

**Practice Note: Variation of Trusts**

**9 February 2017**

**Confidentiality Orders Pending the Hearing of the Application**

This note sets out the practice concerning the way in which the initial stages of Variation of Trusts (“VoT”) claims are handled in the light of:

- The decision in *V v T and A* [2014] EWHC 3432 (Ch);
- The change to Masters’ jurisdiction in April 2015;
- The guidance contained in paragraphs 29.22 to 29.27 of the Chancery Guide [as amended].

The procedure set out below has been approved by the Chancellor with the agreement of the Chancery Bar Association.

Paragraph 30 of Morgan J’s judgment in *V v T and A* makes suggestions for the future listing of VoT applications where there is a wish to preserve confidentiality. However, the guidance pre-dates the extension to the Masters’ jurisdiction in April 2015. As from that date the Masters have had jurisdiction to make VoT orders and all VoT claims should in the first instance come before a Master.

When the parties are ready to issue VoT proceedings, they should attend before a Master in advance of the claim being issued (a) to consider whether orders should be made on an interim basis to preserve confidentiality pending the full hearing of the application and (b) to discuss whether the application is best suited for hearing by a Master or a judge. Whether a particular application is more suitably dealt with by a judge is decided on a case by case basis taking account of the complexity and scope of the application, whether there are novel legal issues, the parties involved and the parties’ wishes. The draft Part 8 claim and the evidence in support should be lodged before the application is issued. It may be reviewed on paper but it is often more convenient for the claim to be discussed at an application without notice (“AWN”) hearing. If the Master is satisfied, based on the evidence, that there is real prospect of the court being willing to direct that the main hearing should be in private and/or there should be reporting restrictions and/or access to the court file should be limited and/or the proceedings are anonymised then interim orders can be made to preserve confidentiality. An example of such an order is at Appendix A, see link below, and is available on the justice.gov website, [numbered CH43](#).

Whether it is appropriate to make an interim order to restrict access to the claim form and evidence on the court file and to make the proceedings anonymous pending the disposal hearing will depend on the circumstances in each case. These orders are not automatic and the applicants will have to provide evidence which justifies the making of such an order. At the full hearing, in the light of more detailed consideration the court can decide whether these orders should be continued and whether the hearing should be in private.