CHANCERY BAR

Chancery Modernisation Review: Provisional Report

Response of the Chancery Bar Association

1. The Chancery Bar Association congratulates Lord Justice Briggs on his detailed, cogent and thought-provoking Provisional Report. It raises a large number of matters of interest, to which the Association welcomes the opportunity to respond. Given the origins of the Provisional Report and the likely readership of this Response, we will not encumber it unnecessarily with the usual explanation of the Association's identity and role.

2. The approach that the Association has decided to take in its response is to identify, first, the matters on which it agrees with the proposals and recommendations of the Report, where it has little if anything to add; then to address the very important issue of "culture change" mentioned frequently in the Report; then to address, under various sub-headings, particular issues or recommendations where the Association wishes to comment further, or believes that the recommendations either do not go far enough or go too far, or are otherwise not entirely the right conclusions to draw; then to address the important subject of litigants in person. Finally, we address briefly those issues in Annex 5 to the Report that we have not previously addressed and on which we feel able to make useful comments or observations.

Extent of agreement with Report

3. The eight members of the Association's working group who have contributed to this response, whose names appear at the end, substantially agree with many of the proposals in the Report. Without seeking to list each of the proposals individually, the following are the most important conclusions with which we respectfully agree:

(1) The Chancery Division should remain a broad ship, whose Judges are, for the most part, non-ticketed;

(2) The workload of the Division should be divided up for the future into four broad streams of work (business and commercial; individual property; company and insolvency; intellectual property), with a Judge of the Division nominally in charge of allocation and the management of each;

(3) The system of triage proposed should be introduced, with a view to deciding at an early stage the appropriate venue (County Court; District Registry; Central London County Court; Rolls Building) and the appropriate case management track;

(4) There should be the 5 case management tracks and all should be available from the outset;

(5) There should be more judicial case management, though only for cases that require it and will benefit from judicial case management for any reason; for routine cases, the Masters already have considerable expertise and the confidence of practitioners;

(6) For more complex cases, where a number of interim hearings are likely, we are attracted by the Judge and Master in partnership case management option;

(7) There should be more capacity for full docketing in appropriate cases;

(8) We agreed that the priorities, so far as any reforms are concerned, should be: (a) shortening or at worst maintaining the current waiting times, (b) improving the service offered to litigants in person, and (c) improving information technology;

(9) We agree all the proposals in relation to litigants in person save that we doubt that a dedicated guide or website giving advice in relation to Chancery cases is ideal or necessary;

(10) The need for better information technology in the Chancery Division in the Rolls Building is urgent;

(11) Early identification of the trial judge, even if he/she has not been case managing the case, is beneficial and the PTR must be conducted by the trial judge;

(12) There should be more fixed, closed-end trials, though we discuss below whether it is a good idea or even possible to aim for all trials to be fixed and closed-ended;

(13) Convergence of procedures, so far as possible, and cross-ticketing of judges between the three Rolls Building jurisdictions (as in the provinces), are good ideas;

(14) Masters should be seen as suitable to deal with some more straightforward trials, subject to capacity in terms of their workload and further training, as necessary;

(15) Having an effective, detailed CMC with the trial advocates present, at an appropriate time, is of critical importance to the objectives of the Review, though the precise timing of this and how it should work in practice needs considerable thought;

(16) The drawing up of orders should be done by the parties, save in cases of particular urgency or matters of technical difficulty.

Culture change

4. We have already noted that the importance of a change in culture by court users is emphasised throughout the Report. In particular, it is stated to be needed in order to –

(i) have an effective CMC, which is essential to identify the real issues at an early stage and to control disclosure, witness statements and expert evidence, ADR and length of hearing;

(ii) deal effectively with costs, the normal expectation being that costs budgets will have been agreed (or at least partly agreed) between the parties wherever reasonably possible;

(iii) reduce the cost of litigation in the Division;

(iv) speed up the process of final resolution of disputes in the Division;

(v) comply with all court orders;

(vi) conduct trials with a fixed length and/or agreed timetable;

(vii) limit the amount of unnecessary cross-examination of witnesses;

(viii) prepare appropriately cases that involve litigants in person.

5. A substantial change in culture is needed, as pointed out in the Report. This requires not just Chancery barristers, but firms of solicitors and, to an extent, lay clients to "buy in" to the new approach. In order to get parties and their solicitors to "buy in", there must be carrot as well as stick. The parties need to understand that they are being offered something better, in terms of service and dispute resolution, which has a price as well as a benefit.

6. We are concerned that it will not be good enough for Chancery barristers alone to "buy in" to the proposed changes. Barristers do not control when they are instructed, briefed or otherwise deployed. Barristers are independent, but in reality they do come under heavy pressure at times from solicitors and lay clients to try to achieve tactical victories and to pursue poor points for ulterior reasons. Getting firms of solicitors to "buy in" is seen as particularly important, since they need to encourage their clients not to be unnecessarily obstructive, not to fight silly points, to agree reasonable costs budgets, to agree to limit the extent of disclosure when appropriate to do so, etc. Substantial costs are often wasted in pre-claim communications, as parties' representatives seek to score points and win battles of correspondence, rather than seeking to co-operate in advancing towards effective dispute resolution.

7. Absolutely fundamental to the success of the proposals, as we see it, is the holding of one effective CMC at the appropriate time, usually before ADR takes place. But the proposed CMC will make significant demands on resources. To hold the kind of CMC envisaged in the Report will require:

(a) proper and detailed pleadings produced at the outset – this should be strictly enforced;

(b) agreement on the main issues (including issues that are concealed on the pleadings);

(c) pre-CMC exchange of costs budgets and agreement on as much as possible (as county court experience is already showing, the system simply cannot operate if every CMC has to be listed and take place as a full CCMC);

(d) pre-CMC discussion of and some agreement on the extent of disclosure that is appropriate;

(e) pre-CMC consideration by each party of what witnesses are needed to prove the issues in dispute, what if any examination in chief is needed and which of the other side's witnesses need to be cross-examined on what issues;

(f) consideration and identification of any *issues* that require expert evidence and how this should be dealt with in terms of directions;

(g) consideration of what ADR might be suitable to the case, and

(h) consideration of the proportionate length of the trial, if needed.

This all requires a lot of pre-planning, the involvement of trial Counsel at an early stage, a considerable amount of work by the instructing solicitors, with the involvement on an informed basis of their client, and a substantial measure of co-operation between the firms of solicitors and/or any litigants in person.

8. We regard "buying in" to the culture change in relation to the CMC as the critical issue. That is because, at that stage, the parties are in control of what is happening and the Court is not. The Court is entirely dependent at that stage on the parties coming to the CMC fully prepared. If they are not, an effective CMC cannot take place. Once directions and rulings have been made at the CMC, a failure to comply with orders made, or failure to adhere to the trial timetable, is more readily dealt with by the Court because it is then in control, albeit that good co-operation between the parties will be important to avoid the waste of time that such failures can engender. It is worth noting that Judges too need to buy into the changed culture: if they are not determined to apply the new approach consistently, the efforts that others make will be to no avail.

9. Will there be a change in culture across the board? As stated, this requires recognition (across the board) of the benefits of the changes that are being introduced as well as of the dangers of non-compliance or non-co-operation (not just restricted to loss of the benefits, but sanctions and penalties). Part of the exercise is therefore to "sell" the benefits, and in our view this needs to be done well in advance of the implementation of the proposed reforms. This can be done by a programme of education at various levels, which could certainly include lectures by the Judge in charge of implementation but it should not be limited to this. It would, we think, be beneficial to have a series of open events at the Rolls Building, possibly hosted by the Chancellor and the Chancery Judges, possibly in partnership with the Association and the City of London Law Society or other responsible bodies, to begin the process of "buying in" and "selling".

10. We are very optimistic that the Chancery Bar will embrace the change in culture. Although there are always discordant notes struck by some members, the substantial majority are likely to see the advantages of the proposals, not just for their clients and for justice, but also for themselves. But buy in to a very substantial degree is required to make the reforms work in the way that the Provisional Report envisages. The Jackson Reforms have run into substantial problems with solicitor "buy in", partly because the reforms in various respects are not seen as attractive, and partly, we feel, because (despite Sir Rupert's programme of lectures) solicitors were not actively involved in the process of implementation. The pervading sense was of onerous and unwelcome changes being imposed from on high. The real benefits of the CMR proposals will need to be "sold", clearly, well in advance of their coming into effect, and there will need to be seen to be immediate sanctions for those who do not co-operate. We suggest that this process should be started as early as the Final Report, with the first substantial chapter setting out the

substantial advantages for litigants that the changes proposed are intended to bring about.

11. So far as barristers are concerned, the most difficult areas of change to accept will be limits on cross-examination and closed-ended trials. The greatest practical difficulties for the Bar may arise upon the delivery of late or inadequate instructions for the all-important CMC.

Masters' and District Judges' jurisdiction

12. We warmly support lifting the restrictions on the jurisdiction of Masters, most of which are illogical. For example, it makes no sense for a Master to be able to approve any compromise on behalf of a party with a disability in a claim under the Inheritance (Provision for Family and Dependants) Act 1975 (which may involve an estate worth millions) but not in a probate claim where the estate exceeds £100,000 (almost every High Court probate claim).

13. There are also obvious cases that a Master should be able to deal with but cannot at the moment, unless granted permission by the Chancellor. For example, undefended claims for rectification or questions of construction. There would also seem no reason why straightforward applications under the Variation of Trusts Act 1958 cannot be dealt with by Masters, who often have considerable expertise in this field.

14. Indeed Masters already have to make judgments as to whether a *Beddoe* application should be dealt with by them (if it is a plain case) and

have no difficulty in deciding which cases they consider ought to be referred to the Judge. The "plain case" test could apply to all matters before them.

15. Further, the limitation on the Masters' jurisdiction sits unhappily with their power to determine summary judgment applications where they ought to be able to grant a final injunction, for example, or express an opinion about the construction of a document. The Masters should be able to grant final injunctive relief as part of their summary judgment powers.

16. In our view, the only limitation on the jurisdiction of the Masters ought to be in respect of interim injunctive relief. That is particularly so in the case of draconian orders, such as freezing and search and seizure orders. Indeed we understand that the Masters themselves would not welcome dealing with such matters. However, we suggest that Masters should not be able to grant interim injunctions at all. If they could, then they would be likely to be faced in their 2.30pm lists with heavy applications that involve a detailed consideration of the balance of convenience, based on sometimes incomplete or one-sided evidence. Dealing with such cases, urgently, requires considerable experience of such matters in practice and on the bench, and the "plain case" test of jurisdiction is likely to be unsuitable in a case where urgent relief is being sought. It might also have a considerable adverse impact on Masters' other work.

17. We would not wish to see the Chancery Masters become, by reputation, the Chancery Division's equivalent of the old "Room 98" in the Queen's Bench Division, where litigants 20 years ago would go when they had a rather dubious case for interim relief and hoped to find a judge who

would not scrutinise the claim as fully as would a judge of the Chancery Division. Once again, we do not believe that the Chancery Masters are anxious to have this new jurisdiction. From a purely practical point of view, the Interim Applications court is far better placed to deal with urgent applications of that kind.

18. We therefore suggest that all the restrictions on the jurisdiction of Masters are lifted, perhaps with an overriding test that they can exercise their powers in plain cases, and subject only to restrictions on their granting interim injunctive relief.

19. The same principle should apply to District Judges in the Registries but only to those who are designated Chancery District Judges.

Pre-action protocols

20. We agree with the suggestion that the ACTAPS pre-action protocol should not be made mandatory, for the reasons expressed in the Report. Similar considerations apply to other voluntary protocols, such as the dilapidations protocol drafted by the RICS. They work well and tend to be used when it is sensible to use them because the lawyers believe in their value. But there are cases where such protocols can serve little or no purpose other than to increase the costs. In some cases they are not needed to identify the dispute, and in other cases their enforcement is liable to give rise to amplification of the scope of the dispute rather than crystallising the issues.

21. Also, given that many of the cases to which the ACTAPS protocol applies involve members of the same family, especially in probate or Inheritance Act cases, it may be that such cases see an increase of litigants in person in the future and we are of the view that it is undesirable to impose a mandatory requirement on them.

22. In general terms, we do not support the mandatory use of pre-action protocols. They tend to be toothless, in the sense that Courts seldom sanction parties in costs for non-compliance, but they tend to drive up costs substantially at an early stage. The existence of such protocols over the years has played a part in educating lawyers about sensible pre-litigation procedures and we believe that, with the benefit of that understanding, straightforward pre-action letters and responses, without any prescribed content, will suffice for the future.

23. We consider that it would be undesirable to have mandatory pre-action protocols in any other area of chancery work and that the Final Report should make that recommendation.

Management tracks, triage, guidelines for allocation, etc.

24. We agree that an important part of the suggested reforms is the power to enable Judges to allocate cases to an appropriate management track (the process known in the report as “triage”). Whilst a different term

might be more readily comprehensible to litigants in person, the term has the attraction of being short, familiar from elsewhere and accurate. [4.17]

25. We agree that the essential structure for triage can be the same for the four main types of business, with the exception of the bulk aspects of insolvency/company business. [4.18]. Those aspects should be susceptible to a simpler form of the process, but on the detail of what it should be we are happy to defer to a more specialist response. We are aware that the Insolvency Court Users' Committee is preparing its own response to the Report. (Incidentally, we support their recommendation for the appointment of an additional bankruptcy registrar, to reduce unacceptable waiting times.)

26. We agree that the immediate decisions facing the gateway judge are the following:

(1) Whether the matter should remain in the Chancery Division or be transferred elsewhere;
(2) Whether it should be transferred to a county court, or to the Central London County Court;
(3) Whether, if issued in London, it should be transferred to a specialist regional trial centre.

27. Assuming the matter remains in the Chancery Division of the High Court (and whether in the regional centres or London), we agree that the next stage is for the allocation to an appropriate management track by the

application of the triage process. We agree that a Practice Direction is appropriate here. [4.19]

28. We consider that an important aspect of users "buying into" the reforms is that they must be educated about the advantages (time, costs, allocation of appropriate expertise, etc) of the triage process.

29. We agree that it would be appropriate for users to give an initial indication with reasons for their view as to the appropriate management track, [4.19] as well as any observations on why the matter should be tried in the Rolls Building or in a Chancery District Registry / trial centre, as the case may be.

30. We broadly agree with the tracks proposed in [4.20]. We foresee that the track known as partnership management is liable to become the most popular, but are concerned about whether it can be, given the limits on judicial resources. The Practice Direction must try to regulate this to some extent, and an initial pilot to assess how well it works and how resource-intensive and otherwise beneficial it proves to be may well be sensible. We think that others are best placed to assess whether that is necessary. [4.21]

31. We consider that it is worth trying all 5 management tracks at the outset, subject to whether there is an initial pilot of the partnership track. Flexibility is the key here and it makes sense to empower the track management judge with as many tools as possible.

32. We think that partnership management is likely to be most useful in business and commercial; some company and insolvency cases (for example office holder claims and unfair prejudice claims) and intellectual property, and less so in individual property cases; but, again, the hallmark of a flexible approach is that it is available as an option when appropriate, even if rarely used. We consider that a case which is likely to be heavy in interim applications (specific disclosure; security for costs; strike out) is likely to be most suitable for this type of management track, although those same cases may also be candidates for full docketing (either by Master/DJ or by Judge). We see no difficulty and are not surprised that cases with the same types of feature might lend themselves to different choices. These are matters of judgment, not hard line decisions.

33. We consider that flexibility means that it should be open to the Master/Judge and parties to ask for reconsideration of allocation of management track at a later stage [4.27]. Nothing is to be set in stone, but there needs to be an awareness that parties may seek to use reconsideration as a mask for antecedent forum shopping, if they receive unfavourable decisions from, say, a fully docketed judge. Any change would need to be reasoned.

34. We agree with the proposals for managing the triage process using supervising judges and their functions [4.24 and 4.25] under the ultimate supervision of the Chancellor [4.26]

35. We consider the most likely useful guidelines for allocation will be the following factors:

(1) Value;

(2) Nature of dispute;

(3) The factual issues arising;

(4) The legal issues arising;

(5) Whether any claim for an injunction is involved;

(6) Number of issues;

(7) The suitability of those issues to be heard as preliminary issues;

(8) Whether there is likely to be a need to take an account;

(9) Whether the case is likely to focus on quantum rather than liability and might be suitable for a FDR hearing;

(10) The need for expert evidence and the type of evidence needed;

(11) Whether the case is likely to be heavy on interim applications and the level at which those decisions are likely to need to be made;

(12) Presence of one or more LIP/SRL;

(13) Whether the case is likely to be suitable for early ADR/ENE.

(14) Possibly any sense the Judge has for the likelihood that parties and their advisers will co-operate with one another (we accept this type of consideration is difficult to reflect in published guidelines but it maybe is a feel for how intense the management to trial is likely to need to be).

36. We agree that the triage process needs to be transparent and readily available and, although a Practice Direction is likely to be required to establish the management tracks and the guidelines for allocation, we do not think it should be any more detailed or prescriptive (as to selection of track) than that. To do so would militate against their flexible and sensitive application. [4.33]

37. So far as partial or full docketing to Masters is concerned, we are concerned that the triage Master or Judge should not too readily assume that a case is suitable for docketing to Masters or District Judges. While some cases undoubtedly will be, on the whole Masters and many District Judges are not expert trial judges; however, judges in the county courts, and especially in the Central London County Court, are. In any case in which partial or full docketing to a Master or District Judge is under consideration, the judge should automatically consider transfer to the county court too.

38. We do not consider it to be desirable to divide the current Masters into teams correlating to the divisions of Chancery business. We think that any advantage in terms of expertise to be gained by such a move is likely to be outweighed by loss of flexibility in listing and (over time) loss of general experience by Masters, which in turn will aggravate the problem with lack of flexibility. This is of course a matter that could be reviewed after implementation but we would counsel against its being adopted at the outset. [4.32]

The regions and transfer to regional trial centres

39. We are in agreement that, given the diversity in size and resources of the various regional centres, it would not be appropriate for them to follow exactly the same procedures and administration as London. "One size fits all" is not appropriate here.

40. Points of difference could be dealt with, where necessary, by way of local Practice Directions, perhaps by way of additional appendices to the Chancery Guide. We are not in favour of having different procedures or procedural guides where these are unnecessary; but where differences do exist for good reason these should be explained. Such local practice directions could deal with matters such as the proposed triage and how it is dealt with in the relevant centre, how urgent cases are listed (including before District Judges), and other listing arrangements. The advantage of such practice directions would be to enable all court users (including those who are not regular practitioners there) to know in advance the local procedures, which knowledge will assist both advocates and the court to act efficiently and effectively.

41. While it may not be possible for all regional centres to be treated identically in all respects, there are some areas in which there ought to be more consistency. Of these, the most important is the "ticketing" of the Chancery District Judges. The aim should be to provide consistency, continuity and expertise and the possibility of the provision of additional training for them is endorsed. If the resource of District Judges is spread too widely then there is a risk of lack of the desired level of expertise and specialist knowledge, especially in those centres with less chancery work.

42. In principle, the ability to refer cases to regional trial centres local to the parties is supported and we agree the endorsement that no case should be too big for the regional centres. There are, however, two concerns about greater transfer to some regional trial centres.

43. First, there is an issue of workload and local expertise. If more cases are transferred, there is the obvious danger that the regional centres will become more stretched as their workloads increase. There is also the concomitant risk that all judges who hear cases there may not have the degree of expertise that judges in London have. This is perceived to be a particular issue with District Judges in regional centres, and particularly in relation to trial expertise. We suggest that cases should in no circumstances be transferred out of London to be case managed or tried by a non-Chancery designated DJ. There therefore needs to be some way of assessing the capacity of the regional trial centre to manage and then try the case at the appropriate level of expertise before the case is transferred. Speed of resolution is important but it is not everything. The right quality of judge is equally important.

44. There is doubt as to whether the use of the supervising Judge or Deputy High Court Judges for such cases will be practicable or viable. The diary of the supervising Judge is such (at the current time) that it means that he will unable to go to a regional centre other than on the dates that he has been allocated to attend there. Sending other Judges from London, whether retired or deputies, will also have a cost, which many of the regional centres may not be able to meet.

45. Second, there is the need to respect party autonomy about the forum for dispute resolution. Frankly, the quality of local judging in Chancery District Registries across the country is patchy. There are regions where litigants (presumably on the advice of their lawyers) deliberately avoid issuing in the local district registries because of the perception of lack of

quality or other attributes of the local section 9 Judge(s). This is a matter that needs to be addressed by improving the quality of regional judges rather than by forcing litigants to use local judges by transferring cases. In the meantime, the court seised of the claim needs to be sensitive to issues of this kind and respect party autonomy as far as possible. It should be borne in mind that, ultimately, the benefit of transfer to a Chancery District Registry (as opposed to a county court where the case does not merit trial in the High Court) is one of convenience for the parties/witnesses and possible faster resolution, but the parties will not regard themselves as being well-served if they are forced into a court where they do not want to be.

46. The ideal of a more regular exchange of information between the regional centres and the London Masters is welcomed, although it is difficult to see how it might be achieved without additional costs. All of the regional centres have experienced staff reductions, which places a strain on the remaining employees. The communications would also have to be both regular and up to date in order to be effective. This means that they will need to be able to be accessed by all of the Masters and District Judges (and perhaps Judges) in the regional centres at any time (including during a hearing). More IT resources may be required in order to achieve that.

47. The regions already tend to have fixed starting dates for trials and, generally, do not have many trials running over their time limits, although the time estimates do not always permit time for judgments. In this light, the approach to rationing of trial time should be used sparingly in the regions, if at all. What may be necessary by way of changes to achieve fixed

start dates and closed-ended trials in London is not needed, generally-speaking, in the regions.

The CMC, ADR , Judicial Case Management and the PTR

ADR

48. We have concerns about the extent to which ADR can be made "integral" to the trial process.

49. Our view is that the Court should facilitate ADR, if that is what the parties want, but not direct ADR or control or (subject to ENE) be involved in the ADR process.

50. In short, ADR should not become compulsory; and the Judge who is doing the case management must be careful not to become too closely aligned with the party that favours ADR and antipathetic to the party that does not. The Judge's role, where the parties are not agreed about undergoing ADR, should be limited to explaining the benefits of ADR and the type of ADR that, in that case, might be most suitable, and perhaps pointing out that the procedures and timetabling of the case can be moulded to accommodate it.

51. That said, in smaller IA, contested probate and TOLATA claims, particularly where the costs will eat significantly into the estate, a more hands-on approach to ADR could be adopted by the court actively requiring

the parties to identify as early as possible the key issues which are keeping them apart and making directions for early disclosure of key documents. We would endorse the recommendation at paragraph 5.17.5 in an appropriate case, but being sensitive to the need to avoid increasing costs in the event of failure of the process.

52. ENE is often a suitable means of resolving a legal issue, or even a mixed legal and factual issue, that divides the parties. We consider, however, that the time is right to reconsider the rather embedded objection to preliminary issues that the courts have developed. Even where a preliminary issue will not dispose of the whole of the claim, if decided one way, it can make a very substantial contribution to the resolution of the dispute without the need for a full trial. A genuine legal issue is often better resolved in a binding way as a preliminary issue, whereas in a case where a party appears to be adopting an inappropriately rosy view of the facts, which makes the determination of a short preliminary issue more difficult, ENE may unblock the path to settlement.

53. ENE may well prove to be successful if more widely used, but the problem is that the empirical data is insufficient to be able to form any reliable view. On the whole, we would not favour judicial ENE by the judge who had hitherto managed the case. It runs the risk that one or other litigant will feel that the judge had already formed a view and would not be sufficiently neutral to want to trust the process: that would be self-defeating. Again, if that Judge does conduct ENE but the case does not settle, the parties have lost one of the benefits of judicial case management. More extensive use of section 9 Deputies could assist in developing ENE as a

useful form of ADR, as could reminding the parties that it can be undertaken by agreement by instructing a well-respected lawyer who is a specialist in the field to give his or her opinion, or even to decide the matter so as to bind the parties.

54. We certainly endorse the approach that the Judge should assist parties who wish to have effective ADR before trial. The directions given with a view to an eventual trial, if needed, should allow the time for ADR to take place. A critical question will be the time at which ADR is most likely to be successful, in whole or in part. This needs to be assessed on a case by case basis, using the information that the parties have provided. Sometimes witness statements (or witness summaries) are needed before an effective mediation can take place; sometimes it is disclosure by one side or other that holds the key. At the same time, the Court should bear in mind that too much tailoring for ADR risks increasing the costs in the event that the case does not settle.

55. In this regard, we consider that there needs to be a revamped allocation questionnaire [paras 5.17.1 – 5.17.4] to enable the parties to provide information about the kind of ADR that they have considered or wish to have, and what steps are needed before such ADR should take place. Careful thought needs to be given to the questions that are asked on this form.

56. Beyond that, we doubt that written guidance or a practice direction would be particularly useful (paragraph 5.22)

57. So far as FDR is concerned, there is a difference of view among our working group who prepared this Response. It may be fair to say that those with most experience of it, in personal property cases, are most in favour of the Judge being able to require FDR to take place. Others are more sceptical, though the value of the claim/estate should be a significant factor in trying to prevent disproportionate costs being incurred.

58. We are, however, doubtful whether the resourcing of FDR is as simple as it sounds, in particular if recusal is a common feature. Once again, we would not be in favour of the case management judge routinely performing the FDR. There is clearly an experience gap in the Chancery Division and specific training ought to be available to judges who undertake this skilled role. We also wonder whether, without any empirical data, the confidence that it would be self-financing is justifiable (paragraph 5.21). However, subject to training, we would recommend increased use of DJs and section 9 Deputies to stand in and perform the FDR where necessary, whether in London or the regions.

59. We agree that feedback from ADR (paragraph 5.30-33) is desirable but unlikely to be forthcoming. It may be sensible to require parties at the PTR to explain where they have got to in terms of attempts to settle, in outline terms and while preserving the confidentiality of any discussions; though again the docketed Judge must be careful not to appear to be overly favourable to the party that is keenest on further ADR at that stage or antipathetic to the other party who now simply wishes to have a trial. The Court could offer any assistance ahead of the looming trial to get parties across the line, in an appropriate case.

60. Finally, we would point out that this section of the Report would benefit from consideration of how the benefits of ADR can be brought home more clearly to LIPs. All too often we see LIPs who want their day in court but are not really aware that there are ways in which to obtain a measure of success through ADR. ADR should not be seen as a lawyer-driven settlement tool available only to those litigants who can afford lawyers to draft mediation agreements, identify suitable mediators, provide facilities and assist in the negotiations.

Case management for trial

61. We would urge that the final Report should lay greater stress on the considerable importance of proper statements of case. Properly pleaded statements of case make the issues obvious, and enable a list of issues to be readily complied for case management purposes. The Court has for too long tolerated statements of case that are unskilled, verbose and not in compliance with the CPR.

62. While we agree that identifying the real issues is absolutely key to the reforms that are proposed, an agreed list of issues should not take the place of proper pleadings or become an end in itself. In order to encourage the parties to produce a simple and working document, we consider that further measures will be needed beyond an exhortation not to spend too much time arguing about the precise drafting of the issues. This will inevitably happen unless the rules take steps to prevent it.

63. We suggest that, save in exceptional cases, the list should be no longer than two pages and that there should be a cap on costs recoverable for producing the list. Each issue should also be cross-referenced to the paragraph of the statement of case under which it arises. If there is no such cross-reference, the parties should expect to have to justify it as an issue. The final Report will also have to consider how to deal with lack of agreement on the list: the Judge will not want to have to deal with two divergent lists of issues. Costs sanctions would appear to be the only effective discipline.

64. Identification of the real issues is critical for the purpose of defining the ambit of disclosure. This should have been discussed between the parties before the CMC takes place, in accordance with the Jackson reforms, but where it has not or where no agreement has been reached, the Judge at the CMC will need to deal with disclosure. In principle, this should follow the list of issues, but it should not be artificially confined. We would not wish to see disclosure in court proceedings become analogous to disclosure in some kinds of arbitrations (though practices differ markedly), where there is almost a presumption against disclosure and the need for the party applying for it to justify it as if on a specific disclosure application.

65. The positive obligation on a party to disclose documents which are unhelpful to its case is one of the bedrock features of fair and open justice in English courts, and a fundamental basis of the adversarial system. We must protect that. This is not a budget item. We would also note that even where the issues relate "only to construction", parties invariably want to have disclosure (and witness statements etc) on "matrix of fact" evidence,

and no matter how hard the courts try to make it clear that it is not admissible or legally relevant, parties always feel they need to see the documents and may be able to make use of them (if relevant, admissibility is not a precondition of disclosure).

66. We deal with the views and recommendations of the Interim Report so far as concerns witness statements and expert's reports (paragraphs 6.15-28) below. However, we feel that Judges should be encouraged to require examination in chief in place of witness statements (or partial examination in chief, limited to certain issues) where the case or issue requires it. Instances include cases in which deceit is alleged and where key issues turn on oral conversations or on individual recollections. Hearing evidence in chief is a considerable benefit to a trial judge and the time spent on it is never wasted, as long as the ambit of it is strictly controlled. We cannot agree that the modern Bar lacks the skillset to conduct examinations in chief. The direction for examination in chief should be given, where appropriate, at the CMC or latest at the PTR.

CMC and PTR

67. In general terms, we embrace the recommendations of the Provisional Report in paragraphs 6.29-6.32 (CMC) and 7.14-7.16 (PTR).

68. As we have said in relation to culture change, however, a substantial change in culture will need to be created in order to hold a detailed and effective CMC in the way that the Report envisages. This is critical as it is the bedrock of the new regime.

69. It is also critical that sufficient time is allowed for the CMC, that it is not taken up routinely with disputes about costs budgets, and that sufficient judicial resources exist for judicial case management of this kind. 4-day trial weeks present the opportunity for it, but experience in the commercial court suggests that judges should not plan social engagements for Thursday evenings.

70. The one feature of trials in the Chancery Division that is presently a blight on the system is that parties rarely discover who their trial Judge is until some days (or even one day) beforehand. This has two undesirable consequences. First, that the PTR, which is an essential milestone in trial preparation, is seldom conducted by the trial Judge. This means that the Judge hearing the PTR is concerned only to ensure that the case remains on track down to the start of the trial, and that what happens thereafter is the concern of the (as yet unknown) trial Judge. This means that late disclosure, issues with experts and removal of irrelevant parts of witness statements cannot be dealt with prior to trial and time at trial is taken up with them. The PTR Judge is understandably anxious not to fetter the trial Judge's discretion in management of the trial itself, which would not arise if he were to be the trial Judge.

71. Second, the advocates preparing skeleton arguments or written openings have no idea how much the Judge knows about the kind of case. This can result in either a lot of wasted effort or in such documents not giving the assistance that they ought to give.

72. It can also make trial timetabling difficult. Often, the trial Judge, on the first day of the trial, will tell the parties that there is a day on which he cannot sit, which affects the dates on which witnesses have been prepared to be called.

73. We therefore strongly support the proposal that the trial judge must conduct the PTR. This is an issue that is separate from whether there is partial or full docketing. Resources must be allocated to enable this to happen.

Trials

74. "The main objective is to give effect to the requirement for proportionality, and to maximise available judicial resources, by making trials no longer than is required for a just determination of the case": *Report*, paragraph 7.1.

75. We agree with that objective. To that end we endorse the recommendations that:

> (1) the Chancery Division move to a system of 4-day trial weeks, with Fridays set aside for case management/applications.
>
> (2) Time be allocated in any trial time estimate for judicial pre-reading and internally by the Court for judgment writing. Delays measured in months (which are not uncommon) do nothing to augment the Chancery Division's

reputation as a dispute resolution forum of choice. As a rule of thumb, the suggested 25% basis (judgment writing as a percentage of trial length) appears workable. Presumably, it would be understood within the Court's administration that it is not subject to being used for other judicial functions.

(3) Seating patterns should be subject to variation for the convenience of the parties in any particular case

76. We also support, albeit with some reservations, the recommendation that greater progress is made towards 'paperless' trials with bundles and authorities available online. They undoubtedly speed up the presentation of a case in Court. We also agree that in practice this represents a practical solution to one problem caused by the ever-growing volume of documentation that finds its way into hard copy bundles.

77. However, online bundles seldom (if ever) obviate the need for hard copy bundles, which are produced for the advocates' preparation of the trial, or as a back-up or for witnesses who are required to read and compare multiple documents. Recent experience is that online bundles are produced too late to be of real assistance and/or are paginated differently from the hard copies! Hard copy core bundles with more peripheral material in electronic format may be a sensible approach in many cases.

78. Online bundles do represent a substantial additional trial cost when, at the same time, it remains unclear whether any expedition afforded to the

trial process would offset the costs of the exercise. Moreover, the use of online bundles themselves can give rise to 'equality of arms' issues where one or more parties have limited resources and cannot, for example, monitor the substantial and frequent uploads from better resourced parties. Any mandatory or policy-based move towards online bundles would have to be as a result of an issue-specific consultation at a time when the profession as a whole has more experience of the benefits and the pitfalls.

79. Turning to the recommendation to move to a system of closed-ended trials, we agree that this is the inevitable quid pro quo for fixed start times and trial judges being able to case manage and/or conduct PTRs. We therefore support the recommendation but subject to the following caveat. We cannot see how the listing of trials could operate if all judges were operating on a closed-ended trial system at the same time. There needs to be some element of flexibility in the system because, with the best will in the world, things do happen in trials that cannot always be managed within the envisaged trial timetable.

80. Therefore, we suggest that at any given time there should be some judges who have flexibility in their diaries – this is likely to be the case in any event as no more than about half of the Chancery Judges at any one time are sitting hearing trials – and that even those judges who are sitting on trials should not have more than two back-to-back, closed-ended fixtures in their diaries. We appreciate that acknowledging the need for this element of flexibility inevitably risks the benefit of docketing or trial-judge conducted PTRs, but the system needs to be able to cope with the unexpected and the unavoidable, otherwise it will inevitably fail.

81. In order to minimise the need to make use of this element of flexibility, we propose that the trial estimate should be carefully evaluated (in accordance with the proportionality principle) at the CMC and again at the PTR, with any necessary adjustments able to be made at the PTR. Anything that occurs after the CMC that prejudices the effective hearing within the time estimate must be notified to the Court immediately, and if necessary a further short CMC be held to address it.

82. The discussion at the CMC must include whether or not time should be allowed for written closing submissions to be prepared after the evidence has been completed, and if so how long, and what further court time is required to make supplementary oral argument in closing. Again, that should be revisited, if only to confirm it, at the PTR. The time for preparing a judgment should be similarly addressed and a provisional date for delivery of judgment agreed.

83. A suitable questionnaire for the PTR should be devised, to ensure that all matters that should be discussed at the PTR are addressed before the date of that hearing. A trial timetable, either fixed or indicative, should be discussed and agreed at the PTR.

84. The adoption of a 'chess-clock' system is not one that we would support. Unlike some of the tribunals in which it is prevalent, many of the parties in the Chancery Division have not bestowed jurisdiction on it by consent. Having reached the stage of trial, we doubt that such a method of regulating trial timing would be acceptable to the end-user, or is necessary.

If the parties cannot agree an appropriate timetable, the Court can impose one. In our view, to employ a mechanistic, chess-clock approach in the High Court would do nothing to promote the reputation of the administration of justice in England and Wales.

85. We have already made observations about the benefit of examination in chief. In our view, trials in the Chancery Division have over the last 10 years or so become unbalanced and sometimes unfair because of the combination of (lawyer-) written witness statements, which count for little after the evidence is heard, and lengthy cross-examination, which is necessary to deal with everything that is written and is all that the Judge hears at trial.

86. We agree with the observations in the Provisional Report to the effect that:

(a) cross-examination now represents the largest part of many, if not most, trials involving disputes of fact (para 7.17);

(b) none of the reforms which began following the Woolf Report have significantly impacted upon the length of cross-examination (para 7.17);

(c) the introduction and constant increase in the length of witness statements has made cross - examination even longer (para 7.17);

(d) the underlying principle which governs cross-examination is the requirement of the party to put its own case to the witness (as long as this is understood to include challenging in any

appropriate way any contrary *account* contained in the witness statement), rather than to engage in a prolix crossing of swords with lengthy and irrelevant passages in the other parties' witness statements (para 7.17)

(e) a conscientious adherence to the underlying principle can lead to lengthy cross – examination of the opposing party's witnesses where, for example, the same detailed case needs to be put to a number of successive witnesses able to give admissible evidence about a complex event about which there are factual issues (para 7.18).

87. However, we do not subscribe to the view that:

(a) it is illogical that the introduction and increase in length of witness statements has made cross-examination even longer (para 7.17). This is because:

(i) those factors, when taken together with a failure by the parties and the Court to identify and agree upon the material issues to be determined, inevitably lead to protracted cross-examination;

(ii) there is an understandable reluctance by counsel to refrain from cross-examining on many issues because of:

(1) the real prospect of the Court finding a factual issue, which until judgment had been thought by counsel to be of peripheral or marginal

materiality and importance, to be crucial to the determination of the case;

(2) the blame culture which now exists, in particular in professional life, and the potential for claims to be brought against counsel notwithstanding a proper exercise of judgment in court;

(b) long cross-examination is unnecessary, even where the same detailed case is perceived as needing to be put to a number of successive witnesses able to give admissible evidence (para 7.18). This is because:

(i) where the evidence of a particular witness is material to the existence of a particular fact or the determination of an issue, counsel has to make a judgment call as to whether:

(1) his/her client's case may be advanced by the cross examination of a particular witness;

(2) the opposing party's case has been undermined sufficiently by the cross-examination of other witnesses;

(ii) in many cases, counsel will be unsure, until judgment, as to the significance (if any) the Court attaches to the evidence of a previous witness and/or to counsel's failure to cross-examine a later witness, in the absence of a direction from the Court or agreement between counsel that is communicated to the Court.

88. We are familiar with the practice which has developed in heavier cases whereby counsel abridge the full rigour of the convention (requiring counsel to put their client's case to a number of successive witnesses able to give admissible evidence) by unwritten agreements or understandings that the full case will either be put only to certain primary witnesses, or parts of it to each of a succession of witnesses, so long as every aspect of the case is put to someone (para 7.19).

89. We agree that this frequently reduces the length of cross-examination to a proportionate level, and that it can do so without compromising the fairness of the process in any way (para 7.20).

90. We also agree that that practice (para 7.20) is:

(a) unwritten;

(b) not the subject of any practice direction or general principled analysis, and

(c) not applied across the whole spectrum of cases in which cross-examination forms a significant part of the trial.

91. Nevertheless, it has to be recognised that such a practice, absent the agreement of the Court and (perhaps to a lesser extent) the client to

the employment of such a practice, is fraught with the difficulties identified in paragraph 85(b) above.

92. Such a practice, we suggest could/should be formalised on a case by case basis by counsel and the Court, or be made the subject-matter of directions from the Court at a CMC or PTR.

93. We consider that a "one size fits all" approach, in the shape of a pre-established general convention on cross-examination:

(a) is unworkable;

(b) may inhibit, and be prejudicial to, a proper determination of the dispute.

The judgment that is necessary on such matters is very much fact-specific to the particular case and is a matter for the exercise of judgement.

94. In some cases, depending on the particular facts of the case, it will be necessary to put the same questions to different witnesses present (e.g. where they had slightly different roles, responsibilities or involvement, or were differently positioned at the time of the events, or where the first witness to which the matters were put was equivocal in his answers) and in other cases (e.g. where there is an emphatic denial by a witness who was best placed of several to observe the fact in issue) it will not be necessary.

95. In our view, the endless subtleties of such factual issues will make it very difficult to create a convention in other than very general terms,

which is likely to be too general to help very much and may create further dangers for counsel and obstacles to a just resolution of a dispute. It also makes it quite difficult in certain cases for any case-specific agreement to be reached ahead of the trial, e.g. at a CMC or PTR, though in a simple case of one person present on one side leading and the other present not being actively involved the answer is fairly obvious as to what needs to be done.

96. In our view, a more rigorous approach to:

(a) case management; and, in particular

(b) the proper identification of the real and material issues and of the likely evidence available for the determination of those issues;

should in itself lead to greater proportionality in terms of the time and cost required for resolution of the dispute.

Litigants in Person (self-representing parties)

97. Our first recommendation is that everyone should agree whether litigants in person are to be called litigants in person or self-representing parties, and that once that decision is taken everyone should use the same terminology.

98. We agree that, consistent with the conclusions of the Civil Justice Council in their report *'Access to Justice for Litigants in Person'*, a culture change is required in the way in which lawyers and the Court

interacts with self-representing parties, and that peripheral changes are unlikely to address the real difficulties which are faced by self-representing parties and by those who are involved in litigation where one or more of the other parties is self-representing

99. We agree that it is fundamental to any attempt to reduce unfairness to all parties in cases which involve self-representing parties, and to reduce the cost of such litigation, that self-representing parties are assisted genuinely and fully to understand the procedure which governs the litigation in which they are involved, for them thereafter to be properly required to comply with such procedure, and for the issues and true merits of the litigation to be revealed as early as possible through active case management. We also agree that progress towards either objective would produce savings of court time and resources.

100. As to the clear necessity of ensuring that self-representing litigants understand and can comply with court procedures:

(1) We strongly agree that any present unfairness is not satisfactorily addressed by largely excusing self-representing litigants their failures to comply with procedure because of their inability to understand it. We would add that this practice is also manifestly unfair to those involved in the litigation who are represented, who can therefore understand the procedure, and who have

followed it. We also endorse the observation of the Civil Justice Council (*Access to Justice for Litigants in Person',* §93), that the obvious benevolence of the Court to the self-represented party instead leaves the represented parties with a sense of injustice (sometimes well-founded) at having been held to a different standard of conduct.

(2) We agree that oral explanations given by judges of the meaning of the procedural language used in orders or the rules are an equally insufficient solution to the unfairness to both sides which may arise from self-represented parties not understanding and following the Court's rules and directions.

(3) We agree that attempts by lawyers to produce procedural rules and guidance that are truly intelligible to lay persons have generally proved unsuccessful, and that it is therefore likely that any guidance that seeks to achieve this must involve others in its formulation.

(4) We agree with the proposal that, as part of active case management, the court should prescribe a detailed and genuinely intelligible set of case preparation instructions tailored to the case and to the particular self-representing litigants involved. We agree that this, together with full docketing of cases involving self-representing parties, may be expected significantly to assist such parties in the

preparation and presentation of their cases, and to increase the degree to which compliance with the necessary procedural steps can be fairly and robustly policed.

(5) We agree that response packs should be designed with use by self-representing litigants in mind, and should include reference to available sources of guidance and advice. However, rather than having different response packs for provision to represented and self-represented parties, we consider that a level of intelligibility sufficient to provide real and clear guidance to self-representing parties should be a design criterion for all guidance issued with court forms (and, indeed the forms themselves). We presume such guidance was introduced, and is maintained, primarily to guide those without access to legal advice and we do not see the necessity for any alternative, more technically framed guidance to be maintained for those who are represented.

(6) We do not consider that the provision of a dedicated guide to chancery litigation (either in the form of a website or a written guide) is either a required or an optimal step, save perhaps in relation to certain very specific areas, such as interim applications and some areas of insolvency practice where self-representation is particularly common. We are mindful of the assessment of the Civil Justice Council

('*Access to Justice for Litigants in Person*', §159) that *"the quantity of material online is* [currently] *overwhelming and there is much duplication"*, and of their recommendation (at §170(4)) of a primary *"go to"* website for coordinated material for self-representing litigants. We consider that the proposal for specific written or electronic advice in relation to the wider practice of the Chancery Division is unlikely to provide any significant benefit that would not already, and more efficiently, be provided by active case management together with comprehensive and genuinely intelligible procedural orders.

(7) We support the implementation of a dedicated counter for self-representing litigants. We also suggest that consideration be given to making provision at the primary point of contact between Court staff and those whose first language is not English; for example by the use of three-way telephone translation services such as Languageline, as is common in medical service provision.

101. As to the objective of identifying the issues and merits of cases early and thereafter dealing with unmeritorious cases robustly:

(1) We agree that the proposals of full docketing, and of the application of investigative techniques at the first case management conference and subsequent procedural

hearings, are key to the early resolution of hopeless cases. We agree that such early resolution reduces unfairness, both to self-representing litigants and to the other parties.

(2) We are optimistic that steps taken to case manage cases which involve self-representing litigants robustly and fairly would pay dividends in the reduction of the court time used overall. We agree, however, that there will be an early need for training of both court staff and judiciary.

102. As to the objectives of maximising resort by self-represented parties to free or affordable advice and representation:

(1) We agree with the recommendation to compile and review, at a regional level, accurate and up-to-date information about available free advice which is relevant to chancery business, and to make this available from the first point of contact with court users and at all possible subsequent opportunities.

(2) The Association is continuing to prepare a duty advocate scheme for the Chancery Interim Applications Court and hopes to launch this before the end of the Michaelmas Term, to come into full effect in January 2014.

103. As to the further miscellaneous proposals (9.103 et seq):

(1) We agree that for cases which are to involve significant numbers of witnesses, and in which one or more of the parties is self-representing, priority should be given for a fixed date hearing.

(2) We agree with the suggestion of a more flexible approach to allowing McKenzie Friends to speak, and the adoption of a practice of appraising the court of the details of the proposed McKenzie Friend through a McKenzie Friend form. We are also cautiously supportive of the Civil Justice Council's suggestion of a code of practice for McKenzie friends, and for any appraisal form to indicate whether the proposed McKenzie friend is aware of the code of practice and is prepared to abide by it. The Court Service needs to be fully aware that there are now "professional McKenzie friends" who charge for their services but who are untrained, and the courts as a whole need to decide what attitude to take to such unqualified advocates.

(3) We agree that there is significant scope for the provision of better guidance to lawyers and self-representing parties as to the way in which the former are expected to interact with the latter. We support the suggestions of the Civil Justice Council as to the content of such guidance.

(4) Whilst we see the sense in represented parties having conduct of the drawing of orders, and the preparation of bundles, we agree that (in particular, in relation to bundles) it would be necessary to ensure that any alteration of the present practice does not simply unfairly throw the costs of this aspect of litigation onto the represented party. We are not persuaded that some form of costs order, which does not require the immediate funding of the cost, could ameliorate this potential unfairness, given the obvious prospect that a self-representing party would have limited ability to meet any cost order either during the proceedings or at their conclusion.

Annex 5 questions

104. A summary of our conclusions on the Annex 5 issues is attached. Most of the issues have been addressed above and we include a cross-reference to the relevant paragraph(s) of the Response. On some of the issues, we either do not have a view or are content to leave the matter to others who are better placed to respond.

Timothy Fancourt QC (Chairman)

Penelope Reed QC (Vice-Chair)

Richard Millett QC (Seminar Secretary)

CHANCERY BAR

Lesley Anderson QC (Chair of Northern ChBA)

Michael Todd QC (former Chairman)

Ian Clarke

Nicola Preston

Toby Watkin

Chancery Bar Association, 31 October 2013

ANNEX: REQUESTS FOR FURTHER FEEDBACK

1. Masters granting/discharging injunctions (3.6): addressed at paras. 16 and 17 of the Response. We think the prohibition should continue.

2. Restraints on master jurisdiction (3.13): addressed at paras 12-15 and 18-19 of the Response. We do not consider that jurisdictional restraints should be retained except in relation to injunctive relief. We tentatively suggest an overriding test that they should only exercise their powers in plain cases.

3. Number of management tracks in triage (4.21): addressed at paras 29-33 of the Response. We broadly support the number of tracks proposed.

4. Whether partnership management track should be piloted (4.21): addressed at para 30 of the Response: we think others are better placed to decide whether a pilot is needed, but can see that it may well be sensible to do so, to assess the demand for it, the demands it makes and the benefits conferred. If there is a pilot it should be done for business and commercial cases but with a spread of different types of case rather than just one type or only highest value cases.

5. Guidelines to be used in allocation of incoming cases (4.28, 38): addressed at para 35 of the Response.

6. Whether to divide up the masters into three teams for triage and case management (4.32): addressed at para 38: We do not think the masters should be divided into teams.

7. The extent to which triage could be used by registrars (4.35). We do not express a view on this and feel that the bankruptcy and company court users' will be better placed to respond knowledgeably on this point.

8. The content of a new cross-examination convention (7.20): this is addressed at paras 88-96. We consider that the practice of agreeing limits on the necessity of putting ones case in cross-examination should be formalised, either through specific open agreement between counsel or as the subject-matter of a decision of the court at a CMC or PTR. We consider that the extent of such limits will vary from case to case so that no single convention (other than in the most general terms) can sensibly be adopted.

9. The amount of judgment-writing time to build into the trial timetable (7.31): this is addressed at para 75(2): we suggest 25% as a percentage of the trial length but on the basis that such time is not then eroded by the use of such time for other judicial functions.

10. The success or otherwise of the 'while you wait' order service in the interim applications court (8.26): we have not addressed this as we as a group had no particular experience of its operation.

11. The subject-matter of a chancery guide for litigants in person (9.92): addressed at para 100(6): we agree that the guidance already drafted in relation to the

interim applications court is of significant benefit. Other than perhaps in relation to insolvency proceedings, we do not consider that other specific guidance is required or desirable.

12. Whether local working groups should lead training for dealing with litigants in person (9.100): we consider that the necessary change of culture must be pursued nationally if it is to be successful, and that training must have a common basis across the country. Subject to that, we agree that local groups should take the initiative for delivery and monitoring of training.

13. Whether all or any of the regional trial centres should adopt a 4 day week (10.42): in principle we consider that the answer is yes, though this may have to be subject to variation in particular trial centres. If the culture change and greater judicial case management is going to operate successfully on a regional level, the same approach to case management will have to apply; and it is fundamental to this change that a there is a 4 day week to permit judges to deal with other matters during trials. We also think the practice has shown to be advantageous in all courts in which it has been adopted (subject to the effect upon judicial social diaries referred to at para 69).

14. Whether some company and insolvency matters should be dealt with administratively (11.31): we do not have a strong view and would prefer to leave this to more specialist responses.

15. How to improve the listing arrangements for trials by Registrars (11.44): again, subject to the observation that something must be done to shorten waiting

times and that we consider an obvious answer to be to recruit an extra Registrar, we leave this to specialist responses.

16. Whether there is a need for a third scientifically qualified patents judge and whether this would lead to a shortfall elsewhere (13/18-19). We do not consider that there is such a need and, given that there is no scope for increasing the total number of chancery judges, would be concerned at the impact that the loss of a "generalist" would have on waiting times and loss of general knowledge base for other work.

17. Whether patent cases should have special listing priority (13.22): we do not see why. If the matter is particularly urgent, an application can be made in the usual way. There are many non-patent cases that have an equal requirement for speedy determination.

18. Content of the chancery annual report (15.9): agreed, as long as it does not become too long or unnecessarily detailed.

19. Content of chancery website (15.11): we agree that there should be such a resource, but it should be as part of an existing website, such as the Justice website. As with guidance for litigants in person, there is a real problem with over-proliferation of websites and sources of information. In our view, any chancery section of such a website should provide:

    (i) Easily available details of all chancery listing.
    (ii) Easily available contact details for all judges clerks.
    (iii) A map and floor plans of the Rolls Building.

(iv) Easy redirection to the CPR, the Chancery Guide.

(v) Help for litigants in person by providing:

(a) An explanation of the broad work of the chancery division and the role of masters and judges.

(b) An example of how a case runs through the division from start to finish.

(c) Up-to-date contact details for agencies and redirecting to their sites.

(d) Redirection (kept up to date) to other guidance for self-representing parties (eg the Bar Council guide).

(e) The guide to the interim applications court.

20. Whether some chancery conferences should be held in public (15.13): we are not convinced about the cost benefit of this, on a regular basis, but it would be wholly apposite in terms of promoting the proposed reforms and getting "buy in". We think that the Judges' conference is a good idea and that there should be a regular body that allows feedback from all court users.