CHANCERY GUIDE

October, 2009

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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 Ministry of Justice website: www.justice.gov.uk/. This Guide will also be found on the Chancery Division section of the Courts Service website: www.hmcourts-service.gov.uk.

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Preface

This, the sixth, edition of the Chancery Guide is published four years after its predecessor. In the intervening period much has changed either in relation to the substantive law, for example the Companies Act 2006, the practice of the court, for example the procedure for paper applications in trust cases introduced by the new rule 64.8A and the working of the court, for example the Electronic Pilot Scheme. What has not changed is the purpose and function of this guide. It is to explain how the substantive law, rules and practice directions are applied in the Chancery Division; it cannot affect their proper interpretation or effect, see **Secretary of State for Communities and Local Government v Bovale Ltd** [2009] EWCA Civ 171.

This edition has been produced under the supervision of Sir Kim Lewison. I am most grateful to him for undertaking the task in addition to his normal duties as a judge of the Chancery Division, the Chancery Supervising judge for Wales and the Midland and Western Circuits; author of Lewison on The Interpretation of Contracts and editor of Woodfall on Landlord and Tenant. He has been assisted with regard to various topics by a number of High Court and Specialist Chancery Circuit judges, Chief Master Winegarten, Master Bragge and Registrar Derrett from the judiciary; Mrs VC Bell from HMCS and Malcolm Davis-White QC and Katherine McQuail for the Chancery Bar Association. To all of them, named or unnamed, I send my thanks.

If all goes according to the present plan the Chancery Division will move to the Rolls Building in the summer of 2011. In that location it will, we are assured, have access to greatly improved IT systems. These events are bound to lead to substantial changes in the practices and working of the court thereby necessitating the seventh edition of the Chancery Guide in 2012. I hope and believe that this edition will be of considerable use to all who, in whatever capacity, have occasion to participate in litigation in the Chancery Division before the move occurs and will remain of some historical interest thereafter.

Andrew Morritt
Chancellor of the High Court
October 2009

CHAPTER 1 INTRODUCTORY

About the Chancery Division

1.1 The Chancery Division is one of the three parts, or Divisions, of the High Court of Justice The other two are the Queen's Bench Division and the Family Division. The 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.

1.2 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 or property disputes of one kind or another. Often these are complex and involve substantial sums of money.

1.3 Judges of the Chancery Division also sit as judges of the Court of Protection; in the Upper Tier Tribunal and in the Competition Appeal Tribunal. This Guide does not cover any of those courts or tribunals.

1.4 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

1.5 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 and the PDs. This Guide should be used in conjunction with them. It is not the function of this Guide to summarise the CPR or the PDs, nor should it be regarded as a substitute for them.

1.6 This Guide does not have the status of a Practice Direction. So it does not have the force of law. But failure to comply with this Guide may influence the way in which the court exercises its powers under the CPR, including the making of adverse costs orders. In case of any conflict between this Guide and a rule or Practice Direction, the rule or Practice Direction prevails.

1.7 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.

1.8 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.

1.9 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.

1.10 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.

1.11 This Guide states the position as at September 2009. 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.

1.12 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, ALLOCATION AND STATEMENTS OF CASE

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

Before starting a claim

2.1 Before issuing a claim parties should consider the PD on Pre-Action Conduct. The PD applies only to claims begun as a Part 7 or Part 8 claim. It does not therefore apply to claims which are started by some other means (e.g. petition). The court will not expect the PD to be complied with where:

(1) telling the other potential party in advance would defeat the purpose of the application (e.g an application for a freezing order);

(2) the application involves the making of representation orders so that non-parties could be bound by the outcome (e.g. pension cases);

(3) there is no other party for the applicant to engage with (e.g. an application to the Court by trustees for directions);

(4) the application results from agreement following negotiation (e.g a variation of trust);

(4) the urgency of the application is such that it is not practicable to comply; or

(5) the claimant follows a statutory or other formal pre- action procedure.

2.2 In other cases the court will consider the extent to which the PD has been complied with.

How to start a claim

2.3 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. It is expected that the Electronic Working Pilot Scheme will apply to claims started in the Chancery Division as from October 1, 2009 (see PD (Electronic Working Pilot Scheme) supplementing rule 5.5 of the CPR).

2.4 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.

2.5 When issuing proceedings, the general rule is that the title of the claim should contain only the names of the parties to the proceedings. There are five exceptions to this: (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"; (d) proceedings relating to pension schemes, which may be entitled "In the Matter of the [ ] Pension Scheme"; and (e) 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

2.6 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

2.7 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 to be allocated to that track. Chapter 13 deals with transfer to county courts.

Statements of case

2.8 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.

2.9 A party should not set out allegations of fraud or dishonesty unless there is credible material 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.

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

2.11 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.

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

2.13 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. However, the deadline for filing the questionnaire is that in rule 15.8.

Part 8 claims

2.14 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, PD 8 Section B lists a large number of particular claims which must be brought under Part 8. Other rules also require the Part 8 procedure to be used. Of particular relevance will be applications to enforce charging orders by sale, claims under the Inheritance (Provision for Family and Dependants) Act 1975, proceedings relating to solicitors and certain proceedings under the Companies Act 2006 (PD 49 para 5). 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.

2.15 Part 8 also provides 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. The application should be listed before a Master.

2.16 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.

2.17 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. Alternatively the information required to be contained in the acknowledgment of service can be provided by letter. Any objection to the use of the Part 8 procedure must be made at that time. A party who does not wish to contest a claim should indicate that fact on the form acknowledging service or by letter.

2.18 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 7.5 of PD 8 a defendant's time for filing evidence may be extended by written 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 written 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.

2.19 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.

2.20 The general rule 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. There are exceptions to this rule (including some claims under the Variations of Trusts Act 1958 and cases where a party has applied for summary judgment).

2.21 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.

3.2 The rules require the parties themselves to help the court to further the overriding objective. Accordingly the court will expect the parties to co-operate with each other. Failure to do so may attract adverse costs consequences.

3.3 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.

3.4 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 clerk to the Chancellor.

Directions

3.5 It is expected that parties and their advisers will try 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 must 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. Digital copies should be available so that any necessary changes can be made quickly. 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.

3.6 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. It will not generally be acceptable for the parties in their Allocation questionnaires to indicate that they have not suggested or agreed draft directions (using the form at Appendix 3). If by the time limited for the filing of Allocation Questionnaires directions are still the subject of discussion, the Master should be alerted to this in the Allocation Questionnaire and given a time by which draft directions will be filed. If a party seeks an unusual or non-routine order he should provide a short explanation for the court with the Allocation Questionnaire. Similarly if the parties seek permission to adduce expert evidence and the reason for this is not obvious they should provide an agreed explanation for use by the court.

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

3.8 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. When sending out allocation questionnaires the court 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.

3.9 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 delayed for a substantial length of time in order to accommodate the advocates' convenience.

3.10 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 any hearing is given to the court.

3.11 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.

Case management bundle

3.12 Parties should consider the compiling of a permanent case management bundle containing a neutral case summary, the statements of case and court orders, updated as necessary during the progress of the case. The court may direct the compiling of such a bundle in an appropriate case.

Applications for information and disclosure

3.13 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

3.14 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 of the whole case, may enable the parties to settle the remainder of the dispute. In such cases a preliminary issue may be appropriate.

3.15 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. 16 Under rule 19.11, where there are likely to be a number of claims giving rise to common or related issues of fact or law, 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.

3.17 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. In the Chancery Division the Register is usually kept by the court and is maintained 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

3.18 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 (including any time needed for pre-reading by the trial judge) 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.

3.19 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

3.20 The court has power to direct that a PTR be held (see rule 29.7). This power will normally be exercised in cases estimated to take more than 10 days and in other cases where the circumstances warrant it.

3.21 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.

3.22 A PTR should be attended by advocates who are to represent the parties at the trial. Any unrepresented party should also attend.

3.23 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.

3.24 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.

3.25 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. 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.

4.2 Although applications for disclosure pursuant to *Norwich Pharmacal v Customs and Excise Commissioners* [1974] AC 133 [1973] 2 All ER 943 HL may be made under Part 7 or Part 8 (as the case may be), nevertheless if the application is or is thought likely to be uncontested the court may entertain in the alternative an application under Part 23 supported by evidence.

DISCLOSURE OF DOCUMENTS

4.3 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.

4.4 Since disclosure can be very expensive, the parties should consider methods by which the expense can be limited. In the case of disclosure of documents stored digitally, this may include agreement on key words to be used in searching.

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

4.6 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 its cost does not outweigh the likely 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.

4.7 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

4.8 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.

4.9 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

4.10 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 and the Protocol for the Instruction of Experts which sets out the duties of an expert and the form and contents of an expert's report.

Single joint expert

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

4.12 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.

4.13 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.

4.14 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

4.15 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

4.16 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).

4.17 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.

4.18 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

4.19 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

4.20 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

4.21 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 and District Registrars outside London are dealt with in Chapter 12.

5.2 It is most important that only 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. If an application is to be made to a judge, the application notice should state that it is a judge's application. If an application which should have been made to a Master is made to a judge, the judge may refuse to hear it.

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, three 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) Second, there are 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) Third, there are cases in which the respondent can only be identified by description and not by name.

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 a case 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 a case 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 the latter case, the order made will 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. The judge's name will be found in the Daily Cause List.

5.9 The Interim Applications judge is available to hear applications each working day in term and an application notice can be served for any working 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 5.41 to 5.47 below.

5.10 An application should not be listed before the Interim Applications Judge if it is suitable for hearing by a Master or Registrar. The mere fact that it is urgent is not enough, because both Masters and Registrars are available to hear urgent applications. If an application which should be heard by a Master or Registrar is listed before the Interim Applications Judge, the judge may refuse to hear it.

5.11 **An application should not be listed before the Interim Applications Judge unless the overall time required to deal with the application is two hours or less. The two hour maximum includes the judge's pre-reading time, time in court and time for judgment.**

5.12 If the overall time required to deal with an application is likely to exceed two hours the application should be heard as an application by order (see paragraphs 5.14 and 5.20). If an application is listed before the Interim Applications Judge and it becomes apparent (either on the day of the hearing or beforehand) that the overall time required to deal with it is likely to exceed two hours the Chancery Judges' Listing Officer (or, in appropriate cases, the clerk to the Interim Applications Judge) must be notified immediately.

5.13 Every skeleton argument must begin with an estimate of the time required for pre-reading and an estimate of the time required in court (including time for judgment).

5.14 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 the judge 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 the applications will be heard and gives any other directions that may be necessary. Sometimes cases are released to other judges at this point. If a case is likely to take 2 hours or more (including pre-reading and oral delivery of judgment), the judge will usually order that it is given a subsequent fixed date for hearing and hear any application for a court order to last until the application is heard fully.

5.15 Where an application is to be heard as an application by order 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.

5.16 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 any revised 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.

5.17 If an application is adjourned to a later date the applicant must:

(1) remove all bundles for the current hearing from the court unless otherwise directed by the Judge.

(2) ensure that all papers required for the adjourned hearing (including bundles and skeleton arguments) are lodged with the Chancery Listing Office in Room WG04, Royal Courts of Justice no later than two working days before it is due to come back before the Judge.

(3) ensure that the adjourned hearing has been re-listed on the correct day when the papers are re-lodged with the Listing Office.

5.18 *Without Notice Applications* If a return date is given on an interim injunction (or any other remedy granted by the Judge) the applicant must ensure that an application is issued and served on the other parties (normally 3 working days before the return date); and that the necessary bundles and written submissions are lodged as indicated in paragraph 5.17 above.

Agreed Adjournment of Interim Applications

5.19 If all parties to an Interim Application agree, it can be adjourned for not more than 14 days by counsel's clerks 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 term.

Interim Applications by Order by agreement

5.20 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.

5.21 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.

Applications without notice

5.22 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 all matters relevant to the application. This includes matters of fact or law which are or may be adverse to the applicant. If made orally, the disclosure must be confirmed by witness statement or affidavit. The applicant or his or her legal representatives must specifically direct the court to passages in the evidence which disclose matters adverse to the application. This duty also applies to litigants in person. If there is a failure to comply with this duty and an order is made, the court may subsequently set aside the order on this ground alone.

5.23 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. Where such an urgent application is made, two copies of the order sought 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.

5.24 A party wishing to make an application without notice should give as much advance warning to the court as possible. If the overall time required to deal

with the application (including pre-reading) is likely to exceed two hours arrangements for the listing of the application should be made with the Chancery Judges' Listing Officer.

Freezing Injunctions and Search Orders

5.25 The grant of freezing injunctions (both domestic and world-wide) and search orders is a staple feature of the work of the Chancery Division. 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.

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

5.26 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

5.27 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

5.28 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. Consideration should also be given to the question whether a cross-undertaking should be given in favour of a person who is not a respondent to the application.

Orders on applications

5.29 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.

Form of order when continuing an injunction

5.30 An order ("the new order"), the effect of which is to continue an injunction granted by an earlier order ("the original order"), may be drawn up in either of the following ways:

a. by writing out in full in the new order the terms of the injunction granted by the original order, amended to give effect to a new expiry date or event;
b. by ordering in the new order that the injunction contained (in a specific paragraph or paragraphs) in the annexed original order is to continue until the new expiry date or event (and annexing the original order);

5.31 In general, the best practice is that indicated in 5.30 (a) above, as it expresses in the clearest possible way by reference to a single document exactly what it is that the party restrained is prevented from doing in the period of the continuation.

5.32 The practice indicated in 5.30 (b) is also acceptable, but can be cumbersome, particularly where an order is continued several times or where the original order is itself bulky and much of it no longer relevant.

5.33 Whilst it is also possible, in principle, to continue an injunction simply by ordering in the new order that the injunction contained (in a specific paragraph or paragraphs) of the original order is to continue until the new expiry date or event (without annexing the original order), this practice has the disadvantage that it is not possible for the party restrained and third parties to see what activities are prevented without cross-referring to another document (which may or may not have been served). This may also give rise to difficulties of enforcement. It is particularly inadvisable to use this form where a litigant in person is involved.

5.34 In drafting the new order, consideration should always be given to whether a penal notice should be included.

5.35 Care should be taken not to "continue" paragraphs which do not need to be continued because they have been carried out or are no longer appropriate, such as orders requiring information or documents to be disclosed.

5.36 It is good practice to recite in the new order that the original order has been made.

Consents by parties not attending hearing

5.37 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.

5.38 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.

5.39 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

5.40 See Chapter 7 below.

Out of hours emergency arrangements

5.41 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.

5.42 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 Royal Courts of Justice (tel: 020 7947 6000), 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) contact telephone numbers for the persons involved in the application.

(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. The Duty Judge will also indicate how any necessary papers are to be delivered (whether physically or by fax or e-mail)

(5) Applications for interim injunctions will only be heard by telephone where the applicant is represented by counsel or solicitors (PD 25, Interim Injunctions, paragraph 4.5 (5)).

5.43 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 Interim Applications Judge. The judge 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.

5.44 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.

5.45 County court matters and matters proceeding out of London. Similar arrangements exist for making urgent applications out of hours in county court matters in certain parts of England and Wales and High Court matters proceeding in Chancery District Registries. The pager numbers for regional Urgent Business Officers are given in Appendix 1 to this Guide. Contact with the Circuit judge on duty for the London County Courts can be made through the Royal Courts of Justice.

Vacation arrangements

5.46 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.

5.47 In the Long Vacation, two Vacation judges sit each day to hear vacation business. In other vacations there is one Vacation judge. 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

5.48 Applications to a Master should be made by application notice. Application notices are issued by the Masters' Appointments section in Room TM7.09. It is important that application notices are lodged at or addressed to Masters' Appointments, Room TM 7.09 Royal Courts of Justice, Strand, London WC2A 2LL and not to a more generalised address such as "Chancery Division, Royal Courts of Justice" otherwise the listing of the application may delayed or the application may be wrongly listed before a judge. 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.

5.49 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.

5.50 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 as soon as possible.

5.51 The agreed time estimate must identify separately the time for the Master to pre-read any documents required to be pre-read; the hearing time of the application and also time to give any judgment at the conclusion of the hearing. The time for judgment 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.

5.52 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.

5.53 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 5.49 applies, the provision of a bundle and skeleton arguments should form part of the agreed timetable.

5.54 The Masters may also allow applications to be made to them informally. The Masters are normally available 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 formal 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.

5.55 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

5.56 Applications under PD 37 for payment out of money held in court 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.

5. 57 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 2.14 above). In all other cases the Master will consider the file without a hearing and make an order for payment and/or sign the appropriate payment schedule.

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 Interim Applications Judge. 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 Interim Hearings List and the General 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 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

a 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 may 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 Interim Applications judge. 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

Interim Applications judge (see further paragraph 7.39). A contested application may 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 for hearing

6.15 Where a case has been listed for hearing and because of the timing of the hearing an application needs to be made as a matter of urgency, parties should first consult 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 6.28)**.** Parties should not list an application before the Interim Applications judge without first consulting the Masters' clerks. If (and only if) a Master cannot

hear the application in good time, the application may be made to the Interim Applications judge.

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 applications for an administration order, applications for approval by the court of schemes of arrangement and applications for the appointment of provisional liquidators, may be issued for hearing on any working day in term time (other than the last day of each term). Unopposed applications for the approval of schemes of arrangement will sometimes be heard by a judge before the start of normal sittings. Other applications may 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. The same principles apply to Registrars.

6.24 Judge's Applications

Reference should be made to Chapter 5.

6.25 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.

6.26 Summary Judgment

Where an application for summary judgment includes an application for an injunction or a declaration, it usually has to be made to a judge because in most cases the Master cannot grant an injunction or make a declaration 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.

6.27 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

6.28 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 Deputy Court Manager (Room TM 5.05)

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.

6.29 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.

6.30 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.

Urgent or oral applications to the Masters

6.31 Masters are normally available to hear short oral applications without notice 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).

6.32 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.

6.33 See also Chapter 5, paragraphs 5.48 to 5.55 (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 pre-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 as soon as practicable; and in any event 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 7.30 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 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 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 must 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.

7.15 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 three 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 an additional 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.

7.16 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.

7.17 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

7.18 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).

7.19 In an appropriate case the court may direct sequential rather than simultaneous delivery of skeleton arguments.

Time for delivery of skeleton arguments

7.20 **In the more substantial matters (e.g. trials and applications by order)** – subject to any contrary direction 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; or, if earlier, one clear day before the trial judge is due to begin pre-reading.

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

7.22 **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. If a skeleton argument is delivered on the day of the hearing, the judge may not have time to read it before the hearing.

7.23 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

7.24 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).

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

7.26 Parties should always ask the judge's clerk whether the judge wishes to receive a digital copy of the skeleton argument by e-mail and, if so, the e-mail address to which the skeleton argument should be sent.

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.

Reading lists and time estimates

7.30 When lodging the agreed bundles, or as soon as practicable thereafter, 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.

Failure to lodge bundles or skeleton arguments on time

7.31 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.

7.32 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

7.33 Authorities are usually supplied as photocopies. Photocopies of authorities should be full size; and not reduced size. 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.

7.34 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.

7.35 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

7.36 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

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

7.38 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. Any such material should also be available for the judge in digital form.

Adjournments

7.39 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. Once a trial has been fixed it will rarely be adjourned.

<u>When to apply</u>

(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.

<u>How to apply</u>

(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. Where an application for an adjournment is made on medical grounds, the court will normally require a witness statement and/or medical evidence. The medical evidence should at least take the form of a medical certificate or doctor's letter. In other cases a witness statement may not be 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

7.40 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 pre-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.

7.41 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.

7.42 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 7.30 above.

7.43 Parties should always ask whether the Master or Registrar wishes to receive a digital copy of the skeleton argument by e-mail and, if so, the e-mail address to which the skeleton argument should be sent.

7.44 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.

7.45 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 <u>not</u> 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.

7.46 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 ……."

7.47 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 ……. ."

7.48 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

7.49 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.

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

7.51 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 not be attached to the electronic version of the skeleton argument; but should be delivered in hard form and, where it would assist, be accompanied by a copy of the skeleton argument in hard form.

7.52 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

7.53 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 3.18 – 3.19.)

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 may 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 7.30). 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 If a witness wishes to deal with matters not dealt with in the original witness statement a supplementary witness statement should be prepared and served on the other parties, as soon as possible Permission is required to adduce a supplementary witness statement at trial if any other party objects to it. This need not be sought before service; it can be sought at a case management conference if convenient or, if need be, at trial.

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

8.12 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.

8.13 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. Similar facilities may be available at courts outside the Royal Courts of Justice.

Expert Evidence

8.14 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.

8.15 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.

Physical exhibits

8.16 Some cases involve a number of physical exhibits. The parties should try to agree the exhibits in advance and their system of labelling. Where it would

be desirable, they should agree a scheme of display (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 draft 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 a judgment delivered in the Royal Courts of Justice may be obtained from the Mechanical Recording Department. Elsewhere, the court will supply a copy.

9.4 If the parties have agreed the form of the order and any consequential orders, and have supplied the judge with a draft, judgment may be handed down without the need for an attendance.

Orders

9.5 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.

9.6 The court may direct the parties to agree and sign a draft order. Where the proceedings are in the Royal Courts of Justice, the draft order should, when agreed and signed, be delivered (if it is a judge's order) to the relevant judge's clerk or (if it is a Master's order) to the Master's clerk in Room TM

7.09. 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 and should do so with expedition.

9.7 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 a digital storage device as well as in hard copy, particularly if the order needs to be drawn quickly. Any digital storage device 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 Microsoft Windows 2003. Enquiries regarding the provision of digital storage devices should be made of the associate responsible for drawing the order in question.

.9.8 Further guidance on the drafting of orders by the parties may be found in Appendix 14.

Drafting and Service of Orders

9.9 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.

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

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. Such orders should be delivered to Room TM 7.09.

Consents by parties not attending the hearing

9.14 This is covered in paragraphs 5.37-5.39 above.

Tomlin Orders

9.15 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".

Any direction for:

(1) payment of money out of court, or

(2) payment and assessment of costs

should be contained in the body of the order and not in the schedule.

This form of order is called a "Tomlin Order". If the order refers to a confidential schedule or agreement, this must be filed with the order but with a prominent request that it be treated as a confidential document not open to inspection to be retained in a sealed envelope on the court file and marked "Not to be inspected without the permission of the Master or judge".

Proceedings after judgment

9.16 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

9.17 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.

9.18 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.

9.19 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

9.20 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.

9.21 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.

9.22 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.

CHAPTER 10 APPEALS

Key Rules: CPR Part 52 and PD 52; PD Insolvency Proceedings, Part 4, paragraph 17: Appeals; PD Directors' Disqualification Para. 35

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 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. Most appeals from tribunals are now dealt with by the Upper Tier Tribunal, which is not covered by this Guide. Appeals from some other bodies (e.g. the Comptroller of Patents) still lie to the court.

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 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)). An application for permission to appeal 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. However, the court has power to adjourn

that hearing for the purpose of considering any application for permission to appeal. If the lower court refuses permission, or permission is not applied for to the lower court, an application may be made to the appeal court by Appellant's Notice.

10.5 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 usually be awarded any costs of so doing even if permission to appeal is refused. The judge who hears the oral application will usually be the same judge who dealt with the application on the papers.

10.6 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).

10.7 If a party who wishes to appeal to the High Court 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 try 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.

10.8 If the documents required for consideration of an application for permission to appeal to the High Court 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.

Stay

10.9 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 Interim Applications Judge.

Appeals from Masters in cases proceeding in the Chancery Division

10.10 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 Part 7 claim allocated to the multi-track lies direct to the Court of Appeal.

Insolvency appeals

10.11 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, . Permission to appeal is required.

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

Appeals from orders made in county court claims

10.13 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

10.14 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. However, most appeals from tribunals are now dealt with by the Upper Tier Tribunal.

Appeals to the Court of Appeal: permission to appeal

10.15 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 (other than an appeal from the Comptroller of Patents), in which case permission may only be granted by the Court of Appeal.

Appeals in cases of contempt of court

10.16 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

10.17 The practice is as set out in paragraph 12 of PD 52, for all appeals except first appeals in insolvency matters. Where the appeal is proceeding in the High Court 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. In this Chapter the "paying party" is the party by whom the costs are to be paid; and the "receiving party" is the party to whom the costs are to be paid.

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 an early stage.

(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 (and usually will) 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 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 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 may be awarded where something takes the case out of the norm. 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.

Funding arrangements

11.12 Funding arrangements are defined in CPR 43.2. If a claimant has entered into a funding arrangement before starting proceedings he must file notice of the arrangement when he issues the claim form or, if the court is to serve the claim form, file sufficient copies of the notice for service by the court. A claimant who enters into a funding arrangement on or after starting the proceedings must file and serve notice within seven days of entering the funding arrangement.

11.13 The court should be informed, on any application for the payment of costs, if any party has entered into a funding arrangement. The court can then consider whether, in the light of that arrangement, 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

11.14 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 CHANCERY BUSINESS OUTSIDE LONDON

General

12.1 Many Chancery cases are heard outside London. There are ten Chancery District Registries: Birmingham, Bristol, Caernarfon, Cardiff, Leeds, Liverpool, Manchester, Mold, Newcastle-upon-Tyne, and Preston. Chancery judges with jurisdiction to hear High Court cases sit regularly at 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 Kitchin is the Chancery Supervising Judge for the Western, Wales, and Midland Circuits. Mr Justice David Richards, as Vice-Chancellor of the County Palatine of Lancaster, is the Chancery Supervising Judge for the Northern Circuit (which now includes Chester) and the North Eastern Circuit. Both these judges regularly take substantial Chancery matters for hearing outside London. Mr Justice Kitchin sits regularly in Birmingham, Bristol and Cardiff, but if appropriate will sit elsewhere on the relevant circuits. Mr Justice David Richards 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 McCahill QC (Bristol)
Judge Purle QC (Birmingham)
Judge David Cooke (Birmingham)
Judge Jarman QC (Cardiff)
Judge Pelling QC (Manchester, Liverpool and Preston)
Judge Behrens (Leeds and Newcastle)
Judge Kaye QC (Leeds and Newcastle)

Judges Hegarty QC and Waksman QC (who are the local Mercantile judges based in Manchester and Liverpool) and Judges Raynor QC and Stephen Davies 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. Judge Havelock-Allan QC, the Mercantile Judge in Bristol, is also authorised to sit as a Chancery Judge. All the judges who sit at the Cardiff Civil Justice Centre (Judges Masterman, Chambers QC and Seys-Llewellyn QC) are authorised to sit as Chancery judges.

12.6 In addition certain other Circuit judges and some Recorders or 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. Guidelines about transfer of cases are contained in Appendix 13.

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. On the Northern circuit (which now includes Chester) there is a presumption that Chancery cases issued in the Liverpool District Registry will be tried in Liverpool. All other Chancery cases on the Northern Circuit will be heard in Manchester, although, exceptionally, and for good reason, Chancery cases may be listed for trial in Chester or Preston. In Wales Chancery cases are normally heard in Cardiff or Swansea, although arrangements can be made for trials at other venues.

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 Kitchin or David Richards 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 Kitchin or the clerk to Mr Justice David Richards, 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 unless a specific time for the application has been given. Matters will be heard without the court going into private session unless good reason is shown. Rights of audience are unaffected. .

12.15 Applications days are: Monday and Friday in Birmingham, Friday in Bristol and Friday in Cardiff. Short urgent applications in Birmingham can be accommodated at other times. On the Northern circuit application days are on Friday of each week in Manchester, although there are special arrangements for appropriate Liverpool applications to be listed before the Specialist Chancery District Judges in 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: Listing

12.20 There is a flexible arrangement whereby any of the specialist judges may direct that a particular case in their own list (normally not one involving complex specialist issues of law) is suitable for trial before any specialist judge, whatever his or her primary field. Parties may be asked for their views on this at a CMC, and are free to volunteer such views at any time. This may result in an earlier hearing date. An alternative in the Chancery list (normally only for cases of 3 days or less) is that with the agreement of the parties, the court may allocate a case both a first fixture and an earlier date on which it is listed as second fixture, to be called on if the case first fixed for that date settles. In such cases the court will give as much notice as possible, normally not less than seven days, if the second fixture is to be called on, and expects the parties to be prepared for trial.

Bristol: Listing

12.21 All cases are allocated a fixed starting date. No reserve list is operated. However, every case listed for trial will have a pre-trial review at least 6 weeks before the trial date. This review often identifies cases likely to settle. Parties in other cases which are ready for trial in the same period are then contacted and given the opportunity to take up any time made available

by the settlement. Any discussions concerning listing should be with the Chancery Listing clerk in Bristol

Cardiff: Reserve Listing

12.22 Judge Jarman 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. 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 Hodge QC and Judge Pelling 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 Hegarty QC and Judge Waksman 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 further 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 three 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 16. Claims relating to patents, registered designs, semiconductor topography rights and plant varieties may only be brought in the Patents County Court; (3) insolvency proceedings may only be brought in a county court which has insolvency jurisdiction.

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. These guidelines are reprinted in Appendix 13.

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. Parties should expect that either the Master or the judge will consider whether a claim started in the High Court should be transferred to a county court. The High Court has power to transfer a case to

a county court even where that court would not otherwise have had jurisdiction. The criteria for transfer are set out in CPR rule 30.3 (2). The Master will in particular consider whether proceedings seeking an order for sale of property outside Greater London should be transferred to the local 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 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 which coincides with a Chancery District Registry.

13.7 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.

13.8 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.

13.9 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.

13.10 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.

13.11 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

13.12 See Chapter 23 below.

CHAPTER 14 USE OF INFORMATION TECHNOLOGY

Key Rules: CPR rule 1.4, PD 5B; 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. PD 5B sets out the circumstances in which documents may be filed by e-mail. The PD on the Electronic Working Pilot Scheme does not yet apply to the Chancery Division but is expected to be extended to the Division in due course. ,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 (otherwise than in cases where the rules or Practice Directions permit 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 by e-mail or on digital storage devices, and daily transcripts on digital storage devices (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/_it_protocol-1345.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 XP but in some cases another version) and Microsoft Office 2003 (including Word 2003). To avoid compatibility problems it is preferable that text files to be provided for use by a judge or clerk be provided either in a format compatible with Word 2003 or in .pdf text readable form or in Rich Text Format (RTF). Although the judges' computers can read the newer DocX format, it is inconvenient to have documents submitted in that format and documents should be submitted in .doc format (or equivalent for the other Office programmes).

Provision of information on digital storage devices: Skeleton arguments etc

14.7 Skeleton arguments, chronologies, witness statements, experts' reports and other documents (if available in digital form) should be provided on digital storage devices (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. Digital storage devices 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 transcripts available in digital form (and nearly all do) the judge should be provided with digitally stored transcripts 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 5.5 (1)(a) and 5PD paragraph 5. It should be noted in particular that were a party files a document by fax he must not send a hard copy in addition; and that faxes should not be used to send letters or documents of a routine or non-urgent nature.

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 and paragraph 4.5 of PD 25 Interim Injunctions. Guidance on other aspects of telephone hearings, and in particular how to set them up, is contained in paragraph 6.9 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. In all but the simplest applications a paginated bundle will normally be required.

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, the court's 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;

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

(4) if making an application in the absence of the respondent, comply with the duty of full and frank disclosure (see para 5.22).

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.

In appropriate cases the Bureau may be able to refer a case to the Bar Pro Bono Unit (www.barprobono.org.uk) which also administers the Personal Insolvency Litigation Advice and Representation Scheme ('PILARS').

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. Before the case starts they should where possible be given photocopies of any authorities which are to be cited 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 (to be replaced by Sched 3 para 2 of the Legal Services Act 2007). Although applications are considered on a case by case basis, the Chancery Division will usually follow the practice of the Family Division summarised in *Practice Note (Family Courts: Mackenzie Friends) (No 2)* [2008] 1 W.L.R. 2757 (www.hmcurts-service.gov.uk/cms/files/mckenzie_friends_note.pdf). Different considerations may apply where the person seeking the right of audience is acting for remuneration and any applicant should be prepared to disclose whether he or she is acting for remuneration and if so how the remuneration is calculated..

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 Judges wear robes for all hearings. Robes are not worn at hearings before Masters unless the Cause List is marked otherwise. 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. District judges wear robes for trials and winding up petitions. Barristers wear robes for all trials and appeals and in any case where the liberty of the subject is at stake. Current guidance for barristers may be found on the Bar Council's website at www.barcouncil.org.uk.

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) (to be replaced by Schedule 3 paragraph 2 of the Legal Services Act 2007).

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.

15.20 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 Patent judges, a representative of each of the Patent Bar Association, the Intellectual Property Lawyers Association, the Chartered Institute of Patent Attorneys, the Institute of Trade Mark Attorneys and the Trade Marks Designs and Patents Federation. It will also include one or more other Chancery judges. The Chairman is Mr Justice Kitchin. 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 Warren. Any suggestions for consideration by the committee should be sent to the clerk to Mr Justice Warren.

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 McCahill QC chairs the committee in Bristol (or Mr Justice Kitchin 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 Jarman QC chairs the committee in Cardiff (or Mr Justice Kitchin 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 Purle QC chairs the committee in Birmingham (or Mr Justice Kitchin when there), the Chancery Listing Officer, acts as secretary. All communications should be addressed to him 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 Act 2006and 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 are covered in Chapters 23 .

18.4 The Chancery judges are among the nominated judges of the Court of Protection but this Guide does not deal with the Court of Protection. Chancery judges also sit in the Upper Tier Tribunal and the Competition Appeal Tribunal; but this Guide does not deal with those.

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". All insolvency proceedings are allocated to the multi-track.

19.3 Certain matters, such as applications for injunctions or for committal for contempt, are heard by a judge. They are listed in *Practice Note on the Hearing of Insolvency Proceedings* 23 May 2005. 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 7.40 to 7.52 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) Bankruptcy Court Guide

(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 wish to apply for my Certificate of Discharge from Bankruptcy - what do I do?”

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

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

CHAPTER 20 THE COMPANIES COURT

Key Rules: ***PD 49 - Applications under the Companies Acts and related legislation; 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 2006, , 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 Acts and related legislation.

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 2006 [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, applications 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. Unopposed applications for the approval of schemes of arrangement will sometimes be heard by a judge before the start of normal sittings. Other applications may be dealt with by the Interim Applications Judge as Companies judge. 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 7.40 to 7.52 apply to hearings before the Registrars of the Companies Court. Skeleton arguments and bundles should be delivered to the Companies Court Issue Section.

Companies entering Administration

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.

Court Order

20.11 An application to the court must be commenced by the prescribed form of application (Form 2.1B) and must be supported by an affidavit or witness

statement. 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.

20.12 Where a pre-arranged sale of the business is envisaged consideration should be given to the extent of the information to be provided to the court on the making of the application. Attention is drawn in this respect to Statement of Insolvency Practice 16, issued under procedures agreed between the insolvency regulatory authorities acting through the Joint Insolvency Committee (JIC).

Out of court

20.13 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.

Extension of administration order

20.14 Where it is necessary to apply to court for an extension of an administration order, the application should be made in good time so that it can be dealt with on paper. Failure to do so may result in any additional costs being disallowed as an expense of the administration.

Schemes of arrangement

20.15 A scheme under Part 26 of the Companies Act 2006 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 Part 26 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 896 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 the original claim form. The hearing of the application at which the sanction of the court is sought will be before a judge. If the application also seeks confirmation of a reduction of capital, there will first be an application to the Registrar for directions. In other cases the application 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 2006, section 994

20.22 Petitions under the Companies Act 2006, section 994, 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 to 7.31.

20.29 The following leaflets are available from the Companies Court 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

(6) Dealing with debt. How to wind up a company that owes you money.

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, exceptional 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 Attention is drawn to the Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property. Parties should be able, if requested by the court, to explain the actions that they have taken to comply with this protocol. Form N 123 contains a Mortgage Protocol Pre-action Checklist.

21.3 PD 55 emphasises that High Court possession 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; or where the County Court has no jurisdiction in respect of particular relief sought. 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.

21.4 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. Except in cases which have been transferred from the High Court to the county court 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.

21.5 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.

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

21.7 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.

CHAPTER 22 PARTNERSHIP CLAIMS AND RECEIVERS

Key Rules: 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 the 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. Unlike the liquidator of a company it is not his or her duty to wind up the partnership. 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 the question of the receiver's 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 INTELLECTUAL PROPERTY CLAIMS 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, registered designs, semiconductor topography rights and plant varieties. CPR Part 63 and PD 63 deal with its particular procedures, and other intellectual property claims. Appeals in patent, design and trade mark cases are governed by Part 52 (see CPR 63.16); reference should be made to Chapter 10 for the general procedure as regards such appeals.

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

Mr Justice Lewison

Mr Justice Mann

Mr Justice Warren

Mr Justice Morgan

Mr Justice Norris

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

23.3 Mr Justice Kitchin 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/infoabout/patents/index.htm*) and can also be found in Section 2F 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 and paragraphs 16 to 24 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 16 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. Cases not specifically assigned to the Patents Court may be heard by any judge of the Division, and may also be heard in certain Chancery District Registries (see PD 63 paragraphs 16 and 21.1).

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 or the District Registry at which the documents are lodged.

24.3 Where an attesting witness is unable to attend the Royal Courts of Justice or the appropriate District Registry 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 or the District Registry, 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 started in the Royal Courts of Justice is transferred to or 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.

24.5 If a disputed will is required for forensic examination an application should be made under Part 23. The court will require to be satisfied that the examiner is suitably qualified and can give undertakings for the safe-

keeping and preservation of the will, and that the proposed methods of examination will not damage the will.

INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975

24.6 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.

24.7 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.

24.8 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.

24.9 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.

24.10 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.

24.11 Where claims under the 1975 Act are compromised the consent order filed must comply with paragraph 9.15 of this Guide.

CHAPTER 25 TRUSTS

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

Introduction

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

25.2 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

25.3 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. This Guide does not repeat what is in the PDs, which must be carefully studied.

25.4 Where the remedy sought is the approval of a sale, purchase, compromise or other transaction by a trustee, the claim form may be issued under rule 8.2A without naming a defendant. In all other cases, permission to issue the claim form under rule 8.2A is required. Case management directions will be given where the court grants an application to issue the claim form under rule 8.2A.

Proceeding without a hearing

25.5 The court will always consider whether it is possible to deal with the application on paper without a hearing.

25.6 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 25.50-55 below), as well as applications under section 48 of the Administration of Justice Act 1985 (see paragraphs 25.15-20 below).

Representation Orders

25.7 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

25.8 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

25.9 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.

Charity trustees' applications for permission to bring proceedings

25.10 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

25.11 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. Evidence is dealt with by PD 64 para 4.

25.12 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.

25.13 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.

25.14 Where parties are represented by the same solicitors and counsel from the same Chambers the court is unlikely to assess costs summarily unless either the case is a clear one or the value of the trust fund is such that a detailed assessment of costs would be disproportionate.

Applications under section 48 of the Administration of Justice Act 1985

25.15 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. The application should not seek a decision of the court on the construction of any instrument.

25.16 The witness statement or affidavit (or exhibits thereto) should state: (a) the reason for the application (b) the names of all persons who are, or may be, affected by the order sought; (c) all surrounding circumstances admissible and relevant in construing the document; (d) the date of qualification of the qualified person and his or her experience in the construction of trust

documents; (e) the approximate value of the fund or property in question; (f) whether it is known to the applicant that a dispute exists and, if so, details of such dispute and (g) what steps are proposed to be taken in reliance on the opinion..

25.17 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.

25.18 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.

25.19 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.

25.20 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

25.21 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.

25.22 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

25.23 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.

25.24 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

25.25 Mortgagees wishing to lodge surplus proceeds of sale in court under s.63 of the Trustee Act 1925 must in their witness statement or affidavit, and in addition to the matters set out in 37PD 6.1, set out the steps they have taken to fulfil their obligation under s.105 of the Law of Property Act 1925 to pay other incumbrancers (if any) and the mortgagor and why those steps have not been successful. Failure to do so will usually result in their application being rejected by the court.

Estates of Deceased Lloyd's Names

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

25.27 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.

25.28 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.

25.29 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.

25.30 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.

25.31 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

25.32 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.

25.33 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.

25.34 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 and by 7947, except where indicated)

Clerk to:	**telephone**	**fax**
The Chancellor	6412	6572
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
Mr Justice Briggs	6741	6196
Mr Justice Henderson	6669	7298
Mr Justice Morgan	6419	6062
Mr Justice Norris	7073 1728	6649
Mr Justice Barling	6238	6684
Mr Justice Floyd	7073 1740	6593
Mr Justice Sales	6657	7185
Mrs Justice Proudman	6671	6291
Mr Justice Arnold	7073 1789	6719
Mr Justice Roth	6589	7379
Mr Justice Vos	7606	6165

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/infoabout/email_guidance/email_guidance_chancery.htm*

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 (6187/7387)
Bankruptcy Registrars' Chambers (6444/7387)
Bankruptcy Court fax number (6378)

2ND FLOOR

TM2.04 Bankruptcy Operational Manager (6812)

TM2.05 Companies Schemes and Reduction of Capital (6727)

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

TM2.09 Companies Court General Office: issue of all winding-up petitions and all other Companies Court applications; filing of documents for winding up procedure (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); 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

TM4.05 Companies Orders Section: Registrars' Orders and disqualification of directors (6822)

TM4.10 Companies Operational Manager (7472)

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

TM6.07 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*: (0870 739 5869) *(*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

Bristol County Court
Lewins Place
Lewins Mead
Bristol
BS1 2NR

Telephone: 0117 9106706 (Chancery Listing Officer)
Fax: 0117 9106727 (Chancery Business)
Urgent Court Business Pager: 07795302944

Cardiff:	The Civil Justice Centre, 2 Park Street, Cardiff CF1 1ET. Telephone: 02920-376402. Fax: 02920-376470 Email: hearings@cardiffcountycourt.gsi.gov.uk
Leeds:	The Court House, 1 Oxford Row, Leeds LS1 3BG. Telephone: 0113-283-0040. Fax: 0113-244-8507.
Liverpool:	35 Vernon Street Liverpool Merseyside L2 2BX DX 702600 Liverpool Tel: 0151 296 2514 or 0151 296 2449
Manchester:	Manchester Civil Justice Centre 1 Bridge Street West Manchester Greater Manchester M60 9DJ DX 724783 Manchester 44 Tel: 0161 240 5307 or main switchboard 0161 240 5000 Email: highcourtspecialhearings@manchester.countycourt.gsi.gov.uk
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").

6. Trial date

( ) 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. 0870 739 5869; email rcjchancery.judgeslisting@hmcourts-service.gsi.gov.uk) 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. Faxes should not be used to send letters or documents of a routine or non-urgent nature. Where a party files a document by fax he must not send a hard copy in addition. (If, exceptionally, a fax has included a document the original of which needs to go on the court file, then a hard copy enclosing the original may be sent and it 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 been 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 2009

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. It is conventional to label this file "X". 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. ***Delivery of documents for Masters' 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 or her 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 or herself understood in broken English and can understand written English, the statement need not be in his or her 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 or her 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.

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

==========

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

(g) carry on or close down or sell a business

(h) employ additional staff in the course of managing a business

(i) 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

APPENDIX 13

Transfer of cases to Chancery trial centres

1. Matters that ought normally to be transferred to a Chancery trial centre. Careful consideration should be given to whether the case should be transferred to a District Registry or a county court or whether arrangements should simply be made for the case to be heard in a different trial centre.

Proceedings under the Companies Acts;

Other disputes among company shareholders;

Corporate insolvency proceedings (except for winding up petitions by creditors);

Personal insolvency proceedings (except for bankruptcy petitions, interim orders and applications to set aside statutory demands);

Directors' disqualification proceedings (but note that the transferee court must have jurisdiction under the Company Directors Disqualification Act 1986);

Claims within CPR Part 56 (Landlord and Tenant Claims and Miscellaneous Provisions about Land) other than applications under section 24 or section 38(4) of the Landlord and Tenant Act 1954 or under the Access to Neighbouring Land Act 1992;

Probate claims, or claims for the rectification of wills, substitution and removal of personal representatives within CPR Part 57 (probate claims ought not to be started outside a Chancery county court in any event);

Proceedings relating to the estate of a deceased person, to trusts or to charities within CPR Part 64;

Proceedings under section 14 of the Trusts of Land and Appointment of Trustees Act 1996 (though a simple case of a joint property dispute, where there is little or no dispute as to the beneficial shares, may best be dealt with at the home county court);

Proceedings relating to intellectual property, including passing-off;

Proceedings relating to land, easements, covenants or contracts relating to land where an injunction, specific performance or declaration is sought or where there are substantial or complex issues (though not all injunction cases are appropriate for transfer, e.g. housing disrepair cases and many neighbour disputes);

Proceedings for breach of a restrictive covenant, breach of trust or breach of fiduciary duty where an injunction is sought or where there are substantial or complex issues;

Claims for rescission on the grounds of undue influence or other equitable grounds, or for rectification of a document;

Claims relating to membership of, exclusion from, or dissolution of, a club or other unincorporated association;

Other claims – for instance for professional negligence or for breach of contract – which involve issues of trust, company, intellectual property, land or conveyancing law or procedure;

Claims for the dissolution of partnerships or the taking of partnership accounts;

Matters other than those listed above, where an account is one of the remedies sought and the issues likely to arise on the account are substantial or complex.

2. Matters which ought not normally to be transferred

Proceedings relating to residential tenancies;

Proceedings relating to residential mortgages (unless a serious issue arises, for example, as to the occupation rights of a third party and as to whether the mortgagee's rights prevail over those of such a third party);

Claims to enforce a charging order;

Applications under section 24 of the Landlord and Tenant Act 1954;

Applications under section 38(4) of the Landlord and Tenant Act 1954;

Applications under the Access to Neighbouring Land Act 1992;

Proceedings under the Inheritance (Provision for Family and Dependants) Act 1975.

APPENDIX 14

GUIDELINES ON DRAFTING ORDERS

Title and Parties

In the heading to the title the name and judicial title of the Judge should appear followed by the date of the Order immediately below the words "Chancery Division". If the Judge sat in private the words "sitting in private" should be added after the Judge's name.

Normally all the parties should be listed . Apart from the exceptions set out in Paragraph 2.3 of the Chancery Guide there is no need to recite Statutes, deeds etc in the Title.

Recitals

The Order should begin with a recital as to how the matter got before the Court (e.g. Upon the Application of … by Notice dated ..)

There should be a recital as to who the Court heard.

There may be a recital that the Court "read the written evidence filed". The words "And upon reading the evidence recorded on the Court File as having been read" are no longer relevant since nothing is now recorded on the Court File as having been read. On an Application without notice there should be a recital of the evidence before the Court – this would usually be in a Schedule.

Consent orders

If the order is an order made by consent it must bear the words "By consent".

Order

The paragraphs should be consecutively numbered.

If a Minute of Order directs a Payment into or out of Court after the direction the words "as directed in the attached Payment/Lodgment Schedule" should appear. It would be as well to attach a note drawing attention to this. In such a Case a Payment or Lodgment Schedule should be drawn by the Associate

If a party applied for permission to appeal at the hearing the order must state –
(a) whether or not the judgment or order is final;
(b) whether an appeal lies from the judgment or order and, if so, to which appeal court;
(c) whether the court gave permission to appeal; and
(d) if not, the appropriate appeal court to which any further application for permission to appeal may be made.

If the Applicant wishes to serve the Order, it would be helpful for a clause to be included in the Order to that effect. This will cut out the need to secure an undertaking to serve when the Order is collected after it is entered.

Backsheet

All Orders should have backsheets which should-

- Show the name of the Judge and date of the Order immediately below the words Chancery Division as in the title.

- Give the Claim Number

There is no need to recite all parties on the backsheet. It suffices to give the name of the First Claimant and the First Defendant

The backsheet should record how the Order is to be served. If it is intended that the Court should serve the Order the words "The Court sent sealed copies of this Order to" should appear under the word Order and the names, addresses (including DX address) and references of the Solicitors or litigants in person to whom it is to be sent given. If it is intended that one of the parties should serve then under the word Order the words "The Court sent this Order and sealed copies for service to" followed by the name and address etc of the party who is to effect service should appear.

Further guidance

Further guidance is contained in PD 40B

APPENDIX 15

Chancery Business at Central London Civil Justice Centre

February 2009

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Central London Civil Justice Centre

Chancery Business Contact Details – at a glance

Addresses

(1) For County Court Offices, District Judges and all fee remittances:
(NB This is the Court's official postal address)

13-14 Park Crescent
London W1B 1HT

(2) For Trial Centre, Circuit Judges, and Chancery Section office:

26 Park Crescent
London W1N 4HT

DX **97325 Regents Park 2**

FAX **08703 305717** (All general Chancery List and Trial Centre matters)

020 7917 5014 (ONLY for District Judge hearings at 13-14 Park Crescent)
020 7917 7940 (ONLY for skeleton arguments for hearings at 26 Park Crescent)

TEL **020 7917 7821** or
020 7917 7889 Chancery Section (for all general matters)

020 7917 7938 (ONLY for transcripts of Trial Centre hearings)

020 7917 5107 (ONLY for transcripts of DJ hearings)

E-MAIL chance.clerk@hmcourts-service.gsi.uk
(All general enquiries and communications)

clondctyla@hmcourts-service.gsi.gov.uk
(ONLY for listing appointments, as directed)

CentralLondonCJSKEL@hmcourts-service.gsi.gov.uk
(ONLY for skeleton arguments for Circuit Judge hearings)

Contacts

Clerk to HH Judge Hazel Marshall QC (Senior Chancery Judge)
Mr Pio Fernandes Pio.Fernandes@hmcourts-service.gsi.gov.uk

Clerk to HH Judge Marc Dight (Second Senior Chancery Judge)
Mrs Birgit Bock Birgit.Bock@hmcourts-service.gsi.gov.uk

Chancery Section Manager **Mr Mark Peacock**

Trial Centre Office Manager **Miss Michelle Bayley**

November 2009

Chancery Business at Central London Civil Justice Centre

Introduction

The High Court transfers an increasing number of Chancery cases to the Central London Civil Justice Centre ("CLCJC") at 26 Park Crescent, London W1. Two specialist Chancery Senior Circuit Judges have been appointed to maintain CLCJC as a centre for Chancery business. CLCJC therefore handles not only Chancery cases commenced in the County Court, but also cases commenced in the High Court but regarded as suitable for conduct at CLCJC, either by agreement of the parties (see s 23 County Courts Act 1984) or by the High Court, which may decide to transfer the matter to CLCJC on its own initiative under Section 40(2) of that Act.

In addition, any significant Chancery case in a County Court in the London area will be transferred to CLCJC Chancery List for trial, and any lengthy or complex cases from any County Court on the South Eastern Circuit or elsewhere may also be transferred. Litigants may wish to consider commencing such cases at CLCJC in the first place.

Suitable High Court cases may also be tried by one of the specialist Chancery Senior Circuit Judges sitting at CLCJC as a High Court judge under s. 9 Supreme Court Act 1981.

1. The Chancery List at Central London

1.1 The business of the Chancery List at CLCJC now comprises business from the three sources mentioned above ie, :

1.1.1 cases transferred from the Chancery Division of the High Court; cases are often transferred at a very early stage.

1.1.2 cases transferred from other county courts on the SE Circuit, because of complexity or length (an estimated trial of two days or more); and

1.1.3 Chancery claims issued in the Central London County Court.

1.2 All business of the Chancery List is identified by a unique case number currently starting "CHY".

1.3 A list of the kinds of case which are suitable for the Chancery List appears at Annex A. The following should be noted.

1.3.1 Since 2001 the court has had original jurisdiction in contentious probate matters pursuant to CPR Part 57.2.

1.3.2 The court has only limited original jurisdiction in matters relating to companies. However where CLCJC has no original jurisdiction, appropriate cases can, by arrangement, be directed by the High Court to be heard at CLCJC by one of the Specialist Chancery Judges sitting as a High Court Judge, authorised under s 9 of the Supreme Court Act 1981.

1.3.3 The court's original jurisdiction in trust, equity and partnership matters is currently technically limited to £30,000 under the County Courts Act 1984. However it is commonplace for higher value cases to be transferred to CLCJC from the High Court, or for the parties to agree to confer extended jurisdiction (see Paragraph 1.5 below).

1.4 Claims may be issued in the Chancery List if the Claimant thinks it appropriate. The claim form must be clearly marked "Chancery Business". If it later appears that the case is unsuitable for the Chancery List it will be transferred back to the General List by a judge. Otherwise, cases from the above sources may be identified as suitable for the Chancery List at any stage. At this point they will be transferred into the Chancery List, (subject to the approval of a Chancery judge if the transfer order is not made by a specialist Chancery judge), and allocated a "CHY" number.

1.5 It is open to parties to increase the court's jurisdiction beyond the current limits under the County Courts Act 1984 by filing a signed joint memorandum of consent pursuant to s 23 of the Act. This can be a useful way of obtaining an earlier hearing in an urgent case which is suitable for trial by a specialist Circuit Judge.

2. The Court House

2.1 CLCJC is located in two buildings in Park Crescent, London W1.

2.2 The Trial Centre is at 26 Park Crescent London W1N 4HT, at the western end of Park Crescent, (ie nearest to the London Clinic and Harley Street). Trials and applications before Circuit Judges take place here.

2.3 The County Court Offices and the District Judges' Chambers, are on the eastern side of Park Crescent, at 13-14 Park Crescent. London W1B 1HT (which is the court's official postal address). Applications and hearings

before District Judges may be heard either here, or at 26 Park Crescent (see Paragraph 3.6 below).

2.4 The nearest Underground stations are Regents Park (on the Bakerloo Line: 2 minutes) and Great Portland Street (on the Metropolitan, Hammersmith and City, and Circle Lines: 5 minutes). Warren Street (Northern Line: 10 minutes) and Baker Street (Jubilee line:10 minutes) are also within walking distance.

3. The Judiciary

3.1 The senior specialist Chancery Circuit Judge is Her Honour Judge Hazel Marshall QC, who is also authorised to sit as a Deputy Judge of the High Court under s 9 of the Supreme Court Act 1981. Any communications for her attention should be addressed to her clerk:

Mr Pio Fernandes

Clerk to the Senior Chancery Judge

E-Mail: Pio.Fernandes@hmcourts-service.gsi.gov.uk.

3.2 The second senior specialist Chancery Circuit Judge is His Honour Judge Marc Dight, who is similarly authorised in respect of High Court business. His clerk is Mrs Birgit Bock (Birgit.Bock@hmcourts-service.gsi.gov.uk).

3.3 Four other resident and visiting Circuit Judges are generally authorised to hear any Chancery List cases ("Category 2" business). These are HH Judge Peter Cowell, HH Judge Edward Bailey, HH Judge Robert Wakefield, and HH Judge Daniel Serota QC.

3.4 In addition there is a panel of Recorders drawn from the Chancery Bar and approved by the Chancellor of the High Court. The Recorders are asked to sit from time to time if the Chancery Circuit Judges are not available, or to relieve pressure on the list. References in this Guide to a "Circuit Judge" include a Recorder unless the context suggests otherwise.

3.5 There are two designated specialist Chancery District Judges: District Judge Margaret Langley and District Judge Barry Lightman. They are based at 13-14 Park Crescent. In addition, District Judge Ruth Fine is authorised to deal with Chancery cases if the state of the lists requires.

3.6 The Chancery District Judges normally deal with Chancery applications and case management in the District Judges' Chancery List, which is heard on

Fridays at 13-14 Park Crescent. However, hearings may take place at other times, or at 26 Park Crescent, according to the state of the list. Litigants should always check the location on the court hearing list. Appointments before Chancery District Judges are made through the Chancery Section in the same way as appointments before Chancery Circuit Judges.

3.7 It is the policy of the court to ensure that all Chancery List matters are dealt with by a judge of suitable experience. Although not Chancery specialists, a number of the Resident Judges at the court have considerable experience in some Chancery areas (e.g. landlord and tenant matters). If, at case management, the Senior Chancery Judge considers that because of its nature, a particular case could be efficiently heard by any such other Resident Judge, the case will be marked accordingly ("Category 3" business), and may subsequently be listed before either a Chancery Judge or any other Judge so nominated.

3.8 A party who considers it appropriate, on the grounds of the particular nature, importance or value of the case, may apply to the Senior Chancery Judge (through her clerk) for the case to be reserved to the Senior Chancery Judges' List ("Category 1" business).

4. The Chancery Section and communicating with the Court.

4.1 The Chancery List is administered by the Chancery and Specialist Section. Their offices are on the fourth floor at 26 Park Crescent. Queries and applications can be presented in person at the reception desk on the fourth floor, so long as they do **not** involve the payment of fees (but note Paragraph 6.6 below with regard to obtaining expedition.)

4.2 All enquiries and correspondence concerned with the Chancery List should be addressed by post to the postal address of the court:-

THE CHANCERY SECTION
Central London Civil Justice Centre
13-14 Park Crescent
London
W1B 1HT

or sent through the DX system to

DX 97325 Regents Park 2

4.3 The following numbers are dedicated numbers for use of the Chancery List business:

Tel: 020 7917 7821 Fax: 08703 305 717

020 7917 7889

E-mail: chance.clerk@hmcourts-service.gsi.gov.uk

Please note the special fax number. These contact details go directly to Chancery Section personnel. **Chancery List communications should not be sent to any other numbers.**

4.4 The Chancery Section Manager is **Mr Mark Peacock**.

Communications should be addressed to THE CHANCERY SECTION MANAGER, at the above address.

4.5 For administrative reasons, all post to CLCJC is received at 13-14 Park Crescent. After sorting, Chancery List post is transferred to the Chancery Section Office at 26 Park Crescent.

4.6 All applications requiring a fee to be paid **must** be initiated at 13-14 Park Crescent, whether made by post or in person. After fee processing, Chancery applications are then transferred to the Chancery Section Office, as soon as possible.

4.7 To assist Chancery Section staff to deal correctly and quickly with letters and applications, it is important that **the case's "CHY" number, names of the parties and the date of the next fixed hearing are stated prominently on the first page of the letter or application.** If the matter is regarded as urgent this may also be stated: see further Paragraph 6.4 below.

4.8 Communications to the court may be made, and **short** documents (12 pages maximum and not involving payment of fees) may be filed, with the Chancery Section by email to the email address given above. The subject line **must** include the CHY number, the parties' names (abbreviated if necessary), the nature of the document, and the date and time of any forthcoming hearing (see also general guidance in CPR PD 5B supplemental to Rule 5.5).

4.9 Faxed documents (other than skeleton arguments: see (Paragraph 9.3 below) for any CHY list hearings taking place at 26 Park Crescent must be faxed to **08703 305 717** to ensure that they reach the Judges' hearing rooms in time.

Faxed Documents for hearings at 13/14 Park Crescent must be faxed to 0207 917 5014.

It is likely that your document will not reach the Judge in time if faxed to the wrong number.

5. Case management

5.1 Subject to the protocols set out in this Guide and to any specific requirements of the Civil Procedure Rules, the Chancery List at CLCJC will follow the practice set out in the Chancery Guide (see Volume II of the White Book).

5.2 When a case is transferred to Central London Chancery List from either a county court or the High Court, directions will usually be given at the transferring court to continue progress towards trial during the transfer period. However, the transferring court cannot make any order fixing a trial date or window at CLCJC. When the file is received at CLCJC, it will be immediately placed before one of the senior Chancery Judges, who will review the existing case management directions (if any), and either give appropriate directions on paper for the further conduct of the matter (which may include giving a listing appointment for trial) or direct an immediate case management conference.

5.3 Case management hearings before a District Judge will usually be held on Fridays, or by telephone under CPR Pt 23. Case management hearings and applications before a Circuit Judge will usually also be heard on Fridays at 10 a.m. or 2 pm, at 26 Park Crescent, or by telephone under CPR Pt 23.

5.4 The judge may have a telephone list in the morning (at 10 am) or the afternoon (at 2 pm) but not both. Telephone appointments are dealt with strictly by time allocated.

A Note setting out the procedure for arranging a telephone hearing will, where applicable, be attached to the Notice of Hearing issued by the Court. The parties and their advisers should refer to this.

5.5 Matters in the list for attended hearings are dealt with in a convenient order, according to urgency and time estimate.

5.6 Appeals from a Chancery District Judge will normally be listed before one of the specialist Chancery Circuit Judges as part of the normal weekday Chancery List. If a trial is imminent, appropriate time arrangements will be made.

5.7 It is essential that the parties provide accurate time estimates for applications and case management conferences. If hearings overrun their allocated time, telephone hearings will, and attended hearings may, be adjourned, with possible sanctions in costs.

5.8 Parties will usually be asked to provide an agreed minute of case management directions ordered at a hearing, and they can often avoid the need for a hearing by drafting or agreeing proposed directions beforehand. To assist litigants, a form of standard model directions frequently given in CHY cases (Form MT3(CHY)) is at Annex B. Attention is draw in particular to the procedure for fixing trial dates – see paragraph 7.2 below.

6. Applications

Normal business

6.1 Chancery applications before Circuit Judges are normally heard with case management business, which is listed every Friday. In exceptional cases of urgency (for example an urgent injunction) an appointment may be given for another day and time. Longer hearings (2 hours or more) may be listed in the normal daily trial lists.

6.2 Any routine application in a CHY case should be made to the Court Office at 13-14 Park Crescent by leaving or posting copies of the Application Notice (one more than the number of parties involved), and the required fee. After issue by the office, the application will be delivered to the Chancery Section, either on the same day or the following morning, and will be dealt with as follows (subject to Paragraphs 6.4 and 6.5) below:

6.2.1 Where a hearing is requested, the Chancery Section clerk will list it for hearing before a judge of the appropriate level (Circuit or District) on the first convenient Friday (or other listing day) at least two weeks after the day when the application is processed. The

court will notify the parties of the date and time of the appointment.

6.2.2 Where the applicant requests that the application be dealt with without a hearing, the Application Notice will be placed before a judge of the appropriate level. If the judge is of the view that a hearing is required, he or she will direct a hearing within an appropriate timescale. The Chancery Section clerk will then list the matter and notify the parties of the date and time.

6.2.3 If the judge deals with the matter on paper, he or she will make such order as is considered appropriate in the circumstances. This will not necessarily be the order requested in the application. The court will then notify the parties of the application and of the order which has been made. Any such order will always contain a provision that any party may apply to the court, as provided in the order (usually within 7 days) to have the order set aside or varied.

6.3 The Chancery Section will endeavour to deal with Chancery Application Notices as set out above, within five working days of their receipt.

Urgent business

Certified urgent business

6.4 Any party making an application which is considered urgent may certify it "**URGENT**" and give brief reasons in a covering letter. The Chancery Section clerk will then give the application such priority as it appears to warrant, and is likely to put it before a Circuit Judge immediately for directions. Parties should note that any abuse of the "urgent" certification may have the result that costs will be disallowed.

Applications within four weeks of trial

6.5 Any application received by the Chancery Section within four weeks before the date fixed for trial will automatically be treated as urgent business. Regardless of the nature of the application or the level of judge which may be suggested by the applicant, the application will be placed immediately before a Circuit Judge for directions. The Judge will then make such order as is considered appropriate to the circumstances.

Voluntary expedited procedure

6.6 Any party wishing to obtain an early appointment for the hearing of an application may use the following procedure.

6.6.1 The applicant should take the Application Notice (and copies) and fee, in person to the Court Office at 13-14 Park Crescent for immediate issue, wait whilst the issue is processed and receive back the issued Application Notice and copies.

6.6.2 The issued Application Notice should then be taken in person to the Chancery Section Office on the fourth floor of 26 Park Crescent.

6.6.3 The Chancery Section clerk will then immediately list the application for hearing whilst the applicant waits, and will list it for hearing on the immediately following Friday if requested by the applicant. Such applications will be listed before a Circuit Judge.

6.6.4 The applicant will then be responsible for service of notice of the appointment on the responding party or parties.

When using this procedure, applicants are reminded that **at least three clear days' notice** to any other party (ie before close of business on Monday) are required if an application is to be heard "with notice" on a Friday. If insufficient notice is given the hearing can, and normally will, take place as an application made "without notice", whether or not the responding party attends. The Judge will make such order as is appropriate in the circumstances.

Extreme urgency

6.7 During normal working hours, emergency applications (ie applications where even the expedited timetable above would be inadequate) can and should be made directly to one of the Senior Chancery Judges. Contact should be made through their clerks (see Paragraphs 3.1 and 3.2) who will make special arrangements appropriate to the circumstances. . There is no facility at the court for dealing with "out of hours" emergency applications. In any such case, litigants should use the emergency "out of hours" service at the Royal Courts of Justice in the Strand (Tel: 020 7947 6000/6260).

7. Listing and Trials

7.1 Fast track Chancery trials will usually be heard by one of the Chancery District Judges. Fast track trials take place on Thursdays, and the Chancery District Judges list their own cases for hearing.

7.2 Multi-track Chancery trials will be given fixed dates in accordance with the usual practice of the CLCJC for multi-track cases. Under the present system, the trial date is set by a telephone listing appointment,

7.2.1 This will be given for a **precise time,** usually on a Thursday.

7.2.2 Prior to the appointment, the court will ascertain (or estimate, if such information has not been given) the likely trial length, and will specify an appropriate trial window.

7.2.3 The parties will be directed to keep the listing appointment, with dates to avoid during the trial window, by telephone either by setting up a telephone conference appointment as under CPR Pt 23, or, if the parties can agree a combined list of dates to avoid, one party may telephone at the relevant time in the usual way.

7.2.4 The trial date will be fixed by the court officer over the telephone, on the basis of the information then available. If the telephone appointment is not set up and the required information is not received by the time stated, the court will proceed to list in any event. No telephone call after the appointment date and time will be considered or otherwise dealt with unless directed by the Court.

7.25 In either case a formal notice of hearing will also be sent by post or DX. Thereafter, the hearing date will not be altered except on application on notice to a Circuit Judge.

When drafting case management orders, solicitors and counsel should note that the above is now the usual procedure, and expressions such as "first open date after …" are obsolete. The court's standard form listing direction can be found in Annex B.

7.3 Parties should note that the practice in the Chancery List is to give listing appointments at an early stage, as soon as the likely witnesses and trial length can be known. The court is able to fix an appropriate window well in advance to take account of likely trial preparation time, and the early fixing of a trial date has been shown to improve efficient trial management.

7.4 Subject to absences, there are three or four Chancery Circuit Judges available to sit at all times. It is therefore the practice of the Chancery Section to list five cases to be heard in parallel at any time, in the confident expectation that, with settlements and the flexibility of listing arrangements, there will be a Chancery List Judge available to hear all listed CHY cases. There remains, however the risk that all cases will stand up. In such a situation, every effort is made (including, where possible, the use of a Recorder or of another Resident Judge with appropriate experience) to ensure that no case is adjourned out.

7.5 The CLCJC aims to achieve continuous listing so that cases should not have to be adjourned part heard. The Chancery Section pursues this objective. **Solicitors and counsel should note, therefore, that if a case overruns its**

trial estimate the Judge is likely to continue the hearing notwithstanding this, and they should arrange their diary commitments accordingly. A case in the Chancery List will never be adjourned part heard for any significant length of time simply because it has overrun its trial estimate. However, a case which overruns from a Thursday may possibly be adjourned to the following week, to accommodate Friday case management business.

7.6 The parties' time estimates are critical to the objective of providing flexibility and continuous listing for the benefit of all litigants. Time estimates should always be practical and realistic. The parties should note the following:

7.6.1 Time estimates for Chancery cases should, if at all possible, be given in a form which indicates whether or not pre-reading time is included in the estimate (and in any event what pre-reading time requirement is expected) and also whether or not the estimate includes any time for the delivery of an immediate judgment.

7.6.2 In order to accommodate pre-reading, and to minimise waiting by the parties, the Chancery List will operate the following general rule regarding the parties' attendance on the first day, according to the estimated length of the hearing, and, where possible, this will be noted on case management directions:

1 or 2 day case:	10.30 am
3 day case	11.30 am
4 day or more case	2 pm.

If in doubt, the parties can contact the Chancery Section after 4 pm on the day before the hearing, to ascertain when their attendance is required.

7.6.3 Time estimates should assume that witness statements will be taken as read and that consequently no significant time will normally be required for oral evidence in chief. Pre-reading time should be calculated to allow for the reading of witness statements.

7.6.4 The trial judge will not normally expect to pre-read bundles of documents, apart from any key documents indicated as being required for a basic understanding of the case, unless arrangements are specifically made for this. If extensive reading of bundles is required, then the parties' advocates should decide whether this is best done before or during the hearing itself, and should make their time estimates and/or inform the court just before trial, accordingly.

7.6.5 Allowance should be made for any witnesses using interpreters. Experience indicates that the use of an interpreter trebles the length

of time for a witness's oral evidence. The evidence of witnesses using a foreign language must carry the appropriate certification as to the witness's understanding, pursuant to the CPR.

7.7 Apart from the above, as a general rule, the parties should assume that, before the hearing, the judge will have been able to read the skeleton arguments, any key documents, and the witness statements, but not bundles of documentary evidence.

7.8 It is the duty of the parties to inform the Chancery Section Manager **immediately** of any changes in the time estimate of the case.

7.9 Advocates may assume that in Chancery cases, robes will be worn for trials and appeals, and that robes will not be worn for applications, except committal proceedings for contempt of court.

8. Bundles and skeleton arguments

8.1 The practice set out in the Chancery Guide and in CPR part 39 should be followed in respect of bundles and skeleton arguments.

8.2 Bundles and skeleton arguments should be lodged in accordance with case management directions in the case, but at the very latest they **must** be lodged 24 hours prior to the time fixed for any hearing. They should be marked for the attention of the Chancery Section Manager **and delivered to the fourth floor office at 26 Park Crescent.**

8.3 Skeleton arguments should now be filed in accordance with the court's Skeleton Argument Protocol by email to CentralLondonCJSKEL@hmcourts-service.gsi.gov.uk (unless email is not available to the party). **The subject line MUST commence with the CHY No (without spaces) followed by case name.** If a party has no access to email then skeleton arguments can be filed in person or be sent by fax to "Reception" at 26 Park Crescent on 020 7917 7940. It is always advisable for a hard copy skeleton argument to be available at the hearing.

9. Authorities

9.1 Bringing photocopies of authorities to court is helpful to the judges and is encouraged. It is also helpful if any bundle of authorities is provided with

an index and appropriate tabs, and if bulky, is placed in a ring binder or lever arch file.

9.2 The court has a text book library including most of the usual Chancery, landlord and tenant and mercantile books. It maintains a set of Law Reports, the All England Law Reports, the Weekly Law Reports and an up-to-date set of Halsbury's Statutes and Halsbury's Laws. However, the provision of photocopied extracts from textbooks, especially specialist books, is of great assistance to the court.

10. Orders

10.1 Orders made after a hearing, whether a trial or an application, will be drawn up and dispatched on the same day wherever possible. In some circumstances however, dispatch may not take place until the following day.

10.2 In order to assist the court, parties should draw up, in advance of the hearing, a minute of any order that they expect to ask the court to make.

10.3 Where the terms of an order can only be finally decided at the hearing itself, solicitors and counsel should be prepared to draft a minute of the order after the hearing, to be handed in to the court clerk in order to assist the preparation of the sealed order. Alternatively, they may be asked to send in a minute to the court clerk by email, on returning to their office.

10.4 Where a party is granted relief at a hearing in the absence of the other party, the representative of the party obtaining the order should ensure either that the court confirms that it will be able to dispatch the sealed order within 24 hours, or that the judge gives any necessary direction for informing the absent party of the terms of the order in the interim.

10.5 Orders made after consideration of a case on paper will be drawn up and dispatched as soon as possible. However, as orders on hearings take priority, this may take up to a week. Counsel and solicitors should bear in mind the time constraints mentioned here and above at Paragraph 6.1-6.3 when making any application for an order without a hearing. This is especially important if the order sought is time-sensitive; an application for determination at a hearing may be more appropriate.

11. Transcripts

11.1 The court has a digital recording system in every courtroom. In the event of an appeal, therefore, a request should be made for a transcript of the evidence (if needed) and the judgment, if not handed down in writing.

11.2 Parties seeking to obtain a transcript should place an order with an approved member of the transcription panel and submit form EX107 to the court. Any enquiries related to transcripts should be directed in the first place as follows:
For hearings at 26 Park Crescent, to

CJ Support Section	020 7917 7938

For hearings at 13-14 Park Crescent to

Ms June Dodds	020 7917 5107

12. Central London Chancery Court User Group

12.1 The CLCJC Chancery Court User Group has been re-established, to meet periodically to monitor the operation of the Chancery List.

12.2 The Group comprises representatives from the Chancery and Property Bar Associations, the Property Litigation Association, the Association of Contentious Trust and Probate Solicitors, the Society of Trust and Estate Practitioners, the West London Law Society, the Westminster and Holborn Law Society, and representative local solicitors' firms. Meetings are held every four months and attended by the court's Chancery Judiciary and Chancery Section management.

12.3 The group is anxious to be kept informed of how the Chancery List is working in order to ensure that the best possible service can be delivered to meet the needs of users. Complaints, comments, suggestions and ideas for improvement may be communicated through any member of the group. However in the first place it will be useful if suggestions could be sent to either the Trial Centre Office Manager (Miss Michelle Bayley) or the Senior Chancery Judge (HH Judge Hazel Marshall QC) at 26 Park Crescent, London W1B1HT.

Nov 2009

Annex A

Cases suitable for the Chancery List at Central London Civil Justice Centre

Any case in the following list which is either expressly transferred from the High Court or is within the statutory jurisdiction of the County Court, which can be extended by agreement (see s 23 of the County Courts Act 1984)..

Note: Where a subject is noted * as being potentially suitable for either the Chancery or the General List, it is for the Claimant's solicitor to choose which is regarded as more appropriate in the first instance. Thereafter, the case will continue in that list unless transferred by the Court on case management, either of its own initiative, or upon application: see Paragraph 1.4 of the Guide

Wills

- Probate disputes
- Interpretation
- Inheritance Act.

Administration of Estates

Trusts

All matters relating to the validity of trusts and their administration but including especially

- Resulting and constructive trusts.
- Home sharing cases, ie *Stack v Downden* cases: see s.14 of the Trusts of Land Act 1996.

  (However two party cases with no complicating aspect may also be suitable for the General List*).

Land

- Sale of land (including specific performance claims)
- Contracts affecting land
- Disputes as to title
- Boundary disputes
- Land registration
- Right of way and other easements and rights over land

- Adverse possession
- Proprietary estoppel

Landlord & Tenant

Many landlord and tenant matters, and in particular business tenancy disputes under the 1954 Act, are suitable either for the Chancery or the General List.*

The Chancery List is particularly suitable for

- Substantial breach of covenant/forfeiture claims
- Rent review and other valuation matters
- Service charges and management (if not within the exclusive jurisdiction of the LVT.)
- Leasehold enfranchisement.
- Agricultural tenancies

It is less suitable, or necessary, for

- Residential tenancies
- Housing cases.

Partnership Actions

- Disputes as to the existence, terms, or termination of any partnership
- Administration or winding up of any partnership business.

Company Law

- Shareholders' agreements
- Disputes regarding the running or management of a company
- Breach of directors' duties (fiduciary and contractual)

But **NOT** cases within the exclusive statutory jurisdiction of the Companies Court.

It should also be noted that CLCJC has no jurisdiction in personal insolvency, and therefore has no original company winding up jurisdiction nor in matters depending on that jurisdiction, eg claims to set aside transactions in fraud of creditors under s 423 of the Companies Act 1986. However, such claims can be dealt with at CLCJC

as High Court cases by specific authority being conferred on the specialist Chancery Judges, under s 9 of the Supreme Court Act 1981.

Torts

Torts in the property and commercial fields especially trespass, nuisance, and negligence in relation to assets and business or financial matters. (Many such matters will also be suitable for the General List.*)

- Fraud including constructive trusts and tracing

Mortgages, banking and financial matters

Mortgages, charges and securities including banking securities (other than simple mortgage possession cases where no defence is raised other than on the figure), but especially

- *O'Brien* defences.
- Disputes regarding priority of mortgages or charges
- Guarantees and indemnities
- Assignments of choses in action
- Subrogation

Business litigation*

Business disputes may be suitable for either the General List or the Chancery List. The Chancery List may be an appropriate list for business litigation as an alternative to a mercantile list where, in particular, a complex point of legal principle or interpretation of contract may arise.

Injunctions and equitable remedies

All forms of equitable relief, including

- injunction,
- specific performance,
- declarations as to interests,

- tracing, and
- equitable accounting
- Claims in restitution

Professional negligence related to any of the above topics

- including solicitors, surveyors, valuers, architects, accountants, financial advisers.

Annex B

Model standard case management directions for Chancery List cases at Central London Civil Justice Centre. - Form MT3 (CHY)

Form MT 3
(CHY)

Case Number:

Parties:

GENERAL

1. Claim allocated to the Multi Track, to proceed as Chancery Business.

2. The parties do give serious consideration to using mediation with a view to reaching an early settlement. (Further particulars of the National Mediation Helpline can be accessed by phoning **0845 603 0809** (local rate) between 8.30am and 6.00pm. The parties may be assisted by reference to the National Mediation Helpline at http://www.nationalmediationhelpline.com/ and to HM Courts Service National Mediation website at http://www.hmcourts-service.gov.uk/cms/14160.htm. The parties will be expected to provide an explanation if mediation has not been attempted. Costs consequences may follow.

DISCLOSURE

3. Each party shall give to the other parties standard disclosure of documents on Form N265 by 4.00pm on [ ]

4. All requests for inspection of or a copy of a document must be made by 4.00pm on [*normally 7 days later*]. Copies of requested documents to be supplied by 4 pm on [*normally a further 7 days later*].

WITNESS STATEMENTS

5. The parties shall [serve][exchange] statements of witnesses of fact by 4.00pm on [ ].

EXPERT EVIDENCE *[Use (1) (2) or (3)]*

(1) No expert evidence

6.[It being agreed] [The court being of the view] that no expert evidence is required, neither party has permission to rely on expert evidence without further order.

(2) Single joint expert

6.Expert evidence [on the issue of] shall be limited to the written report of a single expert [name if available] to be jointly instructed by the parties. Unless the parties agree in writing or the court otherwise orders, the fees and expenses of the single expert shall be paid by the parties equally.

7.Parties are to agree a letter of instruction to the single joint expert by 4 pm on [ ]. Expert to provide a copy of his report to the parties and file his report with the court by 4 pm on [ ].

8.Each party to serve any questions to the single joint expert on the other parties and the single joint expert by 4 pm on [ ]. Expert to respond to such questions by 4 pm on [ ] by serving a copy of his answers on the parties and filing the answers with the court.

9. If the parties cannot agree by 4.00pm on [ ] [who the expert is to be] [the form of the letter of instruction] [the payment of the expert's fees] either party may apply to the court for further directions.

(3) Parties' experts

5. Each party has permission to rely on expert evidence of a [state discipline(s)].

6. Experts' written reports to be served by 4 pm on [ ].

7. Expert reports to be agreed if possible. If not, the experts shall hold without prejudice discussions and prepare and serve a statement of issues agreed and issues not agreed with a summary of the reasons for any disagreement by 4.00pm on [ ].

8. Experts to attend for cross examination at the trial unless agreed by the parties or otherwise ordered by the Court.

VIEW *(in appropriate cases)*

[ ]. Parties to co-operate in making arrangements for an early site inspection (aided by the provision of an agreed case summary and core bundle of key documents) by a Circuit Judge (to whom the case will then be reserved)[1].

LISTING

[ ]. The case is to be listed for trial before a Circuit Judge in the period from [ ] to [ ] with a time estimate of [ ] day/s, [including hours] [excluding any] pre-reading time for the court. [*For hearing of 3 days or more:* Parties not to attend until …. on the first day][2]

[ ]. There will be a telephone listing appointment on [the first available date after namely] at …… . Each party must have

[1] *This direction is for consideration in appropriate cases, namely where the dispute turns wholly or mainly on the interpretation of title deeds and/or plans. It may be employed at any stage of case management if and t appears likely to promote early narrowing of the issues and/or assistance with settlement.*

[2] *(1) Trial window will in principle to be one month for each day of estimated length of trial, and will commence about 4 weeks after the projected time of the last step in pre-trial preparation, which will usually be either exchange of witness statements or finalisation of expert evidence.*

(2) Attendance on the first day will normally be 11.30 am for a case of 3 days and 2 pm for a hearing of 4 or more days, but the parties may vary this

dates to avoid for parties, witnesses and advocates. The listing appointment will be conducted as a telephone conference pursuant to PD 26.3; relevant information is attached. The parties are encouraged to agree a list of such dates, in which case one party may phone (without setting up a formal telephone conference) on behalf of all, provided he certifies that all others have agreed.

[ ]. On receipt of the required information the Court will arrange the date over the phone at the time of the call. If the telephone appointment is not set up and the required information is not received by the time stated, the court will proceed to list,. In either case a formal notice of hearing will also be sent by post or DX. Thereafter, the hearing date will not be altered except on application on notice to a Circuit Judge.

[ ]. No telephone call after the appointment date and time will be considered or otherwise dealt with unless directed by the Court.

PREPARATION FOR TRIAL

[ ]. *If considered necessary, direction for a Pre-Trial Review on an appropriate date, approximately 3-4 weeks before trial date. Provision can be made to vacate the PTR upon receipt of a joint certificate from the parties' solicitors, not less than three days before the PTR that the case is ready for trial and no further directions are required.*]

[ ]. Not less than [3] nor more than [7] days before the date fixed for trial, the Claimant is to prepare and file a trial bundle in accordance with the Practice Direction to Part 39 CPR. [Such trial bundle is to include [a chronology] [a case summary not exceeding …. words] [a list of issues].]

[ ]. Skeleton arguments are to be exchanged. Skeleton arguments shall be filed at least [one] clear day before the hearing, and should be filed by email to CentralLondonCJSKEL@hmcourts-service.gsi.gov.uk in accordance with the court's CJ Skeleton Argument Protocol, unless email is not available to the party.

[ ]. Parties to inform the court immediately if the case should settle.

COSTS

[ ]. Costs of this [application] [case management conference] [hearing] be

[*as appropriate*].

Dated:

HH Judge
Mr/Ms Recorder
District Judge
Deputy District Judge

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References are to Chapter paragraphs except that a reference with the prefix App *is to an Appendix.*