to the contents of the order, the parties should mention the matter to the judge or Master who heard the application.

9.6 Where a draft or an agreed statement of the terms of an order exists in electronic form, it is often helpful if the draft or agreed statement is provided to the court by e-mail or on disk as well as in hard copy, particularly if the order needs to be drawn quickly. Any disk supplied for this purpose must be new and newly-formatted before writing the material on it so as to minimise the risk of transferring a computer virus. The current word processing system used by the Chancery Associates is Word for Windows 2000. Enquiries regarding the provision of disks should be made of the associate responsible for drawing the order in question.

Drafting and Service of Orders

9.7 Where a judge or Master directs that a statement of the terms of an order be agreed and signed, the agreed statement should be filed in Room TM5.04 as set out in paragraph 9.5 above. Agreed statements will normally be adopted as the order of the court.

9.8 Orders will be drawn up by the court, unless the judge or Master directs that no order be drawn. Unless a contrary order is made, or the party concerned has asked to serve the order, a sealed order will be sent by the court to each party.

9.9 Where a particular order is required to be served personally, the party concerned (see above) will be responsible for service.

9.10 If the order is to be drawn up by a party, three engrossments of the order proposed should be delivered or posted to:

Chancery Chambers Registry
Room TM5.04
Thomas More Building
Royal Courts of Justice
Strand
London WC2A 2LL

Forms of Order

9.11 Recitals will be kept to a minimum and the body of the order will be confined to setting out the decision of the court and the directions required to give effect to it. If upon receipt of an order any party is of the view that it is not drawn up in such a way as to give effect to the decision of the court, prompt notice must be given to the Chancery Chambers Registry in Room TM5.04 and to all other parties setting out the reasons for dissatisfaction. If the differences cannot be resolved, the objecting party may apply on notice for the order to be amended and should do so promptly

Copies of Orders

9.12 Copies of orders may be obtained from Room TM5.04 upon payment of the appropriate fee.

Consent Orders

9.13 All consent orders filed in Chancery Chambers and in respect of which a fee has been paid are referred to the Master for approval before the order is sealed.

Consent Orders under the Inheritance (Provision for Family and Dependants) Act 1975

9.14 Every final order embodying terms of compromise made in proceedings in the Chancery Division under the 1975 Act must under paragraph 18.2 of PD 57 contain a direction that a memorandum of the order shall be endorsed on or permanently annexed to the grant and a copy of the order shall be sent to the Principal Registry of the Family Division with the relevant grant of probate or letters of administration for endorsement notwithstanding that any particular order may not, strictly speaking, be an order under the 1975 Act.

Consents by parties not attending the hearing

9.15 This is covered in paragraphs 5.24-26 above.

Tomlin Orders

9.16 Where proceedings are to be stayed on agreed terms to be scheduled to the order, the draft order should be drawn so as to read, with any appropriate provision in respect of costs, as follows:

> "And the parties having agreed to the terms set out in the attached schedule
> IT IS BY CONSENT ORDERED
> That all further proceedings in this claim be stayed except for the purpose of carrying such terms into effect
> AND for that purpose the parties have permission to apply".

This form of order is called a "Tomlin Order".

Proceedings after judgment

9.17 Proceedings under judgments and orders in the Chancery Division are now regulated by PD 40 Accounts, Inquiries etc., PD 40B Judgments and Orders, and PD 40D Court's Powers in Relation to Land etc.

Directions

9.18 Where a judgment or order directs further proceedings or steps, such as accounts or inquiries, it will often give directions as to how the accounts and inquiries are to be conducted, for example:

for accounts

(1) who is to lodge the account and within what period;

(2) within what period objection is to be made; and

(3) arrangements for inspection of vouchers or other relevant documents;

for inquiries

(4) whether the inquiry is to proceed on written evidence or with statements of case;

(5) directions for service of such evidence or statements; and

(6) directions as to disclosure.

9.19 If directions are not given in the judgment or order an application should be made to the assigned Master as soon as possible asking for such directions. The application notice should specify the directions sought. Before making the application, applicants should write to the other parties setting out the directions they seek and inviting their response within 14 days. The application to the court should not be made until after the expiry of that period unless there is some special urgency. The application must state that the other parties have been consulted and have attached to it copies of the applicant's letter to the other parties and of any response from them. The Master will then consider what directions are appropriate. In complex cases he or she may direct a case management conference.

9.20 If any inquiry is estimated to last more than two days and involves very large sums of money or strongly contested issues of fact or difficult points of law, the Master may direct that it be heard by a judge. The parties are under an obligation to consider whether in any particular case the inquiry is more suitable to be heard by a judge and should assist the Master in this. Accounts, however long they are estimated to take, will normally be heard by the Master. The Master is likely to want to give detailed directions in connection with the account and the form of it.

Registration of judgments

Paragraphs 9.21-9.23 (inserted on 12th July 2006) are at ADDENDUM A at the end of the Guide.

CHAPTER 10 APPEALS

Key Rules: CPR Part 52 and PD 52; PD Insolvency Proceedings, Part 4, paragraph 17: Appeals

General

10.1 This Chapter is concerned with the following appeals affecting the Chancery Division:

(1) Appeals within the ordinary work of the Division, from Masters to High Court judges;

(2) Insolvency appeals from High Court Registrars and from county courts to High Court judges;

(3) Appeals to High Court judges in the Chancery Division from orders in claims proceeding in a county court;

(4) Statutory appeals from tribunals and others to the Chancery Division.

Proceedings under the Companies Acts are specialist proceedings for the purposes of rule 49(2) and therefore as regards the destination of appeals. In those cases appeals from final decisions by a Registrar of the Companies Court go direct to the Court of Appeal. Such appeals are not covered in this Chapter.

10.2 This Chapter does not deal with appeals from High Court judges of the Division, except as regards permission to appeal, and as to giving notice to the court of an appeal in a contempt case. It does not deal with appeals in the course of the detailed assessment of costs.

10.3 The detailed procedure for appeals is set out in Part 52 and in PD 52, and in the PD relating to Insolvency Proceedings, to which reference should be made. This Chapter only refers to some of the salient points.

Permission to appeal

10.4 Permission to appeal is required in all cases except: (a) appeals against committal orders, (b) certain insolvency appeals and (c) certain statutory appeals. Permission to appeal will only be given where the court considers that the appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard (rule 52.3(6)).

10.5 An application for permission may be made to the lower court, but only if it is made at the hearing at which the decision to be appealed was made (rule 52.3(2)(a)). Permission may be granted, or refused, or granted in part

(whether as to a part of the order, a ground of appeal or an issue) and refused as to the rest. It may be granted conditionally.

10.6 If the lower court refuses permission, or if permission is not applied for to the lower court at the original hearing, an application for permission may be made to the appeal court, by appeal notice.

10.7 An application to the appeal court for permission may be dealt with without a hearing, but if refused without a hearing the applicant may request that it be reconsidered at a hearing. Notice of the hearing is often given to the respondent; the respondent may submit written representations or attend the hearing but will not necessarily be awarded any costs of so doing even if permission to appeal is refused.

10.8 Guidance for litigants in relation to appeals to the High Court is available by way of a Practice Statement which may be obtained from the High Court Appeals Office at the Royal Courts of Justice (Room WG4).

10.9 If a party who wishes to appeal cannot lodge all the documents which are required at the time when the appellant's notice is issued, the Appeals Office is able to allow some further time by way of an extension, but beyond this any further extension has to be allowed by a judge, who will consider the case on paper. If there is a delay in obtaining a transcript of the judgment to be appealed, the appellant should endeavour to obtain a note of the judgment, which the lawyers representing any party at the hearing below ought to be able to provide, at least as an interim measure before a transcript is obtained.

10.10 If the documents required for consideration of an application for permission to appeal have not been lodged, despite any extension which has been allowed, the case may be listed for oral hearing in the Dismissal List, for the appellant to show cause why the case should not be dismissed. The respondent will not normally be notified of such a hearing.

Time for appealing

10.11 The time limit for an appeal notice to be filed at the appeal court is 14 days after the decision of the lower court to be appealed, unless the lower court fixes some other period, which may be longer or shorter. The lower court can only fix a different period if it does so at the time it makes the order to be appealed from. Otherwise only the appeal court can alter the time limits.

Stay

10.12 Unless the lower court or the appeal court orders otherwise, an appeal does not operate as a stay of any order or decision of the lower court. A stay of execution may be applied for in the appellant's notice. If it is, it may be dealt with on paper. If the stay is required as a matter of great urgency, or

before the appellant's notice can be filed, an application should be made to the Applications judge.

Appeals from Masters in cases proceeding in the Chancery Division

10.13 If permitted, an appeal from a decision of a Master in a case proceeding in the Chancery Division usually lies to a High Court judge of the Division. An appeal from a final decision of a Master in a claim allocated to the multi-track lies direct to the Court of Appeal.

10.14 The appeal to the judge is limited to a review of the decision of the lower court, unless the court considers that, in the circumstances of the individual appeal, it would be in the interests of justice to hold a re-hearing. This principle applies to all appeals dealt with in this Chapter except where some other provision is made, as mentioned below. Unless the court does decide, exceptionally, to hold a re-hearing, the appeal will be allowed if the decision of the lower court was wrong or if it was unjust because of a serious procedural or other irregularity in the proceedings in the lower court.

Insolvency appeals

10.15 An appeal lies from a county court (Circuit or District Judge) or a High Court Registrar in bankruptcy or company insolvency matters to a High Court judge of the Chancery Division, for which permission is not required.

10.16 Appeals in proceedings under the Company Directors Disqualification Act 1986 are treated as being in insolvency proceedings.

10.17 The time limit for such an appeal is the same as for ordinary Chancery appeals. An appeal is limited to a review of the decision of the lower court.

Appeals from orders made in county court claims

10.18 An appeal against a decision of a circuit judge in a claim proceeding in a county court lies to the High Court, unless, either, the decision is a final decision in a claim allocated to the multi-track or in specialist proceedings to which rule 49(2) applies, or the decision is itself on an appeal; in either of these cases the appeal lies direct to the Court of Appeal. This does not apply, however, where the allocation to the multi-track is deemed, rather than the result of a specific order, so that in cases begun by a Part 8 claim form, even though they are deemed to be so allocated, appeals lie to the High Court. The general rules as to the requirement for permission described above apply to these appeals.

Statutory appeals

10.19 The Chancery Division hears a variety of appeals and cases stated under statute from decisions of tribunals and other persons. Some of these are listed or referred to in PD 52, but this is not exhaustive. Particular cases include appeals under the Taxes Management Act 1970 and the Inheritance Tax Act 1984, appeals from the Value Added Tax and Duties Tribunal, from the Pensions Ombudsman and the Occupational Pensions Regulatory Authority, from the Comptroller-General of Patents, Designs and Trade Marks, from the Chief Land Registrar, from the Commons Commissioners, and from the Charity Commissioners under the Charities Act 1993.

10.20 Tax and VAT appeals are dealt with in Chapter 25 below, and appeals in patent, design and trade mark matters in Chapter 23. For other appeals reference should be made to the relevant statute and to PD 52.

Appeals to the Court of Appeal: permission to appeal

10.21 An appeal lies from a judgment of a High Court judge of the Division to the Court of Appeal (unless an enactment makes it final and unappealable), but permission is required in all cases except where the order is for committal. Permission may be granted by the High Court judge, if applied to at the hearing at which the decision to be appealed was made, unless the order of the High Court judge was itself on an appeal, in which case permission may only be granted by the Court of Appeal.

Appeals in cases of contempt of court

10.22 Appellant's notices which by paragraph 21.4 of PD 52 are required to be served on "the court from whose order or decision the appeal is brought" may be served, in the case of appeals from the Chancery Division, on the Chief Master of the Chancery Division; service may be effected by leaving a copy of the notice of appeal with the clerk of the Lists in Room WG4, Royal Courts of Justice, Strand, London WC2A 2LL.

Dismissal by consent

10.23 The practice is as set out in paragraph 12 of PD 52, for all appeals except first appeals in insolvency matters. A document signed by solicitors for all parties must be lodged with the High Court Appeals Office (Room WG7), Royal Courts of Justice, Strand, London WC2A 2LL, requesting dismissal of the appeal. The appeal can be dismissed without any hearing by an order made in the name of the Chancellor. Any orders with directions as to costs will be drawn by the Chancery Associates. In the case of a first appeal in an insolvency matter, reference should be made to paragraph 17.22(8) of the PD Insolvency Proceedings.

CHAPTER 11 COSTS

Key Rules: CPR Parts 43 to 48 and the PD supplementing them

11.1 This Chapter does not set out to do more than refer to some salient points on costs relevant to proceedings in the Chancery Division. In particular it does not deal with the processes of detailed assessment or appeals in relation to such assessments.

11.2 A number of provisions in respect of costs in the CPR and in the PD supplementing Parts 43 to 48 (Costs PD) are likely to be relevant to Chancery proceedings:

(1) *Informing the client of costs orders:* Solicitors have a duty to tell their clients, within 7 days, if an order for costs is made against them and they were not present at the hearing. Solicitors must also tell anyone else who has instructed them to act on the case or who is liable to pay their fees. They must inform these persons how the order came to be made (rule 44.2; Costs PD, paragraph 7.1).

(2) *Providing the court with estimates of costs:* The court can order a party to file an estimate of costs and to serve it on the other parties. (Costs PD, paragraph 6.3). This is to assist the court in deciding what case management orders to make and also to inform other parties as to their potential liability for costs. In addition parties must file estimates of costs when they file their allocation questionnaire or any listing questionnaire (Costs PD, paragraph 6.4).

(3) *Summary assessment of costs:* An outline of these provisions is given below. Their effect is that in the majority of contested hearings lasting no more than a day the court will decide, at the end of the hearing, not only who is to pay the costs but also how much those costs should be, and will order them to be paid, usually within 14 days. As a result the paying party will have to pay the costs at a much earlier stage than before.

(4) *Interim orders for costs*: Where the court decides immediately who is to pay particular costs, but does not assess the costs summarily, for example after a trial lasting more than a day, so that the final amount of costs payable has to be fixed by a detailed assessment, the court may order the paying party to pay a sum or sums on account of the ultimate liability for costs.

(5) *Interest on costs*: The court has power to award interest on costs from a date before the date of the order, so compensating the receiving party for the delay between incurring the costs and receiving a payment in respect of them from the paying party.

Summary Assessment

11.3 The court will generally make a summary assessment of costs whenever the hearing lasts for less than one day. The judge or Master who heard the application or other hearing (which will include a trial, or the hearing of a Part 8 Claim, lasting less than a day) carries out the summary assessment. The court may decide not to assess costs summarily either because it orders the costs to be "costs in the case" or because it considers the case to be otherwise inappropriate for summary assessment, typically because substantial issues arise as to the amount of the costs claimed. Costs payable to a party funded by the Legal Services Commission cannot be assessed summarily.

11.4 In order that the court can assess costs summarily at the end of the hearing each party who intends to claim costs must, no later than 24 hours before the time fixed for the hearing, serve on the other party, and file with the court, his or her statement of costs. Paragraph 13.5 of the Costs PD contains requirements about the information to be included in this statement, and the form of the statement. Failure by a party to file and serve his or her statement of costs as required by paragraph 13.5 of the Costs PD will be taken into account by the court in deciding what order to make about costs and could result in a reduced assessment, in no order being made as to costs, or in the party being penalised in respect of the costs of any further hearing or detailed assessment hearing which may be required as a result of the party's failure.

11.5 Where the receiving party (the party to whom the costs are to be paid) is funded by the Legal Services Commission the court cannot assess costs summarily. It is not, however, prevented from assessing costs summarily by the fact that the paying party (the party by whom the costs are to be paid) is so funded. A summary assessment of costs payable by a person funded by the Legal Services Commission is not by itself a determination of the amount of those costs which the funded party is to pay (as to which see section 11 of the Access to Justice Act 1999 and regulation 10 of the Community Legal Services (Costs) Regulations 2000). Ordinarily, where costs are summarily assessed and ordered to be paid by a funded person the order will provide that the determination of any amount which the person who is or was in receipt of services funded by the Legal Services Commission is to pay shall be dealt with in accordance with regulation 10 of the Regulations.

11.6 The amount of costs to be paid by one person to another can be determined on the standard basis or the indemnity basis. The basis to be used is determined when the court decides that a person should pay the costs of another. The usual basis is the standard basis and this is the basis that will apply if the order does not specify the basis of assessment. Costs that are unreasonably incurred or are unreasonable in amount are not allowed on either basis.

11.7 On the standard basis the court only allows costs which are proportionate to the matters in issue. If it has any doubt as to whether the costs were reasonably incurred or reasonable and proportionate in amount, it resolves the doubt in favour of the paying party. The concept of proportionality will always require the court to consider whether the costs which have been incurred were warranted having regard to the issues involved. A successful party who incurs costs which are disproportionate to the issues involved and upon which he or she has succeeded will only recover an amount of costs which the court considers to have been proportionate to those issues.

11.8 On the indemnity basis the court resolves any doubt it may have as to whether the costs were reasonably incurred or were reasonable in amount in favour of the receiving party.

11.9 The court must take into account all the circumstances, including the parties' conduct and the other matters mentioned in rule 44.5. Indemnity costs are not confined to cases of improper or reprehensible conduct. They will not, however, usually be awarded unless there has been conduct by the paying party which the court regards as unreasonable or unless the case falls within rule 48.4 (see paragraph 11.13 below).

11.10 A party must normally pay costs which are awarded against him or her and summarily assessed within 14 days of the assessment. But the court can extend that time (rules 44.8, 3.1(2)(a)). The court may therefore direct payment by instalments, or defer the liability to pay costs until the end of the proceedings so that the costs can then be set against any costs or judgment to which the paying party then becomes entitled.

11.11 If the parties have agreed the amount of costs, they do not need to file a statement of the costs, and summary assessment is unnecessary. If the parties to an application are able to agree an order by consent without the parties attending they should also agree a figure for costs to be inserted in the order or agree that there should be no order as to costs. If the costs position cannot be agreed then the parties will have to attend on the appointment but unless good reason can be shown for the failure of the parties to deal with costs as set out above no costs will be allowed for that attendance. The court finds it most unsatisfactory if parties agree the terms of a consent order but not the provision for costs. Depending on the facts and circumstances, the court may not be able to decide on the question of costs without hearing the application fully, but it is not likely to be consistent with the overriding objective to allow the necessary amount of court time to the dispute on costs in such a case. The court may then have to decide the costs issue on a broad brush approach, making an order against one party or the other only if it is clear, without spending too much time on it, that such an order would be appropriate, and otherwise making no order as to the costs.

Conditional fee agreements

11.12 The court should be informed, on any application for the payment of costs, if any party has entered into a conditional fee agreement. The court can then consider whether, in the light of that agreement, to stay the payment of any costs which have been summarily assessed until the end of the action, or to decline to order the payment of costs on account under rule 44.3(8).

Other provisions

11.13 Parts 45 to 48, and the Costs PD, contain provisions regarding:

(1) special cases in which costs are payable;

(2) wasted costs;

(3) fixed costs (these are payable for instance if judgment for a sum of money is given in default); and

(d) detailed assessment.

In the context of Chancery litigation attention is drawn to rule 48.2 (Costs orders in favour of or against non-parties); rule 48.3 (Amount of costs where costs are payable pursuant to a contract) (see further Costs PD paragraph 50 and see also Chapter 21 – Mortgage Claims); and rule 48.4 and Costs PD paragraph 50A (Limitations on court's power to award costs in favour of trustee or personal representative). Reference may also be made to Chapter 26 as regards costs orders in trust litigation.

CHAPTER 12 DISTRICT REGISTRIES

General

12.1 Many Chancery cases are heard outside London. There are eight Chancery District Registries: Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle-upon-Tyne, and Preston. High Court or Circuit Chancery judges sit regularly at all of these centres.

12.2 Outside London, county courts have exclusive jurisdiction in bankruptcy, and proceedings in bankruptcy must therefore be brought in the relevant county court which has bankruptcy jurisdiction rather than in the District Registries.

Judges

12.3 Two Chancery judges supervise the arrangements for the hearing of Chancery cases out of London. Mr Justice Hart is the Chancery Supervising judge for the Western, Wales and Chester, and Midland Circuits. Mr Justice Patten, as Vice-Chancellor of the County Palatine of Lancaster, is concerned with Chancery hearings on the Northern and North Eastern Circuits. Both these judges regularly take substantial Chancery matters for hearing outside London. Mr Justice Hart sits regularly in Birmingham, Bristol and Cardiff, but if appropriate will sit elsewhere on the relevant circuit, for example in Chester. Mr Justice Patten sits regularly in Manchester, Liverpool, Leeds and Newcastle, and may sit in Preston or in other court centres on either circuit (e.g. Carlisle or Sheffield) if business so requires.

12.4 There are also Specialist Circuit judges who have the authority to exercise the powers of a judge of the Chancery Division (under section 9 of the Supreme Court Act 1981, therefore known as section 9 judges) and who normally sit out of London. They exercise a general Chancery jurisdiction, subject to exceptions. Those exceptions are proceedings directly concerning revenue, and proceedings before the Patents Court constituted as part of the Chancery Division under section 96 of the Patents Act 1977.

12.5 Currently the Circuit judges who sit regularly in Chancery matters out of London are:

Judge Weeks QC (Bristol)
Judge Norris QC (Birmingham)
Judge Wyn Williams QC (Cardiff)
Judge Howarth (Manchester, Liverpool and Preston)
Judge Behrens (Leeds and Newcastle)
Judge Kaye QC (Leeds and Newcastle)
Judge Hodge QC (Manchester, Liverpool and Preston)

Judge Gilliland QC (who normally sits in Salford hearing Technology and Construction cases), Judges Kershaw QC and Hegarty QC (who are the local Mercantile judges based in Manchester and Liverpool) and Judge Raynor QC also assist in the disposal of Chancery business on the Northern Circuit. So also, on the North-Eastern Circuit, does Judge Langan QC who is the Mercantile judge for Leeds and Newcastle. The Chancery, Mercantile and TCC judges assist each other in Birmingham, Bristol and Cardiff as well.

12.6 In addition certain other Circuit judges and some Queen's Counsel are authorised to take Chancery cases on the same basis.

Trials

12.7 If a Chancery case is proceeding in any District Registry other than a Chancery District Registry, the case should normally be transferred to the appropriate Chancery District Registry upon the first occasion the case comes before the court.

12.8 The venue of a Chancery trial out of London will normally be one of the centres mentioned above. However in appropriate circumstances (e.g. because of the number or age of local witnesses, the need for a site visit, or travel problems) arrangements can be made for a Chancery judge to sit elsewhere.

12.9 In cases of great difficulty or importance the trial may be by a High Court judge. Arrangements can also be made in exceptional circumstances for a High Court judge to deal with any of the matters excepted from the jurisdiction of an authorised Circuit judge. Such a judge may be one of the Chancery judges other than Hart or Patten JJ.

12.10 Where it is desired that a case be heard by a specialist Chancery judge outside one of the normal Chancery Centres, or be taken by a High Court judge, inquiries should normally be made in the first instance to the Listing Officer for the nearest Chancery District Registry on the relevant circuit . If the need arises, inquiries can also be made to the clerk to Mr Justice Hart or the clerk to Mr Justice Patten, as the case may be. If no relevant clerk is available, inquiries should be made to the Chancery Listing Officer at the Royal Courts of Justice in London. The clerks' contact numbers are in Appendix 1.

Applications

12.11 Subject to the following paragraphs any application should normally be made to a District Judge (unless it relates to a matter which a District Judge does not have power to hear).

12.12 A District Judge may of his or her own initiative (for instance because of the complexity of the matter or the need for specialist attention) direct that an application be referred to a High Court judge or an authorised Circuit Judge.

12.13 If all or any of the parties consider that the matter should be dealt with by a judge (High Court or Circuit), the parties or any of them may arrange that the matter be listed on one of the ordinary application days (see paragraph 12.14 below). The District Judges, who will consult where necessary with one of the Chancery judges (High Court or Circuit), are usually available by post or telephone to give guidance on procedural matters, for example the court before which the matter should come or whether the matter may be dealt with in writing.

Application Days before a judge

12.14 Applications days are listed regularly before a judge, when applications and short appeals, including all interim matters are heard. Normally all matters will be called into court at the commencement of the day in order to work out a running order. Matters will be heard without the court going into private session unless good reason is shown. Rights of audience are unaffected. Applications days in Newcastle are subject to the Newcastle telephone application pilot scheme (see PD 23B), and many applications there are dealt with by telephone hearings.

12.15 Applications days are: Monday in Birmingham, Thursday in Bristol and Friday in Cardiff. In Manchester and Liverpool application days are on Friday of each week alternating between Manchester and Liverpool. In Leeds and Newcastle Chancery and Mercantile application days are combined. In Leeds applications are heard most Fridays. In Newcastle there is at least one application day each month, on a Friday. An application which needs to be heard urgently may be made, by telephone or in person, on a day other than the regular applications day: the Listing Officer for the relevant centre should be approached as soon as possible when the need for an urgent hearing arises.

Applications out of hours and telephone applications

12.16 These are governed by the general rules, save that in the case of applications out of hours, the party applying should contact the relevant court office. The main relevant contact numbers are set out in Appendix 1. In case of difficulty, contact the Royal Courts of Justice, on the number given in Appendix 1.

Agreed interim orders

12.17 Normally a hearing will not be necessary. The procedure is as in the general rules.

12.18 A judge is unlikely to agree to more than two consent adjournments of an interim application. Applications to vacate a trial date will require substantial justification and a hearing, normally before the trial judge.

Local Listing Arrangements

12.19 Listing arrangements may vary at different centres, depending on availability of judges and courtrooms. The current details are described below.

Birmingham: Shared Listing

12.20 The Shared List

The shared list is primarily for use by the three specialised lists of the Birmingham District Registry - those operated by the Chancery, Mercantile and Technology and Construction Courts.

The shared list is in addition to the normal lists of those courts and allows better use to be made of judicial time. Given the settlement rate of trials in the three divisions, two additional cases, the fourth and fifth fixtures, will be listed at any one time, in addition to the three cases listed before the three specialist courts. Those two additional cases will be taken by any of the section 9 judges who become available. Cases are only entered into the shared list if there is a very strong expectation that they will be heard on the day fixed.

In order, therefore, for a case to enter the shared list it must be suitable for hearing before any of the section 9 specialist judges.

Suitability for listing a case in the shared list may be suggested by the District Judge at directions stage, or by the parties when applying for the case to be listed. It is likely that 4th and 5th fixtures will be allocated an earlier trial date than a case which has to be heard by the appropriate specialist judge.

The final decision to list a case in the shared list will lie with Judge Norris QC for Chancery cases, Judge Alton for Mercantile cases, and Judge Kirkham for Technology and Construction cases.

Bristol: Reserve Listing

12.21 In order to make available earlier hearing dates than would otherwise be possible, a reserve list is operated for Chancery cases listed to be heard in the Bristol District Registry. Cases in the reserve list are given a fixed date, usually as a second fixture. A second fixture will only be given when there is a very strong expectation of the case being heard on that date. Other

judges are called upon in the event of both first and second fixtures being effective.

Cardiff: Reserve Listing

12.22 Judge Wyn Williams QC sits both as a Chancery judge and a judge of the Technology and Construction Court. His list contains both categories of case. All cases are allocated a fixed starting date but some are first and some reserve fixtures. Other judges are called upon in the event of both first and reserve fixtures being effective. All the judges who sit at the Cardiff Civil Justice Centre (Judges Price QC, Masterman, Chambers QC and Hickinbottom) are authorised to sit as Chancery judges. Any discussions concerning listing should be with the Chancery Listing clerk in Cardiff.

Manchester, Liverpool and Preston

12.23 The Shared List

When sitting at the same court centre, Judge Howarth and Judge Hodge QC will assist each other in the disposal of their respective daily lists. If necessary and if they are available at the relevant court centre, Judge Kershaw QC and Judge Hegarty QC (who are the local Mercantile judges), and other circuit judges will assist in the disposal of business. Listing for all Chancery matters in Manchester, Liverpool and Preston is dealt with from Manchester.

Second Fixtures

Given the very high settlement rate, most cases will be given a second fixture date as well as a first fixture date. Parties to second fixtures are notified in advance of the hearing date if the case will not be reached on that date. The amount of notice depends on the circumstances of the case. In some cases it may not be until the previous working day but it is usually farther ahead, and longer may be guaranteed in the case of particular difficulties.

Leeds and Newcastle

12.24 When sitting at the same time in Leeds or Newcastle Judge Behrens, Judge Langan QC and Judge Kaye QC will assist each other in the disposal of their respective daily lists. The Chancery and Mercantile Court lists are run on a shared basis in both Leeds and Newcastle. Second fixtures are used in the same way as on the Northern Circuit, and on the same basis.

CHAPTER 13 COUNTY COURTS

Key Rules: CPR Part 30; PD 7, paragraph 2

Unified procedure

13.1 A key feature of the civil justice reforms is the introduction of a unified procedure for the High Court and for county courts. The procedure to be followed in both courts is therefore the same.

Chancery cases brought in the county court

13.2 Any county court has jurisdiction to hear a Chancery case, subject to two principal exceptions: (1) a probate claim in a county court must be brought in a county court where there is a Chancery District Registry: CPR part 57.2(3); (2) an intellectual property claim must be brought in any such county court or in the Patents County Court: CPR Part 63.13 and PD 63 paragraph 18.

13.3 If a case of a Chancery nature is brought in any county court, the claim form should be marked "Chancery business" in the top left hand corner: CPR Part 7, PD 2.5.

13.4 If a Chancery case is brought in a county court which does not coincide with a Chancery District Registry, consideration ought to be given at an early stage to whether it needs to have specialist case management or a specialist trial judge, because of the nature of the issues. If it needs either, then it may be necessary to transfer the case to a county court at a Chancery District Registry. If there are good reasons against such a transfer, for example because of the distance involved and the convenience of parties or witnesses, then it may be possible, with enough notice, to arrange that the trial is heard by a recorder with Chancery experience or even by a Chancery circuit judge. Guidance has been given to District Judges by the Chancery supervising judges as to the circumstances and types of case in respect of which either a transfer or a special arrangement for trial by a judge or recorder with specialist experience may be appropriate.

Transfer to a county court

13.5 Any Chancery case which does not require to be heard by a High Court judge, and falls within the jurisdiction of the county courts, may be transferred to a county court. Where a case has been so transferred, the papers must be marked "Chancery Business" so as to ensure, so far as possible, suitable listing.

13.6 The jurisdiction of county courts is set out in the High Court and County Court Jurisdiction Order 1991 as amended, and in enactments amended by that Order.

13.7 The jurisdiction of the High Court to transfer cases to a county court is contained in the County Courts Act 1984, section 40, as substituted by the Courts and Legal Services Act 1990, section 2(1). Under that section, the court has jurisdiction in certain circumstances to strike out actions which ought to have been begun in a county court.

13.8 A claim with an estimated value of less than £50,000 will generally be transferred to a county court, if the county court has jurisdiction, unless it is either within a specialist list or is within the criteria in rule 30.3(2).

13.9 If the case is one of a specifically Chancery nature a transfer from the High Court will ordinarily be to the Central London County Court (Chancery List) ("the CLCC") where cases are heard by specialist Chancery Circuit judges or recorders and a continuous Chancery List is maintained, unless the parties prefer a transfer to a local county court.

13.10 Even where the estimated value of the claim is more than £50,000 transfer to the CLCC may still be ordered if the criteria in rule 30.3(2) point in that direction, in particular having regard to the criteria in rule 30.3(2)(d), namely the complexity of the facts, legal issues, remedies or procedures involved.

13.11 If a claim is transferred to a county court at the allocation stage no other directions will usually be given and all case management will be left to the county court.

13.12 The Chancery List at the CLCC is managed by the Business Chancery and Patents Section at 26 Park Crescent, London W1 4HT. The telephone number of the section manager is set out in Appendix 1. A guide to the Chancery List may be obtained from the section manager.

13.13 As an alternative to starting the case in the Chancery Division and transferring to the CLCC a case (if appropriate to be started there) may be started at the CLCC and a request made there for it to be transferred to the Chancery List. The request will receive judicial consideration and a transfer will be made if appropriate.

13.14 It should be noted that only in very limited circumstances may freezing orders or search orders be granted in the county court. If necessary, an application may be made in the High Court in aid of the county court proceedings if such an order is to be sought in a case where it cannot be granted in the county court.

13.15 Practitioners should continue to take care that Chancery cases requiring chancery expertise are dealt with in a county court with a Chancery District Registry.

Patents County Court

13.16 See Chapter 23 below.

CHAPTER 14 USE OF INFORMATION TECHNOLOGY

Key Rules: CPR rule 1.4, Part 6; PD 6, PD 32, Annex 3

General

14.1 The CPR contain certain provisions about the use of information technology in the conduct of cases. Apart from these provisions, no standard practice has evolved or been prescribed for the use of information technology in civil cases, but it is possible to identify certain areas in which electronic techniques may be used which should encourage the efficient and economical conduct of litigation.

14.2 It must be remembered, however, that it is unlikely that the number of litigants in person will diminish, and the number may well increase, in the future and that not all solicitors have available sophisticated IT facilities. Use of IT is acceptable only if no party to the case will be unfairly prejudiced and its use will save time or money.

14.3 A number of specific applications of information technology have been well developed in recent years. The use of fax, the provision of skeleton arguments on disk, and daily transcripts on disk (with or without appropriate software) have become commonplace. Short applications may be economically heard by a conference telephone call, provided that the parties ensure that the judge or Master has the relevant documents and a draft order. Taking evidence by video link has become more common, and the available technology has improved considerably. There is still little experience of the intensive use of information technology in the ordinary course of the trial by, for example, providing documents as images to be displayed.

14.4 In any case in which it is proposed to use information technology in the preparation, management and presentation of a case in a manner which is not provided for by the CPR, it may be necessary for directions to be given by the judge who is to hear the case. It is unlikely to be satisfactory for parties and their solicitors to agree to a particular application of information technology (for example, using imaging techniques to deal either with disclosure or with the preparation of documents for use in court, in effect by way of electronic bundles) without the agreement of the judge. Accordingly it is likely, particularly in heavy cases, that it will be desirable for a judge to be nominated to conduct the case. Where a nomination is desired, application should be made to the Chancellor in writing by letter addressed to his clerk for a judge to be nominated.

14.5 In every case in which it is proposed to use information technology, the first step will be for the solicitors for all parties to determine whether it is possible to establish a common protocol for the electronic exchange and management of information. It is recommended that the protocol provided

by the Technology and Construction Solicitors' Association ("TeCSA") be used. The TeCSA protocol has enjoyed success and is available from TeCSA's website at *http://www.tecsa.org.uk/protocol/protocol.htm.* The CPR's underlying policy of co-operation and collaboration is particularly important in this context. In a large case the parties must facilitate the task of the judge by providing any additional help and IT know-how, including, for example, demonstrations, which he or she requires in order to control the case properly.

14.6 The judges of the Chancery Division and their clerks are equipped with IBM compatible computers running Windows (usually NT 4.0 but in some cases another version) and MS Office 97 or 2000. To avoid compatibility problems it is preferable that text files to be provided for use by a judge or clerk be provided in Rich Text Format (RTF).

Provision of information on disk: Skeleton arguments etc

14.7 Skeleton arguments, chronologies, witness statements, experts' reports and other documents (if available in electronic form) should be provided on disk (or by e-mail) if the judge requests it. Enquiry should be made of the judge's clerk for this purpose. Where the complexity of the case justifies it, attention must be given to providing the judge with versions of the documents containing links to enable cross-references to be followed up in a convenient manner. Disks provided to judges must be checked for virus contamination and be clean.

E-mail communications with the Chancery Division

14.8 A protocol for e-mail communications with the Chancery Division sets out how parties may communicate by e-mail on certain matters, and can be found at www.hmcourts-service.gov.uk. The protocol applies PD 5B on electronic communication and filing of documents in respect of specified documents: skeleton arguments, chronologies, reading lists, lists of issues, lists of authorities (but not the authorities themselves) and lists of *dramatis personae* sent in advance of a hearing. The protocol sets out the relevant e-mail addresses, which are also to be found in Appendix 1. The clerk to the judge concerned should be contacted to find out whether the judge will accept other documents by e-mail and whether documents should be sent by e-mail direct to the judge's clerk's e-mail address.

Transcripts

14.9 The various shorthand writers provide a number of different transcript services. These range from an immediately displayed transcript which follows the evidence as it is given (usually with about 10 seconds delay) to provision of transcripts of a day's proceedings one or two days in arrears. The use of transcripts is always of assistance if they can be justified on the ground of cost and in long cases they are a considerable advantage. If an

instantaneous service is proposed, inquiries should be made of the judge's clerk, and sufficient time for the installation of the equipment necessary and for any familiarisation on the part of the judge with the system should be found. If special transcript-handling software is to be used by the parties, consideration should be given to making the software available to the judge.

14.10 If the shorthand writers make disks available (and nearly all do) the judge should be provided with disks as they appear if he or she requires them.

Fax communications

14.11 The use of fax in the service of documents is now authorised by rule 6.2(1) and PD 6.

14.12 Each of the judges sitting in the Chancery Division may be reached by fax if the occasion warrants it. The respective judges' clerks' telephone and fax numbers are set out in Appendix 1. Where the name of the judge is not known, short documents may be sent to the Chancery Judges' Listing Office, whose fax number is also given in Appendix 1. Written evidence should not be sent by fax to this number. All fax messages should have a cover sheet setting out the name of the case, the case number and the judge's name, if known.

Telephone hearings

14.13 Applications may be heard by telephone, if the court so orders, but normally only if all parties entitled to be given notice agree, and none of them intends to be present in person. Special provisions apply where the applicant or another party is in person: see paragraph 6.3 of PD 23. Guidance on other aspects of telephone hearings, and in particular how to set them up, is contained in paragraph 6.5 of PD 23. When putting that guidance into practice once an order has been made for a hearing to take place by a telephone conference call, the following points may be useful:

(1) A telephone hearing may be set up by calling the BT Legal Call Centre on 0800 028 4194. The caller's name and EB account number will have to be given. Other telecommunications providers may also be able to offer the same facility.

(2) The names and telephone numbers of the participants in the hearing including the judge must be provided.

(3) The co-ordinator should be told the date, time and likely approximate duration of the hearing.

(4) The name and address of the court and the court case reference should be given, for delivery of the tape of the hearing.

(5) Then tell the court that the hearing has been arranged.

It is necessary to ensure that all participants in the hearing have all documents that it may be necessary for any of them to refer to by the time the hearing begins.

Video-conferencing

14.14 The court may allow evidence to be taken using video-conferencing facilities: rule 32.3. Experience has shown that normally taking evidence by this means is comparatively straightforward, but its suitability may depend on the particular witness, and the case, and on such matters as the volume and nature of documents which need to be referred to in the course of the evidence.

14.15 A video-link may also be used for an application, or otherwise in the course of any hearing.

14.16 Annex 3 to PD 32 (Video Conferencing Guidance) provides further detail on the manner in which video conferencing facilities are to be used in civil proceedings.

14.17 Video conferencing facilities are available at the Royal Courts of Justice in Court 38. It is convenient that these facilities should be used if at all possible in relation to proceedings which are under way in the Royal Courts of Justice. Attention is drawn to the following matters:

(1) Permission to use video conferencing during a hearing should be obtained as early as possible in the proceedings. If all parties are agreed that the use of video conferencing is appropriate, then a hearing may not be necessary to obtain such permission.

(2) Before an order fixing the appointment for the use of the facilities at the Royal Courts of Justice is obtained their availability must be ascertained from the video managers (Roger Little / Norman Muller, tel. 020 7947 7609, fax 020 7947 6357). When the order is made the video managers must be informed immediately so as to ensure that all necessary arrangements can be made well in advance of the hearing.

(3) If it is necessary for other facilities to be used, whether because the Royal Courts of Justice facilities are unavailable or for any other reason, consideration should be given to using the facilities available at the Bar Council or the Law Society. The party seeking to use the facilities will be responsible for making all the necessary arrangements.

(4) If the use of facilities other than those at the Royal Courts of Justice, the Bar Council or the Law Society is proposed, approval must first be

obtained to the use of the particular facilities even if the parties are agreed.

CHAPTER 15 MISCELLANEOUS MATTERS

Key Rules: CPR Part 39; PD – Miscellaneous Provisions relating to Hearings supplementing CPR Part 39

Litigants in person

15.1 The provisions of this Guide in general apply to litigants in person. Thus, for example, litigants in person should:

(1) prepare a written summary of their argument in the same circumstances as those in which a represented party is required to produce a skeleton argument;

(2) prepare a bundle of documents in the same way that a represented party is required to produce a bundle of documents; and

(3) be prepared to put forward their argument within a limited time if they are directed to do so by the court.

15.2 This means that litigants in person should identify in advance of the hearing those points which they consider to be their strongest points, and that they should put those points at the forefront of their oral and written submissions to the court.

15.3 It is not the function of court officials to give legal advice. However, subject to that, they will do their best to assist any litigant. Litigants in person who need further assistance should contact the Community Legal Service (CLS) through their Information Points. The CLS is developing local networks of people giving legal assistance such as law centres, local solicitors or the Citizens' Advice Bureaux. CLS Information Points are being set up in libraries and other public places. Litigants can telephone the CLS to find their nearest CLS Information Point on 0845 608 1122 or can log on to the CLS website at *www.justask.org.uk* for the CLS directory and for legal information.

15.4 The Royal Courts of Justice Advice Bureau off the Main Hall at the Royal Courts of Justice is open from Monday to Friday from 10am to 1pm and from 2pm to 5pm. The Bureau is run by lawyers in conjunction with the Citizens' Advice Bureau and is independent of the court. The Bureau operates on a "first come first served" basis, or telephone advice is available on 0845 120 3715 (or 020 7947 6880) from Monday to Friday between 11am and 12 noon and between 3 and 4pm. The Bureau also operates a Bankruptcy Court Advice Desk on Monday and Wednesday mornings (10am – 1pm) in the Consultation Room, 1st Floor, Thomas More Building.

15.5 Where a litigant in person is the applicant, the court may ask one of the represented parties to open the matter briefly and impartially, and to summarise the issues.

15.6 It is the duty of an advocate to ensure that the court is informed of all relevant decisions and enactments of which the advocate is aware (whether favourable or not to his or her case) and to draw the court's attention to any material irregularity.

15.7 Representatives for other parties must treat litigants in person with consideration. They should where possible be given photocopies of any authorities which are to be cited before the case starts in addition to the skeleton argument. They should be asked to give their names to the usher if they have not already done so. Representatives for other parties should explain the court's order after the hearing if the litigant in person does not appear to understand it.

15.8 If a litigant in person wishes to give oral evidence he or she will generally be required to do so from the witness box in the same manner as any other witness of fact.

15.9 A litigant in person must give an address for service in England or Wales. If he or she is a claimant, the address will be in the claim form or other document by which the proceedings are brought. If he or she is a defendant, it will be in the acknowledgment of service form which he or she must send to the court on being served with the proceedings. It is essential that any change of address should be notified in writing to Chancery Chambers and to all other parties to the case.

15.10 Notice of hearing dates will be given by post to litigants at the address shown in the court file. A litigant in person will generally be given a fixed date for trial on application. A litigant in person who wishes to apply for a fixed date should ask the Chancery Judges' Listing Office for a copy of its Guidance Notes for Litigants in Person.

Assistance to litigants in person

15.11 A litigant who is acting in person may be assisted at a hearing by another person, often referred to as a McKenzie friend (see *McKenzie v. McKenzie* [1971] P 33). The litigant must be present at the hearing. If the hearing is in private, it is a matter of discretion for the court whether such an assistant is allowed to attend the hearing. That may depend, among other things, on the nature of the proceedings.

15.12 The McKenzie friend is allowed to help by taking notes, quietly prompting the litigant and offering advice and suggestions to the litigant. The court can, and sometimes does, permit the McKenzie friend to address the court on behalf of the litigant, by making an order to that effect under section

27(2)(c) of the Courts and Legal Services Act 1990 (by reference to sections 17 and 18 of that Act), but this is an exceptional course. Some factors which may be relevant to whether this should be permitted have been discussed in reported judgments, including *Izzo v. Philip Ross* [2002] BIPR 310 and *Paragon Finance v. Noueiri (Practice Note)* [2001] EWCA Civ 1402, [2001] 1 W.L.R. 2357.

15.13 The Personal Support Unit (Room M104) offers personal support for litigants in person, witnesses and others. The PSU will sometimes be able to accompany litigants into court to provide emotional support and give other guidance, but it does not give legal advice.

Representation on behalf of companies

15.14 Rule 39.6 allows a company or other corporation to be represented at trial by an employee if the employee has been authorised by the company or corporation to appear on its behalf and the court gives permission. Paragraph 5 of PD 39 describes what is needed to obtain permission from the court for this purpose and mentions some of the considerations relevant to the grant or refusal of permission.

Robed and unrobed hearings

15.15 Advocates (and judges) wear robes at hearings by High Court judges of trials (including preliminary issues) and statutory appeals or cases stated. Robes are not worn for other hearings, including appeals from Masters, Bankruptcy Registrars and county courts. The Daily Cause List states, in relation to each judge's list, whether the matter is to be heard robed or unrobed. Robes are not worn at hearings before Masters. Robes are worn at the following hearings before Bankruptcy and Companies Court Registrars: public examinations of bankrupts and of directors or other officers of companies; applications for discharge from bankruptcy or for suspension of such discharge; all proceedings under the Company Directors Disqualification Act 1986; petitions to wind up companies; final hearings of petitions for the reduction of capital of companies.

Solicitors' rights of audience

15.16 At hearings in chambers before 26 April 1999 solicitors had general rights of audience. The fact that a matter which would then have been heard in chambers is now heard in public under Part 39 does not affect rights of audience, so in such matters as would have been heard in chambers previously, the general right of audience for solicitors continues to apply. Such cases included appeals from Masters, applications for summary judgment, and those concerned with pleadings, security for costs and the like, pre-trial reviews, and applications concerned with the administration of a deceased person's estate, a trust or a charity. They did not include applications in what is now the Interim Applications List or the Companies

Court, nor appeals from county courts or insolvency appeals. Solicitors do, however, have general rights of audience in personal insolvency matters; this is not affected by whether the hearing is in public or private.

15.17 If a solicitor who does not have the appropriate special right of audience wishes to be heard in a case which is not one which, before 26 April 1999, would have been heard in chambers nor a personal insolvency case, an application may be made for the grant of a special right of audience before the particular court and for the particular proceedings under the Courts and Legal Services Act 1990, section 27(2)(c).

Recording at hearings

15.18 In the Royal Courts of Justice it is normal to record all oral evidence and any judgment delivered during a hearing before a judge. If any party wishes a recording to be made of any other part of the proceedings, this should be mentioned in advance or at the time of the hearing.

15.19 At hearings before Masters, it is not normally practicable to record anything other than any oral evidence and the judgment, but these will be recorded. No party or member of the public may use recording equipment without the court's permission.

CHAPTER 16 SUGGESTIONS FOR IMPROVEMENT AND COURT USERS' COMMITTEES

16.1 Suggestions for improvements in this Guide or in the practice or procedure of the Chancery Division are welcome. Unless they fall within the remit of the committees mentioned at paras. 16.3 to 16.7 below, they should be sent to the clerk to the Chancellor.

Chancery Division Court Users' Committee

16.2 The Chancery Division Court Users' Committee's function is to review, as may from time to time be required, the practice and procedure of all courts forming part of the Chancery Division, to ensure that they continue to provide a just, economical and expeditious system for the resolution of disputes. The Chancellor is the chairman. Its membership includes judges, a Master, barristers, solicitors and other representatives of court staff and users. Meetings are held three times a year, and more often if necessary. Suggestions for points to be considered by the Committee should be sent to the clerk to the Chancellor.

Insolvency Court Users' Committee

16.3 Proposals for change in insolvency matters fall within the remit of the Insolvency Court Users' Committee unless they relate to the Insolvency Rules 1986. The members of the Insolvency Court Users' Committee include members of the Bar, the Law Society, the Insolvency Service and the Society of Practitioners of Insolvency. Meetings are held three times a year, and more often if necessary. Suggestions for points to be considered by the Committee should be sent to the clerk to the Chancellor.

Insolvency Rules Committee

16.4 The Insolvency Rules Committee must be consulted before any changes to the Insolvency Rules 1986 are made. The Chairman of the Insolvency Rules Committee is Mr Justice David Richards. Proposals for changes in the Rules should be sent to The Insolvency Service, Room 502, PO Box 203, 21 Bloomsbury Street, London WC1B 3QW, with a copy to the clerk to Mr Justice David Richards.

Intellectual Property Court Users' Committee

16.5 This considers the problems and concerns of intellectual property litigation generally. Membership of the committee includes the principal Patent judges, a Master, a representative of each of the Patent Bar Association, the Intellectual Property Lawyers Association, the Chartered Institute of Patent Agents, the Institute of Trade Mark Agents and the Trade Marks Designs and Patents Federation. It will also include one or more other Chancery judges. The Chairman is Mr Justice Pumfrey. Anyone having views

concerning the improvement of intellectual property litigation is invited to make his or her views known to the committee, preferably through the relevant professional representative on the committee.

Pension Litigation Court Users' Committee

16.6 This consists of a judge and a Master, two barristers and two solicitors. Its Chairman is Mr Justice Etherton. Any suggestions for consideration by the committee should be sent to the clerk to Mr Justice Etherton.

Court Users' Committees outside London

16.7 There are several Court Users' Committees relating to Chancery work on circuit. They are as follows:

(1) *The Northern Circuit and the North-Eastern Circuit Court Users Committees*: the Northern Circuit Chancery Court Users' Committee, which meets in Manchester; the Leeds Chancery and Mercantile Court Users' Committee; and the Newcastle Joint Chancery Mercantile and TCC Court Users' Committee. Each of these meets two or three times a year, and has a membership including judges, court staff, barristers and solicitors. The Vice-Chancellor of the County Palatine of Lancaster chairs these three Committees, and the Vice-Chancellor's clerk acts as secretary to each Committee. All communications should be to the clerk.

(2) *The Western Circuit, Wales & Chester and Midland Circuits Court User Committees*: the circuit committees normally meet three or four times per year. They have a membership including judges, court staff, barristers and solicitors.

(a) *Western Circuit*: Judge Weeks chairs the committee in Bristol (or Mr Justice Hart when there), Mrs Liz Bodman acts as secretary. All communications should be addressed to her at Chancery Listing Section, Bristol Crown Court, Small Street, Bristol.

(b) *Wales & Chester Circuit*: Judge Williams chairs the committee in Cardiff (or Mr Justice Hart when there), the Diary Manager, Annette Parsons acts as secretary. All communications should be addressed to her at Cardiff Civil Justice Centre, 2 Park Street, Cardiff.

(c) *Midland Circuit*: Judge Norris chairs the committee in Birmingham (or Mr Justice Hart when there), the Chancery Listing Officer, Amanda Lee acts as secretary. All communications should be addressed to her at Chancery Listing

Section, Birmingham Civil Justice Centre, 33 Bull Street, Birmingham.

CHAPTER 17 ALTERNATIVE DISPUTE RESOLUTION

Key Rules: CPR rules 3.1 and 26.4

17.1 While emphasising the primary role of the court as a forum for deciding cases, the court encourages parties to consider the use of ADR (such as, but not confined to, mediation and conciliation) as a possible means of resolving disputes or particular issues.

17.2 The settlement of disputes by means of ADR can:

(1) significantly help litigants to save costs;

(2) save litigants the delay of litigation in reaching finality in their disputes;

(3) enable litigants to achieve settlement of their disputes while preserving their existing commercial relationships and market reputation;

(4) provide litigants with a wider range of solutions than those offered by litigation; and

(5) make a substantial contribution to the more efficient use of judicial resources.

17.3 The court will in an appropriate case invite the parties to consider whether their dispute, or particular issues in it, could be resolved through ADR. In particular, it is to be expected that the judge or Master at any case management conference will inquire what steps can usefully be taken to resolve the dispute by settlement discussion, alternative dispute resolution or other means. The parties should be in a position to tell the court what steps have been taken or are proposed to be taken. The court may also adjourn the case for a specified period of time to encourage and enable the parties to use ADR and for this purpose extend the time for compliance by the parties or any of them with any requirement under the CPR or this Guide or any order of the court. The court may make such order as to the costs that the parties may incur by reason of the adjournment or their using or attempting to use ADR as may in all the circumstances seem appropriate.

17.4 Legal representatives in all cases should consider with their clients and the other parties concerned the possibility of attempting to resolve the dispute or particular issues by ADR and they should ensure that their clients are fully informed as to the most cost effective means of resolving their dispute.

17.5 Parties who consider that ADR might be an appropriate means of resolving their dispute, or particular issues in the dispute, may apply for directions at any stage.

17.6 The clerk to the Commercial Court keeps some published information as to individuals and bodies that offer ADR services. (The list also includes individuals and bodies that offer arbitration services.) If the parties are unable to agree upon a neutral individual, or panel of individuals, for ADR, they may refer to the judge for assistance, though the court will not recommend any particular body or individual to act as mediator or arbitrator.

SECTION B SPECIALIST WORK

CHAPTER 18 INTRODUCTION TO THE SPECIALIST WORK OF THE CHANCERY DIVISION

18.1 As explained in Chapter 1 of this Guide, some proceedings in the High Court must be brought in the Chancery Division. These matters include:

(1) claims for the sale, exchange or partition of land, or the raising of charges on land;

(2) mortgage claims;

(3) claims relating to the execution of trusts;

(4) claims relating to the administration of the estates of deceased persons;

(5) bankruptcy matters;

(6) claims for the dissolution of partnerships or the taking of partnership or other accounts;

(7) claims for the rectification, setting aside or cancellation of deeds or other instruments in writing;

(8) contentious probate business;

(9) claims relating to patents, trade marks, registered designs, copyright or design right;

(10) claims for the appointment of a guardian of a minor's estate;

(11) jurisdiction under the Companies Acts 1985 and the Insolvency Act 1986 relating to companies;

(12) some revenue matters;

(13) claims relating to charities;

(14) some proceedings under the Solicitors Act 1974;

(15) proceedings under the Landlord and Tenant Acts 1927 (Part I), 1954 (Part II) and 1987 and the Leasehold Reform Act 1967;

(16) proceedings (other than those in the Commercial Court) relating to the application of Articles 81 and 82 of the EC Treaty and the equivalent provisions of the Competition Act 1998.

(17) proceedings under other miscellaneous statutory jurisdictions.

18.2 There is concurrent jurisdiction with the Family Division under the Inheritance (Provision for Family and Dependants) Act 1975.

18.3 Certain appeals lie to the Chancery Division under statute. These are dealt with in paragraph 10.19. Intellectual property appeals and revenue appeals are also covered in Chapters 23 and 25 respectively.

18.4 The Chancery judges are the nominated judges of the Court of Protection but this Guide does not deal with the Court of Protection.

CHAPTER 19 THE BANKRUPTCY COURT

Key Rules: PD – Insolvency Proceedings; Insolvency Rules 1986

19.1 The Bankruptcy Court is part of the Chancery Division and disposes of proceedings relating to insolvent individuals arising under Parts VIII to XI of the Insolvency Act 1986 and related legislation. These include applications for interim orders to support an individual voluntary arrangement, applications to set aside a statutory demand, bankruptcy petitions and various applications concerned with the realisation and distribution of the assets of individuals who have been adjudged bankrupt, as well as proceedings concerning the administration in bankruptcy of the insolvent estate of a deceased person. The procedure in the Bankruptcy Court is governed by the Insolvency Rules and the PD - Insolvency Proceedings. Appeals in bankruptcy matters are covered in Chapter 10.

19.2 Proceedings in the Bankruptcy Court are issued in the Bankruptcy Issue and Search Room and are dealt with by the Registrars in Bankruptcy, not the Masters. Proceedings under Parts VIII to XI of the Insolvency Act 1986 should be entitled "IN BANKRUPTCY".

19.3 Certain matters, such as applications for injunctions or for committal for contempt, are heard by a judge. A judge is available to hear such matters each day in term time and applications may be listed for any such day. The judge will normally also be hearing the interim applications list for the day, but one or more other judges may be available to assist if necessary.

19.4 The Registrar may refer or adjourn proceedings to the judge, having regard to such matters as the complexity of the proceedings, whether the proceedings raise new or controversial points of law, the likely date and length of the hearing, public interest in the proceedings, and the availability of relevant specialist expertise. When proceedings have been referred or adjourned to the judge, interim applications and applications for directions or case management will be listed before a judge, except where liberty to apply to the Registrar has been given.

19.5 There are prescribed forms for use in connection with all types of statutory demand and of petitions for bankruptcy orders. Every other type of application is either an originating application in Form 7.1 (meaning an application to the court which is not an application in pending proceedings before the court) or an ordinary application in Form 7.2 (meaning any other application to the court).

Statutory demands

19.6 All applications to set aside a statutory demand are referred initially to a Registrar. The application may be dismissed by the court without a hearing if it fails to disclose sufficient grounds (see paragraph 12.4 of PD –

Insolvency Proceedings and Insolvency Rules, r. 6.5(4). If it is not dismissed summarily, it will be allocated a hearing date when the Registrar may either dispose of it summarily or give directions for its disposal at a later date. Such directions will commonly include an order for the filing and service of written evidence and a listing certificate of compliance (see paragraph 19.13 below).

Bankruptcy petitions

19.7 The court will not normally allow more than one bankruptcy petition to be presented against an individual at any one time.

19.8 In cases where the statutory demand relied on has not been personally served on the debtor or where execution of the debt has been returned unsatisfied in whole or in part, the permission of the Registrar is required before a petition may be presented to the court. For service of statutory demands see paragraphs 10 – 11 and 13 of PD – Insolvency Proceedings.

19.9 On presentation to the court a bankruptcy petition is given a distinctive number. The details of the name and address of the petitioner, of his solicitors and of the debtor are entered on a computerised record which may be searched by attendance at the Issue and Search Room. It will also be endorsed with a hearing date which may be extended on application without notice if the petitioner has been unable to serve the petition on the debtor before the hearing date (see paragraph 14 of PD – Insolvency Proceedings).

19.10 A debtor who intends to oppose the making of a bankruptcy order should file and serve a written notice in the prescribed form stating his grounds for opposing the petition not less than seven days before the hearing date. The court may give such further directions as to the filing of evidence and of listing certificates (see paragraph 19.13 below) as it considers appropriate to the disposal of the petition.

Other applications

19.11 Many different types of application may be made to the court for the purpose of the administration of the estate and affairs of a bankrupt individual or insolvent person who is subject to an individual voluntary arrangement (IVA). These may involve such matters as the examination of the bankrupt or of persons having knowledge of his affairs, the realisation of assets in his estate and the determination of disputes regarding the validity of a creditor's claim to dividend or entitlement to vote at a creditors' meeting. Such applications will be given a hearing date when the Registrar will give such directions as are appropriate to the type of case, which may include directions for the filing and service of written evidence, for the cross-examination of witnesses and for the filing of certificates of compliance (see paragraph 19.13 below).

Orders without attendance

19.12 In suitable cases the court will normally be prepared to make orders under Part VIII of the Act (interim orders for IVAs) and consent orders without attendance by the parties. Details of these types of order are set out in paragraph 16 of the PD – Insolvency Proceedings.

Listing certificates

19.13 In order to prevent waste of the court's time each party to insolvency proceedings may be required by the court to file a listing certificate in which he will be required to certify whether the directions previously given by the court have been complied with, whether and by whom he will be represented at the final hearing, his estimate of the time required for such hearing and his and his representative's dates to avoid. On the filing of the certificates in any particular case the court will fix a date for the final hearing of the case and notify the parties.

Preparation for hearings before the Registrars

19.14 Paragraphs 7.39 to 7.50 apply to hearings before the Bankruptcy Registrars. Skeleton arguments and bundles should be delivered to the Bankruptcy Registry.

General information

19.15 Inspection of the court's record and court file in any insolvency proceedings is governed by Insolvency Rules, rr. 7.28 and 7.31.

19.16 The following publications regarding practice and procedure in the Bankruptcy Court are available free from the Bankruptcy Issue and Search Room and from Room TM1.10 Thomas More Building, Royal Courts of Justice:

(1) Current Practice Direction and Practice Notes

(2) A concise Guide to procedure in the Bankruptcy Court

(3) *"I want to set aside my statutory demand - what do I do?"*

(4) *"I have a petition against me - what do I do?"*

(5) *"I want to appeal an order made by a District Judge or an order made by a Bankruptcy Registrar of the High Court - what can I do?"*

(6) *"I wish to apply for my Certificate of Discharge from Bankruptcy - what do I do?"*

(7) Dealing with debt – how to make someone bankrupt

(8) Dealing with debt – how to petition for your own bankruptcy.

CHAPTER 20 THE COMPANIES COURT

Key Rules: ***PD 49 - Applications under the Companies Act; PD - Insolvency; Insolvency Rules 1986; Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987; PD – Directors Disqualification Proceedings***

20.1 The Companies Court is a part of the Chancery Division. Applications in the High Court under the Companies Act 1985, the Insurance Companies Act 1982, the Financial Services and Markets Act 2002, the Insolvency Act 1986 in relation to companies registered in England and Wales, and the Company Directors Disqualification Act 1986, must be commenced in the Companies Court. Proceedings concerning insolvent partnerships, under the Insolvent Partnerships Order 1994, are also brought in the Companies Court (unlike proceedings against partners separately, which, if the partner is an individual, are brought in bankruptcy). Many other kinds of application are brought in the Companies Court. Appeals in Companies Court matters are dealt with in Chapter 10.

20.2 Applications, other than in insolvency, are governed by the Civil Procedure Rules and PD 49 - Applications under the Companies Act 1985.

20.3 Applications in insolvency relating to companies (and to insolvent partnerships) are governed by the Insolvency Rules and PD - Insolvency Proceedings.

20.4 Proceedings under the Company Directors Disqualification Act 1986 are governed by the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987 and the PD - Directors Disqualification Proceedings.

20.5 Proceedings in the Companies Court under a particular statute should be entitled accordingly, thus:

"In the matter of [name and registration number of the company] And in the matter of the Companies Act 1985 [and of any other statute as appropriate]"

"In the matter of [name of the relevant company] And in the matter of the Company Directors Disqualification Act 1986"

"In the matter of [name of the debtor] And in the matter of the Insolvency Act 1986 [and of any appropriate order, such as the Insolvent Partnerships Order 1994]"

20.6 The Companies Court has a separate administrative procedure. Proceedings are issued in the Companies Court General Office, and they are dealt with by the Registrars.

20.7 Petitions for winding up, petitions for confirmation by the court of reduction of capital, and interim applications for directions in proceedings by shareholders are among the principal matters heard by the Registrars. A Registrar may direct that any case be heard by a judge even if it is a kind of application which would normally be heard by a Registrar.

20.8 Certain matters such as applications for an administration order under Part II of the Insolvency Act 1986, petitions for approval by the court of schemes of arrangement and applications for the appointment of provisional liquidators are heard by a judge. A judge is available to hear companies matters each day in term time, and applications to be heard by that judge may be listed for any such day. The judge will normally also be hearing the Interim Applications List for the day, but one or more other judges may be available to assist if necessary. The Registrar may refer or adjourn proceedings to the judge in accordance with the criteria set out in paragraph 19.4 above.

Preparation for hearings before the Registrars

20.9 Paragraphs 7.39 to 7.50 apply to hearings before the Registrars of the Companies Court. Skeleton arguments and bundles should be delivered to the Companies Court Issue Section.

Administration Orders

20.10 The statutory regime for administrations commencing on or after 15 September 2003, with certain exceptions, is found in the Insolvency Act 1986, schedule B1, which should be read with the new Part 2 of the Insolvency Rules 1986. Administrations commenced before 15 September 2003 and administrations of certain bodies (building societies, insolvent partnerships, limited liability partnerships, certain insurers, and public utility companies listed in section 249(1)(a) – (d) of the Enterprise Act 2002) continue to be governed by Part II of the Insolvency Act 1986 (or enacted before the introduction of Schedule B1) and the former Part 2 of the Insolvency Rules 1986. Administration creates a statutory moratorium and allows the affairs, business and property of the company to be managed by an administrator.

20.11 Administrators may be appointed by the court or out of court. By paragraph 3(i) of Schedule B1 the administrator must perform his duties with the objective of:

(1) rescuing the company as a going concern, or

(2) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or

(3) realising property in order to make a distribution to one or more secured or preferential creditors.

Court Order

20.12 An application to the court must be commenced by the prescribed form of application (Form 2.1B under the new regime) and must be supported by an affidavit. The Act and Rules specify the information which must be included in the affidavit. The application may be made by the company, its directors, one or more creditors, the justices' chief executive for a magistrates' court (in relation to a fine) or any combination of the above. The application will be listed before a judge.

20.13 To make the order the court must be satisfied that the company is or is likely to become unable to pay its debts and that the administration order is likely to achieve the purpose of the administration.

Out of court

20.14 Under the new regime, the holder of a qualifying floating charge, the company or its directors, may appoint an administrator without going through the court process. The appointment becomes effective when a notice of appointment in the prescribed form accompanied by the administrators' consent to act and a statement by him that in his opinion the purpose of the administration is likely to be achieved has been filed with the court. Rule 2.19 makes special provision for filing notice of appointment by fax out of business hours. (Form 2.7B). The fax number for filing notice in the Royal Courts of Justice is 020 7947 6607.

Schemes of arrangement

20.15 A scheme under section 425 of the Companies Act 1985 can be proposed whether or not a company is in liquidation. It is necessary to obtain the sanction of the court to a scheme which has been approved by the requisite majority of members or creditors of each class at separately convened meetings directed by the court. If the company is insolvent the objective of the scheme may be more simply and economically achieved by a company voluntary arrangement under Part I of the Act. However, a scheme under section 425 has the advantage that the court may approve the distribution of assets otherwise than in accordance with creditors' strict legal rights.

20.16 The application for an order to convene meetings of members or creditors under section 425(1) is made by a CPR Part 8 claim form. The application will usually be heard by a Registrar, unless it is thought that issues of difficulty may arise, in which case it can be heard by a judge. The relevant practice is set out in *Practice Statement (Companies: Schemes of Arrangements)* [2002] 1 WLR 1345.

20.17 The application to sanction a scheme of arrangement, once approved by members or creditors by the statutory majority, is made by petition. The hearing of the petition at which the sanction of the court is sought will be before a judge. If the petition also seeks confirmation of a reduction of capital, there will first be an application to the Registrar for directions. In other cases the petition will go straight to a judge.

Winding up petitions

20.18 Proceedings to wind up a company are commenced by presenting a petition to the court. The presentation of a winding up petition can cause substantial damage to a company. A winding up petition should not be presented when it is known that there is a real dispute about the debt. Practitioners should make reasonable enquiries from their client as to the existence of any such dispute. The court may order a petitioner to pay the company's costs of a petition based on a disputed debt on the indemnity basis.

20.19 When a winding up petition is presented to either the Companies Court, a Chancery District Registry or a county court having jurisdiction, particulars including the name of the company and the petitioner's solicitors are entered in a computerised register. This is called the Central Registry of Winding Up Petitions. It may be searched by personal attendance at the Companies Court General Office, or by telephone on 020 7947 7328.

20.20 The requirement to advertise the petition (Insolvency Rules, r. 4.11(2)(b)) is mandatory, and designed to ensure that the class remedy of winding up by the court is made available to all creditors, and is not used simply as a means of putting pressure on the company to pay the petitioner's debt. Failure to comply with the rule, without good reason accepted by the court, may lead to the summary dismissal of the petition on the return date (Insolvency Rules, r. 4.11(5)). If the court, in its discretion, grants an adjournment, this will be on condition that the petition is advertised in due time for the adjourned hearing. No further adjournment for the purpose of advertisement will normally be granted.

20.21 If an order is made restraining advertisement while an application is made to the court to stop the proceedings, the case is listed in the Daily Cause List by number only so that the name of the company is not given.

Proceedings for relief from unfairly prejudicial conduct under the Companies Act 1985, section 459

20.22 Petitions under the Companies Act 1985, section 459, are liable to involve extensive factual enquiry and many of the measures summarised in Section A of this Guide which are designed to avoid unnecessary cost and delay are particularly relevant to them. Procedure is governed by the Companies (Unfair Prejudice Applications) Proceedings Rules 1986 (SI 1986/2000).

20.23 Where applications are brought in the Companies Court and in a related case in the Chancery Division at the same time, special arrangements can be made on request to the Chancery Judges' Listing Officer for the applications to be heard by the same judge.

Applications for leave to act as director of a company with a prohibited name

20.24 Section 216 of the Insolvency Act 1986 restricts the use of a company name by any person who was a director or shadow director of the company in the 12 month period ending with the day upon which it went into insolvent liquidation – except with the leave of the court: section 216(3).

20.25 The application for leave is governed by the Insolvency Rules 1986, rr. 4.226 to 4.230. These rules provide for certain exceptions to the prohibition. The application for leave is by originating application supported by written evidence.

20.26 By r. 4.227 the court may call upon the liquidator for a report of the circumstances in which the company became insolvent and the extent of the applicant's apparent responsibility. However if the liquidator consents to the application it is helpful if his views are put before the court at the outset. The Registrar who then hears the application may be prepared to grant it at the first hearing.

20.27 Notice should be given to the Secretary of State and/or the Official Receiver.

General

20.28 Inspection of the court's records and the court file in any insolvency proceedings is governed by Insolvency Rules, rr. 7.28 and 7.31.

20.29 The following leaflets are available from the Companies Court General Office:

(1) Current Practice Directions and Practice Notes

(2) *"I want to wind up a company which owes me money: what do I do?"*

(3) Treasury Solicitors' – A Guide to company restoration

(4) *"I want to apply to extend time for registration of a charge or to rectify a mis-statement or omission (in the registered particulars of a charge or of a memorandum of satisfaction): what do I do?"*

(5) Dealing with debt. How to wind up your own company

CHAPTER 21 MORTGAGE CLAIMS

Key Rules: CPR Parts 55 and 73 and the PDs supplementing them

21.1 Under Part 55 mortgage possession claims commenced since 15 October 2001, whether in respect of residential or commercial property, are generally heard in the county courts. The only exceptions to this are (a) a relatively small number of cases where either the county court has no jurisdiction or where the claimant can certify, verified by a statement of truth, the reasons for bringing the claim in the High Court and (b) any remaining transitional cases, i.e. mortgage possession claims commenced before 15 October 2001, and proceedings to enforce charging orders commenced prior to 25 March 2002, as to which directions should be sought from the assigned Master.

21.2 PD 55 emphasises that High Court claims are to be regarded as exceptional and that while the value of the property and the size of the claim may well be relevant circumstances they will not, taken alone, normally justify the issue of proceedings in the High Court. High Court proceedings may, however, be justified where there are complicated disputes of fact or where a claim gives rise to points of law of general importance. Where a mortgage possession claim is issued in the High Court it is assigned to the Chancery Division. The provisions of Part 55 will apply to it.

21.3 The most common instance where, notwithstanding Part 55, the Chancery Division will retain jurisdiction in a mortgage possession case is where proceedings are brought seeking an order for sale under an equitable charge, ordinarily that created by a charging order, but where part of the relief claimed ancillary to the order for sale is an order for possession. Although rule 73.10 now provides that proceedings to enforce charging orders by sale should be made in the court in which the charging order was made, that provision is expressly subject to that court having jurisdiction. The jurisdiction of a county court to enforce a charge is confined to those cases where the amount secured by the charge falls within the relevant county court limit (currently £30,000) and it follows that in many cases where judgments have been obtained in county courts and charging orders made enforcement will nonetheless require proceedings in the High Court.

21.4 Such proceedings, as well as proceedings to enforce charging orders made in other divisions of the High Court, are assigned to the Chancery Division. The evidence required in support of such proceedings is that set out in paragraph 4.3 of PD 73.

21.5 There remains in the Chancery Division a number of mortgage possession proceedings issued prior to Part 55 coming into force (on 15 October 2001). Of those proceedings, some may never have been adjudicated upon and many will have given rise to suspended possession orders, in respect of which applications to issue execution may arise in reducing numbers.

21.6 Practitioners should also have regard to the fact that 'old' proceedings which have not been adjudicated upon and which were issued prior to 26 April 1999 will fall within the 'automatic stay' provisions of paragraph 19 of PD 51 so that a claimant wishing to proceed with such a claim will have to apply to lift the stay. Such an application may be made at the same time as the application for possession but the court will require sufficient evidence to allow it to determine properly whether it is appropriate to lift the stay. The application to lift the automatic stay should form one of the heads of relief in the Application Notice seeking possession. If the evidence in support exhibits a mortgage account sufficient to show what has happened on the account since the last time the claim was before the court (ex hypothesi from before 26 April 1999) no additional evidence will be likely to be necessary in support of the stay application.

21.7 The Chancery Division retains its jurisdiction in respect of redemption and foreclosure of mortgages and kindred matters.

21.8 Rule 48.3 and paragraph 50 of the Costs PD (Amount of costs where costs are payable under a contract) are of particular relevance to mortgage claims.

21.9 In summary, where under a mortgage a mortgagee has a contractual right to his or her costs, the court's discretion in respect of costs under section 51 of the Supreme Court Act 1981 should be exercised so as to reflect that contractual right. The power of the court to disallow a mortgagee's costs sought to be added to the security stems not from section 51 but from the power of the courts of equity to fix the terms upon which redemption will be allowed. A decision by the court to refuse costs to a mortgagee litigant may be a decision in the exercise of the court's discretion under section 51, or pursuant to its power to fix the terms upon which redemption will be allowed, or a decision as to the extent of the mortgagee's contractual right, in a given case, to add costs to his or her security, or any combination of these three things. A mortgagee is not to be deprived of a contractual or equitable right to add costs to his or her security without reference to the mortgagee's contractual or equitable rights to such costs and without a proper adjudication as to whether or not the mortgagee should be deprived of his or her costs.

CHAPTER 22 PARTNERSHIP CLAIMS AND RECEIVERS

Key Rules: RSC O.81 (in CPR, schedule 1); CPR Part 69, PDs 24 and 40

PARTNERSHIP CLAIMS

22.1 In claims for or arising out of the dissolution of a partnership often the only matters in dispute between the partners are matters of accounting. In such cases there will be no trial. The court will, if appropriate, make a summary order under paragraph 6 of PD 24 for the taking of an account. This will be taken before the Master.

22.2 Only if there is a dispute as to the existence of a partnership (whether it is claimed that there never was a partnership or that the partnership is still continuing and has not been dissolved) or if there is a material dispute as to the terms of the partnership (e.g. as to the profit sharing ratios) will there be a trial, at which the judge will decide those issues. In such cases there will be a two stage procedure with the judge deciding these issues at the trial and ordering the winding up of the partnership which will involve the taking of the partnership accounts by the Master (see PD 40 Accounts, Inquiries etc.).

22.3 In some cases and in order to reduce costs, it may be appropriate for the parties to invite the Master to determine factual issues as a preliminary to the account, eg issues as to terms of the partnership or assets comprised in it. At any case management conference it will be particularly important to identify issues to be determined before an effective account or inquiry can be made. The court will not simply order accounts and inquiries without identifying the issues.

22.4 The expense of taking an account in court is usually wholly disproportionate to the amount at stake. Parties are strongly encouraged to refer disputes on accounts to a jointly instructed accountant for determination or mediation.

22.5 The functions of a receiver in a partnership action are limited. It is not his or her duty to wind up the partnership, like the liquidator of a company. His or her primary function is to get in the debts and preserve the assets pending winding up by the court and he or she has no power of sale without the permission of the court.

RECEIVERS

22.6 The procedure for the appointment of receivers by the court is comprehensively governed by Part 69 and its PD. A new Guide for receivers in the Chancery Division is available. Copies of the Guide can be obtained from an associate or from the Court Manager, Chancery Chambers. The Guide is also reproduced at Appendix 10. Particular

attention should be paid to remuneration and the fact that it must be authorised on the basis specified in an order of the court.

CHAPTER 23 THE PATENTS COURT AND TRADE MARKS etc.

Key Rules: CPR Part 63 and PD 63 – Patents, etc

23.1 The matters assigned to the Patents Court are essentially all those concerned with patents or registered designs. CPR Part 63 and PD 63 deal with its particular procedures. Appeals in patent, design and trade mark cases are governed by Part 52 (see CPR 63.17); reference should be made to Chapter 10 for the general procedure as regards such appeals.

23.2 The principal Patent judges are Mr Justice Pumfrey and Mr Justice Kitchin. The other assigned Patents judges currently nominated are:

Mr Justice Patten
Mr Justice Lewison
Mr Justice Mann

Several senior practitioners have also been appointed to sit as Deputy High Court judges to hear Patent Court matters.

23.3 Mr Justice Pumfrey is the judge in charge of the Patents List.

23.4 In cases of great urgency, when a nominated judge or Deputy Judge is not available an application can be made to any other judge of the High Court, preferably a judge of the Chancery Division.

23.5 The procedure of the Patents Court is broadly that of the Chancery Division as a whole, but there are important differences.

23.6 The Patents Court has its own Court Guide which is available on the Patents Court website (*www.hmcourts-service.gov.uk*) and can also be found in Section 2F-111 of Volume 2 of the White Book. That Guide must be consulted for guidance as to the procedure in the Patents Court.

23.7 The Court's diary can be accessed on its website. The Patents Court will endeavour, if the parties so desire and the case is urgent, to sit in September.

Patents County Court

23.8 Special provisions relate to the transfer of cases between the Patents Court and the Patents County Court. The Patents Court has no power to order the transfer to it of cases commenced in the Patents County Court which fall within the latter court's special jurisdiction (i.e. matters relating to patents and designs). On the other hand it does have the power to transfer cases commenced in the High Court to the Patents County Court.

Registered trademarks and other intellectual property rights

23.9 CPR 63.13 to 63.15 and paragraphs 18 to 27 of PD 63 apply to claims relating to matters arising out of the Trade Marks Act 1994 and other intellectual property rights (such as copyright, passing off, design rights, etc.) as set out in paragraph 18 of PD 63. Claims under the Trade Marks Act 1994 must be brought in the Chancery Division. Among the Chancery Masters trade mark cases are assigned to Master Bragge.

23.10 Appeals from decisions of the Registrar of Trade Marks are brought to the Chancery Division as a whole, not the Patents Court. Permission to appeal is not required.

CHAPTER 24 PROBATE AND INHERITANCE CLAIMS

Key Rules: CPR Part 57 and PD 57

PROBATE

24.1 In general, contentious probate proceedings follow the same pattern as an ordinary claim but there are important differences and Part 57 and PD 57 should be carefully studied. All probate claims are allocated to the multi-track. Particular regard should be had to the following:

(1) The claim form must be issued out of Chancery Chambers or out of the Chancery District Registries, or if the claim is suitable to be heard in the county court, a county court where there is also a Chancery District Registry, or the Central London County Court.

(2) A defendant must file an acknowledgment of service. An additional 14 days is provided for doing so.

(3) Save where the court orders otherwise, the parties must at the outset of proceedings lodge all testamentary documents in their possession and control with the court. At the same time parties must file written evidence describing any testamentary document of the deceased of which they have knowledge, stating, if any such document is not in the party's possession or control, the name and address, if known, of the person in whose possession or under whose control the document is. In the case of a claimant, these materials must be lodged at the time when the claim form is issued. In the case of a defendant, these materials must be lodged when service is acknowledged. If these requirements are not complied with it is likely that the claim will not be issued and, correspondingly, that the acknowledgment of service will not be permitted to be lodged.

(4) The court will generally ensure that all persons with any potential interest in the proceedings are joined as parties or served with notice under Part 19.8A.

(5) A default judgment cannot be obtained in a probate claim. Where, however, no defendant acknowledges service or files a defence, the claimant may apply for an order that the claim proceed to trial and seek a direction that the claim be tried on written evidence.

(6) If an order pronouncing for a will in solemn form is sought under Part 24, the evidence in support must include written evidence proving due execution of the will. In such a case, if a defendant has given notice under rule 57.7(5) that he raises no positive case but requires that the will be proved in solemn form and that, to that end, he wishes to cross examine the attesting witnesses, then the claimant's application for

summary judgment is subject to the right of such a defendant to require the attesting witnesses to attend for cross examination.

(7) A defendant who wishes to do more than test the validity of the will by cross examining the attesting witnesses must set up by counterclaim his positive case in order to enable the court to make an appropriate finding or declaration as to which is the valid will, or whether a person died intestate or as the case may be.

(8) The proceedings may not be discontinued without permission. Even if they are compromised, it will usually be necessary to have an order stating to whom the grant is to be made, either under rule 57.11 (leading to a grant in common form), or after a trial on written evidence under paragraph 6.1(1) of PD 57 (leading to a grant in solemn form) or under section 49 of the Administration of Justice Act 1985 and paragraph 6.1(3) of PD 57 (again leading to a grant in solemn form). Practitioners should refer to PF38CH and adapt as appropriate.

24.2 When the court orders trial of a contentious probate claim on written evidence, or where the court is asked to pronounce in solemn form under Part 24, it is normally necessary for an attesting witness to sign a witness statement or swear an affidavit of due execution of any will or codicil sought to be admitted to probate. The will or codicil is at that stage in the court's possession and cannot be handed out of court for use as an exhibit to the witness statement or affidavit, so that the attesting witness has to attend at the Royal Courts of Justice.

24.3 Where an attesting witness is unable to attend the Royal Courts of Justice in order to sign his or her witness statement or swear his or her affidavit in the presence of an officer of the court, the solicitor concerned may request from Room TM7.09, a photographic copy of the will or codicil in question. This will be certified as authentic by the court and may be exhibited to the witness statement or affidavit of due execution in lieu of the original. The witness statement or affidavit must in that case state that the exhibited document is an authenticated copy of the document signed in the witness' presence.

24.4 When a probate claim is listed for trial outside London, the solicitor for the party responsible for preparing the court bundle must write to Room TM7.09 and request that the testamentary documents be forwarded to the appropriate District Registry.

INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975

24.5 Claims under the Inheritance (Provision for Family and Dependants) Act 1975 in the Chancery Division will be allocated to the Multi-Track and are issued by way of a Part 8 claim. Ordinarily they will be tried by the Master

unless an order is made transferring the claim to a county court for trial. They are governed by Part 57 and PD 57.

24.6 The written evidence filed by the claimant with the claim form must exhibit an official copy of the grant of probate or letters of administration together with every testamentary document in respect of which probate or letters of administration was granted.

24.7 A defendant must file and serve acknowledgment of service not later than 21 days after service of the Part 8 claim form. Any written evidence (subject to any extension agreed or directed) must likewise be served and filed no later than 21 days after service.

24.8 The personal representatives of the deceased are necessary defendants to a claim under the 1975 Act and the written evidence filed by a defendant who is a personal representative must comply with paragraph 16 of PD 57.

24.9 On the hearing of a claim under the 1975 Act, the personal representatives must produce the original grant of representation to the deceased's estate. If the court makes an order under the Act, the original grant together with a sealed copy of the order must, under paragraph 18.2 of PD 57, be sent to the Principal Registry of the Family Division, First Avenue House, 42-49 High Holborn, London WC1V 6NP for a memorandum of the order to be endorsed on or permanently annexed to the grant.

24.10 Where claims under the 1975 Act are compromised the consent order filed must comply with paragraph 9.14 of this Guide.

CHAPTER 25 REVENUE PROCEEDINGS

Key Rules: CPR Part 52, PD 52, paragraphs 23.2(11) to (16), 23.3 to 23.5, 23.8

25.1 Several kinds of revenue proceedings are heard in the Chancery Division. Usually the parties are HM Revenue and Customs on one side and a taxpayer on the other. The main examples are described below. Almost all of them are appeals against decisions made by lower level tribunals at first instance. The appeals are governed by Part 52. Reference should be made to Chapter 10 for the general procedure relating to such appeals.

Appeals from decisions of the General Commissioners relating to income tax, corporation tax or capital gains tax

25.2 The General Commissioners are a first instance appeal tribunal for cases concerning these three taxes. Appeals from their decisions, whether by the Revenue or by a taxpayer, are conducted on the basis of a case stated, drawn up by the General Commissioners, which sets out the facts, the arguments, and the General Commissioners' decision. The case stated is usually backed up by whatever documents were before the Commissioners. These appeals are limited to questions of law. The judge never hears evidence, and the appeal will almost certainly fail if the appellant's real complaint is that the General Commissioners got the facts wrong. The judge does have power to remit a case to the General Commissioners for them to hear further evidence and find further facts, but this is only rarely done.

25.3 The rules provide that, when the party who is appealing from the General Commissioners receives the case stated in its final form from the General Commissioners' clerk, the party has to transmit it to the High Court within 30 days. The court has no power to extend this time limit, which must be strictly observed if the court is to be able to hear the appeal: *New World Medical Ltd v Cormack* [2002] EWHC 1245 (Ch), [2002] STC 1245.

Appeals from decisions of the Special Commissioners relating to income tax, corporation tax, capital gains tax or inheritance tax

25.4 The Special Commissioners are the other first instance appeal tribunal for tax purposes, and hear cases relating to all four taxes mentioned above, known as the direct taxes. Appeals from their decisions, whether by the Revenue or by a taxpayer, are conducted, not on the basis of a case stated, but on the basis of the Special Commissioners' decision and the papers which they had before them. Those papers may include a transcript of the evidence or the Special Commissioners' notes of the evidence, but, as with appeals from General Commissioners, appeals to the Chancery Division are limited to questions of law. The judge never hears evidence. Again as with the General Commissioners, the judge has power to remit a case to the Special Commissioners for them to hear further evidence and find further

facts, but this is only rarely done. There are time limits for filing an Appellant's Notice for an appeal from a decision of the Special Commissioners. In most cases the limit is 56 days from the date of the Commissioners' decision, but in some cases it is shorter. For details reference should be made to paragraph 23.5 of PD 52.

25.5 Exceptionally, appeals from the Special Commissioners in relation to the direct taxes may go directly to the Court of Appeal, so leapfrogging the Chancery Division.

25.6 Some inheritance tax appeals are exceptions to the normal procedure and do not start before the Special Commissioners, so that the Chancery Division is the court of first instance. These are limited to cases where the issues to be decided are wholly or mainly issues of law and there is no substantial dispute about the facts. Detailed procedural rules about appeals of this nature are to be found in paragraph 23.3 of PD 52.

Stamp duty appeals

25.7 These are heard in the Chancery Division, and are conducted on the basis of a case stated drawn up by HM Revenue and Customs. Usually there is no oral evidence, but it has occasionally been heard.

25.8 Appeals relating to stamp duty reserve tax are also heard in the Chancery Division. Rules relating to such appeals have been made, but no such appeal has yet arisen.

Appeals from the Value Added Tax and Duties Tribunal

25.9 Most of these appeals relate to VAT, but occasionally appeals on other duties, such as excise duty, arise. An appeal may be brought either by HM Revenue and Customs or by the taxpayer. As with appeals from the Special Commissioners relating to the direct taxes, exceptionally leapfrog appeals may lie direct to the Court of Appeal, but normally the appeal will be to the Chancery Division.

25.10 As with appeals from the Special Commissioners, VAT appeals are based on the Tribunal's decision and the documents in the case. The judge never hears evidence. The documents usually include a transcript of the evidence before the Tribunal or the Tribunal's notes of the evidence. Nevertheless, like appeals from the Special Commissioners concerning the direct taxes, an appeal lies only on a point of law. Usually the time limit for filing the appellant's notice is 56 days from the decision of the Tribunal.

CHAPTER 26 TRUSTS

Key Rules: CPR Part 8; Part 19; Part 64 and PD 64

Introduction

26.1 This Chapter contains material about a number of aspects of proceedings concerning trusts, the estates of deceased persons (other than probate claims) and charities.

26.2 The topics covered in this Chapter are (a) applications by trustees for directions and related matters; (b) the Variation of Trusts Act 1958; (c) section 48 of the Administration of Justice Act 1985; (d) vesting orders as regards property in Scotland; (e) trustees under a disability; (f) lodgment of funds; (g) the estates of deceased Lloyd's Names; and (h) judicial trustees.

Trustees' applications for directions

26.3 Applications to the court by trustees for directions in relation to the administration of a trust or charity, or by personal representatives in relation to a deceased person's estate, are to be brought by Part 8 claim form, and are governed by Part 64, and its PDs; rule 8.2A is also relevant.

26.4 If confidentiality of the directions sought is important (for example, where the directions relate to actual or proposed litigation with a third party who could find out what directions the claimants are seeking through access to the claim form under rule 5.4) the statement of the remedy sought, for the purposes of rule 8.2(b), may be expressed in general terms. The trustees must, in that case, state specifically in the evidence what it is that they seek to be allowed to do.

26.5 The proceedings will normally be listed and heard in private: rule 39.2(3)(f) and paragraph 1.5 of PD 39. Accordingly the order made, and the other documents among the court records (apart from a claim form which has been served), will not be open to inspection by third parties without the court's permission: rule 5.4(2). If the matter is disposed of without a hearing, the order made will be expressed to have been made in private.

26.6 Part 64 deals with the joining of beneficiaries as defendants. Often, especially in the case of a private trust, it will be clear that some, and which, beneficiaries need to be joined as defendants. Sometimes, if there are only two views as to the appropriate course, and one is advocated by one beneficiary who will be joined, it may not be necessary for other beneficiaries to be joined since the trustees may be able to present the other arguments. Equally, in the case of a pension trust, it may not be necessary for a member of every possible different class of beneficiaries to be joined.

26.7 In some cases, it may be that the court will or might be able to assess whether or not to give the directions sought, or what directions to give, without hearing from any party other than the trustees. If the trustees consider that their case is in that category they may apply to the court under rule 8.2A for permission to issue the claim form without naming any defendants. They must apply to the court before the claim form is issued, and include a copy of the claim form that they propose to issue. Practitioners should note that this procedure may enable directions to be obtained about matters concerning the administration of a trust or estate in circumstances which would fall outside the relatively narrow confines of section 48 of the Administration of Justice Act 1985 where the expense and delay associated with an application naming defendants may not be in the interests of beneficiaries.

26.8 In other cases the trustees may know that beneficiaries need to be joined as defendants, or to be given notice, but may be in doubt as to which. Examples could include a case concerning a pension scheme with many beneficiaries and a number of different categories of interest, especially if they may be differently affected by the action for which directions are sought, or a private trust with a large class of discretionary beneficiaries. In those cases the trustees may apply for permission to issue the claim form without naming any defendants under rule 8.2A. The application may be combined with an application for directions as to which persons to join as parties or to give notice to under rule 19.8A.

26.9 In the case of a charitable trust the Attorney-General is always the appropriate defendant, and almost always the only one.

26.10 Applications for directions whether or not to take or defend or pursue litigation (see *Re Beddoe* [1893] 1 Ch 547) must be made by Part 8 claim, independently of the main litigation, to a Master not involved with the main case. They should be supported by evidence including the advice of an appropriately qualified lawyer as to the prospects of success and other matters relevant to be taken into account, including a cost estimate for the proceedings and any known facts concerning the means of the opposite party to the proceedings, and a draft of any proposed statement of case. There are cases in which it is likely to be so clear that the trustees ought to proceed as they wish that the costs of making the application, even on a simplified procedure without a hearing and perhaps without defendants, are not justified in comparison with the size of the fund or the matters at issue.

26.11 References to an appropriately qualified lawyer mean one whose qualifications and experience are appropriate to the circumstances of the case. The qualifications should be stated. If the advice is given on formal instructions, the instructions should always be put in evidence as well, so that the court can see the basis on which the advice was given. If it is not, the advice must state fully the basis on which it is given. If a hearing is

necessary the lawyer whose opinion is relied on should if possible be the advocate at the hearing.

26.12 All applications for directions should be supported by evidence showing the value of the trust assets, the significance of the proposed litigation or other course of action for the trust, and why the court's directions are needed. In the case of a pension trust the evidence should include the latest actuarial valuation, and should describe the membership profile and, if a deficit on winding up is likely, the priority provisions and their likely effect.

26.13 On an application for directions about actual or possible litigation, the evidence should also state (i) whether any relevant Pre-Action Protocol has been followed, and (ii) whether the trustees have proposed or undertaken, or intend to propose, ADR, and (in each case) if not why not.

26.14 If a beneficiary of the trust is a party to the litigation about which directions are sought, with an interest opposed to that of the trustees, that beneficiary should be a defendant to the trustees' application, but any material which would be privileged as regards that beneficiary in the litigation should be put in evidence as exhibits to the trustees' witness statement, and should not be served on the beneficiary. However, if the claimant's representatives consider that no harm would be done by the disclosure of all or some part of the material then that material should be served on that defendant. That defendant may also be excluded from part of the hearing, including that which is devoted to discussion of the material withheld: see *Re Moritz* [1960] Ch 251; *Re Eaton* [1964] 1 W.L.R. 1269.

Case management directions

26.15 The claim will be referred to the Master once a defendant has acknowledged service, or otherwise on expiry of the period for acknowledgment of service, (or, if no defendant is named, as soon as the claimant's evidence has been filed) to consider directions for the management of the case. Such directions may be given without a hearing in some cases; these might include directions as to parties or as to notice of proceedings, as mentioned in paragraph 26.8 above.

26.16 Case management directions will be given where the court grants an application to issue the claim form without naming a defendant under rule 8.2A.

Proceeding without a hearing

26.17 The court will always consider whether it is possible to deal with the application on paper without a hearing. The trustees must always consider whether a hearing is needed for any reason. If they consider that it is they should say so and explain why in their evidence. If a defendant considers

that a hearing is needed, this should be stated, and the reasons explained, in his evidence, if any, or otherwise in a letter to the court.

26.18 If the court would be minded to refuse to give the directions asked for on a consideration of the papers alone, the parties will be notified and given the opportunity, within a stated time, to ask for a hearing.

26.19 In charity cases, the Master may deal with the case without a hearing on the basis of a letter from or on behalf of the Attorney-General setting out his attitude to the application.

26.20 Cases in which the directions can be given without a hearing include those where personal representatives apply to be allowed to distribute the estate of a deceased Lloyd's name, following the decision in *Re Yorke (deceased)* [1997] 4 All ER 907 (see paragraphs 26.50-55 below), as well as applications under section 48 of the Administration of Justice Act 1985 (see paragraphs 26.37-42 below).

Evidence

26.21 The trustees' evidence should be given by witness statement. In order to ensure that, if directions are given, the trustees are properly protected by the order, they must ensure full disclosure of relevant matters, even if the case is to proceed with the participation of beneficiaries as defendants.

Consultation with beneficiaries

26.22 The evidence must explain what, if any, consultation there has been with beneficiaries, and with what result. In preparation for an application for directions in respect of litigation, the following guidance is to be followed.

(1) If the trust is a private trust where the beneficiaries principally concerned are not numerous and are all or mainly adult, identified and traceable, the trustees will be expected to have canvassed with all the adult beneficiaries the proposed or possible courses of action before applying for directions.

(2) If it is a private trust with a larger number of beneficiaries, including those not yet born or identified, or children, it is likely that there will nevertheless be some adult beneficiaries principally concerned, with whom the trustees must consult.

(3) In relation to a charitable trust the trustees must have consulted the Attorney-General, through the Treasury Solicitor, as well as the Charity Commissioners, whose consent to the application will have been needed under section 33 of the Charities Act 1993.

(4) In relation to a pension trust, unless the members are very few in number, no particular steps by way of consultation with beneficiaries (including, where relevant, employers) or their representatives are required in preparation for the application, though the trustees' evidence should describe any consultation that has in fact taken place. If no consultation has taken place, the court could in some cases direct that meetings of one or more classes of beneficiaries be held to consider the subject-matter of the application, possibly as a preliminary to deciding whether a member of a particular class ought to be joined as a defendant, though in a case concerning actual or proposed litigation, steps would need to be considered to protect privileged material from too wide disclosure.

26.23 If the court gives directions allowing the claimant to take, defend or pursue litigation it may do so up to a particular stage in the litigation, requiring the trustees, before they carry on beyond that point, to renew their application to the court. What stage that should be will depend on the likely management of the litigation under the CPR. If the application is to be renewed after disclosure of documents, and disclosed documents need to be shown to the court, it may be necessary to obtain permission to do this from the court in which the other litigation is proceeding. However, the implied undertaking limiting the use of documents disclosed by another party to the litigation does not preclude their use on an application by trustee parties for directions, since that is use for the purposes of the litigation: *White v. Biddulph*, Hart J, unreported, 22 May 1998.

26.24 In such a case the court may sometimes direct that the case be dealt with at that stage without a hearing if the beneficiaries obtain and lodge an opinion of an appropriately qualified lawyer supporting the continuation of the directions. Any such opinion will be considered by the court and, if thought fit, the trustees will be given a direction allowing them to continue pursuing the proceedings without a hearing.

26.25 In a case of urgency, such as where a limitation period or period for service of proceedings is about to expire, the court may give directions on a summary consideration of the evidence to cover the steps which need to be taken urgently, but limiting those directions so that the application needs to be renewed for fuller consideration at an early stage.

26.26 On any application for directions where a child is a defendant, the court will expect to have put before it the instructions to and advice of an appropriately qualified lawyer as to the benefits and disadvantages of the proposed, and any other relevant, course of action from the point of view of the child beneficiary. Where the matters to be drawn to the attention of the court are fully covered in the instructions and written opinion, it should not be necessary for a separate skeleton argument to be lodged, but the court needs to be informed that this is the case. The opinion should be given by the lawyer who is to be the advocate at the hearing.

Hearing

26.27 The Master may give the directions sought though, if the directions relate to actual or proposed litigation, only if it is a plain case, and the Master may be prepared to proceed without a hearing: see PD 2 Allocation of Cases to Levels of Judiciary, paragraph 4.1 and paragraph 5.1(e), and see also paragraphs 26.17 to 26.20 above. Otherwise the case will be referred to the judge.

Representation Orders

26.28 It is not necessary to make representation orders under rule 19.7 on an application for directions, and sometimes it would not be possible, for lack of separate representatives among the parties of all relevant classes of beneficiaries, but such orders can be useful in an appropriate case and they are sometimes made.

Costs

26.29 Normally the trustees' costs of a proper application will be allowed out of the trust fund, on an indemnity basis, as will the assessed (or agreed) costs of beneficiaries joined as defendants, subject to their conduct of the proceedings having been proper and reasonable.

Prospective costs orders

26.30 In proceedings brought by one or more beneficiaries against trustees, the court has power to direct that the beneficiaries be indemnified out of the trust fund in any event for any costs incurred by them and any costs which they may be ordered to pay to any other party, known as a prospective costs order: see *McDonald v. Horn* [1995] 1 All ER 961. Such an order may provide for payments out of the trust fund from time to time on account of the indemnity so that the beneficiaries' costs may be paid on an interim basis. Applications for prospective costs orders should be made on notice to the trustees. The court will require to be satisfied that there are matters which need to be investigated. How far the court will wish to go into that question, and in what way it should be done, will depend on the circumstances of the particular case. The order may be expressed to cover costs incurred only up to a particular stage in the proceedings, so that the application has to be renewed, if necessary, in the light of what has occurred in the proceedings in the meantime: See paragraph 6 of PD 64, to which is annexed a model form of order.

Registration of judgments

9.21 Under the Register of Judgments, Orders and Fines Regulations 2005, money judgments in claims commenced in the High Court after 6th April

2006 (unless exempt) are registered with the Registrar of Judgments, Orders and Fines. Returns are sent to the Registrar by the court. In non-contested cases (judgments in default or on admission) registration is immediate. In contested cases the judgment is not registered unless steps are taken to enforce it under Part 70 or Part 71.

9.22 Judgments which are the subject of an appeal under Part 52 are not registered until the appeal has been determined. The court officer responsible for returns (Malcolm Dann, Room TM 5.07, 020 7947 6531) should be informed if permission to appeal is granted after a judgment has been registered, and he should also be informed when an application is made under Part 70 or Part 71.

9.23 If the judgment debt is satisfied, the judgment has been set aside or reversed, or the amount of the debt increases as a result of the issue of a final costs certificate or an increase in the amount of the debt as a consequence of enforcement proceedings, the court officer responsible for returns (as above) should be notified.

Charity trustees' applications for permission to bring proceedings

26.31 In the case of a charitable trust, if the Charity Commissioners refuse their consent to the trustees applying to the court for directions, under Charities Act 1993 section 33(2), and also refuse to give the trustees the directions under their own powers, under sections 26 or 29, the trustees may apply to the court under section 33(5). On such an application, which may be dealt with on paper, the judge may call for a statement from the Charity Commissioners of their reasons for refusing permission, if not already apparent from the papers. The court may require the trustees to attend before deciding whether to grant permission for the proceedings. It is possible to require notice of the hearing to be given to the Attorney-General, but this would not normally be appropriate.

Variation of Trusts Act 1958

26.32 An application under the Variation of Trusts Act 1958 should be made by a Part 8 claim form. As to listing of such applications see paragraph 6.27. The Master will not consider the file without an application.

26.33 Where any children or unborn beneficiaries will be affected by an arrangement under the Variation of Trusts Act 1958, evidence must normally be before the court which shows that their litigation friends or the trustees support the arrangements as being in the interests of the children or unborn beneficiaries, and exhibits a written opinion to this effect. In complicated cases a written opinion is usually essential to the understanding of the litigation friends and the trustees, and to the consideration by the

court of the merits and fiscal consequences of the arrangement. If the written opinion was given on formal instructions, those instructions must be exhibited. Otherwise the opinion must state fully the basis on which it was given. The opinion must be given by the advocate who will appear on the hearing of the application. A skeleton argument may not be needed where a written opinion has been put in evidence and no matters not appearing from the instructions or the opinion are to be relied on: see paragraph 26.26 above.

26.34 Where the interests of two or more children, or two or more of the children and unborn beneficiaries, are similar, a single written opinion will suffice; and no written opinion is required in respect of those who fall within the proviso to section 1(1) of the Act (discretionary interests under protective trusts). Further, in proper cases the requirement of a written opinion may at any stage be dispensed with by the Master or the judge.

Stamp Duty

26.35 An undertaking by solicitors with regard to stamping is not required to be included in an order under the Variation of Trusts Act 1958 whether made by a judge or Master.

26.36 The Commissioners of Inland Revenue consider that the stamp duty position of duplicate orders is as follows:

(1) Orders confined to the lifting of protective trusts. These orders are not liable for duty at all and should not be presented to a stamp office.

(2) Orders effecting voluntary dispositions inter vivos. These orders may be certified under the Stamp Duty (Exempt Instruments) Regulations 1987 (S.I. 1987 No. 516), as within category L in the schedule to those regulations, in which case they should not be presented to a stamp office. Without such a certificate they attract 50p duty under the head "Conveyance or transfer of any kind not hereinbefore described."

(3) Orders outside those described at paragraphs (1) and (2) above that contain declarations of the trust, i.e. that effect no disposition of trust property. These orders attract 50p fixed duty under the head "Declaration of trust." They may be presented for stamping at any stamp office in the usual way, or sent for adjudication if preferred.

Applications under section 48 of the Administration of Justice Act 1985

26.37 Applications under section 48 of the Administration of Justice Act 1985 should be made by Part 8 Claim Form without naming a defendant, under rule 8.2A. No separate application for permission under rule 8.2A need be made. The claim should be supported by a witness statement or affidavit to which are exhibited: (a) copies of all relevant documents; (b) instructions to

a person with a 10-year High Court qualification within the meaning of the Courts and Legal Services Act 1990 ("the qualified person"); (c) the qualified person's opinion; and (d) draft terms of the desired order.

26.38 The witness statement or affidavit (or exhibits thereto) should state: (a) the names of all persons who are, or may be, affected by the order sought; (b) all surrounding circumstances admissible and relevant in construing the document; (c) the date of qualification of the qualified person and his or her experience in the construction of trust documents; (d) the approximate value of the fund or property in question; and (e) whether it is known to the applicant that a dispute exists and, if so, details of such dispute.

26.39 When the file is placed before the Master he will consider whether the evidence is complete and if it is send the file to the judge.

26.40 The judge will consider the papers and, if necessary, direct service of notices under rule 19.8A or request such further information as he or she may desire. If the judge is satisfied that the order sought is appropriate, the order will be made and sent to the claimant.

26.41 If following service of notices under rule 19.8A any acknowledgment of service is received, the claimant must apply to the Master (on notice to the parties who have so acknowledged service) for directions. If the claimant desires to pursue the application to the court, in the ordinary case the Master will direct that the case proceeds as a Part 8 claim.

26.42 If on the hearing of the claim the judge is of the opinion that any party who entered an acknowledgment of service has no reasonably tenable argument contrary to the qualified person's opinion, in the exercise of his or her discretion he or she may order such party to pay any costs thrown away, or part thereof.

Vesting orders - property in Scotland

26.43 In applications for vesting orders under the Trustee Act 1925 any investments or property situate in Scotland should be set out in a separate schedule to the claim form, and the claim form should ask that the trustees may have permission to apply for a vesting order in Scotland in respect thereto.

26.44 The form of the order to be made in such cases will (with any necessary variation) be as follows:

> "It is ordered that the [ ] as Trustees have permission to take all steps that may be necessary to obtain a vesting order in Scotland relating to [the securities] specified in the schedule herein."

Disability of Trustee

26.45 There must be medical evidence showing incapacity to act as a trustee at the date of issue of the claim form and that the incapacity is continuing at the date of signing the witness statement or swearing the affidavit. The witness statement or affidavit should also show incapacity to execute transfers, where a vesting order of stocks and shares is asked for.

26.46 The trustee under disability should be made a defendant to the claim but need not be served unless he or she is sole trustee or has a beneficial interest.

Lodgment of Funds

26.47 Lodgment into the High Court of amounts of cash or securities of less than £500 under section 63 of the Trustee Act 1925, and rule 14(1) of the Court Funds Rules 1987 will not be accepted by the Accountant-General unless the Chief Master so signifies in writing.

26.48 The Accountant-General will refer the applicant to the Chief Master who will consider whether there is a more economical method of preserving the fund than lodging it in the High Court or, failing that, may suggest that the money be lodged in a county court (which has power to accept sums of up to £30,000 lodged under section 63 of the Trustee Act 1925).

26.49 If the Chief Master decides that a particular lodgment should be made in the High Court, he will so signify on the back of the request (in respect of applications under rule 14(1)(ii)(a)) or the office copy schedule to the affidavit (in respect of applications under rule 14(1)(ii)(b)).

Estates of Deceased Lloyd's Names

26.50 The procedure concerning the estates of deceased Lloyd's names is governed by a *Practice Statement* [2001] 3 All ER 765.

26.51 Personal representatives who wish to apply to the court for permission to distribute the estate of a deceased Lloyd's Name following *Re Yorke (deceased)* [1997] 4 All ER 907, or trustees who wish to administer any will trusts arising in such an estate, may, until further notice and if appropriate in the particular estate, adopt the following procedure.

26.52 The procedure will be appropriate where:

(1) the only, or only substantial, reason for delaying distribution of the estate is the possibility of personal liability to Lloyd's creditors; and

(2) all liabilities of the estate in respect of syndicates of which the Name was a member have for the years 1992 and earlier (if any) been reinsured (whether directly or indirectly) into the Equitas group; and

(3) all liabilities of the estate in respect of syndicates of which the Name was a member have for the years 1993 and later (if any) arise in respect of syndicates which have closed by reinsurance in the usual way or are protected by the terms of an Estate Protection Plan issued by Centrewrite Limited or are protected by the terms of EXEAT insurance cover provided by Centrewrite Limited.

26.53 In these circumstances personal representatives (and, if applicable, trustees) may apply by a Part 8 Claim Form headed "In the Matter of the Estate of [……..] deceased (a Lloyd's Estate) and In the Matter of the Practice Direction dated May 25 2001" for permission to distribute the estate (and, if applicable, to administer the will trusts) on the footing that no or no further provision need be made for Lloyd's creditors. Ordinarily, the claim form need not name any other party. It may be issued in this form without a separate application for permission under rule 8.2A.

26.54 The claim should be supported by a witness statement or an affidavit substantially in the form set out in Appendix 11 adapted as necessary to the particular circumstances and accompanied by a draft of the desired order substantially in the form also set out in Appendix 11. If the amount of costs has been agreed with the residuary beneficiaries (or, if the costs are not to be taken from residue, with the beneficiaries affected) their signed consent to those costs should also be submitted. If the Claimants are inviting the court to make a summary assessment they should submit a statement of costs in the form specified in the Costs PD. If in his discretion the Master (or outside London the District Judge) thinks fit, he will summarily assess the costs but with permission for the paying party to apply within 14 days of service of the order on him to vary or discharge the summary assessment. Subject to the foregoing, the order will provide for a detailed assessment unless subsequently agreed.

26.55 The application will be considered in the first instance by the Master who, if satisfied that the order should be made, may make the order without requiring the attendance of the applicants, and the court will send it to them. If not so satisfied, the Master may give directions for the further disposal of the application.

Judicial Trustees

26.56 Judicial trustees are appointed by the court under the Judicial Trustees Act 1896, in accordance with the Judicial Trustee Rules 1983. An application for the appointment of a judicial trustee should be made by Part 8 claim (or, if in an existing claim, by an application notice in that claim) which must be served (subject to any directions by the court) on every existing trustee who

is not an applicant and on such of the beneficiaries as the applicant thinks fit. Once appointed, a judicial trustee may obtain non-contentious directions from the assigned Master informally by letter, without the need for a Part 23 application (unless the court directs otherwise). Applications for directions can be sought from the court as to the trust or its administration by rule 8 of the Judicial Trustee Rules.

26.57 Where it is proposed to appoint the Official Solicitor as judicial trustee, inquiries must first be made to his office for confirmation that he is prepared to act if appointed. The Official Solicitor will not be required to give security.

26.58 A judicial trustee is entitled under rule 11 of the 1983 rules to such remuneration as is reasonable in respect of work reasonably performed. Applications for payment by the trustee must be by letter to the court, submitted with the accounts. A Practice Note issued by the Chief Chancery Master, with the authority of the Vice-Chancellor, on 1 July 2003 sets out the best practice to be followed in determining the amount of remuneration. The Practice Note mirrors the position regarding receivers' remuneration under CPR rule 69.7 and is reproduced at Appendix 12.

APPENDIX 1 ADDRESSES AND OTHER CONTACT DETAILS

1. CLERKS TO THE CHANCERY JUDGES

(all numbers to be preceded by 020 7947)

Clerk to:	**telephone**	**fax**
The Chancellor	6412	6572
Mr Justice Lindsay	6253	7185
Mr Justice Evans-Lombe	6657	6719
Mr Justice Blackburne	6589	7379
Mr Justice Lightman	6671	6291
Mr Justice Rimer	6418	6649
Mr Justice Park	6741	6196
Mr Justice Pumfrey	7482	6593
Mr Justice Hart	6419	6062
Mr Justice Lawrence Collins	7467	7298
Mr Justice Patten	7617	6650
Mr Justice Etherton	6116	6165
Mr Justice Peter Smith	6183	6133
Mr Justice Lewison	6039	6894
Mr Justice David Richards	7419	6743
Mr Justice Mann	7964	6739
Mr Justice Warren	7260	7740
Mr Justice Kitchin	6518	6439

2. E-MAIL COMMUNICATIONS

The e-mail protocol sets out how parties may communicate by e-mail on certain matters with the Chancery Division, and can be found at: *www.hmcourts-service.gov.uk*

The relevant e-mail addresses are:

(a) For skeleton arguments, chronologies, reading lists, list of issues, lists of authorities (but not the authorities themselves) and lists of the persons involved in the facts of the case sent in advance of a hearing:

Judge:
rcjchancery.judgeslisting@hmcourts-service.gsi.gov.uk
[**Note:** The clerk to the judge concerned should be contacted to find out whether other documents will be accepted by e-mail, and whether documents should be sent direct to the judge's clerk's e-mail address.]

Chancery Master:
rcjchancery.mastersappointments@hmcourts-service.gsi.gov.uk

Bankruptcy Registrar:

rcjbankruptcy.registrarshearings@hmcourts-service.gsi.gov.uk

Companies Court Registrar:
rcjcompanies.orders@hmcourts-service.gsi.gov.uk

(b) For the agreed terms of an Order which is ready to be sealed following the conclusion of a hearing:

Judge:
rcjchancery.ordersandaccounts@hmcourts-service.gsi.gov.uk

Chancery Master:
rcjchancery.ordersandaccounts@hmcourts-service.gsi.gov.uk

Bankruptcy Registrar:
rcjbankruptcy.registrarshearings@hmcourts-service.gsi.gov.uk

Companies Court Registrar:
rcjcompanies.orders@hmcourts-service.gsi.gov.uk

3. AT THE ROYAL COURTS OF JUSTICE, THOMAS MORE BUILDING

(All telephone extension numbers and fax numbers should be prefixed by 020 7947 unless otherwise specified)

1ST FLOOR

TM1.10 Bankruptcy Registrars' Clerks, applications without notice, Registrars' hearings and orders (6444)
Bankruptcy Registrars' Chambers (6444/7387)
Bankruptcy Court fax number (6378)

2ND FLOOR

TM2.04 Deputy Court Manager (6812)

TM2.07 Court Manager, Companies, Bankruptcy Courts (6870).

TM2.09 Companies Court General Office: issue of all winding-up petitions and all other Companies Court applications; filing of documents (6294); Central Index (7328)

TM2.11 Bankruptcy Issue and Search Room; issue of all petitions presented by creditors and debtors and applications to set aside statutory demand and applications for interim orders; search room (6448); setting down appeals from Registrars and District and Circuit Judges (6863); Companies Court Fax number (6958)

3RD FLOOR

TM3.08 Bankruptcy and Companies Registry. Filing affidavits, witness statements and documents and requesting bankruptcy and company files for applications without notice to be made in Chambers; requests for

office copies, lodging applications for certificates of discharge in bankruptcy (6441)

4TH FLOOR

TM4.04 Companies Schemes and reductions of capital (6727

TM4.05 Companies Orders Section: Winding up Court (6780); Registrars' Orders and disqualification of directors (6822)

5TH FLOOR

TM5.04 Chancery Chambers Registry and Issue Section: issue and amendment of all Chancery process, filing affidavits and witness statements (save those lodged within two days of a hearing before a Master which are to be filed in Room TM7.09); filing acknowledgements of service, searches of cause book; applications for office copy documents, including orders; transfers in and out (6148/6167)

TM5.05 Deputy Court Manager, Chancery Chambers. Certification of documents for use abroad (6754)

TM5.06 Lawyer, Chancery Chambers (6080).

TM5.07 Orders and Accounts Section. Associates: preparation of all Chancery Orders and Companies and Bankruptcy Court Orders; small payments; bills of costs for assessment; settlement of payment and lodgment schedules; accounts of receivers, judicial trustees, guardians and administrators; applications relating to security set by the court; matters arising out of accounts and inquiries ordered by the court (6855); Chancery Orders and Accounts Fax number: (7049)

6TH FLOOR

TM6.04 Chancery Masters' Library

TM6.05 Master Price

TM6.06 Court Manager, Chancery Chambers (6075)

TM6.07 Master Bowles

TM6.08 Secretary to Masters (6777)

TM6.09 Master Bragge

7TH FLOOR

TM7.05 Mater Teverson

TM7.06 Master Moncaster

TM7.08 Chief Master Winegarten

TM7.09 Masters' Appointments. Issue of Masters' applications, including applications without notice to Masters; filing affidavits and witness statements in proceedings before Masters (only if filed within two working days of hearing before the Master); applications to serve out of jurisdiction; filing stop notices; filing testamentary documents in contested probate cases; filing grants lodged under Part57; filing affidavits relating to funds paid into court under the Trustee Act 1925, Compulsory Purchase Act 1965 and the Lands Clauses Consolidation Act 1845. Manager (6095); Clerks to Chancery Masters (6702/7391); Masters' Appointments Fax no: (7422)

4. AT THE ROYAL COURTS OF JUSTICE BUT OUTSIDE THOMAS MORE BUILDING

(Prefaced by 020 7947 unless otherwise specified).

RCJ Switchboard (6000)
RCJ Security Office (6260)
Fees Office (Room E01) (6527)
Clerk of the Lists, Room WG3 (6318)
Chancery Judges' Listing Office, Room WG4 (6778/6690)
High Court Appeals Office, Room WG7 (7518)
Chancery Judges' Listing Office Fax number*: (7345) *(*See paragraph 14.12)*
Officer in charge of mechanical recording (Room WB.14) (6154)
Head Usher (6356, fax 6668)
Customer Service Officer (7731)
Video-conferencing managers (6581, fax 6613)

RCJ Advice Bureau (0845 120 3715, or 020 7947 6880, fax 020 7947 7167)
Personal Support Unit (Room M104). (7701/7703 fax 7702)

5. LONDON, OUTSIDE THE ROYAL COURTS OF JUSTICE

Central London County Court
Civil Trial Centre, Chancery List, 26-29 Park Crescent, London W1N 4HT
DX 97325 Regents Park 2
Business Chancery and Patents section (020 7917 7821/7887)
Fax 0207 917 7935/7940

6. OUTSIDE LONDON

The following are the Court addresses, telephone and fax numbers for the courts at which there are regular Chancery sittings outside London:

Birmingham: The Priory Courts, 33 Bull Street, Birmingham B4 6DS.
Telephone: 0121-681-3033. Fax: 0121-681-3121

Bristol: The Law Courts, Small Street, Bristol BS1 1DA.
Telephone: 0117-976-3098. Fax: 0117-976-3074

Cardiff: The Civil Justice Centre, 2 Park Street, Cardiff CF1 1ET.
Telephone: 01222-376402. Fax: 01222-376470

Leeds: The Court House, 1 Oxford Row, Leeds LS1 3BG. Telephone: 0113-283-0040. Fax: 0113-244-8507.

Liverpool: Queen Elizabeth II Law Courts, Derby Square, Liverpool L2 1XA.
Telephone: 0151-473-7373. Fax: 0151-227-2806

Manchester: The Courts of Justice, Crown Square, Manchester M3 3FL.
Telephone: 0161-954-1800. Fax: 0161-832-5179

Newcastle: The Law Courts, Quayside, Newcastle-upon-Tyne NE1 3LB.
Telephone: 0191-201-2000. Fax: 0191-201-2001

Preston: The Law Courts, Openshaw Place, Ringway, Preston PR1 2LL.
Telephone: 01772-832300. Fax: 01772-832476.

In some centres resources do not permit the listing telephone numbers to be attended personally at all times. In cases of urgency, solicitors, counsel and counsel's clerks may come into the Chancery Court and leave messages with the member of staff sitting in Court.

Urgent Court business officer pager numbers for out of hours applications:

Birmingham (Midland Circuit):	
West Side:	07699-618079
East Side:	07699-618078
Bristol:	07699-618088
Cardiff:	07699-618086
Manchester and Liverpool:	07699-618080
Preston	07699-618081
Newcastle	01399-618083
Leeds and Bradford	01399-618082

In case of difficulty out of hours, contact the Royal Courts of Justice on 020 7947 6260.

APPENDIX 2 GUIDELINES ON STATEMENTS OF CASE

1. The document must be as brief and concise as possible.

2. The document must be set out in separate consecutively numbered paragraphs and sub-paragraphs.

3. So far as possible each paragraph or sub-paragraph should contain no more than one allegation.

4. The document should deal with the case on a point by point basis, to allow a point by point response.

5. Where the CPR require a party to give particulars of an allegation or reasons for a denial (see rule 16.5(2)), the allegation or denial should be stated first and then the particulars or reasons listed one by one in separate numbered sub-paragraphs.

6. A party wishing to advance a positive case must identify that case in the document; a simple denial is not sufficient.

7. Any matter which if not stated might take another party by surprise should be stated.

8. Where they will assist, headings, abbreviations and definitions should be used and a glossary annexed.

9. Contentious headings, abbreviations, paraphrasing and definitions should not be used; every effort should be made to ensure that headings, abbreviations and definitions are in a form that will enable them to be adopted without issue by the other parties.

10. Particulars of primary allegations should be stated as particulars and not as primary allegations.

11. Schedules or appendices should be used if this would be helpful, for example where lengthy particulars are necessary.

12. The names of any witness to be called may be given, and necessary documents (including an expert's report) can be attached or served contemporaneously if not bulky (PD 16; Guide paragraph 2.11). Otherwise evidence should not be included.

13. A response to particulars stated in a schedule should be stated in a corresponding schedule.

14. A party should not set out lengthy extracts from a document in his or her statement of case. If an extract has to be included, it should be placed in a schedule.

15. The document must be signed by the individual person or persons who drafted it not, in the case of a solicitor, in the name of the firm only. It must be accompanied by a Statement of Truth.

APPENDIX 3 CASE MANAGEMENT DIRECTIONS

DRAFT ORDERS FOR USE ON ALLOCATION OR AT CASE MANAGEMENT CONFERENCES

Claim No.

IT IS ORDERED

1. Allocation to multi-track

( ) that this claim is allocated to the multi-track.

2. Transfer of claims, including transfer from Part 8

() that the claim be transferred to:

(a) the Division of the High Court;
(b) the District Registry;
(c) the [Central London] County Court [Chancery List].

( ) that the issue(s) (*define issue(s)*) be transferred to (*one of (a) to (c) above*) for determination.

( ) that the (*party*) apply by (*date*) to a Judge of the Technology and Construction Court [*or other Specialist List*] for an Order to transfer the claim to that Court.

( ) that the claim (*title and claim number*) commenced in [the County Court][the District Registry of], be transferred from that Court to the Chancery Division of the High Court.

( ) that this claim shall continue as if commenced under Part 7 and shall be allocated to the multi-track.

3. Alternative dispute resolution

This claim be stayed until [*one month*] for the parties to try to settle the dispute by alternative dispute resolution or other means. The parties shall notify the Court in writing at the end of that period whether settlement has been reached. The parties shall at the same time lodge *either*:

(a) (if a settlement has been reached) a draft consent Order signed by all parties; *or*

(b) (if no settlement has been reached) a statement of agreed directions signed by all parties or (in the absence of agreed directions) statements of the parties' respective proposed directions.

4. Probate cases only

() that the [*party*] file [his][her] witness statement or affidavit of testamentary scripts and lodge any testamentary script at Room TM7.09, Thomas More Building, Royal Courts of Justice, Strand, London WC2A 2LL [District Registry] by (*date*).

5. Case summary

() that [each party][the (*party*)] by (*date*) prepare and serve a case summary [not exceeding words] on all other parties, to be agreed by (*date*) and filed by (*date*) and if it is not agreed by that date the parties shall file their own case summaries.

6. Trial date

( ) that the trial of the claim/issue(s) take place between (*date*) and (*date*) ("the trial window").
( ) that the (*party*) shall make an appointment to attend on the Listing Officer (Room WG4, Royal Courts of Justice, Strand, London WC2A 2LL; Tel. 020 7947 6816; Fax No. 020 7947 7352) to fix a trial date within the trial window, such appointment to be not later than (*date*) and give notice of the appointment to all other parties.
( ) that

(i) the claim be entered in the [Trial List][General List], with a listing category of [A][B][C] *(to be decided by the Master with reference to the substance and difficulty of the case)*, with a time estimate of days/weeks

(ii) the trial take place in London (*or* identify venue).

7. Pre Trial Review
() [the trial being estimated to last more than 10 days] that there be a Pre Trial Review on a date to be arranged by the Listing Officer [in conjunction with the parties] [to take place shortly before the trial and, if possible, in front of the Judge who will be conducting the trial] at which, except for urgent matters in the meantime, the Court will hear any further applications for Orders.

8. All directions agreed.
() The parties having agreed directions it is by consent ordered:-

[Set out all the directions by reference to parties' draft Order on file].

9. Some directions agreed
() The parties having agreed the following directions it is by consent ordered:

[Set out the agreed directions by reference to parties' draft Order on file as above, and any further directions to be given at this stage].

10. Case management conference etc.
() that there be a [further] case management conference before the Master in Room TM … , Thomas More Building, Royal Courts of Justice, Strand, London WC2A 2LL on (*date*) at o'clock (of hours/minutes duration).
() that there shall be a case management conference (of hours/minutes duration). In order for the Court to fix a date the parties are to complete the accompanying questionnaire and file it by (*date*).
() that the (*party*) apply for an appointment for a [further] case management conference by (*date*).
() At the case management conference, except for urgent matters in the meantime, the Court will hear any further applications for Orders and any party must file an Application Notice for any such Orders and serve it and supporting evidence (if any) by (*date*).

11. Failure to file allocation questionnaire
( ) that, ***no allocation questionnaire having been received from [the Claimant][the Defendant],*** if [the Claimant][the Defendant] [does not file [his][her] allocation questionnaire within 3 days after service of this Order upon [him][her], the [claim]

[counterclaim] shall be struck out without further Order *[or as the case may be]*. [Add Order as to costs].

12. Amendments to statement of case

( ) that the (*party)* has permission to amend [his][her] statement of case as in the copy on the Court file [initialled by the Master].
( ) that the amended statement of case be verified by a statement of truth.
( ) that the amended statement of case be filed by (*date*).
( ) that [the amended statement of case be served by (*date*).] [service of the amended statement of case be dispensed with].
( ) that any consequential amendments to other statements of case be filed and served by (*date*)
( ) that the costs of and consequential to the amendment to the statement of case [shall be paid by (*party*) in any event] [are assessed in the sum of £ and are to be paid by (*party*)][within (*time*)].

13. Addition of parties etc.

() that the (*party*) has permission:

(a) to [add][substitute][remove] (*name of party*) as a (*party*) and

(b) to amend [his][her] statement of case in accordance with the copy on the Court file [initialled by the Master].

and that the amended statement of case be verified by a statement of truth.

() that the amended statement of case be :

(a) filed by (*date*);

(b) served on (*new party, existing parties or removed party, as appropriate*), by (*date*).

() that a copy of this Order be served on (*new party, existing parties or removed party, as appropriate*), by (*date*).
() that any consequential amendments to other statements of case be filed and served by (*date*).
() that the costs of and consequential to the amendment to the statement of case [shall be paid by the (*party*) in any event] [are assessed in the sum of £ and are to be paid by the (*party*)].

14. Consolidation

() that this claim be consolidated with claim number (*number and title of claim*), the lead claim to be claim number . [The title to the consolidated case shall be as set out in the Schedule to this Order].

15. Trial of issue

() that the issue of (*define issue*) be tried as follows:

(a) with the consent of the parties, before a Master

(i) on (*date*) in Room TM Thomas More Building, Royal Courts of Justice, Strand, London WC2A 2LL;

(ii) with a time estimate of (hours),

(iii) with the filing of listing questionnaires dispensed with, *or*

(b) before a Judge

(i) with the trial of the issue to take place between (*date*) and (*date*) ("the trial window")

(ii) with the (*party*) to make an appointment to attend on the Listing Officer (Room WG4, Royal Courts of Justice, Strand, London WC2A 2LL; Tel. 020 7947 6778/6690; Fax No. 020 7947 7345) to fix a trial date within the trial window, such appointment to be not later than (*date*) and to give notice of the appointment to all other parties.

(iii) with the issue to be entered in the [Trial List][General List], with a listing category of [A][B][C] *(to be decided by the Master with reference to the substance and difficulty of the case*, and a time estimate of days/ weeks and to take place in London (*or* identify venue).

16. Further information

() that the (*party*) provide by (*date*) the [further information][clarification] sought in the request dated (*date*) [initialled by the Master].

() that any request for [further information][clarification] shall be served by [*date*].

17. Disclosure of documents

() that each party give by (*date*) standard disclosure to every other party by list [by categories].

() that the (*party/parties*) give specific disclosure of documents [limited to the issues of] described in the Schedule to this Order [initialled by the Master] by list [by categories] by (*date*).

() that the (*party*) give by (*date*) standard disclosure by list [by categories] to (*party*) of documents limited to the issue(s) of (*define issues*) by list.

18. Inspection of documents

() that any requests for inspection or copies of disclosed documents shall be made within days after service of the list.

19. Preservation of property

() that the (*party*) preserve (*give details of relevant property*) until trial of the claim or further Order *or other remedy under rule 25.1(1).*

20. Witness statements

() that each party serve on every other party the witness statement of the oral evidence which the party serving the statement intends to rely on in relation to [any issues of fact][the following issues of fact (*define issues)*] to be decided at the trial, those statements [and any notices of intention to rely on hearsay evidence] to be

(a) exchanged by (*date*) or

(b) served by (*party*) by (*date*) and by (*party*) by (*date)*

provided that before exchange the parties shall liaise with a view to agreeing a method of identification of any documents referred to in any such witness statement.

() that the (*party*) has permission to serve a witness summary relating to the evidence of (*name*) of (*address*) [on every other party by][to be served on (*party*)/exchanged at the same time as exchange of witness statements].

21. No expert evidence
() no expert evidence being necessary, that [no party has permission to call or rely on expert evidence][permission to call or rely on expert evidence is refused].

22. Single expert
() that evidence be given by the report of a single expert in the field of (*define field*) instructed jointly by the parties, on the issue of (*define issue*) [and [his][her] fees shall be limited to £].
() that if the parties are unable to agree [by (*date*)] who that expert is to be and about the payment of [his][her] fees any party may apply for further directions.
() that unless the parties agree in writing or the Court orders otherwise, the fees and expenses of the single expert shall be paid to [him][her] by the parties equally.
() that each party give [his][her] instructions to the single expert by (*date*).
() that the report of the single expert be filed and served by [him][her] on the parties by (*date*).
() that no party may recover from another party more than £ for the fees and expenses of the expert.
() that the evidence of the expert be given at the trial by [written report][oral evidence] of the expert.

23. Separate Experts
() that each party has permission to adduce [oral] expert evidence in the field of (*specify*) [limited to expert(s) [per party][on each side].
() that the experts' reports shall be exchanged by (*date*).
() that the experts shall hold a discussion for the purpose of:
(a) identifying the issues, if any, between them; and
(b) where possible, reaching agreement on those issues.
() that the experts shall by [*specify date after discussion*] prepare and file a statement for the Court showing:
(a) those issues on which they are agreed; and
(b) those issues on which they disagree and a summary of their reasons for disagreeing.
() No party shall be entitled to recover by way of costs from any other party more than £ for the fees or expenses of an expert.

24. Definition and reduction of issues.
() that by (*date*) the parties list and discuss the issues in the claim [including the experts' reports and statements] and attempt to define and narrow the issues [including those issues the subject of discussion by the experts].

25. Trial bundle and skeleton arguments.

() that not earlier than 7 days or later than 3 days before the date fixed for trial or of the claim entering the Warned List the Claimant shall file with the Chancery Listing Office a trial bundle for the use of the Judge in accordance with Appendix 6 of the Chancery Guide.
() that skeleton arguments and chronologies shall be filed not less than 2 clear days before the date fixed for trial or of the claim entering the Warned List, in accordance with Appendix 7 of the Chancery Guide.

26. Settlement
() that if the claim or part of the claim is settled the parties must immediately inform the Court, whether or not it is then possible to file a draft Consent Order to give effect to the settlement.

27. Compliance with Directions
() that the parties shall by (*date*) notify the Court in writing that they have fully complied with all directions or state:

(a) with which directions they have not complied;
(b) why they have not complied; and
(c) what steps they are taking to comply with the outstanding directions in time for the trial.

If the Court does not receive such notification or if the steps proposed to comply with outstanding directions are considered by the Court unsatisfactory, the Court may order a hearing (and may make appropriate orders as to costs against a party in default).

28. Costs
( ) that the costs of this application be:

(a) costs in the case;
(b) summarily assessed at £ and paid by (*party*); *or*
(c) the [party/parties]'[s] in any event, to be subject to detailed assessment.

NOTE 1

The attention of the parties is drawn to the importance of seeking to agree at an early stage directions for the management of the case as emphasised in the Practice Direction to Part 29 of the Civil Procedure Rules.

NOTE 2

The parties may, subject to any agreement being in accordance with the provisions of the Civil Procedure Rules, agree to extend the time periods given in the directions above provided this does not affect the date given for any case management conference or pre-trial review or the date of the trial or trial period.

NOTE 3

If you fail to attend a hearing that has been ordered, the Court may order you to pay the costs of the other party, or parties, that do attend. Failure to pay those costs within the time stated may lead to your statement of case (claim or defence) being struck out.

NOTE 4

If you do not comply with these directions, any other party to the claim will be entitled to apply to the Court for an order that your statement of case (claim or defence) be struck out.

APPENDIX 4

Part 1: JUDGE'S APPLICATION INFORMATION FORM

Title as in claim form

Application Information

1. [DATE APPLICATION TO BE HEARD]

2. DETAILS OF SOLICITOR/PARTY LODGING THE APPLICATION

    a. [Name]

    b. [Address]

    c. [Telephone No.]

    d. [Reference]

    e. [Acting for Claimant(s)/Defendant(s)]

3. DETAILS OF COUNSEL/OR OTHER ADVOCATE

    a. [Name]

    b. [Address of Chambers/Firm]

    c. [Telephone No.]

4. DETAILS OF OTHER PART(Y'S)(IES') SOLICITORS

    a. [Name]

    b. [Address]

    c. [Telephone No.]

    d. [Reference]

[Acting for Claimant(s)/Defendant(s)]

Part 2: WRITTEN EVIDENCE LODGMENT FORM

CHANCERY CHAMBERS

TO FILING SECTION - ROOM TM5.04
CLAIM NO:
SHORT TITLE:

Herewith Affidavit or witness statement of.....
/or if other document specify.....
filed in respect of:-

	Tick
1. Application before Judge on.....	
2. Application before Master on.....	
3. Charging Order	
4. Garnishee Order	
5. Permission to issue claim for possession	
6. Service by alternative method	
7. Service out of Jurisdiction	
8. Evidence	
9. Oral examination of debtor	
10. To enable a Master's order to be drawn	
11. Other (Specify).....	

Signed

Solicitors for Claimant/Defendant
other (please specify)
Telephone No:
Ref:

APPENDIX 5 CORRESPONDENCE WITH CHANCERY MASTERS – PRACTICE NOTE

1. One of the consequences of the new Rules and Practice Directions has been a significant increase in letters to the Court from parties and their solicitors. This imposes a heavy extra burden on the staff and Masters. It also means that court files have to be moved more often, which itself gives rise to problems. It would therefore be greatly appreciated if parties and solicitors involved in litigation before the Chancery Masters had regard to the following points.

2. When corresponding, please consider carefully (a) whether your letter is really necessary and (b) if it is who the correct addressee should be. Only address letters to the Master if the letter needs to be seen by him. If not address the letter to his clerk.

3. Letters and other documents should only be sent by fax if there is a real urgency, and should not be followed up with a hard copy. (If, exceptionally, a fax has contained a document the original of which needs to go on the court file, then the hard copy enclosing the original should be marked clearly "confirmation of fax").

4. As a general rule all correspondence, whether letter or fax, must be copied to the other parties. Correspondence should therefore state that it has been copied to the other parties (or else it should state that it has not and explain why).

5. Correspondence should not be used in place of a Part 23 application (which requires payment of a fee, a draft order and a statement of truth).

J Winegarten
Chief Chancery Master
July 2001

APPENDIX 6 GUIDELINES ON BUNDLES

Bundles of documents must comply with paragraph 3 of PD 39 Miscellaneous Provisions relating to Hearings. These guidelines are additional to those requirements, and they should be followed wherever possible.

1. The preparation of bundles requires co-operation between the legal representatives for all parties, and in many cases a high level of co-operation. It is the duty of all legal representatives to co-operate to the necessary level. Where a party is acting in person it is also that party's duty to co-operate as necessary with the other parties' legal representatives.

2. Bundles should be prepared in accordance with the following guidance.

Avoidance of duplication

3. No more than one copy of any one document should be included, unless there is good reason for doing otherwise. One such reason may be the use of a separate core bundle.

4. If the same document is included in the chronological bundles and is also an exhibit to an affidavit or witness statement, it should be included in the chronological bundle and where it would otherwise appear as an exhibit a sheet should instead be inserted. This sheet should state the page and bundle number in the chronological bundles where the document can be found.

5. Where the court considers that costs have been wasted by copying unnecessary documents, a special costs order may be made against the relevant person. In no circumstances should rival bundles be presented to the court.

Chronological order and organisation

6. In general documents should be arranged in date order starting with the earliest document.

7. If a contract or other transactional document is central to the case it may be included in a separate place provided that a page is inserted in the chronological run of documents to indicate where it would have appeared chronologically and where it is to be found instead. Alternatively transactional documents may be placed in a separate bundle as a category.

Pagination

8. This is covered by paragraph 3 of the PD, but it is permissible, instead of numbering the whole bundle, to number documents separately within tabs. An exception to consecutive page numbering arises in the case of the core

bundle. For this it may be preferable to retain the original numbering with each bundle represented by a separate divider.

9. Page numbers should be inserted in bold figures, at the bottom of the page and in a form that can clearly be distinguished from any other pagination on the document.

Format and presentation

10. Where possible, the documents should be in A4 format. Where a document has to be read across rather than down the page, it should so be placed in the bundle as to ensure that the top of the text starts nearest the spine.

11. Where any marking or writing in colour on a document is important, for example on a conveyancing plan, the document must be copied in colour or marked up correctly in colour.

12. Documents in manuscript, or not easily legible, should be transcribed; the transcription should be marked and placed adjacent to the document transcribed.

13. Documents in a foreign language should be translated; the translation should be marked and placed adjacent to the document translated; the translation should be agreed or, if it cannot be agreed, each party's proposed translation should be included.

14. The size of any bundle should be tailored to its contents. There is no point having a large lever-arch file with just a few pages inside. On the other hand bundles should not be overloaded as they tend to break. **No bundle should contain more than 300 pages.**

15. Binders and files must be strong enough to withstand heavy use.

16. Large documents, such as plans, should be placed in an easily accessible file. If they will need to be opened up often, it may be sensible for the file to be larger than A4 size.

Indices and labels

17. Indices should, if possible, be on a single sheet. It is not necessary to waste space with the full heading of the action. Documents should be identified briefly but properly, e.g. "AGS3 – Defendants Accounts".

18. Outer labels should use large lettering, e.g. "A. Pleadings." The full title of the action and solicitors' names and addresses should be omitted. A label should be used on the front as well as on the spine.

19. A label should also be stuck on to the front inside cover of a file at the top left, in such a way that it can be seen even when the file is open.

Staples etc.

20. All staples, heavy metal clips etc. should be removed.

Statements of case

21. Statements of case should be assembled in 'chapter' form, i.e. claim form followed by particulars of claim, followed by further information, irrespective of date.

22. Redundant documents, e.g. particulars of claim overtaken by amendments, requests for further information recited in the answers given, should generally be excluded. Backsheets to statements of case should also be omitted.

Witness statements, affidavits and expert reports

23. Where there are witness statements, affidavits and/or expert reports from two or more parties, each party's witness statements etc. should, in large cases, be contained in separate bundles.

24. The copies of the witness statements, affidavits and expert reports in the bundles should have written on them, next to the reference to any document, the reference to that document in the bundles. This can be done in manuscript.

25. Documents referred to in, or exhibited to, witness statements, affidavits and expert reports should be put in a separate bundle and not placed behind the statement concerned, so that the reader can see both the text of the statement and the document referred to at the same time.

26. Backsheets to affidavits and witness statements should be omitted.

New Documents

27. Before a new document is introduced into bundles which have already been delivered to the court - indeed before it is copied - steps should be taken to ensure that it carries an appropriate bundle/page number, so that it can be added to the court documents. It should not be stapled, and it should be prepared with punch holes for immediate inclusion in the binders in use.

28. If it is expected that a large number of miscellaneous new documents will from time to time be introduced, there should be a special tabbed empty loose-leaf file for that purpose. An index should be produced for this file, updated as necessary.

Inter-Solicitor Correspondence

29. It is seldom that all inter-solicitor correspondence is required. Only those letters which are likely to be referred to should be copied. They should normally be placed in a separate bundle.

Core bundle

30. Where the volume of documents needed to be included in the bundles, and the nature of the case, makes it sensible, a separate core bundle should be prepared for the trial, containing those documents likely to be referred to most frequently.

Basis of agreement of bundles

31. See Chapter 7, paragraph 13.

Photocopy authorities

32. If authorities, extracts from text-books etc. are photocopied for convenience for use in court, the photocopies should be placed in a separate bundle with an index and dividers. Reduced size copies (i.e. 2 pages of original to each A4 sheet) should not be used. Where only a short passage from a long case is needed, the headnote and key pages only should be copied and the usher should be asked to have the full volume in court. Whenever possible the parties' advocates should liaise about these bundles in order to avoid duplication of copies.

APPENDIX 7 GUIDELINES ON SKELETON ARGUMENTS, CHRONOLOGIES, INDICES AND READING LISTS

Skeleton arguments

1. A skeleton argument is intended to identify both for the parties and the court those points which are, and those that are not, in issue, and the nature of the argument in relation to those points which are in issue. It is not a substitute for oral argument.

2. Every skeleton argument should therefore:

   (1) identify concisely:

   (a) the nature of the case generally, and the background facts insofar as they are relevant to the matter before the court;

   (b) the propositions of law relied on with references to the relevant authorities;

   (c) the submissions of fact to be made with reference to the evidence;

   (2) be as brief as the nature of the issues allows - it should not normally exceed 20 pages of double-spaced A4 paper and in many cases it should be much shorter than this;

   (3) be in numbered paragraphs and state the name (and contact details) of the advocate(s) who prepared it;

   (4) avoid arguing the case at length;

   (5) avoid formality and make use of abbreviations, e.g. C for Claimant, A/345 for bundle A page 345, 1.1.95 for 1st January 1995 etc.

3. Paragraph 1 also applies to written summaries of opening speeches and final speeches. Even though in a large case these may necessarily be longer, they should still be as brief as the case allows.

Reading lists

4. The documents which the Judge should if possible read before the hearing may be identified in a skeleton argument, but must in any event be listed in a separate reading list, if possible agreed between the advocates, which must be lodged with the agreed bundles, together with an estimate, if possible agreed, of the time required for the reading.

Chronologies and indices

5. Chronologies and indices should be non-contentious and agreed with the other parties if possible. If there is a material dispute about any event stated in the chronology, that should be stated in neutral terms and the competing versions shortly stated.

6. If time and circumstances allow its preparation, a chronology or index to which all parties have contributed and agreed can be invaluable.

7. Chronologies and indices once prepared can be easily updated and may be of continuing usefulness throughout the case.

APPENDIX 8 DELIVERY OF DOCUMENTS IN CHANCERY CHAMBERS

1. ***Deliver of documents for Master's hearings***

(a) Deliver bundles and skeletons (if required) to Masters' Appointments, Room TM7.09, 2 clear working days (not more than 7) before the hearing.

(b) Mark clearly "for hearing on ..……*(date)* before Master ……

(c) Insert a reading list and estimate of reading time if appropriate.

(d) Bundles may be presented in ring binders or lever arch files, or as appropriate.

(e) Documents for Masters' hearings should not be taken direct to the Master's room unless in any particular case the Master has directed otherwise.

(f) Documents required for Masters' hearings should never be taken to (i) the Registry (Room TM5.04); (ii) the Chancery Judges' Listing Office (Room WG 4) or (iii) the RCJ Post Room) – if they are they may well not reach the Master in time.

Note:
Documents required for hearings before a Chancery judge must not be delivered to Chancery Chambers. They must be delivered to the Chancery Judges' Listing Office (Room WG 4).

2. ***Filing of documents***

(a) Take or send documents required to be filed (i.e. placed on the Court file, either under the CPR or under an Order of the Court (e.g. statements of case, defences, allocation questionnaires, some witness statements)) to the Chancery Registry, Room TM5.04 for filing.

(b) <u>But</u> documents (e.g. witness statements, exhibits) required to be filed which are needed for a Masters' hearing within 10 working days must be delivered for filing to Masters' Appointments, Room 7.09 not the Registry.

(c) If bulky, use treasury tags, not files or ring binders.

APPENDIX 9 GUIDELINES ON WITNESS STATEMENTS

1. The function of a witness statement is to set out in writing the evidence in chief of the maker of the statement. Accordingly witness statements should, so far as possible, be expressed in the witness's own words. This guideline applies unless the perception or recollection of the witness of the events in question is not in issue.

2. Witness statements should be as concise as the circumstances of the case allow. They should be written in consecutively numbered paragraphs. They should present the evidence in an orderly and readily comprehensible manner. They must be signed by the witness, and contain a statement that he or she believes that the facts stated in his or her witness statement are true. They must indicate which of the statements made are made from the witness' own knowledge and which are made on information and belief, giving the source of the information or basis for the belief.

3. Inadmissible material should not be included. Irrelevant material should likewise not be included.

4. Any party on whom a witness statement is served who objects to the relevance or admissibility of material contained in a witness statement should notify the other party of his or her objection within 28 days after service of the witness statement in question and the parties concerned should attempt to resolve the matter as soon as possible. If it is not possible to resolve the matter, the party who objects should make an appropriate application, normally at the PTR, if there is one, or otherwise at trial.

5. It is incumbent on solicitors and counsel not to allow the costs of preparation of witness statements to be unnecessarily increased by over-elaboration of the statements. Any unnecessary elaboration may be the subject of a special order as to costs.

6. Witness statements must contain the truth, the whole truth and nothing but the truth on the issues covered. Great care must be taken in the preparation of witness statements. No pressure of any kind should be placed on a witness to give other than a true and complete account of his or her evidence. It is improper to serve a witness statement which is known to be false or which the maker does not in all respects actually believe to be true. In addition, a professional adviser may be under an obligation to check where practicable the truth of facts stated in a witness statement if he or she is put on enquiry as to their truth. If a party discovers that a witness statement which he or she has served is incorrect he or she must inform the other parties immediately.

7. A witness statement should simply cover those issues, but only those issues, on which the party serving the statement wishes that witness to give

evidence in chief. Thus it is not, for example, the function of a witness statement to provide a commentary on the documents in the trial bundle, nor to set out quotations from such documents, nor to engage in matters of argument. Witness statements should not deal with other matters merely because they may arise in the course of the trial.

8. Witness statements very often refer to documents. If there could be any doubt as to what document is being referred to, or if the document has not previously been made available on disclosure, it may be helpful for the document to be exhibited to the witness statement. If, to assist reference to the documents, the documents referred to are exhibited to the witness statement, they should nevertheless not be included in trial bundles in that form: see Appendix 6, paragraph 4. If (as is normally preferable) the documents referred to in the witness statement are not exhibited, care should be taken in identifying them, for example by reference to the lists of documents exchanged on disclosure. In preparation for trial, it will be necessary to insert cross-references to the trial bundles so as to identify the documents: see Appendix 6, paragraph 24.

9. If a witness is not sufficiently fluent in English to give his evidence in English, the witness statement should be in the witness' own language and a translation provided. If a witness is not fluent in English but can make himself understood in broken English and can understand written English, the statement need not be in his own words provided that these matters are indicated in the statement itself. It must however be written so as to express as accurately as possible the substance of his evidence.

APPENDIX 10 A GUIDE FOR RECEIVERS IN THE CHANCERY DIVISION

1. This guide sets out brief notes on the procedure to be followed after an order has been made appointing a receiver in the Chancery Division. The procedure is now governed by CPR Part 69 and its PD.

2. Appendix C contains notes on the main powers and duties of a receiver and a copy should be passed to the receiver.

ACTION ON THE APPOINTMENT OF A RECEIVER (Rule 69.6; PD 6&8)

3. Where an order has been made appointing a receiver, it is generally necessary to apply for directions, by application notice under Part 23. Part 69 PD 6 lists the matters on which directions will usually be given. A draft order should normally be submitted with the Application Notice.

4. The application for directions should normally be made immediately after the making of the order appointing the receiver, especially where security has to be given within a limited time (see below). Only if the order appointing the receiver appoints him or her by name and gives full directions as to accounts and security will an application for directions not be necessary.

5. The receiver may of course apply to the Master at any time for other directions as necessary. Where the directions are unlikely to be contentious or important to the parties this may be done by letter (see Part 69 PD 8).

Giving Security (Rule 69.5; PD 7).

6. The order appointing a receiver will normally include directions in relation to security, and will specify the date by which security is to be given. It is therefore important to obtain an early date for the directions hearing. If security is not completed within the time specified the receivership may be terminated and it will then be necessary for an application to be made to renew it. To avoid this, if it seems likely that security will not be given in time an application should be made at the directions hearing for an extension of time to give security.

7. When the amount of the security has been settled, a guarantee in Form PF 30 CH (Appendix A) must (unless the receiver is a licensed insolvency practitioner covered by bond, which has been extended to cover the appointment) be prepared and entered into with one of the four main clearing banks or the insurance company listed in Appendix B.

8. The guarantee must then be engrossed and executed, i.e. signed by the receiver and signed and sealed by the bank or insurance company. It should then be lodged in Chancery Chambers, Room TM7.09, Royal Courts of Justice, Strand London WC2A 2LL. It will then be signed by the Master and endorsed with a certificate of completion of security and placed on the court file. Where security is given by bond, written evidence of the extended bond and the sufficiency of its cover must be filed in Room 7.09 in accordance with the requirements of Part 69 PD 7.3(1).

9. If the amount of the security given is subsequently increased or decreased, an endorsement is made to the original guarantee.

Receiver's Remuneration (Rule 69.7; PD9)

10. A receiver may only charge for his services if the court permits it and specifies the basis on which the receiver is to be remunerated. Unless the court directs the remuneration to be fixed by reference to some fixed scale, or percentage of rents collected, it will determine the amount in accordance with the criteria set out in rule 69.7(4).

Receiver's Accounts (Rule 69.8; PD 10).

11. If directions as to the receiver's accounts have not been given in the order appointing the receiver, such directions must be obtained at the directions hearing.

12. Normally accounts are prepared half-yearly and must be delivered within a month of the end of the accounting period.

13. Generally accounts need only be presented to the court if any party receiving them serves notice on the receiver, under rule 69.8(3), that he objects to any item in the accounts.

Discharge of Receiver and Cancellation of Security (Rule 69.10&11)

14. When a receiver has completed his duties, the receiver or any party should apply for an order discharging the receiver and cancelling the security.

15. When an order for cancellation of a receiver's security has been made, any guarantee and the duplicate order appointing the receiver are endorsed to that effect.

16. The endorsed guarantee and duplicate order should then be taken to the bank or insurance company by the solicitors for cancellation and return of any outstanding premium.

Appendix A to Guide for Receivers

Guarantee for receiver's acts and defaults[1]

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

[TITLE]

I, ….(*Name*). of ……(*address*), the Receiver [and manager] appointed by Order dated……(*date*) (*or* proposed to be appointed) in this claim hereby undertake to the Court duly to account for all money and property received by me as such Receiver [and manager] at such times and in such manner in all respects as the Court directs.

And we…… (*name*(*s*) *of surety or sureties*) hereby [jointly and severally[2]] undertake with the Court and guarantee to be answerable for any default by ……(*name*) as such Receiver [and manager] and upon such default to pay to any person or persons or otherwise as the Court directs any sum or sums not exceeding £……in total that may from time to time be certified by [a Master of the Supreme Court][a District Judge] to be due from……(*name*) as Receiver [and manager] and we submit to the jurisdiction of the Court in this action to determine any claim made under this undertaking.

DATED this …… day of …… 20...

Signed sealed and delivered by the above named …… in the presence of

or

The Common Seal of …… was hereunto affixed in the presence of:-

(*Signature of receiver*)

(*Seal of surety with appropriate signature or signatures*)

1 Adapted from Form PF 30CH.

2 Omit these words in the case of a guarantee or other company.

Appendix B to Guide for Receivers

Guarantees for Personal Applicants

The insurance company detailed below is willing to act as surety

Name of company	**Address to be shown on and for correspondence**
Zurich GSG Limited	Hawthorn Hall Hall Road Wilmslow Cheshire SK9 5BZ

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Appendix C to Guide for Receivers

The Powers and Duties of a Receiver

1. The main function of a receiver appointed by the court is to protect the assets received by him pending the court proceedings. The following notes set out some of the more important powers and duties a receiver should be aware of.

2. A receiver must obtain the permission of the court (which may be contained in the order appointing him) before he can:

   (a) bring, defend or compromise legal proceedings

   (b) pay a debt (other than in a partnership claim)

   (c) compromise a claim

   (d) purchase or sell assets other than in the normal course of business

   (e) grant obtain or surrender a lease or purchase or sell real property (even in the course of managing a business); since the appointment of a receiver is an equitable remedy it does not confer on him any title to land: unless the legal owner is prepared to join in the conveyance or

lease the receiver would in any case have to obtain a vesting order under section 47 or section 50 of the Trustee Act 1925.

(f) borrow money

(h) carry on or close down or sell a business

(i) employ additional staff in the course of managing a business

(j) carry out repairs to property costing more than £1000 in any one accounting year

3. Receivers should ensure that they have insurance (if any) transferred into their own names and should consider the adequacy of the insurance cover.

4. Receivers are not entitled to instruct their own solicitors without the express permission of the court.

5. Receivers should seek the court's directions on any question of doubt which arises in the course of the receivership.

6. Receivers should bear in mind that their function as receiver does not include the preparation of partnership accounts and they cannot include fees for such work in their remuneration as receiver.

7. Unless expressly authorised by the court (whether in the Order appointing him or otherwise) the receiver must not part with assets in his hands, whether to the person appointing him or otherwise. If he has completed his functions as receiver before the disputes between the parties have been resolved in the proceedings, the receiver should normally apply to be discharged on lodging into court the money he is holding.

APPENDIX 11 LLOYD'S NAMES' ESTATE APPLICATIONS: FORMS

FORM OF WITNESS STATEMENT

[Heading as in claim form]

1. We are the personal representatives of the estate of the above-named Deceased ("the Deceased") who died on [ ]. We obtained [a grant of probate][letters of administration] out of the [ ] Registry on [ ] and a copy of the grant [and the Deceased's will dated [ ]] is now produced and shown to us marked " . 1". We make this witness statement in support of our application for permission to distribute the Deceased's estate [and to administer the will trusts of which we will be the Trustees following administration.]. This witness statement contains facts and matters which, unless otherwise stated, are within our own knowledge obtained in acting in the administration of the estate. We believe them to be true.

2. The Deceased was before his death an underwriting member of Lloyd's of London whose underwriting activities are treated as having ceased on [ ]. The estate was sworn for probate purposes at £[ ]. We are now in a position to complete the administration of the estate and to distribute it to the beneficiaries but we do not wish to do so [or to constitute the will trusts] without the authority of the Court because of the existence of possible contingent claims arising out of the Deceased's underwriting liabilities for which we might be liable.

3. The position concerning the Deceased's Lloyd's liabilities is as follows:

[3.1 The Deceased's liabilities in respect of the years of account 1992 and earlier were reinsured into Equitas as part of the Lloyd's settlement. There is now produced and shown to us marked " .2" a copy of the certificate or statement of reinsurance into Equitas].

3.2 [The syndicates in which the Deceased participated in the years of account 1993 and later have [closed by reinsurance in the usual way] [are the subject of an Estate Protection Plan issued to the Deceased by Centrewrite Limited][are protected by an EXEAT policy obtained by the Claimants from Centrewrite Limited].

4. There is now produced and shown to us marked " .3" a copy of a letter dated [ ] from the estate's Lloyd's agents confirming that [all] the syndicates have been reinsured to close [with the exception of [ ] which syndicate is protected by [the Estate Protection Plan][the EXEAT policy]] and confirming that in the case of failure of a reinsuring syndicate to honour its obligations, the primary liability to a creditor will fall on Lloyd's Central

Fund. [A copy of the [Estate Protection Plan and Annual Certificate] [EXEAT policy] is now produced and shown to us marked " .4".]

5. The Claimants believe that the interests of any Lloyd's claimant are reasonably secured by virtue of the fact that all the Lloyd's syndicates in which the Deceased participated have either been closed ultimately by reinsurance to close (in respect of any open years prior to 1992 into the Equitas group) or, in respect of subsequent years [have all closed by reinsurance] [are protected by the Estate Protection Plan][are protected by the EXEAT policy.] Equitas remains licensed to conduct insurance business and there is presently no reason to doubt its solvency. A copy of the latest report and accounts of Equitas Holdings Limited is now produced and shown to us marked " .5". [The [Estate Protection Plan] [EXEAT policy] is provided by Centrewrite Limited which is a wholly-owned subsidiary of Lloyd's and the beneficiary of an undertaking by Lloyd's to maintain its solvency. We have no reason to doubt the solvency of Centrewrite. A copy of the latest report and accounts of Centrewrite Limited is now produced and shown to us marked " . 6".]

6. As appears from the schedule now produced and shown to us marked " .7" in which we summarise the assets and liabilities of the estate, we have paid all the debts of the Deceased known to us (apart from the costs and expenses associated with the final administration of the estate) and we have also advertised for and dealt with all claimants in accordance with s.27 of the Trustee Act 1925 [or if not explain why].

7. We know of no special reason or circumstance which might give rise to doubt whether the provision described above can reasonably be regarded as adequate provision for potential claims against the estate and we ask for permission to distribute accordingly.

FORM OF ORDER

[Heading as in claim form]

ON THE APPLICATION of the Claimants by Part 8 Claim Form dated [ ]

UPON READING the documents recorded on the Court file as having been read

IT IS ORDERED THAT:

1. the Claimants as [the personal representatives of the estate ("the Estate") of the above named deceased ("the Deceased")] [and] [the trustees of the trusts of the Deceased's will dated [ ]("the Will")] have permission to [distribute the Estate] [and] [administer the trusts of the Will and distribute capital and income in accordance with such trusts] without making any retention or further provision in respect of any contract of insurance or

reinsurance under-written by the Deceased in the course of his business as an underwriting member of Lloyd's of London

2. the costs of the Claimants of this application [either in the agreed sum of £] [or summarily assessed in the sum of £ [assessed in the sum of £….] (with permission to [the residuary beneficiaries][name beneficiaries] to apply within 14 days after service of this order on them for the variation or discharge of this summary assessment] [or subject to detailed assessment on the indemnity basis if not agreed by or on behalf of [the residuary beneficiaries] name beneficiaries]] be raised and paid or retained out of the Estate in due course of administration.

APPENDIX 12

PRACTICE NOTE: REMUNERATION OF JUDICIAL TRUSTEES

1. When dealing with the assignment of remuneration to a judicial trustee under section 1(5) of the Judicial Trustees Act 1896 and rule 11 of the Judicial Trustee Rules 1983 the court will consider directions as to remuneration based on the common form of order set out below, subject to such modifications as may be required in any particular case.

2. In general the court when considering reasonable remuneration for the purposes of rule 11(1)(a) will need to be satisfied as to the basis upon which the remuneration is claimed, that it is justified and that the amount is reasonable and proportionate and within the limit of 15% of the capital value of the trust property specified in the rule.

3. The court may, before determining the amount of remuneration, require the judicial trustee to provide further information, alternatively refer the matter to a costs judge for him to assess remuneration.

4. When an application is made to the court for the appointment of a judicial trustee or when the court gives directions under rule 8 practitioners should produce to the court a draft order which should take account of the common form of order

DRAFT PARAGRAPHS OF ORDER

[IT IS ORDERED]

...that the remuneration of the Judicial Trustee shall be in such amount as may be approved from time to time by this court upon application for payment on examination of his accounts

....that the Judicial Trustees accounts shall be endorsed by him with a certificate of the approximate capital value of the trust property at the commencement of the year of account

.... that every application for payment by the Judicial Trustee shall be in the form of a letter to the court (with a copy to the beneficiaries) which shall (a) set out the basis of the claim to remuneration, the scales or rates of any professional charges, the work done and time spent, any information concerning the complexity of the trusteeship that may be relied on and any other matters which the court shall be invited by the Judicial Trustee to take into account and (b) certify that he considers that the claim for remuneration is reasonable and proportionate

J. Winegarten
Chief Chancery Master 1st July 2003
With the authority of the Vice-Chancellor

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References are to paragraph numbers unless preceded by Ch (for Chapter) or App (for Appendix); a reference A2/10 is to paragraph 10 of Appendix 2

ADDENDUM A

Registration of judgments

9.21 Under the Register of Judgments, Orders and Fines Regulations 2005, money judgments in claims commenced in the High Court after 6th April 2006 (unless exempt) are registered with the Registrar of Judgments, Orders and Fines. Returns are sent to the Registrar by the court. In non-contested cases (judgments in default or on admission) registration is immediate. In contested cases the judgment is not registered unless steps are taken to enforce it under Part 70 or Part 71.

9.22 Judgments which are the subject of an appeal under Part 52 are not registered until the appeal has been determined. The court officer responsible for returns (Malcolm Dann, Room TM 5.07, 020 7947 6531) should be informed if permission to appeal is granted after a judgment has been registered, and he should also be informed when an application is made under Part 70 or Part 71.

9.23 If the judgment debt is satisfied, the judgment has been set aside or reversed, or the amount of the debt increases as a result of the issue of a final costs certificate or an increase in the amount of the debt as a consequence of enforcement proceedings, the court officer responsible for returns (as above) should be notified.