HM Courts & Tribunals Service

Chancery Guide

February 2016

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Amended December 2016: para 22.4,

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Chancery Guide 2016

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Chapter 1 Introduction

About the Chancery Division

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1.1 The Chancery Division is one of the three 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"); currently he is Sir Geoffrey Vos. The Chancery Division is based in the Rolls Building, in Fetter Lane, London EC4. In addition to general Chancery work, the Division includes the specialist lists of the Companies Court, the Bankruptcy Court, the Patents Court and the Intellectual Property and Enterprise Court ("IPEC"). It also shares the Financial List with the Commercial Court.

1.2 The Rolls Building is shared with the Admiralty and Commercial Court and the Technology and Construction Court ("TCC"), making it the largest specialist centre for financial, business and property litigation in the world. A summary of the work in the Rolls Building and details of the judges sitting there can be found on the Judiciary website (https://www.judiciary.gov.uk/) or at https://www.gov.uk/courts-tribunals/chancery-division-of-the-high-court

1.3 There are currently 19 High Court Judges (including the Chancellor) attached to the Division There are also six judges who are referred to as Masters (one of whom is the Chief Master), and five judges who are referred to as Bankruptcy Registrars (one of whom is the Chief Registrar). Throughout this Guide the term "judge" (initial lower case) includes the High Court Judges, Masters, Registrars, judges with s.9 powers sitting as a High Court Judge and deputies. If the context makes it clear, "Judge" (initial capital) may be used to denote a High Court Judge.

1.4 The High Court Judges also sit as judges in the Upper Tribunal (particularly the Tax Chamber); and in the Competition Appeal Tribunal. This Guide does not cover those tribunals.

1.5 In the District Registries (see Chapter 30) some of the work done by Masters in London is performed by District Judges.

1.6 The Chancery Division undertakes civil work of many kinds, the majority of which is business litigation. There is a strong international element and many claims are both substantial and complex. Specialist work within the Division includes company and bankruptcy, partnership, intellectual property, land, trusts, pensions, contentious probate and claims relating to the application of Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) and the equivalent provisions in the Competition Act 1998.

1.7 There are certain claims, for example partnership 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. See Schedule 1 of the Senior Courts Act 1981 for a list of claims which must be brought in the Chancery Division, and CPR Part 63.

1.8 In many types of case (e.g. claims for professional negligence against solicitors, accountants, valuers or other professionals and many commercial claims) the claimant has a choice whether to bring the claim in the Chancery Division or elsewhere in the High Court. However, the court will give careful consideration to the appropriate venue at an early stage and claims may be transferred to another part of the High Court, or to the County Court, by the court shortly after issue if the Chancery Division is obviously unsuitable.

1.9 Cases in the Financial List, which came into being on 1st October 2015 (see Chapter 27), may be commenced either in the Chancery Division or in the Commercial Court.

1.10 The Shorter Trials and Flexible Trials pilot schemes which also came into being on 1st October 2015 apply across all three jurisdictions in the Rolls Building. See Chapter 28.

About this Guide

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1.11 The aim of this Guide is to provide practical information and should be used in conjunction with the CPR. It is not the function of the Guide to summarise the Civil Procedure Rules ("CPR") or the Practice Directions ("PD's"), nor should it be regarded as a substitute for them. However, there are a number of aspects of practice in the Chancery Division which differ from other courts and specialist jurisdictions due to the nature of the work carried out. The Rules, PD's, pre-action protocols and forms are published by the Stationery Office and are on the gov.uk website: https://www.gov.uk/courts-tribunals/chancery-division-of-the-high-court_and (for forms http://hmctsformfinder.justice.gov.uk/HMCTS/GetForms.do?court_forms_category=Chancery) In addition, a number of standard forms of order which are specifically for use in the Chancery Division, including case management directions, may be found at this latter site by typing "chancery" into the box headed "available types".

1.12 This Guide does not have the status of a PD and 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.

1.13 The format of this edition of the Guide differs from that of previous versions. It is no longer divided into Parts A and B; the two Parts have been amalgamated. There are no longer any Appendices; matters previously contained in the Appendices have been incorporated into the body of the Guide, or placed (in the case of forms) on the gov.uk website or, if obsolete, removed. Additional forms may be found in the main procedural reference books. The Guide does not have an index; the Table of Contents has been expanded to include subheadings within chapters and the Guide is largely in the same order as cases proceed through the courts, so it is easy to navigate.

1.14 There have been major changes in procedure and practice since the Guide was last published. These include the cost management reforms to the CPR introduced by Jackson LJ, the changes introduced following the Chancery Modernisation Review ("CMR") published by Briggs LJ on 17th December 2013, the introduction of the CE-file on 1st October 2014 and of electronic filing on 16th November 2015, changes to the production and service of orders with effect from 2nd January 2015 and the changes to PD 2B, with effect from 6th April 2015, which removed most of the restrictions on the types of relief a Master might grant and permitted Masters to try Part 7 cases without the consent of the parties, thus making Chancery Masters' jurisdiction, subject to certain exceptions, very similar to that of the Judge. These changes are all covered in this Guide.

1.15 The text of the Guide is published, together with other useful information concerning the administration of justice in the Chancery Division, on the.gov.uk website (https://www.gov.uk/courts-tribunals/chancery-division-of-the-high-court_) and on the Judiciary website (https://www.judiciary.gov.uk/). The Guide will be kept under review in the light of practical experience and of changes to the rules and PD's and amendments will be made on the website as necessary. The Guide is printed in the main procedural reference books. It is no longer printed separately in hard copy.

Chapter 2 Contact details

(all telephone numbers to be preceded by 020 and by 7947, except where indicated)

IN THE ROLLS BUILDING

The Judges

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High Court Judges' Clerks

Judge	Clerk	Telephone	Email
The Chancellor	Amanda Collins	6412	amanda.collins@hmcts.gsi.gov.uk
Mr Justice Peter Smith	Supriya Saleem	7379	supriya.saleem@hmcts.gsi.gov.uk
Mr Justice Mann	Susan Woolley	7964	susan.woolley@hmcts.gsi.gov.uk
Mr Justice Warren	Elizabeth Collum	7260	elizabeth.collum2@hmcts.gsi.gov.uk
Mr Justice Henderson	Kim Andrews	6669	kim.andrews@hmcts.gsi.gov.uk
Mr Justice Morgan	Heather Watson	6419	heather.watson@hmcts.gsi.gov.uk
Mr Justice Norris	Adham Harker	7073 1728	adham.harker@hmcts.gsi.gov.uk
Mr Justice Barling	Helen Trout	6675	helen.trout@hmcts.gsi.gov.uk
Mrs Justice Proudman	Elizabeth Collum	7260	elizabeth.collum2@hmcts.gsi.gov.uk
Mr Justice Arnold	Pauline Drewett	7073 1789	pauline.drewett@hmcts.gsi.gov.uk
Mr Justice Roth	*(Based at*	*Competition*	*Appeal Tribunal)*
Mr Justice Newey	Cathy Johnson	7467	cathy.johnson@hmcts.gsi.gov.uk
Mr Justice Hildyard	Richard Trout	6039	richard.trout@hmcts.gsi.gov.uk
Mrs Justice Asplin	Chris Ellis	6589	chris.ellis@hmcts.gsi.gov.uk
Mr Justice Birss	Supriya Saleem	7379	supriya.saleem@hmcts.gsi.gov.uk
Mrs Justice Rose	Rebecca Sigrist	5694	rebecca.sigrist@hmcts.gsi.gov.uk
Mr Justice Nugee	Gary Clark	7200	gary.clark@hmcts.gsi.gov.uk
Mr Justice Snowden	Wendy Simpson	7073 0304	Wendy.Simpson@hmcts.gsi.gov.uk
Mr Justice Henry Carr	Jas Kahlon	6339	Jas.kahlon@hmcts.gsi.gov.uk

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Judges' Listing

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General enquiries & appeals 6690/7717

Email: chanceryjudgeslisting@hmcts.gsi.gov.uk

IPEC

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Trials and other hearings in the IPEC

The IPEC is supervised by Judge Hacon, Clerk to the IPEC: Adam Wilcox (6265)
IPEC@hmcts.gsi.gov.uk

Chancery Masters' Clerks

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Chief Master Marsh	Hearing room 2	Beth Gilligan	beth.Gilligan@hmcts.gsi.gov.uk>
Master Bowles	Hearing room 4	Frances Schwarzkopf	frances.shwarzkopf@hmcts.gsi.gov.uk
Master Price	Hearing room 1	Nicola Pierce	nicola.pierce@hmcts.gsi.gov.uk
Master Teverson	Hearing room 5	Sherrina Thomas	sherrina.thomas@hmcts.gsi.gov.uk
Master Clark	Hearing room 6	Hannah Bailey	hannah.bailey@hmcts.gsi.gov.uk
Master Matthews	Hearing Room 3	Mohammed Choudury	mohammed.choudury@hmcts.gsi.gov.uk

Clerks' Telephone: 7391

Bankruptcy Registrars

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Chief Registrar Baister	Hearing room 7
Registrar Derrett	Hearing room 8
Registrar Barber	Hearing room 10
Registrar Jones	Hearing room 11
Registrar Briggs	Hearing room 9

Contact details for the Registrars' Clerks:

Telephone – 020 7947 6731

Email – rcjcompanies.order@hmcts.gsi.gov.uk

CHANCERY CHAMBERS

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Ground Floor

Issue Section:

Issue and amendment of all Chancery process including High Court Patents and IPEC claims, filing defence/counterclaims, direction questionnaires/bundles, request for default judgments, writs of possession, acknowledgements of service, searches of cause book and transfers in. Issue Clerks (7783), Email: chancery.issue@hmcts.gsi.gov.uk.

Masters' Appointments:

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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); skeleton arguments, hearing bundles, sealing of Masters' orders, applications to serve out of jurisdiction; filing stop notices; filing testamentary documents in contested probate cases; filing grants lodged under Part 57, Clerks to Chancery Masters (7391), Miscellaneous Payments out of Court Clerks (7929); Email: chancery.mastersappointments@hmcts.gsi.gov.uk.

File Management:

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Applications for office copy documents, including orders, transfers out, Notice of Change, filing affidavits and witness statements (save those lodged within two days of a hearing before a Master which are to be filed with the Masters' Appointment Section) and Certificates of Service. File Management Clerks (6148/6175).

Judges' Listing

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Chancery Judges' Listing Office (6690/7717) Fax (0870 739 5869)

High Court Appeals Office (6690)

Video-conferencing requests (7717)

Consultation room requests (6585)

Chancery Associates:

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Preparation of some Chancery Orders and Companies and Bankruptcy Court Orders; settlement of payment and lodgment schedules; filing affidavits relating to funds paid into court under the Trustee Act 1925, Compulsory Purchase Act 1965 and the Lands Clauses Consolidation Act 1845, 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 (6733);

Team Leader In Court Support/Usher (6322)

1st Floor

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Room D01–007 Personal Assistant (Masters) (6777)

HIGH COURT BANKRUPTCY AND COMPANIES

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Ground Floor

High Court Bankruptcy and Companies Operational Manager (7472)

Companies Schemes and Reductions of Capital (6727)

High Court Bankruptcy and Companies Issue Section:

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Issue of all Creditors' Bankruptcy Petitions, Applications to set aside Statutory Demands, Applications for certificates of discharge in Bankruptcy and issue of all Companies Claims, Petitions and Applications to be heard before a Registrar (6294/6102)

Registrars' Hearings:

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High Court Bankruptcy and Companies Registrars' Clerks (6731)

File Management:

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High Court Bankruptcy File Inspections, and Office copies. Requesting bankruptcy and companies files, for applications without notice to be made in Chambers (6175)

1st Floor

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Registrars Hearings Office

Additional numbers at the Rolls Building (Prefaced by 020 7947 unless otherwise specified)

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RCJG Switchboard (6000)

Rolls Security Office (7000)

Rolls First Aid (7000)

At the Royal Courts of Justice, but outside the Rolls Building

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(Prefaced by 020 7947 unless otherwise specified).

Officer in charge of Courts and Recording Transcription Unit (6154)

RCJ Advice Bureau (0203 475 4373)

Personal Support Unit (7701)

RCJ Security Office (6260)

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

OUTSIDE LONDON

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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 Chancery Listings: Christine Baker 0121 250 6229 Email chris.baker@hmcts.gsi.gov.uk Email: birmingham.chancery@hmcts.gsi.gov.uk
Bristol	Bristol Civil Justice Centre, 2 Redcliff Street, Bristol BS1 6GR DX95903 BRISTOL 3 Telephone: General switchboard: 0117 3664800 Specialist Jurisdiction Listing Officer: 0117 3664860 Chancery Clerk: 0117 3664850 Email: bristolchancerylisting@hmcts.gsi.gov.uk
Cardiff	The Civil Justice Centre, 2 Park Street, Cardiff CF10 1ET Telephone: 02920 376400 Email: hearings@cardiff.countycourt.gsi.gov.uk Skeletons: cardiffcjcskeletons@hmcts.gsi.gov.uk Enquiries: enquiries@cardiff.countycourt.gsi.gov.uk
Leeds	The Court House, 1 Oxford Row, Leeds LS1 3BG Telephone: 0113 3062461 Gold Fax: 0870 7617710 Email: enquiries@leeds.countycourt.gsi.gov.uk
Liverpool	35 Vernon Street, Liverpool, Merseyside L2 2BX DX 702600 Liverpool Telephone: 0151 296 2200 or 2445 Email: efilings@liverpool.countycourt.gsi.gov.uk Enquiries: enquiries@liverpool.countycourt.gsi.gov.uk
Manchester	Manchester Civil Justice Centre, 1 Bridge Street West, Manchester, Greater Manchester M60 9DJ DX 72483 Manchester 44 Telephone: 0161 240 5307 or main switchboard 0161 240 5000 Gold Fax: 01264 785034 Email: manchester.chancery@hmcts.gsi.gov.uk
Newcastle	The Law Courts, Quayside, Newcastle-upon-Tyne NE1 3LA Telephone: 0191 201 2000 Gold Fax: 0870 3240243 Email: enquiries@newcastle.crowncourt.gsi.gov.uk

Preston	The Law Courts, Openshaw Place, Ringway, Preston PR1 2LL Telephone: 01772 844700 Gold Fax: 0870 3240011 Email: enquiries@preston.countycourt.gsi.gov.uk

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 Region):

West Side: 07748 542966

East Side: 07748 613886

Bristol: 07795302944

Cardiff: 07699618086

Manchester: 07554459626

Preston: 07554459606

Newcastle: 07699618083

Leeds: 07699618082

Chapter 3 Users Committees and suggestions for improvement

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3.1 Suggestions for improvements to this Guide or in the practice or procedure of the Chancery Division are welcome, as are any comments on the text of the Guide. These should be addressed to the Chancery Lawyer, Vicky Bell (vicky.bell@hmcts.gsi.gov.uk) unless they fall within the remit of the committees mentioned below.

Chancery Division Court Users' Committee

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3.2 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 Chief Master.

Bankruptcy and Companies Court Users' Committee

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3.3 Proposals for changes in insolvency matters fall within the remit of the Bankruptcy and Companies Court Users' Committee unless they relate to the Insolvency Rules 1986. The members of the Bankruptcy and Companies Court Users' Committee include members of the Bar, solicitors, 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 Chief Registrar.

Chancery Liaison Committee

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3.4 The Chancery Liaison Committee is a committee that brings together judges, civil servants and listing officers involved in Chancery business from both the High Court and the County Court at Central London, as well as the Chair of the Chancery Bar Association. It meets three times a year to discuss how best to distribute the Chancery case work between the High Court and the County Court, to coordinate on Chancery performance and statistical analysis, to identify areas for reform, and to institute best practices in terms of listing arrangements and other administrative practices. The agenda is set by the Chancellor's Private Office in coordination with committee members.

Financial List Users' Committee

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3.5 This users' committee is a joint Chancery-Commercial Court enterprise, as the Financial List is composed of judges from both of those jurisdictions. The members of the committee include members from the Bar, solicitors, representatives from legal or financial professional associations, and general counsel or chief executive officers from financial institutions. Meetings are held twice a year and more often if necessary. Suggestions for points to be considered by the committee should be sent to the Secretary to the Committee, Vannina Ettori, at Vannina.ettori@judiciary.gsi.gov.uk

Insolvency Rules Committee

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3.6 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 Norris. 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 Norris or the Chief Registrar.

Intellectual Property Court Users' Committee

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3.7 This committee considers the problems and concerns of intellectual property litigation generally. Membership of the committee includes the patent judges and 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 Arnold. Anyone with views concerning the improvement of intellectual property litigation is invited to make them known to the committee, preferably through the relevant professional representative on the committee or its secretary, Philip Westmacott, at Philip.Westmacott@Bristows.com.

Intellectual Property Enterprise Court Users' Committee

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3.8 The IPEC has a Users' Committee which considers the problems and concerns of intellectual property litigators in the IPEC. Membership of the committee includes a representative from each of the Intellectual Property Federation, the Law Society Intellectual Property Law Committee, 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. The chairman is His Honour Judge Hacon. Anyone having views concerning the improvement of intellectual property litigation in the IPEC is invited to make his or her views known to the committee, preferably through the relevant professional representative on the committee or its secretary, Alan Johnson, at Alan.Johnson@Bristows.com.

3.9 If matters relate to intellectual property litigation more widely, then this may be a matter for the Intellectual Property Court Users' Committee. Views can be expressed to the IPEC Users' Committee, who will refer on matters outside its remit, or direct to representatives of the Intellectual Property Court Users' Committee or its secretary.

Pension Litigation Court Users' Committee

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3.10 This consists of a High Court Judge and a Master (currently Master Teverson), two barristers and two solicitors. Its chairman is Mr Justice Nugee. Any suggestions for consideration by the committee should be sent to the secretary to the committee, David Grant (David.Grant@outertemple.com) or alternatively the clerk to Mr Justice Nugee.

Court Users' Committees outside London

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3.11 There are several Court Users' Committees relating to chancery work outside London. They are as follows:

The Northern Region and the North-Eastern Region Court Users' Committees: the Northern Region 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.

The Western Region, Wales and Midland Region Court Users' Committees: these committees normally meet three or four times per year. They have a membership including judges, court staff, barristers and solicitors.

Western Region: Judge McCahill QC chairs the committee in Bristol (or Mr Justice Newey when there), Mrs Liz Bodman acts as secretary. All communications should be addressed to her at Bristol Civil Justice Centre, 2 Redcliff Street, Bristol BS1 6GR.

Wales: Judge Jarman QC chairs the committee in Cardiff (or Mr Justice Newey 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 CF1 1ET.

Midland Region: Judge Purle QC chairs the committee in Birmingham (or Mr Justice Newey when there), the Chancery Listing Officer acts as secretary. All communications should be addressed to her at Chancery Listing Section, Birmingham Civil Justice Centre, 33 Bull Street, Birmingham B4 6DS.

Chapter 4 Litigants in person

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4.1 Many forms of help are available to the increasing numbers of individuals who, for various reasons, bring and defend claims without legal representation. It is important for litigants in person to be aware that the rules of procedure and of practice apply to them in the same way as to lawyers. The court will however have regard to the fact that a party is unrepresented, so that the party is treated fairly, as explained below.

Procedural rules applying to litigants in person

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4.2 A litigant in person will be expected to comply with the Civil Procedure Rules ("CPR"), and the provisions of this Guide apply to them. Litigants in person should therefore make themselves familiar with those parts of this Guide which are relevant to their claim and also with the applicable provisions of the CPR.

4.3 For example, the rules relating to disclosure and inspection of documents require the parties, if so ordered, to disclose not just documents (including electronic documents) on which they rely in their claim but also documents which may adversely affect their claim or support another party's claim. Litigants in person are required to comply with this and if they do not do so they may be penalised.

4.4 It is the duty of all parties to litigation, whether represented or not, to bring relevant matters to the attention of the court and not to mislead the court. This means for example that they must not misrepresent the law and must therefore inform the court of any relevant legislation or previous court decisions which are applicable to their case and of which they are aware (whether favourable or not to their case); and must draw the court's attention to any material irregularity. In addition there is a particular duty when an application is made to the court without the other party being present (for example in the case of urgency or when seeing a Master at an 'Application without Notice'). Here the litigant is under a duty to disclose any facts or other matters which might be relevant to the court's decision, even if adverse to their case, and specifically draw the court's attention to such matters.

4.5 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 required 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 must be sent to the court. It is essential that any change of address is notified in writing to Chancery Chambers and to all other parties to the case, otherwise important communications such as notices of hearing dates may not arrive. A litigant in person who wishes to apply for a fixed trial date before a Judge should ask the Chancery Judges' Listing Office for a copy of its guidance notes for litigants in person.

4.6 Litigants in person should identify in advance of any hearing those points which they consider to be their strongest points, and they should put those points first in their oral and written submissions to the court. Where a litigant in person is the applicant, the court may ask one of the represented parties to speak first in court and explain the case briefly and impartially, and to summarise the issues.

Ensuring that litigants in person are treated fairly

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4.7 Proper allowances in relation to hearings will be made which recognise the difficulties facing litigants in person and enable the unrepresented party's case to be put forward in a way which ensures that the proceedings are conducted fairly. Represented parties must treat litigants in person with consideration at all times during the conduct of the litigation. Similarly, litigants in person must show consideration and respect to their opponents, whether legally represented or not, and to the court. Where a claimant is unrepresented, a represented defendant may be directed to file hearing bundles.

4.8 Before a hearing starts a litigant in person should, where possible, be given, and should provide, photocopies of any cases and/or statutes which are to be cited in addition to the skeleton argument. They should be asked to give their names to the usher or in-court support staff if they have not already done so. The judge will explain the Order he or she makes. Representatives for other parties should also explain the court's order after the hearing if the litigant in person does not appear to understand it.

4.9 CPR rule 3.1A, which came into force in October 2015, provides that the court, in exercising any powers of case management, must have regard to the fact that a party is unrepresented. In drafting case management directions the parties and the court must make use of any relevant standard directions (which can be found online at http://hmctsformfinder.justice.gov.uk/HMCTS/GetForms.do?court_forms_category=Chancery and adapt them to the circumstances of the case. Appropriate procedures adopted at a hearing may include asking a litigant in person the matters about which their witness may be able to give evidence or on which a witness called by another party ought to be cross-examined, and if necessary putting to the witness such questions as the court considers proper.

4.10 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.

Practical assistance for litigants in person

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4.11 Neither the court staff nor the judges are in a position to give advice about the conduct of a claim. There is however a great deal of practical help available for litigants in person.

Written Guides

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4.12 An Information Sheet giving details and contact numbers of the various organisations which provide assistance to litigants in person is available from the public counters. Information that may be helpful to litigants in person is also available on a notice board near the counters.

Guide to making Chancery Applications

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4.13 Guides on preparing and presenting cases include booklets on "Going to Court", obtainable for the CAB or PSU or from www.advicenow.org.uk, which also provides links to a wide range of materials on law and procedure; and "Representing Yourself", produced by the Bar Council, obtainable for the CAB or PSU or www.barcouncil.org.uk.

The CLIPS scheme: help with Interim Applications before Judges

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4.14 "CLIPS" is the acronym of the Chancery bar Litigants In Person Support scheme. Under the scheme, which started in January 2014, barristers provide free legal assistance to litigants in person appearing in the Applications Court, which is where High Court Judges hear applications for an interim remedy such as an injunction or other order made in or prior to a claim, under CPR Part 25. The scheme is run by the Chancery Bar Association in conjunction with the RCJ Advice Bureau and the Bar Pro Bono Unit. It is supported by the Personal Support Unit in the RCJ and by LawWorks, the solicitors' voluntary service to assist litigants in person.

4.15 Under the scheme one or two barrister volunteers are available each applications day during the legal term from 10.00 am. Initially they will be outside Court 10 in the Rolls Building, where there is a dedicated conference room available, At 10.30 they will go into court and the Judge will invite any litigant in person to consider whether they would like to make use of the free advice or representation available. The barrister may give advice and may, if appropriate and possible, represent the litigant in court. If the barrister is not needed in court he or she will return to Chambers at about 11am but will be contactable by telephone up to 4.30 pm.

4.16 One of the RCJ Advice Bureau volunteer case workers will also available in the Rolls Building near Court 10 in case other assistance is needed.

Citizens' Advice Bureau ("CAB")

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4.17 There is no Citizens' Advice Bureau in the Rolls Building, but the Royal Courts of Justice Advice Bureau off the main hall at the Royal Courts of Justice is open from Monday to Friday from 9.30 am to 4.00 pm. The bureau is run by lawyers in conjunction with the Citizens' Advice Bureau and is independent of the court. Appointments must be booked. Telephone 0203 475 4373. The bureau also operates a drop-in Bankruptcy Court advice desk on Monday to Friday (10 am – 1.00 pm) on the Ground 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 offers some free help from a barrister, solicitor or Chartered Legal Executive for those who cannot afford the costs of litigation. The Unit also administers the Personal Insolvency Litigation Advice and Representation Scheme ('PILARS'). Alternatively, potential litigants in person may contact their local CAB.

Legal Aid Agency: Civil Legal Advice

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4.18 Litigants in person who may be eligible for legal aid may also contact Civil Legal Advice (CLA). Litigants can telephone the CLA helpline to find their nearest CLA Information Point on 0345 345 4 345. This service is funded by the Legal Aid Agency (LAA). The LAA is open from Monday to Friday, 9am to 8pm, and on Saturday, 9am to 12:30pm. Members of the public can also text 'legalaid' and their name to 80010 to get a call back. This costs the same as a normal text message.

4.19 The LAA is responsible for making sure that legal aid services from solicitors, barristers and the not-for-profit sector are available to those who are eligible. A new online 'eForm' process for applying for legal aid is available. Telephone 0300 200 2020 or email contactcivil@legalaid.gsi.gov.uk.

Personal Support Unit (PSU)

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4.20 The Personal Support Unit (PSU) offers personal support for litigants in person, witnesses and others. It is based in the Royal Courts of Justice, Room M104 on the first floor, opposite courts 5 and 6, telephone 020 7947 7701/7703, open Monday to Friday, 9.30am 1.00pm and 2.00pm to 4.30pm The PSU also operates at the Birmingham, Manchester, Liverpool and Cardiff Civil Justice Centres, the Principal Registry of the Family Division and the Wandsworth County Court. 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.

McKenzie friend

1A-42

4.21 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.

4.22 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 Schedule 3 paragraph 2 of the Legal Services Act 2007. Although applications are considered on a case by case basis, the Chancery Division will usually follow the guidance contained in Practice Note (McKenzie friends: Civil and Family Courts) [2010] 1 WLR 1881. 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.

Company Insolvency Pro Bono Scheme

4.23 This was set up in 2015 to assist litigants in person facing corporate insolvency in the winding up court. It operates from consultation room 17 on the second floor of the Rolls Building from 10am to 1pm on Mondays during term time. It is served mainly by junior barristers from the Chancery and Commercial Bar, who provide both advice and representation.

Chapter 5 Pre-Action behaviour

1A-43

5.1 Before issuing a claim parties should consider the Practice Direction ("PD") on Pre-Action Conduct and any relevant Pre-Action protocols. 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:

- telling the other potential party in advance would defeat the purpose of the application (e.g. an application for a freezing order);
- there is no other party for the applicant to engage with (e.g. an application to the court by trustees for directions);
- the application results from agreement following negotiation (e.g. a variation of trust);
- the urgency of the application is such that it is not practicable to comply; or
- the claimant follows a statutory or other formal pre- action procedure.

5.2 In other cases the court will consider the extent to which the PD and any relevant Pre-Action Protocol has been complied with.

Chapter 6 The court file

CE-File and Electronic filing

1A-44

6.1 The Chancery Division in London has been using the new CE-File electronic court file since 1 October 2014. This means that the court does not hold a paper file for claims issued from that date. This has important practical consequences for dealing with the court. In addition under a new Electronic Working pilot scheme court users may now file documents electronically direct to the court file in all the Rolls Building Courts, including the Chancery Division and as from 25th April 2017 this will be mandatory.

CE-File

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6.2 The electronic file contains those documents which the court is required to hold pursuant to the CPR, whether they are documents created by the court or lodged by the parties. It also contains notes, emails and letters added by the court staff and the judiciary, as did the previous paper file.

6.3 All claims issued from 1st October 2014 ("New Claims") are allocated a new style number. The Master with responsibility for each claim is allocated in rotation on a random basis and the claim form is stamped with the Master's name. Claims issued prior to 1st October 2014 ("Old Claims") are given a new style claim number in place of the existing number on the first occasion a document is filed after 30th September 2014. Old claims where no document has been filed after that date will retain their old number, with the Masters identified by a letter of the alphabet. The old claim number will not be recognised by CE-File.

6.4 It is only necessary to provide the court with the old number where a payment out is to be made of funds paid into court prior to 1st October 2014.

6.5 New claims are managed as far as possible from the electronic file. All paper documents lodged with the court are scanned to the electronic file, or filed electronically, and routine case management is generally carried out using that file unless the volume of documents makes it impractical. If paper copies are required by the court a direction will be given to lodge further paper copies, usually in the form of a bundle (see below). The parties may be asked on occasions to file a pdf version of long documents to assist the court.

6.6 No paper file is maintained for New Claims. Paper documents lodged with the court, after having been scanned to the file, are retained in day files for a period of 6 months. They will be available only in the event that scanning errors need to be corrected. They are destroyed at the end of the period.

6.7 The only exception is original documents which are required to be lodged with the court pursuant to an order or a provision of the CPR (such as original wills). Original documents are retained in a separate secure storage area. Original documents must be clearly marked as such with a front sheet marked in a font of not less than 14 point, as follows:

"CLAIM NO. XXXXXX

ORIGINAL DOCUMENT – NOT TO BE DESTROYED"

6.8 In appropriate cases the court may direct that the filing party should provide an electronic version of longer documents.

Electronic filing

6.9 The Electronic Working Pilot Scheme went live on 16th November 2015 and has been extended to be in force for two years. Documents (apart from original documents – see above - may be filed in all courts in the Rolls Building using Electronic Working both in new and existing cases and whether the user is represented or not.

6.10 There are considerable advantages both for court users and the court in this system being used. The system can be used 24 hours a day, every day, including out of normal court office hours and at weekends and bank holidays. The filing party will know at once, from an electronic confirmation, that the court has received the document and will subsequently receive further confirmation, after it has been reviewed by the court, that it has been accepted. Electronic Working may be used to start, or continue, Part 7, Part 8 and Part 20 claims and pre-action applications. Also, other parties to proceedings are able to inspect electronically all documents on the file which are available to them under CPR 5.4B once they have been granted access to the system.

6.11 Details of how the system works are set out in Practice Direction 51O and there is more information on the Electronic Working website www.ce-file.uk.

6.12 The system is easy to use. To file a document using Electronic Working, a party should access the Electronic Working website, register for an account or log on to an existing account, enter details of the case, upload the appropriate document, and pay the required fee. The filing party will receive confirmation that the document has been submitted and subsequently that it has been accepted. A document will not fail acceptance simply because of a procedural error, unless the court orders otherwise. If there is such an error the court may remedy it by making an order under CPR rule 3.10(b).

6.13 It is important to note that where documents are filed and payment of a fee is not required the date and time of submission will be the date and time of filing for the purposes of any direction under the CPR or of complying with a court order. Where a fee is required the date and time of filing will be the date and time of payment of the fee. Fees relating to any filing may be paid using the PBA system (details may be obtained from the PBA Support Team, telephone 01633 652125) FeeAccountPayments@hmcts.gsi.gov.uk; LiberataRecDD@justice.gsi.gov.uk; Liberata UK Ltd, PO Box 736, Newport, NP20 9FN; DX134282, Cleppa Park 2.or by credit or debit card.

6.14 Where the court issues a claim form or other originating application submitted electronically it will seal the document electronically with the date on which the court fee was paid. This will be the date of issue. The seal will be black (and court seals used on paper documents in the Rolls Building have all been changed to black to ensure consistency). Where a defendant is outside the jurisdiction, the Foreign Process Department will accept claim forms and other documents for service abroad with an electronically generated court seal. The FCO, who deal with service requests from non-convention countries, have also indicated that they will accept electronic seals. There is no requirement either in the EU Regulations or the Hague Conventions for documents to be served to have an original court seal.

6.15 Parties filing documents using Electronic Working should not also file by another means unless required to do so, for example bundles for hearings.

6.16 Parties filing a Claim Form with schedules should consider filing the schedules as separate documents, because under CPR rule 5.4C non-parties may obtain a copy of a statement of case but not any attached documents. If schedules are filed as one document with the statement of case this could cause problems.

6.17 Parties should retain the originals of documents filed, so that they are available for inspection if required.

6.18 As stated above, where an original document is required it cannot be filed using electronic working but must be filed physically with the court. As a result, contentious probate claims cannot be issued using Electronic Working unless the court permits.

6.19 Users wishing to apply for a fee remission are not permitted to use Electronic Working.

Online public search

6.20 Online public search went live in May 2016 and office copy request functionality in August 2016. A court user registered as an E-Filer will automatically have access to this function and should use it where possible. A court user who is not an E-Filer, but wishes to use this function should register for an account on the Electronic Working website www.ce-file.uk. Once approved, parties will be able, upon payment of the relevant fee, to carry out a search of the Rolls Buildings Register of Claims as permitted under PD 5.4B and request office copies. A non-party may make a request for copies of documents to which they are entitled as set out in. PD 5.4C. In addition, in due course parties and non-parties will be able to inspect the electronic record on one of the terminals being installed in the Rolls Building.

Other Communications with the Court

6.21 There have recently been some important changes in the use of emails to the court. On 3 October 2016 PD51O was amended, as a step towards the increased use of electronic working by court users, and PD 5B (which enables parties to file certain documents by email and to use email to communicate with the court), was disapplied for all Rolls Building courts. the following sub-paragraph was added to paragraph 3.4 of PD51O:

6.22 "(2) The court will not accept submissions made by e-mail pursuant to Practice Direction 5B, except where expressly requested by the trial judge or the trial judge's clerk; all electronic submissions must be made through Electronic Working."

This wording proved to be unduly restrictive and a re-amended wording was agreed by the Civil Procedure Rules Committee on 6th October. This will come into effect in December 2016 or January 2017 when its Statutory Instrument is passed.

The new wording of paragraph 3.4 is to be as follows:

(1) The court may refuse to convert documents to PDF format where those documents were originally submitted by other means.

(2) In relation to any document required by the Rules, any Practice Direction or any order of the court to be filed, the court will not accept that document for filing if submitted by e-mail and any such document must be filed through Electronic Working (unless submitted on paper); but if a judge, Master or Registrar has requested or permitted the submission of such a document by email then it shall be so submitted as well as being filed through Electronic Working (or on paper).

6.23 The effect of this amendment is that "submissions", that is all documents which are required by the rules or any practice direction to be filed on the court file, must be filed using Electronic Working, but such documents may also to be sent via email if the judge, Master or Registrar requests or permits.

6.24 Until the new wording comes into effect, the existing wording of 3.4(2) continues to apply and must be followed. However, this is subject to an important Practice Note, issued as an interim measure, which remains in force until the new wording comes into effect.

6.25 The Practice Note is here reproduced in full.

Practice Note to PD51O Paragraph 1

This Practice Note provides clarification as to the documents which will no longer be accepted as email attachments but which must be submitted via Electronic Working (unless submitted on paper). It operates while that Direction is in the form which came into force on 3rd October 2016.

The word "submissions" should be taken to mean all those documents which are required by the rules or any practice direction to be filed on the court file. It does not mean normal day to day communications with the court such as those sending in draft orders or dealing with case management issues.

Nor (for the avoidance of doubt) does it mean documents such as skeleton arguments and chronologies which are submitted to any court for the determination of any hearing or paper application unless the court has directed that those documents be filed. Where any such document has been directed to be filed the parties must do so but may also (by way of exception to the Practice Direction) submit them by email to the listing officer or the judge's clerk in question.

The court may direct that any document which is not required to be filed should in fact be filed, in which case it becomes a "submission" for the purposes of the Practice Direction.

The expression "trial judge" shall include any judge, Master or Registrar who is determining any matter at an oral hearing or on paper.

Practice Note approved by the Acting Chancellor, Mr Justice Mann, in concurrence with the Judge in Charge of the Commercial Court, Mr Justice Blair, and the Judge in Charge of the Technology and Construction Court, Mr Justice Coulson, on this day, 12th October 2016

6.26 In effect the Practice Note anticipates the new wording of 3.4(2), so the practice regarding emails will not alter when the new wording comes into effect. The practice in the Chancery division will be as follows.

6.27 Normal day to day communications with the court such as sending in draft orders or dealing with case management issues do not generally need to be filed and will generally be accepted by email, as may documents such as skeleton arguments and chronologies which are submitted for any hearing or paper application.

6.28 If the court considers that an email (which is not a submission) contains information that should be placed on the electronic file then the clerk will either file the email or will request the party to do so. The document will then be treated as a submission.

6.29 If late submissions need to reach the court urgently (for example last minute filing for a hearing) they may be emailed, if this is acceptable to the judge, Master or Registrar, or the clerk. But it is essential that they are also filed using electronic working.

6.30 Paper documents in general will continue to be accepted by the court until 25th April 2017. From that date, all claims will have to be issued on-line and all filing will have to be made using Electronic Filing. The circumstances in which documents in paper form will be permitted will then be very limited and will probably only include hearing and trial bundles, bundles of authorities and original documents such as wills. This will be a fundamental change in the way claims are dealt with.

6.31 Telephoning should not be used except in an emergency. Fax should not be used at all.

Chapter 7 Applications made pre-issue or at the point of the issue

Interim Injunctions

7.1 A High Court Judge is available on every day that the court is sitting, both in normal court hours and out of hours, to deal with applications for interim injunctions. Such applications are made to the Applications Court. The procedure is set out in Chapter 16 of this Guide.

7.2 Although the Masters have jurisdiction to grant interim injunctions, other than freezing and search orders, all applications for interim injunctions should be made to a High Court Judge.

Other Applications

Appointment of receivers

7.3 Prior to April 2015 such applications tended to be made in the Applications Court. If the application is urgent this practice is likely to continue. However, the Masters have jurisdiction to appoint receivers and an application may be listed before a Master when it is convenient to do so.

Norwich Pharmacal Orders

7.4 Although it may have previously been Chancery practice to permit applications for disclosure pursuant to *Norwich Pharmacal v Customs and Excise Commissioners* [1974] AC 133, [1973] 2 All ER 943, HL to be made by Part 23 application notice, the better practice is to make the application by Part 8 claim form. An application under Part 23 is likely to be rejected.

7.5 The *Norwich Pharmacal* jurisdiction is an exceptional jurisdiction and careful scrutiny will be given both to the need for an order and to the scope of the order which is sought. In principle it should be no wider than is strictly necessary to enable the applicant to pursue its proposed claims.

7.6 Applications should be made in the first instance to the assigned Master. The application will be referred to a High Court Judge if the complexity and/or importance of the application warrants it. If the applicant wishes to apply direct to a High Court Judge, consent from a Master should be sought.

ESMA applications

7.7 Applications may be made by ESMA (the European Securities and Market Authority which was established in 2010), pursuant to regulation 17 of the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 for authority to carry out inspections of 'trade repositories'. They may be heard by either a Judge or a Master.

7.8 Following the judgment of Mrs Justice Rose in *European Securities and Markets Authority v DRCC Derivatives Repository Limited* [2015] EWHC 1085 (Ch) (the first application to be made under regulation 17), and with the approval of the Chancellor of the High Court, future applications by either ESMA or the FCA under regulation 17 can be submitted to the Court for consideration on the papers in the following circumstances:

(i) The company subject to the inspection has been informed of the inspection and has indicated its intention to submit to the inspection.

(ii) In cases where the application is made by ESMA, that the FCA has been informed

and does not wish to be heard at a hearing of the application.

(iii) The application does not seek a power to seal business premises or books and records, does not include a request for records of telephone and data traffic and does not request the issue of a warrant.

7.9 The application should be issued by ESMA by Part 8 claim form. The Judge or Master, on considering the application, may of course decline to deal with the matter on the papers and direct that a hearing should take place.

Pre-action disclosure

7.10 Applications made pursuant to CPR rule 31.16 may be made by application notice and will always be heard by a Master unless exceptionally the weight and complexity of the application warrants it being released to be dealt with by a High Court Judge. The application must be supported by a witness statement.

7.11 The applicant will need to satisfy the threshold tests in CPR rule 31.16(3) (a) to (d) and persuade the court that the making of an order is an appropriate exercise of the court's discretion. The scope of disclosure, whether as to specific documents or classes of documents, should be carefully described and should be no wider than is strictly necessary.

Permission to serve out of the jurisdiction

7.12 The application notice with evidence in support should be issued in Chancery Chambers. It will then be referred to the assigned Master. Such an application will be referred to a High Court Judge only be in exceptional cases and the note at 6.37.5 in the 2015 edition of Civil Procedure (the 'White Book') does not state the current practice.

7.13 The applicant must show (a) it has a good arguable case that the application comes within one of the jurisdictional gateways, (b) a serious issue to be tried in respect of each cause of action concerning which permission is sought and (c) that the courts of England and Wales are the forum conveniens.

7.14 The applicant must take account of the obligation to be candid and should draw to the attention of the court in the evidence all relevant matters regardless of whether they help or hinder the application. A failure to comply with this obligation may lead to an order giving permission to serve out of the jurisdiction being set aside regardless of the merits.

Application to issue the claim form without naming defendants

7.15 CPR rule 8.2A permits the court to make an order in relation to a Part 8 claim (not a Part 7 claim) entitling the claimant to issue the claim without naming defendants. An order might be appropriate, for example, where the court is asked to make an order to assist executors who are unable to locate beneficiaries named in a will.

7.16 The application is made by application notice issued at Chancery Chambers. It will then be placed before the assigned Master. Alternatively in a simple case the Master may be willing to deal with it at 10.30 or 2.00 as an Application without Notice ("AWN"). .

Applications to issue the claim form with anonymous parties

7.17 In some cases the court will permit a claim form to be issued without the claimant and/or the defendant being identified. An application for such an order should be made to the Master. Only if it is urgent should it be made to the Master as an AWN. In other cases the application should be lodged with a witness statement in support.

7.18 If it is appropriate to make an order preventing a party being identified the applicant may also wish to apply under CPR rule 5.4C (4) for an order preventing a non-party from obtaining the statements of case, or perhaps any document, from the court file.

Chapter 8 Issue of the claim form

Part 7 or Part 8

8.1 The CPR permits claims to be issued using one of two different approaches governed respectively by CPR Part 7 and Part 8. The majority of claims are issued under Part 7 which requires the claimant to provide particulars of claim, either at the point of issue or to serve and file them within 14 days of service of the claim form. The Defendant must serve a defence failing which judgment may be obtained. A Part 7 claim is usually appropriate where there are likely to be disputes of fact for the court to resolve.

8.2 Part 8 describes an alternative procedure which may be used either if the claimant "seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact" or where a rule or PD requires that the Part 8 procedure is used (for example in the case of claims under the Inheritance Act).

8.3 The issue of a claim using an incorrect form or method of issue will not invalidate a claim. However, the court is likely to give directions to put the matter right at an early stage.

Place of issue

8.4 It is important for the claimant to consider carefully whether the Chancery Division is the appropriate venue for the claim. The principal considerations are:

- Does Schedule 1 of the Senior Courts Act 1971 require the claim to be issued in the Chancery Division?
- Does any statute, regulation or provision of the CPR require the claim to be brought in a particular venue
- If it is a money claim with a value of less than £100,000 the claim must be issued in the County Court. Even if the value exceeds £100,000, should the claim in any event be issued in the County Court? The value of the claim is one of several criteria which should be considered and as a general starting point the court will scrutinise carefully a claim with a value of less than £500,000 to see if it should remain in the High Court. For more details see the transfer guidelines (Chapter 14 paragraphs 15-26).
- Do the issues raised by the claim suggest that it would be preferable to issue it in another part of the High Court or in a District Registry?

8.5 All Part 7 claims are reviewed by a Master upon the particulars of claim being filed. If it is considered that the Chancery Division in London is not the appropriate venue, an order for transfer will be made.

How to start a claim

8.6 Claims are issued out of the High Court of Justice, Chancery Division, either in the Rolls Building, or in a District Registry. There is no Production Centre for Chancery claims.

8.7 The claim form must be issued either under Part 7, or under the alternative procedure for claims in Part 8. Insolvency and company matters are generally commenced by petition, claim form or application.

8.8 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 various exceptions to this:

(i) 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: standard forms are on the gov.uk website: http://hmctsformfinder.justice.gov.uk/HMCTS/GetForms.do?court_forms_category=Chancery.

(ii) contentious probate proceedings, which should be entitled "In the estate of AB deceased (probate)";

(iii) 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";

(iv) proceedings relating to pension schemes, which may be entitled "In the Matter of the [ ] Pension Scheme";

(v) proceedings in the Companies Court are entitled in the matter of the relevant company or other person and of the relevant legislation.

(vi) A claim form to which Section I of Part 63 applies (patents and registered designs) must be marked "Chancery Division Patents Court" below the title of the court in which it is issued (PD 63 paragraph 3.1(a));

(vii) a claim form to which Section II of Part 63 applies (e.g. copyright, registered trade marks, Community trade marks and other intellectual property rights) must, except for claims started in a patents county court, be marked "Intellectual Property" below the title of the court in which it is issued (PD 63 paragraph 17).

(viii) IPEC. See Chapter 26

(ix) Financial List. See paragraph 13 below and Chapter 27

(x) Shorter trials. See Chapter 28

Allocation of a Master

8.9 A Master is allocated to every claim at the point of issue and wherever possible applications should be made to the assigned Master. Where claims are connected, either by the cause of action or the parties, a request may be made to the Chief Master prior to issue for one Master to be allocated to all such claims.

8.10 An early triage procedure is carried out when the particulars of claim have been filed. The subject of transfer will be considered, and also the management track. If a party considers from the outset that the claim warrants being docketed to a High Court Judge for case management as well as trial, an application should be made in the first instance to the Master to assign it to that case management track (see Chapter 17 paragraphs 7-10). It will not normally be appropriate to apply direct to the Chancellor.

Service of claim

8.11 Claims issued in the Rolls Building will not be served by the court. See CPR Part 6.30 to 6.47 and Chapter 7 paragraphs 12-14 above for applications for service out of the jurisdiction.

Allocation to a track

8.12 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. They will also be allocated to a 'management track' at the first Case Management Conference ("CMC"): see Chapter 14 (Judges/Masters) below.

Issuing Claims in the Financial List

8.13 The Financial List is a single specialist list defined in CPR Part 63A and its PD. Claims in the Financial List may be commenced in either the Chancery Division in London or the Commercial Court. Further information is given in Chapter 28.

Shorter Trials Scheme

8.14 As from 1st October 2015 until 30 September 2018 a pilot scheme is in operation in all three jurisdictions in the Rolls Building for "business claims" (the term is not defined in the scheme) which will not exceed 4 days, including judicial reading, at trial. Opting into the scheme will lead to the claim being fully docketed to a High Court Judge or, if the parties consent, a Chancery Master, at an early stage. The idea behind the scheme is that for some types of business dispute a simplified procedure will be suitable and the claim will come on for trial in a truncated period. The expense of pursuing a claim is expected to be lower than in ordinary claims and costs management does not apply. For further details of the scheme see Chapter 28 of this guide and PD 51N. The scheme is only applicable to a Part 7 claim.

Chapter 9 Part 8 claims

When Part 8 is appropriate

9.1 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 (for example rule 64.3) 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 under the Presumption of Death Act 2013, proceedings relating to solicitors and certain proceedings under the Companies Act 2006 (PD 49A paragraph 5). Subject to jurisdiction (see CPR rule 73.3(2)), 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.

Issuing claim form without naming defendant

9.2 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. Where permission is needed, it is to be sought by application notice under Part 23. The application should be listed before a Master.

Details of procedure

9.3 Part 8 claims will generally be disposed of on written evidence without cross-examination. The witness statements with the claim form should be sufficient in most cases to define the issues.

9.4 Claims issued under the Part 8 procedure are automatically allocated to the multi-track. The claimant does not need to serve particulars of claim and the defendant does not need to serve a defence. No directions questionnaires are required. Judgment cannot be granted in default.

9.5 Claimants issuing a Part 8 claim should use Form N208. Defendants who wish to contest a Part 8 claim or to take part in the proceedings, even if neither contesting nor agreeing to the relief,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.

9.6 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 PD 8A paragraph 7.5 a defendant's time for filing evidence may be extended by written agreement with the claimant 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 they file 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.

9.7 Any longer extension, either for the defendant or the claimant, requires the court's approval. It is recognised that in substantial matters the time limits for evidence in Part 8 may be burdensome upon defendants and in such matters the court will normally be willing to grant a reasonable extension. If the parties are in agreement that such an extension should be granted the application should be made by filing a consent order. If there is no agreement an application notice must be issued and listed for hearing unless the Master considers that the application may be dealt with without a hearing.. The parties should at all times act co-operatively and agree reasonable requests for additional time. The court is likely to order the opposing party to pay the costs of a contested application for additional time where the opposition is unreasonable.

9.8 A defendant who wishes to rely on written evidence must file it with the acknowledgment of service. 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. Where a defendant objects to the use of the Part 8 procedure he or she must give reasons for this objection with the acknowledgment of service.

9.9 Part 20 (counterclaims and other additional claims) apply to Part 8 claims, except that a party may not make a Part 20 claim without the court's permission.

9.10 The general rule is that the court file will be considered by the assigned Master 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.

9.11 In some cases if the claim is not contested and is uncontroversial, the court will not require any oral hearing, but will be able to deal with the matter by making a final order upon the claim and the evidence being considered. 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.

Continuing under Part 7

9.12 The court may at any stage order a claim started under Part 8 to continue as if the claimant had commenced the claim under Part 7 if it becomes clear that there are significant issues of fact which make the Part 8 procedure inappropriate. It is a matter of judgment whether one or more issues of fact will make the claim unsuitable for Part 8 but it should not be assumed that any issue of fact is sufficient basis to require conversion to Part 7.

Chapter 10 Statements of case

Setting out allegations of fraud

10.1 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:

- full particulars of any allegation of fraud, dishonesty, malice or illegality; and
- where any inference of fraud or dishonesty is alleged, the facts on the basis of which the inference is alleged.

10.2 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.

Service of reply

10.3 Claimants should if possible serve any reply before they file their directions questionnaire. This will enable other parties to consider the reply before they file their directions questionnaire. However, the deadline for filing the reply is that in CPR rule 15.8.

Drafting guidelines

10.4 The drafting guidelines set out below 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.

10.5 The document must be as brief and concise as possible. It must be set out in separate consecutively numbered paragraphs and sub-paragraphs (and the pages should also be numbered). So far as possible each paragraph or sub-paragraph should contain no more than one allegation.

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

10.7 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.

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

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

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

10.11 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.

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

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

10.14 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 2.12). Otherwise evidence should not be included.

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

10.16 Lengthy extracts from a document should not be set out. If an extract has to be included, it should be placed in a schedule.

10.17 The document must be accompanied by a Statement of Truth and signed in accordance with the CPR .

Chapter 11 Service

Service of claim form by claimant

11.1 The current practice in the Chancery Division in London is that all claim forms are served by the claimant and not the court. A claim form must be served within 4 months of issue (6 months if it is for service out of the jurisdiction).

11.2 In most cases the claim should be served promptly and if efforts to serve the defendant prove to be difficult an application for an order under CPR rule 6.16 should be made without delay.

Agreed extension of time for service

11.3 The parties may agree to the period being extended by an agreement in writing (*Marshall v Maggs* [2006] EWCA Civ 20) if the parties are agreed, for example that further time is needed to complete the stages specified in a pre-action protocol. It is, however, good practice to obtain the approval of the court by lodging a consent order signed by all parties.

11.4 The court may grant a prospective extension of time for service of a claim form on a application by the claimant under CPR rule 7.6(2) but such an application is vulnerable to being set aside on an application made later by the defendant particularly if an extension is granted at or towards the end of the limitation period.

11.5 CPR Part 6 applies to the service of documents, including claim forms.

Address for service

11.6 All individual litigants (in other words litigants who are not corporate entities), whether represented or not, 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.

Service out

11.7 Applications for service out of the jurisdiction are normally made before the claim is issued (see Chapter 7 paragraphs 12-14). However, the claim form may be issued even though one or more defendants is resident outside the jurisdiction. In that case the claim form will be marked: “Not for service out of the jurisdiction”. The claimant may apply for permission at that stage. The procedure for the application is the same as an application made before issue of the claim.

11.8 A challenge to the grant of permission to serve out the jurisdiction, challenging jurisdiction on another ground or challenging the effectiveness of service should be made by application heard by the Master.

Service of application notices and court orders

11.9 All application notices are to be served by the applicant and not the court. There is no need for the applicant to send the court multiple copies of the application and evidence in support. Two copies suffice. If the application is sent in by email or by CE-filing only one copy should be sent.

11.10 The vast majority of court orders are now served by the party designated in the order by the court. For more details see Chapter 22 below.

Chapter 12 Judgment in default

Granting a default judgment – CPR 12

12.1 A default judgment (ie a judgment without trial) may be applied for when the claim is for a specified sum of money or an amount to be decided by the court when, a defendant fails to file an acknowledgment of service or, having filed an acknowledgement of service, fails to file and serve a defence. It is not available in Part 8 claims.

12.2 The granting of a default judgment is essentially an administrative act. Application is made by filing a request using a specified practice form and will be dealt with by a court official. If the application fulfils the criteria set out in CPR rule 12.3 the judgment will be entered. The court official will refer any concerns to a Master for guidance.

12.3 In certain circumstances, however, (eg where the claim includes a claim for 'another remedy' or is against a child), the application must be made by application notice under Part 23 and will be considered by the Master without a hearing. If the claimant seeks discretionary relief such as a declaration, rectification, an injunction or other similar relief the Master will usually require to be satisfied that such relief is necessary, and if so ought to be granted, and a full witness statement will usually be required. In cases of complexity the application notice may need to be listed. Declaratory relief and relief by way of rectification will not be granted without evidence and will not ordinarily be appropriate for resolution by way of judgment in default.

12.4 If "another remedy" is claimed in addition to a money claim, judgment may be entered if the other remedies are waived.

12.5 Judgment in default cannot be obtained where a defendant has applied for summary judgment or to have the claim struck out, or has requested time to pay.

Setting aside a default judgment – CPR Part 13

12.6 An application to set aside a default judgment must be filed and served on the claimant and should include a witness statement in support and if possible include a draft defence.

12.7 Where a default judgment has been wrongly entered (because the conditions for granting it were not properly complied with or the whole of the claim was satisfied prior to judgment being entered) the court must set it aside, regardless of the merits.

12.8 In any other case the court may set aside or vary a default judgment where the defendant has a real prospect of successfully defending the claim or there is some other good reason to set aside or vary the judgment. – see CPR rules 13.3 and 13.4.

Chapter 13 Part 24/strike-out

Jurisdiction

13.1 Applications for summary judgment under Part 24 or for a statement of case to be struck out under CPR Part 3.4 should generally be heard by a Master (see PD paragraph 24.3) and the application should be made to Masters' Appointments. The procedure is no different to any other application to be heard by a Master. However, it is commonly the case that the hearing of Part 24/strike out applications will exceed two hours. (See Chapter 15 paragraphs 30 and 32).

13.2 If a Master has jurisdiction (and since 6th April 2015, when PD2B was amended it will be rare that this will not be so), a party wishing an application to be heard by a High Court Judge should apply to the Master for the case to be released rather than asking Chancery Judges' Listing Office, ground floor, Rolls Building, ("Judges' Listing") to issue it 'at risk.' This is because it is not for the parties to decide upon the allocation of work; it is for judicial decision. The refusal to release an application to a Judge may be informally reviewed by a triage Judge (see Chapter 14 paragraph 11) on an application in writing by a party and overruled.

13.3 The following criteria will point to the application being heard by a High Court Judge:

- Complex legal issues, particularly where there are conflicting authorities.
- Complex issues of construction.
- Substantial media interest.
- Claims which by their subject matter require the specialist knowledge of a specialist Judge such as the more complex IP claims, and those commercial claims whose subject matter is highly involved or technical such as sophisticated types of commercial instrument or securitisation, complex trust claims and some large multi-jurisdiction trust and estate claims.
- Difficult cases involving litigants in person.
- Particularly lengthy applications (2 days or more)

13.4 If the Master does not have jurisdiction (which is now rare) or the application is released to the Judge, the application should be issued in Judges' Listing 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 and appropriate directions will be given. The adjourned date will be fixed in the usual way through the Chancery Judges' Listing Office ("Judges' Listing"), and a certificate signed by an advocate as to the estimated length of the hearing must be lodged with Judges' Listing. If the claimant is a litigant in person, the application must be issued by the solicitor for the first-named defendant who has instructed a solicitor. If a summary disposal is likely, the solicitor must keep Judges' Listing informed of any developments as soon as they occur.

13.5 There will be occasions when it will be natural to seek approval from a Judge for a Judge to hear the application, for example if a Judge is dealing with directions following a hearing in the Interim Applications List.

Chapter 14 Judges/Masters

Introduction: changes in jurisdiction

14.1 The division of work between the High Court Judges and Masters is subject to rules contained in the CPR and guidance notes. High Court Judges deal with the majority of trials, applications for interim and other relief listed in the Applications Court and certain categories of business such as committals and the work of the Patents Court. In addition, some claims are docketed to be case managed and tried by a High Court Judge.

14.2 Since April 2015, when PD 2B was amended, there is a greater overlap between the responsibilities of High Court Judges and Masters. The revision of PD2B removed most of the restrictions on the types of relief a Master may grant and Masters may try Part 7 cases without the consent of the parties. The main restriction in the CPR which remains concerns applications for freezing and search orders which are the exclusive preserve of High Court Judges. Applications for other types of interim injunction may be granted by a Master but in practice most interim injunctions are granted by High Court Judges in the Applications Court.

14.3 Other types of application, whether for case management, interim relief or disposal should normally be listed before a Master. If it is considered that exceptionally the application should be heard by a High Court Judge the Master should be requested to release it.

Deputies

14.4 Both High Court Judges and Masters are replaced by deputies on occasion.

14.5 Deputy Masters may be called upon when a Master is away or is hearing a case that is likely to last several days. They may undertake any matter that a Master deals with, although they would be unlikely to deal with particularly complex or weighty matters.

14.6 Deputy High Court Judges may be either senior Circuit Judges who are appointed under section 9 of the Senior Courts Act 1981 to sit as deputies from time to time, or they may be QC's who are called upon on an ad hoc basis. They carry out the same work as the Judges, although certain cases of particular substance or difficulty will only be tried by a High Court Judge (see Chapter 17 paragraphs 30-31).

Guidance notes on trials and granting injunctions by Masters

14.7 Guidance notes have been published concerning the types of Part 7 claim which will be suitable for trial by a Master and the circumstances in which it will normally be appropriate for a Master to grant an injunction. The notes provide broad guidance which will be developed in the light of experience. Under this guidance:

- Trials by Masters are likely to be the exception due to the pressure of other work currently undertaken by Masters.
- Claims which are suitable for transfer to the County Court should not normally be tried by Masters unless it is more efficient to do so and in the interests of the parties.
- Subject to the foregoing, Masters should not try claims involving issues of particular legal or factual complexity and not normally try cases where the trial is estimated to last more than 5 days.

- Trials by Masters will normally be conducted in cases otherwise falling within listing category C or where the legal issues arising in the claim fall within the areas of expertise of the Master.
- Preliminary issues may be suitable for trial by a Master such as where the speedy determination of issues may assist the parties to settle the overall claim.
- Careful consideration should be given to objections by a party to trial by a Master. The wishes of the parties, however, are merely one factor to be taken into account.
- If there is doubt about the suitability of a claim being tried by a Master, guidance may be obtained by the Master from one of the triage Judges.

14.8 It remains the case that applications for injunctions which will involve consideration of the *American Cyanamid* principles will invariably be dealt with by a High Court Judge and the work of the Applications Court is largely unchanged. However, applications which include the grant of injunctive relief, such as Part 24 applications seeking a final injunction, and trials in which an injunction is sought, do not need to be heard by a High Court Judge.

Allocation to a Management Track / Docketing

14.9 Since January 2015 all cases in the Chancery Division in London are allocated to one of four management tracks:

- Case management and trial by Master (or Registrar)
- Case management by Master (or Registrar) and trial by High Court Judge
- Full docketing to a particular Judge, so that the Judge deals with all case management and the trial
- (On a pilot basis) a partnership management arrangement under which the prospective trial Judge works with a specified Master (or Registrar).

14.10 Three Judges (Mr Justice Mann, Mr Justice Norris and Mr Justice Arnold) have been nominated by the Chancellor to supervise the triage process.

14.11 Most track allocation is undertaken by Masters and Registrars, especially at Case Management Conferences. It is, however, open to a Judge to allocate a case at a hearing before him/her, and a supervising Judge may make an allocation decision if the parties request that. The supervising Judges are available to be consulted by Masters and Registrars as needed.

14.12 Decisions as to full docketing to Judges are made by full-time Masters, Registrars and Judges. Any decision that a case should be given full docketing will be passed to the Chancellor for approval. Assuming that the Chancellor endorses the decision, he will nominate the particular Judge.

14.13 A Judge to whom a docketed case is assigned will consider whether partnership management would be desirable and, if so, this will be reflected in the first case management order. Partnership management is intended to be flexible with the Judge deciding what type of application and/or case management in the particular case may be delegated to the Master.

14.14 The following factors are to be taken as pointing towards full docketing to a Judge:

a) The heaviest claims where the trial is estimated to last 15 days or more and there is the potential for reducing the length of the trial process by active case management by the trial Judge;

b) Claims involving numerous pre-trial applications which have been or will in any

event be required to be dealt with by a Judge;

c) Claims where there will be particular advantage in pre-trial applications being heard by the trial judge;

d) Claims which by their subject matter require the specialist knowledge of a specialist Judge such as the more complex IP claims, and those commercial claims whose subject matter is highly involved or technical such as sophisticated types of commercial instrument or securitisation, complex trust claims and some large multi-jurisdiction trust and estate claims;

e) Cases that are subject to a Group Litigation Order and other substantial group claims requiring active case management by a Judge assigned to try them;

f) Urgent claims requiring expedition and determination by a Judge within weeks or a few months;

g) Claims where one or more parties are litigants in person and it is considered that full docketing would (i) best serve the needs of the parties and (ii) be consistent with the efficient administration of justice.

Transfer to other courts

14.15 The parties should give careful consideration whether it is necessary for the claim to be heard in the Chancery Division in the High Court in London, or whether it may be more suitable for transfer out. Whether a claim should be transferred out will be decided in accordance with guidelines approved by the Chancellor, which relate to transfers to a Chancery District Registry outside London, the County Court, or another Division of the High Court. Claims are transferred out where another court is more suitable for case management and trial of a claim. Only cases which may properly be regarded as being suitable for management and trial in the Chancery Division of the High Court in London will be retained there. All other claims will be transferred out. Active consideration will given at all stages of the management of a claim to the appropriate venue for the claim to be managed and tried. If a case is suitable for transfer, it is generally preferable for it to be transferred before detailed case management has taken place, leaving the receiving court to case manage the claim in accordance with its usual approach.

14.16 Consideration will be given, where relevant, to:

(a) PD 29 paragraphs 2.1 to 2.6 which provides guidance for case management within the High Court in London;

(b) CPR rule 30.3(2) which sets out criteria the court should take into account when considering transfer. The criteria are not exclusive;

(c) Part 49 and PD 49A and PD 49B – Specialist Proceedings;

(d) Part 57 – Probate and Inheritance;

(e) Part 63 – Intellectual Property.

14.17 Under PD 29 paragraph 2.2 a claim with a value of less than £100,000 will generally be transferred to the County Court unless it is required by an enactment to be tried in the High Court, it falls within a specialist list, or it falls within one of the categories specified in the list at PD 29 paragraph 2.6.

14.18 The figure of £100,000 in PD 29 paragraph 2.2 accords with the current minimum value of money claims which may be issued in the High Court. It does not follow that money claims of over £100,000 (or over £300,000 (the value figure beyond which court fees do not increase)) will be retained in the Chancery Division. The value of a claim is not a consideration which has greater weight than the other criteria set out in CPR rule 30.3(2) but it is likely to be a factor with considerable influence in making a decision about

transfer to the County Court or a specialist list. Similarly, for probate and equity claims, the figures of £30,000 and £350,000 respectively are not determinative.

14.19 If the value of the claim is ascertainable, the court will consider the possibility of transferring Part 7 claims with a value of less than £500,000. Factors which may point to retention of such claims in the High Court include complex facts and/or complex or non-routine legal issues or complex relief; parties based outside the jurisdiction; public interest or importance; large numbers of parties; any related claim; and the saving of costs and efficiency in the use of judicial resources .

14.20 The availability of a judge with the specialist skills to deal with the claim is always an important consideration when considering whether or not to transfer it. There are two circuit judges at Central London County Court who are specialised in Chancery work, and the waiting times at Central London are likely to be shorter than in the High Court for a trial before a judge. The delay in having a case heard should also be a consideration when deciding whether to transfer a case to the County Court or not and regard will be had to listing information provided by Central London CC, Chancery List. The order for transfer of a claim to Central London County Court, Chancery List may include a direction that the case is considered to be suitable for trial only by a specialist circuit judge. Such a direction is not binding on the County Court but should be taken into account.

14.21 PD 29 paragraphs 2.6(1), (3) and (7) indicates that professional negligence claims, fraud and undue influence claims and contentious probate claims are suitable for trial in the High Court, but it does not follow that claims within these categories should necessarily remain in the High Court. Less complex and/or lower value claims of these types are suitable for trial in Central London County Court, Chancery List. Serious cases of fraud, however, should generally remain in the High Court. Certain professional negligence claims may be better suited to the Queen's Bench Division.

14.22 Part 7 and Part 8 claims may sometimes be dealt with more efficiently by a Master rather than transferring the claim, especially since the amendments to PD 2B which came into effect on 6 April.

14.23 Many claims under the Inheritance Act will be suitable for trial in the County Court and should generally be transferred to Central London County Court, Chancery List unless the Master is willing to try the claim and it is efficient to do so. Inheritance Act claims by a spouse will usually be suitable for transfer to the Family Division. Where there is a related Probate claim, or other Part 7 claim, the overall scope of the issues before the Court should be considered and generally all related claims should either be retained in the High Court or transferred out. The County Court limit for probate claims is £30,000, but claims well above that figure should be transferred to the County Court nonetheless.

14.24 Most claims under the Trusts of Land and Appointment of Trustees Act 1996 will be suitable for transfer to the County Court.

14.25 Claims may only be transferred to the Commercial Court, the Mercantile Court or the Technology and Construction Court with the consent of the Chancellor and the senior judge in those venues (CPR rule 30.5(4))

14.26 Whenever the parties and their witnesses are principally based within the area of a District Registry, the claim should normally be transferred. The place where the legal representatives are based is a relevant consideration, but no more than one factor to be taken into account.

Chapter 15 Matters dealt with by Masters

File work

15.1 The Masters deal with a large number of judicial matters that do not involve a hearing. In the pre-CE-file era this was known as box-work. It is referred to throughout this Guide as "file work".

15.2 During the course of most claims the court's intervention is needed at many stages, sometimes before the claim is issued (see paragraph 4 below and Chapter 7). File work may be required due to supervision by the court of the claim (for example requiring the parties to explain what is happening) or at the request of one or both parties such as applications dealt with 'on paper' and routine correspondence. Where practicable, the Masters will deal with file work using the court's electronic file. However, where substantial reading is required, the parties may be asked to lodge a paper bundle.

15.3 The Masters are all available regularly to deal with Applications without Notice ("AWNs") at either 10.30am or 2.00pm depending on the Master (see paragraph 15 below). It is normally unnecessary for routine file work to be brought before the Master as an AWN. However, where the matter is urgent, or where guidance is needed, it may be convenient to do so. AWNs should not be used for contested hearings.

15.4 Applications made pre- issue or at the point of issue, for example applications for pre-action disclosure, applications for permission to serve out, and *Norwich Pharmacal* applications are normally dealt with as file work.

15.5 The Masters deal with a large number of consent orders. Provided they are submitted in the correct form, and signed by all the relevant parties, these will be approved and sealed. Detailed guidance on the correct form of orders, which should be followed in all cases, is given in Chapter 22.

15.6 Other applications dealt with on the file include applications for transfer, applications by solicitors to come off the record, and applications by parties and non-parties to inspect documents on the court file.

Part 7 Claims

15.7 The principal point of file review in a Part 7 claim follows the filing of a defence. The court sends out Form N149C (Notice of Provisional Allocation) with a letter from the court explaining what the parties are required to do. If the parties do not wish there to be a stay for alternative dispute resolution ("ADR"), they must serve and file with the court by the date specified in the letter the directions questionnaire, disclosure report, list of issues (agreed or not agreed), draft directions and costs budgets (if applicable). The claimant must then lodge a bundle with the statements of case and all the additional documents served following the provisional notice of allocation which will be reviewed by the Master. It is incumbent on the parties to ensure that the court is provided with helpful and complete information because a number of important issues will be made on the file review including:

- Considering a request for a stay, or for the continuation of a previously agreed extension of a stay.
- Considering whether the claim should remain in the High Court or be transferred out. In many cases the value of the claim will be the dominant factor. However, the transfer guidelines (see Chapter 14 paragraphs 15-26.) make it clear that the decision to retain or transfer a claim involves a wide range of factors. In a marginal case it will be helpful for the parties to have considered the guidelines and explained their views on the subject when filing the Directions Questionnaire. In an obvious

case, the Master will make an order for transfer. In other cases the Master may write to the parties expressing a provisional view and inviting comments or indicate that the subject will need to be addressed at a Case Management Conference ("CMC").

- Reviewing the draft directions. In some cases the parties will have agreed a suite of directions and will request the court to approve an agreed directions order without holding a CMC. However, save for cases which are straight forward and likely to follow a pattern established in other cases of a similar type, the court is unlikely to be willing to approve draft directions without holding a CMC. In the majority of cases a CMC will be needed, particularly where the court will be making a costs management order.
- Considering trial directions. In a small number of cases it may be possible to give trial directions to enable a listing appointment to be obtained before a Costs and Case Management Conference ("CCMC") or CMC provided that the trial time estimate is unlikely to be affected by directions made at such a hearing.
- Consideration of costs management. The Master will consider the budgets and the answer given by the parties to the question raised in the court's letter on this subject. In cases where both parties do not wish the court to make an order for costs management consideration will be given to the criteria in CPR rule 3.15(2) and whether costs management is desirable. If there is to be a costs and case management hearing, it is essential that the parties establish the extent to which the budgets are agreed as soon as possible. If the budget phases are all agreed the court need do no more than record the fact of agreement. It is likely that in most cases which do not fall outside the costs management regime the court will make an order setting up a CCMC and requiring the parties to undertake specified steps beforehand – see Chancery draft order CH3 (Case and Costs Management and Trial date)
http://hmctsformfinder.justice.gov.uk/HMCTS/GetForms.do?court_forms_category=Chancery

Part 8 claims

15.8 Applications to issue a Part 8 claim without a defendant are made to the Master as part of file work. The application, normally in a witness statement, should explain carefully why the order is appropriate.

15.9 All Part 8 claims are referred to a Master when an acknowledgment of service is filed or if time for filing an acknowledgment expires without one being filed. In the absence of an acknowledgment, the Master will normally give directions for a disposal hearing and will sometimes override the provisions of Part 8 by directing that the defendant must file and serve an acknowledgement and evidence by a specified date failing which the defendant will not be entitled to play any part in the disposal hearing. This is intended to make explicit for a LIP what is already set out in the CPR.

15.10 If an acknowledgment has been filed, the Master will normally fix a hearing for directions. However, in some cases it may be possible as part of the file work to give directions and to fix a disposal hearing.

15.11 If the claim is undefended, the Master may decide to deal with the claim without a hearing.

Hearing of Applications before Masters

Assignment of cases before Masters

15.12 Claims are assigned to Masters on a rota basis at the time the claim is issued. Trade Mark cases and IP cases are now are assigned on the same rota basis as other claims. However, if it is considered that specialist knowledge is essential, it is open to;

(a) the allocated Master to decide that the case should be transferred to Master Clark as an IP specialist;

(b) the allocated Master at the triage stage to propose that a judge should manage the claim involving consultation with Mr Justice Arnold;

(c) the parties to apply for a Judge to be allocated;

(d) the parties to apply to the Chief Master by emailed letter for the case to be allocated to Master Clark.

This ensures that only cases which really require particular IP skills at Master or Judge level will be given special treatment. It is envisaged that the majority of IP claims will remain with the Master allocated at the outset. (See also Chapter 27).

Pension cases may be assigned to Master Teverson by making an application to the Chief Master by emailed letter in the same way.

15.13 If two or more claims are connected by their subject matter, or by having linked parties, it will normally be appropriate for an application to be made to the Chief Master to direct that one Master should deal with all such claims. If a party is issuing one or more of a series of related claims an application should be made to the Chief Master prior to issue. This may be done in writing or as an application without notice (see below).

Oral applications without notice

15.14 These applications are intended for straightforward procedural matters that are capable of being disposed of within 5 minutes and do not require significant reading or investigation into the substance of the case. An example of a suitable matter might be an application for permission to serve a witness summary. Such applications should not be used for matters which should be dealt with on notice and are likely if notice were given to be contentious.

15.15 The time at which Applications Without Notice ("AWNs") are dealt with will vary depending upon the individual preference of the Master. They are no longer dealt with only at 2.15pm. The times are:

Chief Master Marsh	10.30am – 10.45am
Master Bowles	2.00pm – 2.15pm
Master Price	2.00pm – 2.15pm
Master Teverson	2.00pm – 2.15pm
Master Clark	10.30am – 10.45am
Master Matthews	10.30am – 10.45pm

15.16 Notice should be given to the Masters' Appointments Section (ground floor, Rolls Building), or by telephone, 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 matter will be before the Master. If this procedure is not followed the Master will be likely to refuse to deal with the application. In many cases it will be necessary to lodge a small bundle. The Master will expect notice of such an application to have been given in an appropriate case to the other party. This procedure must not be used as a substitute for the issue and service of an application notice if that is appropriate.

15.17 Unless there is a good reason to the contrary (such as genuine urgency), an AWN should be made to the assigned Master. If the assigned Master is not available on any particular day, the applicant will be informed and asked to come when the assigned Master is next available. Applications will only be heard by another Master in cases of urgency or when the assigned Master is on vacation.

Urgent applications to Masters

15.18 There is a fortnightly "urgent applications" list for urgent Masters' business. It is held from 11.00am – 1.00pm and 2.15pm – 4.30pm on every other Wednesday. One Master (in rotation) including the Chief Master will take this list (whether or not he or she is the assigned Master for the case). The following requirements must be observed:

- applicants must certify on the application notice when issued as follows "I hereby certify that this is urgent business, and cannot await a hearing before the assigned Master in its due turn, because [specify reasons]. [signed] [dated]." If appropriate, the reasons for urgency may be attached in a covering letter;
- application notices must be issued and served in the usual way;
- an application should not be so listed unless the overall time required to deal with the application is two hours or less. The two hour maximum includes time in court, time for judgment and costs assessment;
- the directions set out in this Guide relating to delivery of bundles and skeleton arguments will apply;
- in the event of a settlement, the Court Office must be informed as soon as possible to allow the listing time to be available for the efficient disposal of other urgent business;
- failure to comply with these arrangements may result in the Master refusing to hear the application and/or in an adverse costs order being made. If the Master is not satisfied that the matter was urgent the case may be put back by him/her into the assigned Master's ordinary list to come on for hearing in its due turn;
- this procedure is not to be understood as a substitute for the existing arrangements for listing applications for extensions of time or for "without notice" applications, in respect of which the existing arrangements will continue to apply.

15.19 Examples of applications which are suitable for the urgent applications list include:

- applications to vacate a trial date, and
- applications which relate to a trial which is due to come on shortly.

Other Applications to a Master: Interim relief

15.20 The scope of work undertaken by Masters has, since 6th April 2015, been widened. Masters now have jurisdiction to grant all types of relief save for the limited exceptions noted in PD2B. However, applications for interim relief which are of particular legal or factual complexity will normally be referred to a High Court Judge. It will be for the Master to decide whether the application should be referred to a Judge. See the guidance at Chapter 13 relating to Part 24 applications which is of wider application.

15.21 The current arrangements for the grant of interim injunctions will continue to apply and Masters will not usually hear applications for interim injunctions where the *American Cyanamid* test must be applied. If such an application is made to a Master, unless there are good reasons for the Master to hear it, the application will be referred forthwith to a Judge in the Interim Applications List. Masters may hear all types of interim application, which include an interim injunction if the injunction is secondary to the main relief which is sought.

15.22 Freezing and search orders, including orders made under CPR 25.1(g), may only be made by a Judge or by an authorised Circuit Judge. Masters will not normally vary or discharge such orders, save where the parties consent. Issues arising from the grant of an injunction may (as now) be referred by a Judge to a Master for determination.

15.23 Masters may grant final injunctions in connection with any application or trial (where the application or trial is suitable for disposal by a Master). Thus, for example, a Part 24 application by a claimant seeking a final injunction may be heard by a Master.

Group Litigation Orders

15.24 A Group Litigation Order ("GLO"), which is essentially a method of case management, may be made 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. A number of such orders have been made in Chancery proceedings. A list of GLOs is published on the gov.uk website (http://www.gov.uk.uk).

15.25 An application for a GLO must be made by application notice under Part 23. The procedure is set out in PD 19B (Group Litigation), which provides that the application should be made to the Chief Master, except for claims in a specialist list (such as the Patents Court), when the application should be made to the senior judge of that list. A GLO may not be made in the Chancery Division without the consent of the Chancellor.

15.26 A suggested draft order for a GLO, specifically for use in the Chancery Division, is available on the gov.uk website.

15.27 Legal representatives should carefully consider, before applying for a GLO, whether some other form of case management of the claims, for example having all the claims dealt with together by one Master or Judge, perhaps with the use of test cases, or bringing all the claims in one claim form with multiple claimants, may be more appropriate, and possibly less costly for their clients. It is always open to legal representatives to discuss informally with the Chief Master or with the Chancery Lawyer Vicky Bell, (room D01–010, tel. 020 7947 6080, email vicky.bell@hmcts.gsi.gov.uk) the suitability of a GLO in relation to their claims.

15.28 Any other initial enquiries regarding the procedure for a GLO may be addressed to the Chancery Lawyer.

15.29 Claimants wishing to join in group litigation should issue proceedings in the normal way and should then apply (by letter or email) to be entered on the group register set up by a GLO. The group register may be kept either by the Lead Solicitors or (less frequently) by the court. This will be specified in the GLO.

Procedure for Applications

15.30 Applications to a Master should be made by application notice and should give careful regard to the time required for the application, including pre-reading time and time for judgment and any determination of costs. In an application of any substance (and all applications with a time estimate over 2 hours), the applicant should, except in the case of genuine urgency, send the unissued application notice (and evidence in support) to the respondent, and seek to agree the time estimate (which must include and identify pre-reading time) and dates to avoid for the hearing. The agreed estimate and dates should then be sent to the court when the application notice is sent to be issued. Application notices are issued by the Masters' Appointments Section ("Masters' Appointments") (ground floor, Rolls Building). It is important that paper application notices are lodged at or addressed to Masters' Appointments, Ground Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL and not to a more generalised address such as "Chancery Division, Rolls Building", or "Chancery Division, Royal Courts of Justice," as otherwise the listing of the application may be delayed or the application may be wrongly listed before a High Court 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.

15.30.1.1 Where an application has been listed for hearing and an additional application is made, the approval of the Master must be obtained if the additional application is to be heard at the same time as the first. This is a change in practice as it now applies to all applications, not just CMC or Directions hearings. In cases of urgency a party may seek approval for listing at an AWN, but generally approval will be sought from the Master internally by the Master's clerk.

15.31 Applications to a Master estimated to last in excess of 2 hours require serious co-operation between the parties and if no agreed time estimate and dates have been sent to the court the Master's directions may be required before they are listed. The Master will normally give permission to list such an application on condition that there is compliance with directions given by the Master. Deputy Masters may not give permission for hearings over two hours before a Master

15.32 The directions are likely to require that:

- the applicant agree the time estimate (see below) with their opponent;
- if the time allowed subsequently becomes insufficient, the court is informed and a new and longer appointment given;
- the parties agree an appropriate timetable for filing evidence such that the hearing will be effective on the date listed;
- positive confirmation is to be given to the Master 5 working days before the hearing date that the hearing remains effective; and
- in the event of settlement, the Master be informed of that fact as soon as possible.

15.33 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 the 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. 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.

Bundles for use at Masters' hearings

15.34 Since the inception of electronic working bundles will be needed by the court in all cases except those that are very short and straightforward and on any matter of substance skeleton arguments must also be provided. Bundles will be needed by the court in all cases except those that are very short and straightforward. If no bundle has been lodged in a case where a bundle would assist the court, it is very likely the hearing will be adjourned to the next available date. Bundles and skeletons (if required) should be delivered to Masters' Appointments, ground floor, Rolls Building, at least 2 and not more than 7 clear working days before the hearing. They should be marked clearly "for hearing on ..…….(date) before Master …….." A reading list and estimate of reading time should be included if appropriate.

15.35 Responsibility for lodging the hearing bundle will normally fall on the applicant. The parties must co-operate with each other and all parties have responsibility for ensuring that the court receives a bundle lodged two clear days before the hearing, save where this is impossible due to the urgent nature of the hearing. Late service of documents is

not a reason to delay lodging the bundle. If necessary, documents may be added to the bundle. The parties should note the following requirements.

1. A party appearing on an application without notice must bring a bundle if it has not been possible to lodge one in advance.

2. Form 149C (Notice of Provisional Allocation) requires the parties to lodge a range of documents. It will be the responsibility of the claimant to lodge a bundle containing the statements of case, the directions questionnaires and all associated documents within 5 working days of the deadline specified in Form 149C. The parties are notified of this and of other requirements for lodging these documents in a form which is sent out with Form N149C once a defence has been filed. The parties may agree to extend the time limit specified in Form N149C for a period or periods of up to 28 days without reference to the court, and must notify the court in writing of the expiry date of any such extension. If all parties wish the claim to be stayed for longer than the period of 28 days in order to attempt ADR, a consent order should be filed before the date specified in paragraph 3 on Form N149C. In that event, the Directions Questionnaire and other documents referred to need not be filed. The consent order may provide for a stay for a period not exceeding 3 months and should specify the calendar date when the stay will end. Unless a settlement is reached, the Directions Questionnaire, and all the other applicable documents, must be filed not later than the date the stay expires.

3. Exhibits should only include the essential documents. Correspondence should only be exhibited where there is a real need for it being considered by the court and a real likelihood of it being referred to at a hearing.

4. Witness statements for trial and expert's reports should never be filed, unless this has been expressly directed by the court.

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

15.37 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.

Telephone hearings

15.38 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 a litigant in person: see PD 23A paragraph 6.3. Guidance on other aspects of telephone hearings, and in particular how to set them up, is contained in PD 23A paragraph 6.9. 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:

- A telephone hearing may be set up by calling the BT Legal Call Centre on 0800 778877. The caller's name and EB account number will have to be given. The court service account number is EB-26724. Other telecommunications providers may also be able to offer the same facility.
- The names and telephone numbers of the participants in the hearing including the judge must be provided.
- The co-ordinator should be told the date, time and likely approximate duration of the hearing.
- The name and address of the court and the court case reference should be given, for delivery of the tape of the hearing.
- 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.

Chapter 16 Applications to a High Court Judge

16.1 It is most important that only applications which need to be heard by a High Court Judge (e.g. certain applications for an injunction) should be made to a Judge. Most applications 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 well refuse to hear it. In some circumstances an application may be dealt with without a hearing, or by a telephone hearing. Part 23 contains detailed rules about how applications should be made.

Applications without notice

16.2 Generally it is wrong to make an application without giving prior notice to the respondent. There are, however, 4 classes of exceptions.

(1) Cases where the giving of notice might frustrate the order (e.g. a search order).

(2) Where there is such urgency that it is truly not possible to give the requisite notice. Even in such a case, however, the applicant should give the respondent informally as much notice of the application as is possible.

(3) 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 the rules usually expressly provide that the absent party will be entitled to apply to set aside or vary any order provided that application is so made within a given number of days of service of the order. A defendant who wishes to dispute the jurisdiction of the court, following service out of the jurisdiction, should apply to the court under Part 11.

(4) Cases in which the applicant cannot identify the respondent by name but only by description.

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.

16.3 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, delivery of judgment and dealing with costs) is likely to exceed 2 hours, arrangements for the listing of the application should be made with the Chancery Judges' Listing Office ("Chancery Listing").

16.4 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 (set out in paragraph 9 below) should where possible be included with the papers handed to the Judge's clerk.

16.5 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 Listing. If it is not practicable to issue the claim form before the application is made, 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.

16.6 On all applications made in the absence of the respondent the applicant and their 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 their 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.

Applications without a hearing

16.7 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.

16.8 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 in existing proceedings

16.9 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 3 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 should notify the court of their wish to bring an application by delivering the requisite documents to Judges' Listing and paying the appropriate fee. They should at the same time deliver a completed "Judge's Application Information Form" in the form set out below.

Judges' Application Information Form

Title as in claim form

Application Information

1. [*Date application to be heard*]

2. *Details of solicitor/party lodging the application*

3. a. [Name]
   b. [Address]
   c. [Telephone No.]
   d. [Reference]
   e. [Acting for Claimant(s)/Defendant(s)]

4. *Details of counsel/other advocate*

   a. [Name]

   b. [Address of Chambers/Firm]

   c. [Telephone No.]

5. *Details of other party/parties' solicitors*

   a. [Name]

   b. [Address]

   c. [Telephone No.]

   d. [Reference]

[Acting for Claimant(s)/Defendant(s)]

16.10 An application will only be listed if (a) two copies of the claim form and (b) two copies of the application notice (one stamped with the appropriate fee) are lodged with Judges' Listing before 12 noon on the working day before the date for which notice of the application has been given. Any party seeking an order should submit an electronic draft of that order attached to an email addressed to chanceryinterimorders@hmcts.gsi.gov.uk. The emails and orders should sufficiently identify the case (not necessarily the full name) and should be in Word format.

16.11 The current practice is that one Judge combines the functions of Interim Applications Judge and Companies Court Judge. The judge's name will be found in the Daily Cause List.

16.12 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 41-48 below.

16.13 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.

16.14 An application should not be listed before the Interim Applications Judge unless the overall time required to deal with the application is 2 hours or less. The 2 hour maximum includes the judge's pre-reading time, the hearing of the application, delivery of judgment and time for dealing with costs.

16.15 If the overall time required to deal with an application is likely to exceed 2 hours the application should be heard as an interim application by order (see paragraphs 23-24 below). 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 2 hours Judges' Listing (or, in appropriate cases, the clerk to the Interim Applications Judge) must be notified immediately.

16.16 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 and costs). It is essential that these time estimates are realistic, and take account of the fact that the judge will usually have no prior acquaintance with the case.

16.17 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, delivery of judgment and costs), 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.

16.18 Where an application is to be heard as an interim application by order the solicitors or the clerks to counsel concerned should apply to Judges' Listing for a date for the hearing. Before so doing there must be lodged with Judges' Listing a certificate signed by the advocate stating the estimated length of the hearing.

16.19 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 Judges' Listing of the date to which it has been adjourned so that it may be re-listed for the new date.

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

- remove all bundles for the current hearing from the court unless otherwise directed by the Judge;
- ensure that all papers and bundles required for the adjourned hearing are lodged with Judges' Listing, no later than one working day before the return date; and
- ensure that the adjourned hearing has been re-listed on the correct day when the papers are re-lodged with Judges' Listing.

16.21 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 notice for the return date is issued (and the appropriate fee paid) and served on the other parties (normally at least 3 working days before the return date); and that an up to date hearing bundle for use by the Judge is lodged in accordance with Chapter 21 paragraphs 34-72 This bundle must include copies of the interim injunction or order, the issued application for the relief originally granted, and the issued application notice for the return date. Failure to comply with these requirements may lead to delay in dealing with the application or costs sanctions.

Agreed Adjournment of Interim Applications

16.22 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 Judges' Listing, at any time before 4.00pm 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 Judges' Listing 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

16.23 This procedure should also be used where the parties agree that the application will take 2 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.

16.24 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.

Freezing Injunctions and Search Orders

16.25 The grant of freezing injunctions (both domestic and world-wide) and search orders is a staple feature of the work of the Chancery Division. Freezing and search orders, including orders made under CPR 25.1(g), will only be made by a Judge or by an authorised Circuit Judge. Masters will not normally vary or discharge such orders, save where the parties consent.

16.26 Applications for such orders are almost 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 Judges' Listing. 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 satisfied that it would, will hear the application in private.

16.27 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 7 days. The same applies to an interim order appointing a receiver. The applicant will be required to give the respondent notice of their 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

16.28 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, the Judge 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

16.29 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

16.30 Any party seeking an order in the Interim Applications Court should submit an electronic draft of that order attached to an email addressed to: chanceryinterimorders@hmcts.gsi.gov.uk. The emails and orders should be named with a version of the name of the case sufficient to identify it (not necessarily the full name), and should be in Word format, and in no circumstances in PDF format.

Form of order when continuing an injunction

16.31 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:

- 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; or
- 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).

16.32 In general, the better practice is the first alternative set out 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.

16.33 The second alternative 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.

16.34 In drafting the new order, consideration should always be given to whether a penal notice should be included. A penal notice is added by the party, not by the court.

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

Consent by parties not attending hearing

16.36 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 their 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.

16.37 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.

16.38 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:

- 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.
- 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 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).

16.39 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) where appropriate, the solicitors must certify that they have explained to the respondent the consequences of giving the undertaking and that the respondent appeared to understand.

Telephone hearings

16.40 The same considerations apply to telephone hearings of applications to a Judge as to those to a Master; see Chapter 15 paragraph 38, which sets out details of when telephone hearings may be appropriate and how to arrange them.

Out of hours emergency arrangements

16.41 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.

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

- 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.
- Initial contact should be through the Royal Courts of Justice (tel: 020 7947 6000/6260), who should be requested to contact the Duty Chancery Judge's clerk.
- When the clerk contacts the applicant, the clerk will need to know:
    - the name of the party on whose behalf the application is to be made;
    - the name of the person who is to make the application and their status (counsel or solicitor);
    - the nature of the application;
    - the degree of urgency; and
    - contact telephone numbers for the persons involved in the application.

16.43 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 email).

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

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

- **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.
- **Weekends**. A Duty Chancery Judge is nominated by rota for weekends, commencing 4.15pm Friday until 10.15am Monday.
- **Vacation**. The Vacation Judge also undertakes out of hours applications.

Sealing orders out of hours

16.46 If 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 with the Associates (ground floor, Rolls Building) by 10am on the following working day.

Matters proceeding out of London

16.47 Similar arrangements exist for making urgent applications out of hours in High Court matters proceeding in Chancery District Registries. The pager numbers for regional urgent business officers are given in Chapter 30.

Vacation arrangements

16.48 There is a Chancery Judge available to hear urgent applications in vacation. 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 business so urgent that it cannot wait until the next Monday or Thursday.

Chapter 17 Case and costs management

Part 7 claims

17.1 The reforms to the CPR introduced by Jackson LJ combined with the changes introduced following the Chancery Modernisation Review ("CMR") have had a profound effect on the way in which claims are case managed in the Chancery Division. Costs management requires the court to manage claims both as to the steps taken and the costs to be incurred so as to further the overriding objective (CPR 3.12(2)).The Chancery Modernisation Review has resulted in all trials being conducted within a set period ("fixed ended").

17.2 This chapter applies to all Part 7 claims save for those which are in the Patents Court, the Shorter trials or the Flexible trials pilot schemes and the Financial List which are dealt with separately. It applies to claims whether managed by a Master or a High Court Judge.

17.3 The range of litigation in the Division is very wide both as to the size of the claim and its complexity. The majority of claims do not permit case management "on the file" and the court will rarely be able to approve agreed directions.

17.4 Section II of CPR Part 3 and PD 3E apply to all claims issued after 22nd April 2014 with a value of less than £10 million (CPR 3.12(1)). (Claims with a value of £10 million or more may be brought into the costs management regime by an order of the court). The requirement to file and serve costs budgets applies to the parties in all claims with a value of less than £10 million other than litigants in person. However, the court may decide under CPR Part 3.15(2) that it is unnecessary to make a costs management order if it is satisfied that the litigation can be conducted justly and at proportionate cost in accordance with the overriding objective without such an order being made. The fact that none of the parties wish the claim to be subject to costs management is a material factor but it is not determinative because the court must consider the broader test in CPR 3.15(2) in each case.

17.5 Cases which are outside the costs management regime are nevertheless likely to benefit from a Case Management Conference ("CMC").

17.6 In the majority of claims, the optimum time for case management will be after statements of case have been exchanged, at which point the issues for the court to determine will be clear. However, in some claims case management from an earlier stage will be appropriate. Examples include claims which have been extensively considered in the Applications Court at an early stage, claims which are to be expedited or where there are multiple claims of a similar type. Masters do not have power to direct expedition and an application for expedition must be made to the Applications Court. If it is considered that early case management is needed in relation to a claim or claims which have not been before a Judge, an application may be made in writing or at an Application without Notice ("AWN") to a Master.

Triage

17.7 Following the service by the court of Notice of Provisional Allocation (Form N149C) the Master will review a bundle containing the statements of case, the Directions Questionnaires, disclosure reports, list(s) of issues, draft directions and costs budgets – see paragraphs 12-14. A process of triage is undertaken with each claim being reviewed for four principal reasons. First, applying the transfer guidelines, consideration is given to whether the claim should remain in the High Court in London. Secondly, consideration is given to the appropriate management track. The most common track will be case management by a Master and trial by a Judge. Thirdly, the Master will consider whether,

exceptionally, a CMC is not required. Fourthly, the Master will consider whether a costs management order is required.

17.8 If the Master considers that the claim should be fully docketed to a Judge the parties will be informed and the Master will ask the Chancellor to nominate a Judge to take charge of the claim. If the parties have indicated in their Directions Questionnaires that they consider that the claim should be fully docketed, but the Master disagrees, the parties will be notified. A decision about the appropriate management track for a claim may be re-considered at the CMC and a decision on that subject may be subject to an appeal.

17.9 Some cases which are suitable for retention in the High Court will be allocated to a management track in which the Master both case manages and tries the claim. See the Guidance notes (New Case Management Tracks in Chancery (5th March 2015) at https://www.judiciary.gov.uk/publications/chancery-division/ which give further guidance about the types of cases which may be managed in this way. Notably, trials before Masters are likely to be heard more quickly than trial before a Judge. Although the Master may indicate that the case is suitable for trial by a Master, it will be rare for this view to be imposed on the parties if they disagree.

17.10 The Master will take careful account of the views expressed by the parties concerning the appropriate management track for a claim. However, the allocation of judicial resources to a claim requires a judicial decision. The Master may consult one of the triage Judges in cases of doubt.

Case and Costs Management Order

17.11 If a case and costs management order is to be made directions will be given by the Master for a Case and Costs Management Order ("CCMC") to be heard. It will be very rare for a claim to proceed without an oral costs and case management conference. An example of the standard directions that may be given is set out here:

Case and Costs Management Conference

There be a Case and Costs Management Conference before the Master in Hearing Room… First Floor, The Rolls Building, 7 Rolls Building, Fetter Lane, London EC4A 1NL

on (*date*) at o'clock (of hours/minutes duration).

[Master's clerk to fix appointment].

The parties shall consider the costs budgets and by 4pm on ……. shall state which phases in the other party's budget are agreed and which are not agreed. Where there is disagreement, brief reasons and alternative figures must be provided.

The Claimant's solicitors shall by 2pm on …… lodge:

(i) Confirmation that all phases in the budgets are agreed; or

(ii) a one page summary in tabular format setting out the figures for the phases in the budgets with an indication of which are agreed and which are not agreed; and

(iii) a summary of the reasons for disagreement and the alternative figures.

If the parties are proposing that an order for standard disclosure should be made, they shall comply with PD 31B paragraphs 8 and 9 and, if it is considered appropriate, exchange Electronic Documents Questionnaires.

The legal representatives attending the CCMC must be in a position to:

(i) identify the witnesses who are likely to be called to give evidence;

(ii) justify the trial time estimate.

A hearing bundle must be lodged by 2pm on …….. (*date*)

17.12 One of the difficulties concerning costs budgets is that they have to be prepared on the basis of assumptions which may prove to wrong. Examples are: will there be standard disclosure, will the court give permission for experts and how long will the trial last. It may be appropriate if there is lengthy gap between service of the budget and the CCMC, or there has been some other material change, for an updated budget to be served. The court will usually give permission for a party to do so at the hearing if there is a good reason for the revision. However, the parties will normally prepare for the CCMC on the basis of the budgets they have served and filed and the court will direct the parties to discuss their respective budgets and to establish which phases are agreed. The jurisdiction of the court to manage the budget is limited to considering costs to be incurred after the date of the budget and to phases which have not been agreed. If the budgets are entirely agreed the court must be notified because it will have an effect on the time estimate for the hearing.

17.13 It is essential for one party (usually the claimant) to lodge in advance of the hearing a one page tabular summary showing:

- The budget phases
- The total costs attributable to each party
- Which phases are agreed and which are not agreed.

17.14 Litigants in person are not required to file costs budgets. However, they are able to agree budgets and a similar process should be followed if one or more party is an LIP.

17.15 A bundle is needed at every case management conference. See Chapter 15 paragraphs 34-36 for details of what should be included. The court will also need, in addition to the tabular summary, brief details of the points taken in relation to budget phases which are not agreed. This may be done in a number of ways including filing relevant correspondence in the bundle or in a skeleton argument.

The Costs and Case Management Conference

17.16 It is emphasised that legal advisers must prepare for the CCMC well in advance and ensure that the court is aware of the range of issues between the parties. The extent to which the budgets are not agreed and the reasons for that must be made clear before the hearing. If this has not been done so the CMC may be adjourned.

17.17 At the CCMC the court will normally deal with directions first and costs management afterwards. However the directions are likely to be informed by the budgets. The court will wish to form an overall view about proportionality taking into account the factors in CPR 44.3(5) and may wish to be addressed on this subject before considering the disputed budget phases.

17.18 The court may not manage costs which have been incurred and the power to make comments about incurred costs is likely to be used sparingly. However, if the court considers that the incurred costs in a phase are outside the range of reasonable and proportionate costs it may take this into account when setting the approved amount of anticipated costs for that or any other phase.

17.19 Having considered the disputed budget phases the court will direct that the order should show how the outcome of costs management is recorded. Given that the approval is for the total figure for each phase this is usually best done by the order setting out all the budget phases, agreed and approved by the court, in an appendix. (see form CH 40 ,adapted as appropriate to the circumstances. (http://hmctsformfinder.justice.gov.uk/HMCTS/GetForms.do?court_forms_category=Chancery), In some cases it may be necessary for a party to file a revised budget.

Case Management Directions

17.20 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 PD 29 paragraph 5.8(1), 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.

17.21 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. 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.

17.22 Skeleton arguments will almost invariably be essential and should be exchanged and filed well in advance of the hearing in almost every case.

17.23 Draft case management directions suitable for claims in the Chancery Division are available on the gov.uk website at http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do and these should be used, varied as appropriate, in all cases. There is a shorter and a longer version. They are designed to be a list of possible directions covering a wide range of possibilities. Many of the directions on the menu will not apply in the majority of cases and care needs to be taken to avoid compiling a list of draft directions which is overly complicated if the claim does not warrant it.

Management track

17.24 The court will make a direction concerning the management track for the claim, if this has not been done previously. If the management track is controversial, this should be made clear in advance and dealt with in the skeleton arguments.

Directions for trial

17.25 All claims in the Chancery Division are now tried on the basis that the trial time estimate, which includes judicial reading time before the trial starts, is fixed. The time estimate does not need to make provision for judgment writing time. It will only be possible in exceptional circumstances for the time estimate to be exceeded. It is therefore essential that careful thought is given, both before and at the CMC, to the length of the trial. The advocates will need to have considered the number of witnesses who will be called, the likely length of cross-examination, the need for expert evidence and how far it is likely to be controversial. In substantial cases it may be obvious that the court and the advocates will benefit from a break between the end of the evidence and closing speeches.

17.26 Inevitably there will be some uncertainties about the time estimate. The court may for example have declined to permit expert evidence but given permission to apply at a later stage. It will generally be desirable for the order for directions to specify a date by which the parties are to review the time estimate and seek the court's approval to a revised time estimate. If the change is minor and sufficient notice is given a revised time estimate will usually be accommodated. The review date should be a substantial period before the trial date. If there is a pre-trial review ("PTR") the time will be reviewed but if a substantial revision is needed the case may lose its trial date.

17.27 The standard Chancery directions require the court to include a trial window. Trial windows are set by Judges' Listing and can be seen at http://www.gov.uk.uk//courts/rcj-rolls-building/chancery-division/chancery-judges-listing-office. The dates vary depending upon the length of the trial. The Master or Judge has no control over the trial window which may be offered and the parties are not able to select a trial window which suits them.

17.28 The court will direct that a party, normally the claimant, takes out a listing appointment with Judges' Listing. The appointment is essentially an administrative exercise and is normally dealt with by counsel's clerk armed with dates to avoid for counsel and the witnesses.

17.29 In every claim with a time estimate of 5 days or more (including judicial reading time) a PTR will be held approximately 28 days before the trial is due to commence. The date will be fixed when the trial date is fixed. In cases due to last 10 days or more the PTR will be conducted by the trial judge where possible. See Chapter 20 for further information about PTRs.

17.30 Trials before Judges in the Chancery Division may come before:

- A High Court Judge (sometimes retired High Court Judges sit)
- A Senior Circuit Judge with s.9 powers
- A Deputy High Court Judge

17.31 Cases are listed by reference to three listing categories – A, B and C – in order to ensure that the level of judge is matched to the case where possible. The order for directions must specify the listing category chosen by the court. The categories are not defined in the CPR or elsewhere. It is important to appreciate that they are each applicable to a range of cases and the categorisation is inexact. However, the number of claims categorised as A is relatively small. The generally understood meanings attached to the categories are:

A – Cases of great substance or great difficulty or of public importance, suitable for trial only by a High Court Judge.

B – Cases of substance and/or difficulty suitable for trial either by a High Court judge, a s.9 judge or a deputy.

C – High Court cases of lesser substance and/or difficulty than category B cases suitable for trial by a s.9 judge, a deputy or a Master.

17.32 Consideration is given at the CMC to the location of the parties and their witnesses and whether London is a suitable trial venue. If it is suitable the order must specify "Trial in London".

17.33 Even if the advocates are all based in London, for the convenience of the parties and witnesses it may be desirable to direct that a claim is transferred immediately to a Chancery District Registry for further case management and trial.

Cases which warrant trial before a High Court Judge should not be transferred out of London for trial without prior consultation with the Judge in charge of the region.

17.34 If case management of the claim is to remain in London until shortly before the trial, the claim must be formally transferred at that stage.

Disclosure and inspection of documents

17.35 Prior to 1st April 2013, standard disclosure by list was the default order under CPR Part 31. This was changed as part of the Jackson reforms and in every case the court is now required to consider the alternatives to standard disclosure listed in CPR rule 31.5(7) with a view to limiting disclosure and thereby limiting the costs incurred in the claim. It

should no longer be assumed that the court will direct standard disclosure in every case. Consideration of the right approach to disclosure should start, at the latest, with the preparation of the disclosure report and careful consideration should be given to the alternatives to standard disclosure.

17.36 The range of litigation in the Chancery Division is very wide. In some cases, it will be right to dispense with disclosure altogether. In other claims, the pool of relevant documents and the need for searches may be very limited and accordingly standard disclosure may not be justified. CPR rule 31.5(7) (b) to (d) and (f) provide alternatives. However, many claims in the Chancery Division are complex business disputes and involve substantial disputed issues of fact. The parties will usually consider in such claims that standard disclosure is essential in order to ensure that full searches are undertaken and all documents which may influence the outcome of the claim are disclosed.

17.37 It is impossible to give general guidance about the approach which will be taken by the court save to emphasise that standard disclosure should not be seen as the default. The issues in the claim, their value and complexity and the cost of standard disclosure as revealed by the disclosure reports and costs budgets will be relevant, together with case specific factors.

17.38 If the court is likely to order standard disclosure in a case involving a significant volume of relevant documents stored electronically, it is essential that the parties comply with the obligations imposed on them under PD. The likely scope of issues concerning disclosure should be established. Consideration must be given to whether or not Electronic Disclosure Questionnaires ("EDQs") should be exchanged. The court will expect these issues to be addressed before the CMC and the advocates appearing will be expected to be able to deal with questions which arise from them.

17.39 CPR rule 31.5(8) permits the court to give directions concerning the scope of searches for documents (such as suitable key words, the identity of custodians and the places and periods of search) and the manner in which searches are to be carried out. It is preferable for such directions to be given at the CMC rather than after lists of documents have been served.

17.40 If a party considers that the other party's disclosure is inadequate, an application may be made for an order for specific disclosure under CPR rule 31.12. The provision permits not just an order that further documents are disclosed but also that further searches are carried out and the fruits of those searches are disclosed. The court may make an order going beyond the limits of standard disclosure if it is satisfied that standard disclosure is inadequate.

17.41 CPR rule 31.12 does not specify that a witness statement must be served with the application but it will almost invariably be essential to do so and the other party given an opportunity to respond. The applicant should explain the basis upon which it is believed that further documents relevant to the claim can be located and explain the significance of those documents.

17.42 The court will not make such an order for specific disclosure 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.

17.43 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.

Witness statements

17.44 Guidance about the contents of witness statements and exhibiting documents is contained in Chapter 19. A witness statement for trial should be no longer than is essential to convey the first hand evidence of the witness. There should not be recitation of the content of documents or commentary on the issues in the claim.

17.45 An order for exchange of supplemental statements may sometimes be made but it is not an established practice in the Chancery Division that reply statements will be permitted and they are regarded as exceptional. If they are permitted the statements should be strictly confined to dealing with additional evidence which arises from the other party's statements and not an opportunity to re-state the highlights of that witness's evidence.

Expert Evidence

General

17.46 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 issue in relation to expert evidence is the question "what added value will such evidence provide to the court in its determination of a given case?" Part 35 states that expert evidence must be restricted to what is reasonably required to resolve the proceedings. See generally the discussion in British Airways Plc v Spencer [2015] EWHC 2477 (Ch).

Duties of an expert

17.47 It is the duty of an expert to help the court on the matters within their expertise; this duty overrides any obligation to the person from whom the expert has received instructions or by whom they are paid (CPR rule 35.3). Attention is drawn to PD 35 and to the Guidance for instruction of experts which sets out the duties of an expert and the form and contents of an expert's report. See in particular PD 35 paragraph 2.1 which provides that expert evidence should be the independent product of the expert, uninfluenced by the pressures of litigation.

17.48 Standard case management provisions regarding experts may be found in the draft Case Management Directions (CH 1) at http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do and should be used as appropriate. An oral case management conference will be necessary in the great majority of cases involving expert evidence, given the cost such evidence usually involves and its importance in the proceedings. In order to assist the court in determining what order should be made in relation to expert evidence, the parties should attach a list of issues, preferably agreed, to their draft case management directions. In addition to identifying the discipline in which the experts are qualified, the Master may also specify the issues to which expert evidence may be addressed.

17.49 The parties should note that the unavailability of their chosen experts at a fixed trial date or trial window, or the late introduction of new expert evidence, will rarely be sufficient grounds for varying the trial date or window.

Single joint expert

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

17.51 The factors which the court will take into account in deciding whether there should be a single expert include those listed in PD35 paragraph 7. Single experts are, for example,

often appropriate to deal with questions of quantum or valuation 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 whether a party acted in accordance with proper professional standards, it will 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.

17.52 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 their own expert to advise them, but they may well be unable to recover the cost of employing their own expert from the other party. The duty of an expert who is called to give evidence is to help the court.

17.53 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 they are asked to consider and specify any assumptions they are asked to make.

More than one expert – exchange of reports

17.54 The most common order is for reports to be exchanged. 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

17.55 The court will normally direct discussion between experts before reports are delivered and in addition, if necessary, after reports are delivered and before trial. An initial discussion between experts before reports are prepared enables them to ensure that they will be addressing the same issues. Such discussions may be quite brief and telephone contact may suffice. Sometimes it may be useful for there to be further discussions during the trial itself. The purpose of discussions after reports have been served and exchanged is to give the experts the opportunity:

- to discuss and to narrow the expert issues; and
- 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).

17.56 Unless the court otherwise directs, the procedure to be adopted at these discussions is a matter for the experts.

17.57 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

17.58 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

17.59 An expert may file with the court a written request for directions to assist them in carrying out their function as expert: CPR 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 the expert has been asked to assist the party instructing him or her to evaluate them.

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

17.61 The evidence of experts (or of the experts on a particular topic) is commonly taken 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. The court may also direct that experts give their evidence at the same time (so called "hot tubbing"). See PD 35 paragraph 11. If this is contemplated as a possibility it should be raised with the judge at the PTR.

Assessors

17.62 Under CPR 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.

Alterations to the dates in the order for directions

17.63 It is common for the timetable set in the order for directions to need minor adjustments and the order usually provide that the parties may, where CPR rule 2.11 applies, agree to extend any time period to which the proceedings may be subject for a period or periods of up to 28 days in total without reference to the court, provided that this does not affect the date given for any case or costs management conference or pre-trial review or the date of the trial. The parties must notify the court in writing of the expiry date of any such extension.

Narrowing and agreeing issues

17.64 The standard Case Management Directions include a paragraph ("Definition and Reduction of Issues") requiring to the parties to attempt by a specified date to narrow and agree issues (including if appropriate issues the subject of expert evidence) after they have completed other steps in the case management timetable. This is a valuable tool which should not be overlooked.

Confirmation that directions have been complied with

17.65 It should not normally be necessary for the order for directions to require the parties to confirm that the directions have been complied with.

Part 8 claims

17.66 The Part 8 claim procedure is flexible and is used for a range of disputes, some of which require substantial disputes of fact to be resolved (for example Inheritance Act claims). However, as a general rule the procedure will lead to a final hearing, generally referred to as a 'disposal hearing', far more quickly than a Part 7 claim and the majority of Part 8 claims are dealt with by Masters.

17.67 The claim is referred to the Master immediately after an acknowledgment of service is filed. The Master will then assess the claim and consider:

- whether the claim may be capable of being dealt with 'on the file'
- if not, how far directions are likely to be needed and whether directions may be given without a hearing
- whether the claim is likely to be referred to a Judge for disposal.

17.68 Examples of Part 8 claims which are dealt with on the file include some *Norwich Pharmacal* applications, some claims for relief where the court has directed that the claim need not name a defendant and some unopposed applications for relief such as applications for a vesting order. The Master will take a view about whether a hearing is needed but disposal without a hearing is exceptional. If the Claimant considers that a hearing is not required, and the Defendant has filed an acknowledgement of service saying the claim will not be defended, the Claimant may ask the court to consider whether the claim may be dealt with in this way.

17.69 In most Part 8 claims the Master will either make an order for directions at the point of initial review or direct that a hearing is fixed. If directions are given at that stage they will usually give notice of a disposal hearing and give directions concerning further evidence to be filed

17.70 Part 8 provides a strict set of rules regarding the evidence which may be relied upon by the parties and the consequences of failing to file an acknowledgment of service. The Claimant is only entitled to rely upon the evidence filed when the claim is issued (CPR rule 8.5(1)) and such evidence must be served on the Defendant with the claim form. The Defendant must file any evidence to be relied upon with the acknowledgment of service and serve it on the other parties. This provides a very short period for the Defendant in a case of any complexity and it will be normal for an extension of time to be agreed between the parties. PD 8A paragraph 7.5 permits the parties to agree an extension of up to 14 days after filing the acknowledgment of service. A longer extension of time must be approved by the court.

17.71 A request for an extension of time should be made immediately and if it is not granted an application should be made to the court when filing the acknowledgment of service.

17.72 The Defendant's failure to file an acknowledgement of service has serious consequences. The Defendant may attend the hearing(s) but may not take part without the court's permission (CPR rule 8.4).

17.73 It is not uncommon, particularly on the hearing of applications for an order for sale of property subject to a charging order, for the defendant to fail to file either an acknowledgment of service or a witness statement. At the disposal hearing the court has to decide whether to grant relief from sanctions both as to the Defendant being able to address the court and to make a positive case.

17.74 Costs management does not apply to Part 8 claims (CPR rule 3.12) unless the court directs that the claim should be brought within the costs management regime. PD 3E paragraph 5 gives examples of the type of Part 8 claim in which costs management may be appropriate. A party seeking an order that costs management should give notice to the other parties and the court well in advance of the directions hearing and explain, preferably in a witness statement, why such an order is sought.

17.75 Attention is drawn to PD3F. Although the PD is entitled "Costs Capping" it contains important provisions which affect all claims in which a party is intending to seek an order for costs out of a "trust fund" (which includes the estate of a deceased person). In Part 8 claims notice of intention to apply for such an order and a costs budget must be given when serving evidence, or if a Defendant is not relying on evidence when filing the acknowledgment of service. It will be a matter for the court to decide if such notice is served whether an order for costs management is required.

17.76 In some claims it becomes clear that the Part 8 procedure is not appropriate because there are substantial issues of fact to be tried and the Part 7 procedure is more suitable. The Defendant may object to Part 8 in the acknowledgment of service. If the court accepts the objection it may direct the Claimant's evidence should stand as particulars of claim or direct that the Claimant must file particulars of claim. The court will wish to avoid adopting a procedure which incurs unnecessary expenditure. However, it is unsatisfactory in a case of complexity for the Claimant's case to be pleaded informally in a witness statement.

17.77 It is rare for orders for disclosure to be made in a Part 8 claim because for most types of Part 8 claim it should suffice for the parties to rely upon the documents they exhibit. It is more common for the court to give permission for expert evidence particularly in relation to valuation. Generally at a directions hearing the court will wish to establish whether:

- the court has all the evidence it will need
- the claim is ready for a disposal hearing
- any witnesses will need to attend the disposal hearing for cross-examination
- the disposal hearing should be dealt with by a Master or a Judge

Some Part 8 claims are by virtue of the subject matter exceptions to the general approach. Pension claims and Inheritance Act claims (see Chapter 29) are examples.

Chapter 18 Case management for settlement

The role of the court

18.1 The settlement of disputes without a trial, by means of Alternative Dispute Resolution ("ADR") can help litigants (a) to save costs, (b) to achieve settlement of their disputes while preserving their existing commercial relationships and market reputation and provide litigants with a wider range of solutions than those offered by the determination of the issues in the claim. 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 about the most cost effective means of resolving the dispute.

Stays for mediation

18.2 Where appropriate the court will, as part of the overriding objective, encourage the parties to use ADR or otherwise help them settle the case or resolve particular issues. There should normally be discussion at the case management conference about what steps have already been taken (if any), and those which ought to considered in future, to try to resolve the claim.

18.3 The court will readily grant a stay at an early stage of the claim to accommodate mediation or any other form of ADR if the parties are agreed that there should be a stay. A consent order may be lodged to stay the claim. 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 usually be on terms that the parties report to the court on a regular basis about their negotiations.

18.4 Any order for a stay will normally include a provision that the parties may agree to extend the stay for periods not exceeding a total of 3 months from the date of this order without reference to the Court, provided they notify the Court in writing of the expiry date of any such extension. Any request for a further extension after 3 months must be referred to the Court. The order will include permission to apply in relation to the extension. At the end of the stay the parties should be in a position to tell the court what steps have been taken or are proposed to be taken

18.5 Once the claim has reached the stage of trial directions being given, a stay for ADR may not be appropriate if a stay will interfere with the timetable of directions or there is no agreement about the optimum time for the stay to take place. The parties may need to be flexible about finding the best time for settlement discussions or mediation and to do so without a stay of the claim.

18.6 The court will not make an order directing the parties to undertake a form of ADR. However, if the court considers that one or both parties are unreasonably refusing to attempt ADR, the court may order a stay with a direction for the parties to take reasonable steps to consider ADR.

Early Neutral Evaluation and Financial Dispute Resolution

Early neutral evaluation

18.7 In appropriate cases and with the agreement of all parties the court will provide a non-binding, early neutral evaluation (ENE) of a dispute or of particular issues (see CPR rule 3.1(2)(m)). ENE is a simple concept which involves an independent party, with relevant expertise, expressing an opinion about a dispute or an element of it. It is unlike mediation because a mediator acts primarily as a facilitator. Although the mediator may undertake some 'reality testing', there is no requirement to do so. The person undertaking ENE provides an opinion based on the information provided by the parties and may do so without receiving oral submissions if that is what they wish.

18.8 An essential feature of ENE, apart from being consensual, is that unless the parties agree otherwise, the opinion is non-binding and the process is without prejudice (it being treated as part of a negotiation between the parties).

18.9 ENE is offered in the Chancery Division by all judges. The judge providing the ENE may be a full time Chancery judge, a section 9 judge, Chancery Master or Registrar. The ENE may be conducted by a judge of the same level as would be allocated to hear the trial, but need not be if the parties agree otherwise.

18.10 There is no one case type which is suitable for ENE. In many cases mediation will remain the preferred form of ADR. Although ENE may be unsuitable for multi-faceted complex claims, if a particular issue lies at the heart of the claim an opinion could help unlock the dispute in a way which a mediator cannot. It is particularly suitable where the claim turns on an issue of construction, an issue of law where there are conflicting authorities or where the case involves the court forming an impression about infringement of intellectual property ("IP") rights.

18.11 The Chancery Division does not have set procedures for ENE. The judge who is to conduct the ENE will give such directions for its preparation and conduct as he considers appropriate. The parties may consider that the judge will be in a position to provide an opinion about the claim or an issue based solely upon written position papers provided by the parties and a bundle of core documents. In many cases, however, it will be preferable for there to be, in addition, a short hearing of up to half a day. The opinion of the judge will be delivered informally.

18.12 Two important points which need to be addressed are as follows:

(a) The norm is that the ENE procedure and the documents, submissions or evidence produced in relation to the ENE are to be without prejudice. However the parties can agree that the whole or part of those items are not without prejudice and can be referred to at any subsequent trial or hearing.

(b) The norm is that the judge's evaluation after the ENE process will not be binding on the parties. However the parties can agree that it will be binding in certain circumstances (e.g. if not disputed within a period) or temporarily binding subject to a final decision in arbitration, litigation or final agreement.

18.13 Assuming the ENE is without prejudice and not binding, the court will not retain on the court file any of the papers lodged for the ENE or a record of the judge's opinion.

18.14 In any event the judge will have no further involvement with the claim, either for the purpose of the hearing of applications or as the judge at trial, unless both parties agree otherwise.

18.15 A specimen draft order is set out below. The order is on the basis that the opinion is agreed to be not binding and the ENE is to be conducted without prejudice.

Specimen draft order directing an ENE

Upon the parties requesting at a CMC the Hon Mr(s) Justice /Master/ Registrar ("the Judge") to provide an opinion about the likely outcome of the claim [or the issue defined in the appendix]

IT IS ORDERED THAT:

1. The Claimant and Defendant shall exchange position papers by 4pm on [date].
2. The parties shall agree a core bundle of documents for the Judge which shall be lodged by 4pm on [date]
3. The parties shall attend before the Judge [in private] at 10.30 on [date].
4. The parties estimate the judicial pre-reading to be [x] hours.
5. The Judge shall consider the submissions made by the parties and provide an informal non-binding opinion about the likely outcome of the claim [or the issue].
6. The opinion shall be without prejudice to the claim and the opinion shall remain confidential to the parties.
7. The court shall not retain any papers filed for the ENE hearing or any record of the opinion provided by the Judge. No non-party shall be entitled to obtain a transcript of the hearing.
8. The Judge shall have no further involvement with this claim or any associated claim.
9. The costs incurred by the ENE shall be costs in the case.

Chancery FDR ("Ch FDR")

18.16 Ch FDR is a form of ADR in which the judge facilitates negotiations and may provide the parties with an opinion about the claim or elements of it.

18.17 Broadly the key elements of Ch FDR are:

- It is consensual. The court will not direct Ch FDR unless all the parties agree to it.
- There will be a Ch FDR 'hearing', although it is quite unlike any other type of hearing. It is better described as a meeting in which the judge plays the role of both facilitator and evaluator.
- Ch FDR is non-binding and without-prejudice. The court will try to lead the parties to agree terms but cannot make a determination.
- It is essential for the parties, or senior representatives in the case of corporate parties, to be present.
- The court will carefully set up the Ch FDR meeting by giving directions which will help it be a success. This may include directing the parties to exchange and file without prejudice position papers (and direct what is to be addressed) and to lodge a bundle. If there is an issue which can only be resolved with expert evidence a way may be found to obtain that evidence without commissioning CPR compliant reports.
- When the meeting takes place the parties are directed to attend before the meeting starts so they may hold initial discussions. The parties are then called in before the judge. The Ch FDR meeting is a dynamic process which has some similarities with an initial mediation meeting. If the parties request it the judge may express an opinion about the issue or the claim as a whole.
- The court will not retain any papers produced for the meeting or any notes of it.

- The judge who conducts the Ch FDR meeting has no further involvement with the case if an agreement is not reached.

18.18 There is no one type of case which is suitable for Ch FDR. The origins of FDR lie in money claims in Family cases. It has been widely used in claims under the Trusts of Land and Appointment of Trustees Act 1996, inheritance and partnership claims. It is likely to have most application to claims in which there is strong animosity and/or a breakdown of personal or business relationships and trust disputes.

Specimen draft order directing Ch FDR

Upon the parties requesting that The Hon Mr(s) Justice /Master / Registrar ("the Judge") should conduct an FDR hearing

IT IS ORDERED THAT:

1. The claim shall be listed before the Judge for a without prejudice financial dispute resolution ('FDR') appointment in private on [date] [or a date to be fixed in consultation with counsel's clerks] with a time estimate of [x] hours commencing at 11.00. Judicial pre-reading is estimate to take [x] hours.
2. The parties and their representatives shall attend one hour beforehand for the purpose of seeking to narrow issues and negotiation.
3. The FDR appointment must be treated as a meeting held for the purposes of discussion and negotiation. Parties attending the FDR appointment must use their best endeavours to reach agreement on all matters in issue between them.
4. The parties must personally attend the FDR appointment unless the court directs otherwise.
5. Not less than 7 days before the FDR appointment, the claimant must file with the court a bundle for the FDR appointment. Copies of all offers and proposals, and responses to them whether made wholly or partly without prejudice should be included in the bundle. The disclosure of offers to the court does not amount to a waiver of privilege.
6. At the conclusion of the FDR appointment, the court may make an appropriate consent order.
7. At the conclusion of the FDR appointment, any documents filed under paragraph (3), and any filed documents referring to them, must be returned to that party and not retained on the court file and the court will not retain a record of the hearing. No non-party will be entitled to obtain a transcript of the hearing.
8. The judge hearing the FDR appointment must have no further involvement with the claim, other than to conduct any further FDR appointment or to make a consent order or a further directions order.
9. The costs of and associated with the FDR hearing shall be costs in case.

Chapter 19 Witness statements

Witness statements for trials

Content of witness statements

19.1 CPR rule 32.4 describes a witness statement as "a written statement signed by a person which contains the evidence which that person would be allowed to give orally".

19.2 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.

19.3 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. It should therefore be confined to facts of which the witness can give evidence. 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, expressions of opinion or submissions about the issues, nor to make observations about the evidence of other witnesses. Witness statements should not deal with other matters merely because they may arise in the course of the trial.

19.4 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's own knowledge and which are made on information and belief, giving the source of the information or basis for the belief.

19.5 Inadmissible material should not be included. Irrelevant material should likewise not be included. 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 their 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 pre-trial review ("PTR"), if there is one, or otherwise at trial.

19.6 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 they have served is incorrect they must inform the other parties immediately.

19.7 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.

Procedure

19.8 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.

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

19.10 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 they give this notice whether they propose to put, or seek to put, the witness statement in as hearsay evidence. If they do not put the witness statement in as hearsay evidence, CPR rule 32.5(5) allows any other party to put it in as hearsay evidence.

19.11 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 ("Judges' Listing") should be notified of any such needs prior to the hearing. The Rolls Building Management Team (020 7947 7899) can also assist with parking, access etc. Similar facilities may be available at courts outside the Rolls Building.

19.12 The court may allow a witness to give evidence through a video link or by other means. Its suitability will depend on the particular witness, on 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. See Annex 3 to PD 32 (Video Conferencing Guidance) and Chapter 21 paragraphs 100-103.

19.13 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's 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.

Witness statements for Applications

19.14 The same guidelines apply to the content of witness statements in support of applications as to witness statements for trials.

19.15 Certain types of applications are required by the CPR to contain evidence in support. In all cases, however, even where there is no specific requirement in the Rules, the court will often require evidence of the facts relied on and will give directions as to the form of the evidence and as to service.

Exhibits to witness statements

19.16 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. If (as is normally preferable) the documents referred to in the

19.17 Documents should not be exhibited to witness statements unnecessarily. The claim form, statements of case, other witness statements already served, orders of the court, and judgments need not be exhibited, nor should documents already before the court.

Chapter 20 Pre-trial reviews and pre-trial applications

20.1 The current practice in the Chancery Division is to hold pre-trial reviews ("PTR's") in all cases estimated to last five days or more (including pre-reading). Whenever a case with an estimate of at least five days is fixed to come on for final hearing, a pre-trial review before a judge will be arranged by the Chancery Judges' Listing Office ("Judges' Listing") at the same time, to take place about four weeks before the trial. A PTR will usually be listed for half a day.

20.2 If the trial judge has already been nominated, the application will if at all possible be heard by that judge. In cases with a time estimate of at least 10 days the judge conducting the PTR will (unless he or she considers that to be unnecessary) normally be the trial judge.

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

20.4 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 and any possible changes in the time estimate, to the other parties, who must respond with their comments at least 2 days before the PTR.

20.5 The claimant, or another party if so directed by the court, should deliver to Judges' Listing by 10 am on the day before the day fixed for the hearing of the PTR, a bundle including a list of matters to be dealt with (whether agreed or not), a list of agreed proposals, the parties' respective proposals for matters which are not agreed and the trial timetable. It should also contain (a) all current pleadings, (b) all orders made in the proceedings, (c) all witness statements filed for the trial (without exhibits), (d) all experts' reports filed for the trial (without exhibits), (e) such other documents (not generally more than 100 pages at most) as the parties consider are reasonably necessary for the PTR.

20.6 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 extent to which information technology may be used may be considered at this stage if it has not already been discussed at an earlier stage. 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. The judge conducting the PTR will be particularly concerned to ensure that the time estimate for the trial is appropriate and that the parties have agreed a realistic trial timetable.

20.7 If the trial timetable is not agreed, the court will impose one. The timetable should allow for realistic pre-reading by the judge as well as opening and closing submissions, witnesses of fact and experts. If written closing submissions are contemplated, it is essential that the timetable should not only allow time for the parties to prepare and lodge them, but for the judge to have read them before oral closing submissions. It is not usually necessary to allow time for judgment. Where the parties put forward rival timetables it is helpful for the claimant to prepare for the PTR a table showing in columns each party's suggested use of each half-day of the trial, with a blank column for the court's decision, as in the following example:

Trial day	Claimant	Defendant	Court
Day 1 am	Judge's pre-reading	Judge's pre-reading	
Day 1 pm	C's opening	Judge's pre-reading	
Day 2 am	Witness A	C's opening	
Day 2 pm	Witness B	D's opening	
etc			

20.8 In some cases it may be possible to obtain agreement from the judge to vacate the PTR if the parties are able to certify that the trial time estimate and the timetable are agreed, the trial will be completed with the time estimate the court has approved and there are no outstanding issues. The judge may consider, however, that a PTR will still be helpful.

20.9 Unless the claim is docketed to a High Court judge, the parties should not save up issues to be dealt with at the PTR. The Masters operate an urgent applications list which is available for all urgent applications which arise in the run up to a trial.

Chapter 21 Trials

Listing

Responsibility for listing

21.1 Subject to the direction of the Chancellor, the Chancery Judges' Listing Officer (ground floor, Rolls Building), has overall responsibility for listing trials before Judges. All applications relating to listing should, in the first instance, be made to Judges' Listing, who will refer matters, as necessary, to a Judge. Any party dissatisfied with any decision of the Chancery Judges' Listing Officer 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 Chancery Judges' Listing Officer and be arranged through the Chancery Judges' Listing Office ("Judges' Listing"). Trials before Masters should be arranged through Masters' Appointments and trials before Registrars through Bankruptcy and Companies Court.

21.2 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 (see Chapter 23). Claims in the Trial List and General List will be given a listing category of A, B or C. This refers to the level of judge allocated (see Ch.17 paras 30-31).

The Trial List

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

The Interim Hearings List

21.4 This list comprises interim applications stood over by the Judge as applications by order, applications that exceed two hours and applications stood over to a Judge from a Master.

The General List

21.5 This list comprises other matters including bankruptcy applications, Part 8 proceedings (where there is no oral evidence – see paragraph 6 below), applications for judgment and all company matters

Listing of Cases in the Trial List

21.6 The procedure for listing Chancery cases to be heard in the Rolls Building 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 PD 2B paragraph 4.1 – Allocation of cases to levels of judiciary.

21.7 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

gov.uk 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 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.

21.8 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.

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

21.10 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

Estimate of duration

21.11 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 will take the case out of the list and notify the Master. The Master may then make the consent order.

Applications after listing for hearing

21.12 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' Appointments Section (ground floor, Rolls Building) 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 in the fortnightly urgent applications list (see further Ch. 15 paragraphs 18-19). Parties should not list an application before the Interim Applications Judge without first consulting the Masters' Appointments Section. If (and only if) a Master cannot hear the application in good time, the application may be made to the Interim Applications Judge.

Appeals

21.13 All appeals for hearing by High Court Judges in the Division are issued by Judges' Listing, ground floor, Rolls Building. Enquiries relating to such appeals are to be made in the first instance to that Office, except as provided below (Listing of particular business).

Daily list of cases

21.14 This list, known as the daily cause list, is available on the gov.uk website: https://www.gov.uk/courts-tribunals/chancery-division , and is also posted each afternoon on the electronic screens on the ground floor, Rolls Building.

Listing of Particular Business

Appeals from Masters and bankruptcy appeals

See Chapter 25

Bankruptcy Applications

21.15 All applications to the Judge should be lodged in Judges' Listing. 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.

Companies Court

21.16 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.

Applications referred to the Judge

21.17 The proper use of judicial resources dictates that where the Master has jurisdiction in respect of an application he should ordinarily exercise that jurisdiction. The same principles apply to Registrars. 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 very sparingly exercised.

Variation of Trusts: Application to a Judge

21.18 Applications under the Variation of Trusts Act 1958 for a hearing before the Judge will be listed for hearing in the General List. The previous practice of listing these applications before a Judge without reference to the Master no longer applies.

Trials before Judges, Masters and Registrars

21.19 To ensure that court time is used efficiently there must be adequate preparation of cases before 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. In addition, if the parties wish to raise questions about the use of information technology at

the trial, they should do so either at the PTR (see Chapter 20) or, preferably, at an earlier stage.

Estimates: Fixed-end trials

21.20 All trials in the Chancery Division in London (including trials before Masters and Registrars) are now conducted on a fixed-end basis. That means that each trial will, save in exceptional circumstances, be required to be completed within the period allocated to it.

21.21 The adoption of fixed-end trials makes it all the more important that parties should ensure that time estimates are accurate and, where appropriate, revise them. The parties need to consider carefully how long each element of the case is likely to take. Every time estimate should also take account of the length of time that the judge is likely to require for pre-reading. Where it is thought that it will be appropriate to have an interval between the close of evidence and final submissions, the time estimate should factor this in as well (taking into account both the preparation of the submissions and, where written submissions are to be supplied, the time that the judge will need to digest them). Sufficient time must also be allowed for the length of oral submissions, 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. In practice, it is vital for the parties to agree a trial timetable at as early a stage as possible and to review it if circumstances change. Timetables (agreed, if possible) should always be filed at the same time as the skeleton arguments for the trial.

21.22 It is to be stressed that, as mentioned above, every time estimate must make a realistic allowance for pre-reading by the judge. The time within which a case must be concluded will thus run from the beginning of the judge's pre-reading. Should the period allowed for pre-reading prove inadequate, the time available in Court will be shortened correspondingly. The same principle will apply if too little time is allowed for the judge to read any written closing submissions. A time estimate for the trial will typically have been provided at an early stage of the proceedings. Where, as will usually be appropriate, a case management conference has been held, this is likely to have fixed a time estimate. If an existing estimate now seems erroneous, it should be revised as soon as practicable, and in any event by the date of any pre-trial review. The Court will, if possible, seek to accommodate an increase (especially a modest one) if appropriate without changing the trial window. 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.

21.23 Where one or more parties to a case propose that the time estimate for a trial should be changed but one or more other parties disagree, the matter must be referred to a Master, Registrar or Judge, as appropriate. Judges' Listing cannot change the time estimate given for a trial without either the parties' consent or a direction from a Master, Registrar or Judge.

21.24 A pre-trial review should be held about 4 weeks before the trial in any case estimated to last five days or more (including pre-reading). Among other things, the judge hearing the pre-trial review will be concerned to check that the time estimate is realistic and that the parties have taken appropriate steps to agree a timetable for the trial. A trial will, however, be conducted on a fixed-end basis even where there has been no pre-trial review (as will typically be the case with trials lasting less than 5 days).

21.25 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 Judges' Listing:

- in the case of a trial, on the application to fix the trial date; and

- in any other case, as soon as possible after the application notice or case papers have been lodged with Judges' Listing.

21.26 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.

Preliminary issues

21.27 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.

21.28 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.

Trial timetable

21.29 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.

21.30 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. During the course of the trial the parties should check each day whether the timetable is being adhered to, and if it is not, should be ready to assist the trial judge with proposals (agreed if possible) for revisions to the timetable which will enable the trial to finish within the fixed trial period; if necessary the court will impose a revised timetable.

Adjournments

21.31 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.

21.32 When to apply:

i. A party who seeks to have a hearing before a judge adjourned must inform Judges' Listing of their application as soon as possible.

ii. 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.

21.33 How to apply:

i. If the application is agreed, the parties should, in writing, apply to Judges' Listing. The Listing 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.

ii. 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 Judges' Listing.

iii. A short summary of the reasons for the adjournment should be delivered to Judges' Listing, 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.

iv. The party requesting an adjournment will, in general, be expected to show that they have conducted their 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.

v. 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 CPR rule 48.7, or dismiss the application, or make any other order (including an order for the payment of costs on an indemnity basis).

vi. A trial date may, on occasion, also be vacated by the Master in the circumstances if, for example on the hearing of an interim application or at a CMC it becomes apparent that the trial date cannot stand without injustice to one or both parties.

Bundles

21.34 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.

21.35 Bundles of documents must comply with PD 39A paragraph 3 – Miscellaneous Provisions relating to Hearings. These guidelines are additional to those requirements, and they should be followed wherever possible.

21.36 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 a litigant in person it is also that party's duty to co-operate as necessary with the other parties' legal representatives.

21.37 Bundles should be prepared in accordance with the following guidance.

Avoidance of duplication

21.38 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.

21.39 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. Alternatively a cross-reference should be given in the margin of the witness statement to the main bundles.

21.40 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

21.41 In general documents should be arranged in date order starting with the earliest document.

21.42 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

21.43 This is covered by PD39A paragraph 3, 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.

21.44 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

21.45 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.

21.46 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.

21.47 Documents in manuscript, or not easily legible, should be transcribed; the transcription should be marked and placed adjacent to the document transcribed.

21.48 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.

21.49 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.

21.50 Binders and files must be strong enough to withstand heavy use.

21.51 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

21.52 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 – Defendant's Accounts".

21.53 Outer labels should use large and clearly visible 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.

21.54 It is important that a label should also be stuck on to the front inside cover of a file, in such a way that it can be clearly seen even when the file is open.

Staples etc

21.55 All staples, heavy metal clips etc. should be removed.

Statements of case

21.56 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.

21.57 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

21.58 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.

21.59 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.

21.60 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. But where the documents exhibited are in the chronological bundles, they should not be copied again; see paragraphs 38-40 above,

21.61 Backsheets to affidavits and witness statements should be omitted.

New Documents

21.62 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.

21.63 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

21.64 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

21.65 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.

21.66 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.

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

- the bundles to be agreed with the other parties (so far as possible);
- references to the bundles to be used in skeleton arguments; and
- the bundles to be delivered to the court at the required time.

21.68 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.

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

- extends no further than agreement of the composition and preparation of the bundles; or
- includes agreement that the documents in the bundles are authentic (see CPR rule 32.19); or
- 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.

21.70 The general rule is that the claimant/applicant must ensure that one copy of a properly prepared bundle is delivered at Judges' Listing not less than 3 clear days and not more than 7 days before the trial. In the case of Masters, the bundle should be delivered to Masters' Appointments not less than 2 clear days (and not more than 7 days) before any hearing or trial. 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 10 am 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.

21.71 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 or in court support staff which they are.

21.72 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

21.73 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.

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

21.75 Every skeleton argument prepared by an advocate should state at the end his or her name, professional address and contact details (email and telephone).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 they should deliver these and their list of issues (if required) to the court with their skeleton argument.

21.76 When skeleton arguments and other documents are lodged with the court, they should be exchanged with the other parties. It is for the parties to arrange for the exchange or delivery of skeletons and any list of persons involved, list of issues or chronology.

21.77 Time for delivery of all skeleton arguments:

- In the more substantial matters (e.g. trials and applications by order) – subject to any contrary direction not less than 2 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.
- On judge's applications without notice – with the papers which the judge is asked to read on the application.
- On all other applications to a judge, including Interim Applications – as soon as possible and not later than 10 am 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.

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 for delivery (over 25 pages)

21.78 Place for delivery of skeleton arguments over 25 pages in length

- If the name of the Judge is not known, or the judge is a deputy judge, skeleton arguments should be delivered to Judges' Listing. In the case of Masters all skeletons should be delivered to Masters' Appointments.
- If the name of the Judge (other than a deputy judge) is known, skeleton arguments should be delivered to the Judge's clerk.
- Parties should always ask the Judge's clerk whether the Judge wishes to receive an electronic copy of the skeleton argument by email and, if so, the email address to which the skeleton argument should be sent.

Filing by email (under 25 pages)

21.79 Filing by email at the Rolls Building of skeleton arguments under 25 pages in length

(a) Subject to the exception mentioned in (b) below, all skeletons under 25 pages in length for hearings in the Rolls Building should be filed by email to the appropriate address:

- chancery.applications.skeletons@hmcts.gsi.gov.uk for skeletons for the Applications Court;
- chancery.general.skeletons@hmcts.gsi.gov.uk for all other skeletons for Judges' hearings; and
- chancery.Mastersappointments@hmcts.gsi.gov.uk for all skeletons for Masters' hearings.

(b) These email boxes should be used for skeleton arguments only and not for any other documents. Any other documents are likely to be ignored. The only exceptions are:

- in the case of the Applications Court mailbox, a short indication that a case is going to be ineffective in the event of that becoming apparent late on the previous day or early on the morning of the hearing; and
- a short reading list.

(c) The digital copy should be in word format, should not be in .pdf format.

(d) All emails should have the following in the subject matter line of the enclosing email and in the following order: the name of the case (in short form) and case number; the name of the judge (if known); and the date of the hearing if known or the hearing window where it is not.

(e) In the Applications Court a fresh skeleton should be emailed in respect of any adjourned hearing even if it has not changed in form since the earlier hearing; and it should be clearly re-dated.

(f) If a supplemental or amended skeleton is lodged, the attention of the relevant judge's clerk should be drawn to that lodgment (preferably by direct email) so that it is not overlooked.

(g) Any skeleton lodged in accordance with the above rules need not thereafter be provided in hard copy, unless the court otherwise directs.

(h) If the skeleton supports a hearing in private, and if the privacy considerations make it undesirable for the skeleton to be transmitted by email (which may not always be the case), it may be lodged in hard copy form with Judges' Listing, or with the Judge's clerk (if known).

(i) This direction applies only to skeleton arguments filed in support of forthcoming hearings. It does not apply to skeleton arguments filed in support of appeals where a hearing may not necessarily take place, or in support of any other application where there is no forthcoming hearing. Those skeletons should be lodged in hard copy.

(j) The above email boxes will be cleared of all skeletons over 14 days old at any given time.

Content

21.80 Content of skeleton arguments

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. Every skeleton argument should:

(a) identify concisely:

(i) the nature of the case generally, and the background facts insofar as they are relevant to the matter before the court;

(ii) the propositions of law relied on with references to the relevant authorities;

(iii) the submissions of fact to be made with reference to the evidence;

(b) be brief as to the nature of the issues;

(c) be in numbered paragraphs and state the name (and contact details) of the advocate(s) who prepared it;

(d) avoid arguing the case at length; 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.

21.81 Paragraph 80 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

21.82 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

21.83 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.

If time and circumstances allow its preparation, a chronology or index to which all parties have contributed and agreed can be invaluable.

Chronologies and indices once prepared can be easily updated and may be of continuing usefulness throughout the case.

Failure to lodge bundles or skeleton arguments on time

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

- the matter not being heard on the date in question;
- the costs of preparation being disallowed; and
- an adverse costs order being made.

Authorities

21.85 Authorities should be supplied as photocopies which should be of full size.

21.86 Advocates should always endeavour to agree and supply a single joint bundle of authorities. If separate bundles have to be provided, every effort should be made to avoid duplication of authorities, or the provision of different reports of the same authority without good reason. Only if such co-operation is impractical, advocates should exchange lists of authorities by 4.00 pm 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.

21.87 Excessive citation of authority should be avoided and practitioners must have full regard to Practice Direction (Citation of Authorities) [2012] 1 WLR 780. 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.

Documents and Authorities

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

21.89 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 electronic form.

Oral submissions

21.90 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.

21.91 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. 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.

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

21.93 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.

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

Physical exhibits

21.95 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.

Representation on behalf of companies

21.96 CPR 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. PD 39A paragraph 5 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

21.97 Judges wear robes for all hearings. Robes are not worn at hearings before Masters unless the Master is conducting a trial or 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 except those with no oral evidence, (for example Part 8 claims) and for 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.

Recording at hearings

21.98 In the Rolls Building it is normal to record all proceedings which take place in court before a judge. At 6 pm the recording system shuts down automatically in all courts and hearing rooms, but any cases that are still being heard will continue to be recorded upon the operation being continued by the clerk, associate or usher in court. For hearings which take place in private, the recording equipment will not normally be turned off but a note will be made on the computer log to the effect that the hearing (or relevant part of it) is in private. If any party wishes different arrangements to be made, this should be raised with the judge (through his or her clerk) before the start of the hearing.

21.99 No party or member of the public may use recording equipment without the court's permission.

Video-conferencing

21.100 The court may allow evidence to be taken using video-conferencing facilities: CPR 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.

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

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

21.103 Video conferencing facilities are available in all courts in the Rolls Building. Some are specially, and permanently, equipped. Others are served by movable equipment. Attention is drawn to the following matters:

- 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.
- Arrangements should be made for using the videoconferencing facilities with Judges' Listing or the individual identified on the web communications page referred to above at https://www.gov.uk/courts-tribunals/chancery-division-of-the-high-court
- The permanently equipped courts are better for longer video conferencing sessions. The temporarily equipped courts are adequate for shorter ones. The parties should consider whether the length and nature of the evidence requires one or the other, and communicate with the court accordingly.

Oral Argument

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

Transcripts of evidence

21.105 The various shorthand writers provide a number of different transcript services. These range from an immediately displayed transcript which follows the evidence almost as it is given to provision of transcripts of a day's proceedings that evening or one or two days in arrears. The use of transcripts in trials is always of assistance if they can be justified on the ground of cost, and in long cases they are almost a necessity. 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, though it will not be possible to load software (as opposed to the text of transcripts) on a judge's computer.

21.106 If the shorthand writers make transcripts available in digital form (and nearly all do) the judge should be provided with a digital version of the transcripts as they become available if he or she requires them.

Judgments

21.107 Unreserved judgments, and some reserved judgments, are delivered orally. In such a case a party wishing to obtain a transcript of the judgment must apply to the Court Recording and Transcription Unit in Room WB04, Royal Courts of Justice, email rcj.cratu@hmcts.gsi.gov.uk, who will supply a transcript once it has been approved by

the judge. Any party asking for a transcript to be approved should be ready to assist the transcribers by providing copies of documents and authorities referred to in the judgment.

21.108 Most reserved judgments are delivered by the judge handing down the written text without reading it out in open court. Where this course is adopted, the advocates will almost always be supplied with the full text of the draft judgment in advance of delivery. This enables them to correct any typographical or other manifest errors in the draft, and also to be ready to deal with any points which may arise when judgment is delivered. It is not an opportunity to re-argue the case.

21.109 Unless the court directs otherwise, the text of the draft judgment 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: see PD 40E paragraph 3.1.

21.110 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 Rolls Building may be obtained from the Court Recording and Transcription Unit in the Royal Courts of Justice. Elsewhere, the court will supply a copy.

21.111 The parties should seek to agree any consequential orders: see PD 40E paragraph 4.1. If the parties have agreed the form of the order and any consequential orders, and have supplied the judge with a draft, it is not necessary for the parties to attend the formal handing down of the judgment.

21.112 If the parties are not agreed on the form of order or consequential orders, they should inform the court by written submissions by 12 noon on the working day before the judgment is to be handed down (see PD 40E paragraph 4.4), indicating whether they wish such matters to be dealt with on written submissions or at a hearing (see PD 40E paragraph 4.5), and if at a hearing whether on hand down or at a later date.

Chapter 22 Orders

22.1 The creation of electronic files and the implementation of electronic filing has led to a change in the way in which orders are produced and served. The parties will generally be responsible for providing the court with an order in a form which may be approved and sealed without amendment. A nominated party will be required to serve the order once it has been sealed. Where a particular order is required to be served personally, the party concerned will be responsible for service.

Draft orders

22.2 Draft orders should usually be lodged with Masters Appointments or the Judge's clerk in Word format which enables minor changes to be made without either the court retyping the order or it being returned to the legal representative for amendment. Where an order is sent to the Judge's clerk for sealing it should also be accompanied by a signed copy in PDF.

22.3 All draft orders provided to the court must be in the form set out below, subject only to such amendments as circumstances require. The draft order must include:

(a) the title and number of the proceedings;

(b) the name of the Judge or Master: Mr/Mrs Justice [name]/Master [name]; If the judge sat in private the words "sitting in private" should be added after the judge's name.

(c) the date of the order;

(d) if the order is made at a hearing, the names of the advocates and/or those given permission to address the court;

(e) the service note, see paragraphs 5 - 7 below.

Normally all the parties should be listed. There is generally no need to recite statutes, deeds etc in the title, except in certain specified proceedings, see paragraph 7 below.

22.4 On an application without notice there should be a recital of the evidence before the court – this would usually be in a schedule.

The paragraphs should be consecutively numbered.

If the order directs a payment into or out of court, after the direction the words "as directed in the attached payment/lodgment schedule" should appear. 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 –

- whether an appeal lies from the judgment or order and, if so, to which appeal court, with an indication of the division of the High Court where the High Court is the appeal court;
- whether the court gave permission to appeal; and
- if not, the appropriate appeal court to which any further application for permission to appeal may be made: see CPR rule 40.2(4). If the order is an order made by consent it must bear the words "By consent".

22.5 The order must contain details as to service, as in the example order below.

Orders are served by the parties, with the order specifying which party is to receive the order for service from the court. A litigant in person will not be nominated as the serving party. The court will send the serving party one sealed copy of the order. It is the responsibility of the serving party to ensure that the text of the order and the court seal are legible in copies served on the other parties. Back sheets are no longer used and must not be provided. Instead, the names and addresses of the parties to whom the

order has been sent should be recorded immediately below the last paragraph of the order in the format shown below.

22.5.1 If a party considers that enforcement of an order by an order for committal may be needed, the order must be served with a penal notice endorsed on it. CPR 81.9 requires a penal notice to be prominently displayed on the front page of the order (unless CPR 81.9(2) applies). The standard form of penal notice is set out in PD81 paragraph 1.

It is not necessary to obtain the consent of the court before a penal notice is endorsed on an order prior to service. Most orders are now drafted by a party nominated by the court. If the drafting party wishes the order to include a penal notice in the order to be sealed by the court it should be added to the draft so that it is part of the sealed order. If the party who is not given responsibility for drafting the order wishes it to contain a penal notice, the terms of the penal notice should be provided to the drafting party. It is, however, always open to the party wishing to enforce the order to endorse a penal notice on the copy of the order to be served. It is not essential that the penal notice forms part of the order when it is sealed.

If the order is being drafted by the court, and the penal notice has not been included in the order, it should be endorsed on the copy of the order to be served.

22.6 Where an order is drawn and served by the court (see below) the service note will be in a similar format replacing "The court has provided a sealed copy of this order to the serving party" with "the court has sent sealed copies of this order to:" followed by the identity of the parties to whom the order has been sent.

Form of order

22.7 Orders should be drafted in the following form:

IN THE HIGH COURT OF JUSTICE Claim No:

CHANCERY DIVISION

Mr/Mrs Justice [name] *or* Master [name]

[day, month, year]

B E T W E E N:

ABCDEFG — Claimant

-and-

(1) HIJKLMNOP

(2) QRSTUV

Defendants

ORDER

UPON the application of [party] by [notice] dated …..

[AND UPON HEARING [names of the advocates and/or those given permission to address the court] for the Claimant and the first Defendant and the second Defendant in person]

IT IS ORDERED that:

1. ……..

2. ……..

3. This order shall be served by the Claimant on the Defendants

Service of the order

The court has provided a sealed copy of this order to the serving party: ABC Solicitors LLP at [address] [reference]

* To be adapted as appropriate. Where, for example, an application has been made by a Part 8 claim form, the recital should read:

"UPON the application of [party] by Part 8 Claim Form dated ….."

An order made following the trial of a Part 7 claim should recite:

"UPON THE TRIAL of this claim".

Consent orders (including Tomlin orders)

22.8 A consent order lodged by solicitors will only be accepted by the court and referred to the Judge or Master for approval if:

(a) the word "draft" or "minute" does not appear in the order and the title and preamble are in the correct format;

(b) the signed order, together with a "clean" copy of the order in Word format excluding the signature provisions, is submitted by email to Chanceryjudgeslisting@hmcts.gsi.gov.uk for Judges' orders or; Chancery.mastersappointments@hmcts.gsi.gov.uk for Masters' orders;

(c) the email contains an undertaking that the court fee will be paid within 2 working days;

(d) the order specifies the party who will receive the order for service from the court;

(e) the order includes a service note (see paragraphs 5-7 above) in the correct format.

22.9 If these requirements are not complied with, the consent order will not be accepted and it will be returned. An order lodged correctly will be referred to the Judge or Master for approval but will not be sealed until the court fee has been paid. It is also important to bear in mind that the substantive relief sought in a consent order must be within the scope of the relief claimed in the claim form - otherwise the Court has no jurisdiction to grant it. If the parties wish the order to deal with other matters outside the scope of the claim, then the order should be in Tomlin form (see paragraph 11 below).

22.10 If a consent order requires amendment because the terms of the order are not approved by the court, the order will normally be returned for re-drafting. If the changes are minor the Judge or Master may choose to make the necessary amendments and approve the order. The following should be noted:

(a) In cases of real urgency, a party may request a Judge or Master to approve a consent order at an Application without Notice hearing provided that the consent order and two clean copies are provided and the court fee has been paid.

(b) In the case of Tomlin orders with a confidential schedule, the schedule should not be lodged with the court. The order must identify clearly the agreement which forms the schedule and where it is held.

(c) The lodging of consent orders by email will not apply to litigants in person.

Form of Tomlin order

22.11 All Tomlin Orders must be headed "Tomlin Order" (not simply "consent order"). A correct form of Tomlin Order (ie where proceedings are stayed on agreed terms scheduled to the order) is as follows:

…"AND the parties having agreed to the terms set out in [the attached schedule][a [confidential] schedule/agreement dated……., copies of which are held by the parties' solicitors/the solicitors for the (*party*)] [and to there being no order for costs

[AND the solicitors having certified that the only relief sought in this claim/counterclaim is the payment of money including any interest and costs, and that no ancillary relief has been sought at any stage]

IT IS BY CONSENT ORDERED that

(1) all further proceedings in this claim be stayed except for the purpose of carrying the terms of the agreement into effect

AND for that purpose the parties have permission to apply [without the need to issue fresh proceedings].

(2) [any provision in respect of costs] *(unless in preamble)"*

22.12 Note that it is not the normal practice of the Judges or Masters of the Chancery Division to inspect schedules or agreements annexed to Tomlin Orders. The judge who makes the order undertakes no responsibility for the scheduled terms and cannot be taken to have approved them.

Sealing of Tomlin Orders relating to money claims by Associates

22.13 If Tomlin Orders are concerned only with claims for money (ie debt or damages, including any interest and costs) and no other relief has been sought, they may be sealed by the court associate under CPR rule 40.6(3) without reference to the Master. This will be subject to strict criteria to protect the parties and ensure that no incorrect forms of order are sealed.

To ensure that the claim is purely a money claim, the solicitors for the parties must include in the preamble to the order the following wording, as included in the form of order above:

AND the solicitors having certified that the only relief sought in this claim/counterclaim is the payment of money including any interest and costs, and that no ancillary relief has been sought at any stage

22.14 This statement will be relied on by the associate.

Further information can be found in the Note "Sealing of Tomlin Orders" approved by Chief Master Marsh on 3rd October 2016 and amended on 24th October 2016 (https://www.gov.uk/courts-tribunals/chancery-division-of-the-high-court).

Unless Orders

22.15 These orders are made by the court under CPR rules 3.1(3) and 3.4(2)(c), which together give court power to strike out a statement of case without further order if a procedural order it has made is not complied with by a specified date. The order is normally in the following terms:

"that unless the Claimant on or before (*date*) (*details of procedure to be complied with*)

his/her/its claim shall without further Order be struck out and stand dismissed"

Costs will normally be awarded against the party in question.

22.16 This is a serious sanction and will be used sparingly by the court, usually as a last resort where other attempts to get the party to comply have failed.

Relief from sanctions

22.17 The court has, under CPR rule 3.9, a general power to give relief from any sanction imposed for failure to comply with a court order (for example an "unless" order) or with any rule or Practice Direction. Since the rule was amended in 2013 the court must consider all the circumstances of the case, including specifically the need for litigation to be conducted efficiently and at proportionate cost and the need to enforce compliance with rules, Practice Directions and court orders. This led to a considerable amount of case law following the landmark case of *Mitchell v News Group Newspapers Limited* [2013] EWCA Civ 1537.

22.18 The Court of Appeal has, in *Denton v TH White Limited* [2014] EWCA Civ 906, clarified the decision in *Mitchell* and set out three stages to be followed when considering applications for relief. First, the court will decide whether the breach was serious or significant. If it was not, relief will usually be granted. Secondly, the court will consider why the breach occurred. Thirdly, it will consider all the circumstances of the case, including those specified in CPR rule 3.9, so as to enable it to deal justly with the application.

22.19 As the Court of Appeal emphasised in *Denton*, a contested application for relief should be an exceptional case. It is vital that the parties and their lawyers co-operate in furtherance of the overriding objective and that litigants (including litigants in person) do not take advantage of mistakes by opposing parties in order to obtain a litigation advantage, for example by unreasonably opposing applications for relief from sanctions. Additionally, the court will expect parties to agree reasonable extensions of time of up to 28 days under CPR rule 3.8(4). Parties acting unreasonably may expect heavy costs sanctions.

Orders made after hearings

22.20 The responsibility for producing an accurate draft order reflecting the terms of orders made by the court will rest with either (a) the applicant or (b) the party nominated by the Judge or Master. If there remains doubt about who bears responsibility for producing a draft order (for example in the case of multiple applications or where no direction is given by the court), it is to be produced by the Claimant unless the Claimant is a litigant in person, in which case it will be the represented party who will have responsibility.

22.21 The terms of the order must be noted by the legal representatives present and in the case of doubt about the terms of the order they must be clarified with the court at the hearing.

22.22 The order should be sent by email as a Word document to the relevant Judge's Clerk or to Masters' Appointments within 2 working days of the hearing and copied to the other party(s). The draft produced should represent in neutral terms what was understood to have been the intention of the Judge or Master. If there are significant differences of view about the correct terms of the order, alternative versions should be recorded on the draft and the Judge or Master will determine the points in issue.

22.23 So far as Judges' orders are concerned, it will be expected that the parties will act swiftly to finalise the order within 2 days. However, if (exceptionally) there is a genuine problem that the parties think can be resolved with a little extra time without troubling the Judge, they should communicate with the Judge's clerk to seek a short extension. Alternative

versions should be recorded on the draft and the Judge or Master will determine the points in issue.

1. The order submitted to the court for approval must state which party is to serve the order and must include a service note with the correct information as set out in paragraph 5. No back sheet should be provided.

2. The Judge or Master will settle the terms of the order and give instructions for it to be sealed. It will be then sent by the court to the serving party.

3. Where all parties are unrepresented, the Judge or Master will record the terms of the order and an Associate will draw up the order and send a sealed copy to each of the parties. This also applies to without notice applications where the court refuses to make the order.

Permission/refusal to appeal

22.23.1 It is important to include the correct wording in an order following the grant or refusal of permission to appeal. The Access to Justice (Destination of Appeals) Order 2016, which came into effect on 3rd October 2016, has replaced the Destination of Appeals Order 2000, No distinction is now made between interim and final decisions and in general all appeals now lie to the next tier of the judiciary. All appeals from Chancery Masters, both interim and final, now go to the High Court rather than the Court of Appeal, (See Table 1 in PD 52A).

22.23.2 The procedure for appeals is set out in Part 52 and its Practice Directions, as amended with effect from 3rd October 2016 by the 86th Update to the CPR. CPR 40.2 has also been amended and now provides that the order must state –

(a) whether an appeal lies from the judgment or order and, if so, to which appeal court with an indication of the division of the High Court where the High Court is the appeal court;

(b) whether the court gives permission to appeal; and

(c) if not, the appropriate appeal court (including which appropriate division, where relevant) to which any further application for permission may be made.

22.23.3 The wording that should be used is as follows:

In the case of all decisions of Masters –

"This is an order from which an appeal lies to a single Judge of the High Court, Chancery Division. [Permission to appeal is granted][Permission to appeal is refused]. A further application for permission may be made to the single Judge]*". (*deleting as appropriate*).*

In the case of all Judges' decisions:-

"This is an order from which an appeal lies to the Court of Appeal. [Permission to appeal is granted][Permission to appeal is refused]. A further application for permission may be made to the Court of Appeal]". (deleting as appropriate).

Sealing orders

22.24 Unless an order is referred to an Associate, the order will normally be sealed by the Judge's clerk or the Masters' clerk.

Orders drawn up by Associates

22.25 The following are circumstances in which draft orders submitted by parties will be referred to an Associate for sealing:

(a) orders made in the Applications Court;

(b) committal orders;

(c) all Bankruptcy and Companies Court orders made by a High Court Judge.

22.26 Associates will also be responsible for drawing, sealing and sending out the following orders:

(a) where both parties are unrepresented;

(b) unsuccessful without notice applications;

(c) where the Judge or Master directs an Associate to do so.

Collection trays

22.27 Some law firms have an arrangement to collect orders from a designated collection tray. That arrangement will remain unchanged. The reference above to the court sending an order to the serving party should be taken to mean, where appropriate, that the sealed order may be left in a collection tray. It is the responsibility of the law firm concerned to ensure that the order is collected and served promptly.

Copies of Orders

22.28 Copies of orders may be obtained from the File Management Section (ground floor, Rolls Building) upon payment of the appropriate fee. (See Chapter 6 paragraph 30)

Chapter 23 Accounts and inquiries

23.1 Proceedings under judgments and orders in the Chancery Division are regulated by PD 40A (Accounts, Inquiries etc.), PD 40B (Judgments and Orders), and PD 40D (Court's Powers in relation to Land etc).

Directions

23.2 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

- who is to lodge the account and within what period;
- within what period objection is to be made; and
- arrangements for inspection of vouchers or other relevant documents;

for inquiries

- whether the inquiry is to proceed on written evidence or with statements of case;
- directions for service of such evidence or statements; and
- directions as to disclosure.

23.3 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 the Master may direct a case management conference.

23.4 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.

Chapter 24 Appeals

General

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

- appeals within the ordinary work of the Division, from Masters to High Court Judges;
- insolvency appeals from High Court Registrars and from the County Court to High Court Judges;
- appeals to High Court Judges in the Chancery Division from orders in claims proceeding in the County Court; and
- statutory appeals to the Chancery Division.

Proceedings under the Companies Acts (and other legislation relating to companies and limited liability partnerships) are specialist proceedings for the purposes of Part 49 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: see the table in PD 52A paragraph 3.5. Such appeals are not covered in this Chapter. Most appeals from tribunals are now dealt with by the Upper Tribunal, which is not covered by this Guide. Appeals from some other bodies (e.g. the Comptroller of Patents and the Pensions Ombudsman) still lie to the court.

24.2 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.

24.3 The Access to Justice (Destination of Appeals) Order 2016, which came into effect on 3rd October 2016, has replaced the Destination of Appeals Order 2000, No distinction is now made between interim and final decisions and in general all appeals now lie to the next tier of the judiciary. Therefore, all appeals from county court judges now go to the High Court rather than the Court of Appeal, as do all appeals from Chancery Masters, both interim and final. (See Table 1 in PD 52A).
The detailed procedure for appeals is set out in Part 52 and its Practice Directions, as amended with effect from 3rd October 2016 by the 86th Update to the CPR , 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

24.4 Permission to appeal is required in all cases except: (a) appeals against committal orders, and (b) certain statutory appeals. Permission to appeal will be given only 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 (CPR rule 52.6(1)). 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.

24.5 An application to the Court of Appeal for permission to appeal will be determined on the papers without a hearing, unless the court considers that it should be determined at an oral 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.

24.6 An application to the High Court for permission to appeal will be determined on the papers without an oral hearing, but if permission is refused the applicant is normally entitled to request that it be reconsidered at an oral hearing. If, however, the judge who refuses permission considers that the application is totally without merit, he or she may refuse permission for the application to be reconsidered. Guidance for litigants in relation to appeals to the High Court is available by way of a Guide to High Court Appeals which may be obtained from the Chancery Judges' Listing Office, ground floor, Rolls Building.

24.7 A party who wishes to appeal to the High Court must lodge, with the appellant's notice, the documents set out in PD 52B paragraph 4.2. The remaining documents which are required to make up the appeal bundle, including a transcript of the judgment under appeal, must be filed within 35 days. This period may be extended by a judge, who will consider any application for an extension on paper. The appellant should however always seek a transcript of the judgment as promptly as possible and in the case of delay will be expected to explain what steps have been taken to obtain it. 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.

24.8 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

24.9 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

24.10 If permission is granted, an appeal from a decision of a Master in a case proceeding in the Chancery Division lies to a High Court Judge of the Division.

24.11 Appeals from Masters (stamped with the appropriate fee) must be filed with the Chancery Judges' Listing Officer, ground floor, Rolls Building. 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 listed, solicitors should forthwith inform the Chancery Judges' Listing Officer whether they intend to instruct counsel and, if so, the name or names of counsel.

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

24.13 Applications for permission to appeal from a decision of a Master (stamped with the appropriate fee) must be lodged in Judges' Listing. If permission to appeal is granted, the procedure set out above will apply.

Insolvency appeals

24.14 An appeal lies from the 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. An appeal against a decision of a District Judge sitting in the County Court must be lodged at an Appeal Centre on the same circuit as that county court. Permission to appeal is required. Notice of appeal from the decision of a Registrar or of the County Court should be lodged in Judges' Listing. If permission is granted, the appeal will be entered in the Interim Hearings List, usually with a fixed date. The date of the hearing will be fixed by the Chancery Judges' Listing Officer in the usual way. Additional guidance for litigants in insolvency appeals is available at https://www.gov.uk/courts-tribunals/chancery-division-of-the-high-court

24.15 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

24.16 An appeal against a decision of a Circuit Judge in a claim proceeding in the County Court lies to the High Court, unless (i) the proceedings are specialist proceedings to which CPR Part 49 applies, or (ii) the decision is itself on an appeal. In these cases the appeal lies direct to the Court of Appeal. The general rules as to the requirement for permission described above apply to these appeals. Any appeal to the High Court must be lodged at an Appeal Centre on the same circuit as the county court where the order under appeal was made. A full list of appeal centres is set out in Table B of PD 52B.

Statutory appeals

24.17 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 52D, but this is not exhaustive. However, most appeals from tribunals are now dealt with by the Upper Tribunal.

Appeals to the Court of Appeal: permission to appeal

24.17.1 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 for 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

24.18 Appellant's notices which by PD 52D paragraph 9.1 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 Judges' Listing.

Dismissal by consent

24.19 The practice is as set out in PD 52A paragraph 6, for all appeals. Where the appeal is proceeding in the High Court a document signed by all parties or their legal representatives must be lodged with Judges' Listing (ground floor, Rolls Building), 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.

Chapter 25 The Bankruptcy and Companies Courts

Introduction to the Courts and Judges

25.1 All High Court insolvency and company work is to be heard in the Chancery Division. This specialist area of work is assigned to the Bankruptcy Court (Personal Insolvency) and the Companies Court (Companies Acts and Related Legislation and Corporate Insolvency).

25.2 Insolvency work involves petitions, applications and claims under: the Insolvency Act 1986; the Company Directors Disqualification Act 1986; the Limited Liability Partnership Act 2000; a myriad of statutes creating special insolvency regimes for different business sectors; and a variety of European Regulations and Directives. It also includes the administration of an insolvent estate of a deceased person.

25.3 Company work includes claims and applications arising from or concerning: the Companies Act 2006, the Company Directors Disqualification Act 1986, the Limited Liability Partnership Act 2000; the Financial Services and Markets Act 2000, the Financial Services Act 2012; the Companies (Cross-Border Mergers) Regulations 2007; and a variety of European Regulations and Directives.

25.4 In London at the Rolls Building the judges who sit in those courts are High Court Judges, High Court Bankruptcy Registrars and their respective deputies. High Court Judges exercise appellate jurisdiction under the Insolvency Act as well as first instance jurisdiction.

25.5 Most work will start before and also be tried by the Registrars, who are specialists in all these areas of work, not just in bankruptcy as their ancient title suggests. The general exception to this are particularly high value and complex cases which will be assigned to the High Court Judges for trial and potentially also for case management. In insolvency there are cases which must always be listed before a Judge (see paragraph 3 of Part One to the PD: Insolvency Proceedings [2014] B.C.C. 502). It also sets out factors a Registrar should always consider when deciding whether to refer or adjourn a matter to a High Court Judge (see paragraph 3.4).

25.6 District Registries do not have specialists corresponding to Registrars. Company and insolvency matters will be assigned between the Chancery supervising High Court Judges on circuit, Circuit Judges with section 9 authorisation to sit as Deputy High Court Judges and Chancery District Judges as part of their general chancery work.

Court Rules

25.7 The Insolvency Rules 1986 (SI 1986/1925) as amended ("IR") are the focal point for all insolvency cases (personal or corporate). The PD: Insolvency Proceedings [2014] B.C.C. 502 prescribes detailed practice requirements. In addition the Civil Procedure Rules ("the CPR") as prescribed by Rule 7.51 IR. Accordingly there will never be a directions questionnaire.

25.8 Claims under the Company Directors Disqualification Act 1986 have their own prescribed rules, namely the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987 (SI 1987/2023) as amended. The CPR will also apply except when inconsistent with those specific rules.

25.9 The CPR applies to all other Companies Court work but there are specific rules relating to petitions under section 994 of the Companies Act 2006 ("CA"): see the "Companies (Unfair Prejudice Applications) Proceedings Rules 2009 (SI 2009 No 2469).

Practice Directions

25.10 The following Practice Directions and Chief Registrars' Notes currently exist for:

25.10.1 corporate and personal insolvency: PD: Insolvency Proceedings [2014] B.C.C. 502 and PD [2007] B.C.C.839.

25.10.2 company law cases: CPR PD 49A Vol 2 White Book – Applications under the Companies Acts and Related Legislation

Issuing and Filing

25.11 In order to start proceedings it is necessary to issue the petition, claim or application. This will not be done without payment of the required fee.

25.12 A file will be created when proceedings are started. Any applications within existing proceedings will need to be issued with payment of a fee.

25.13 In the Rolls Building all files for cases commenced after 25 October 2015 will be opened electronically.

25.14 A hearing bundle must be lodged in accordance with Chapter 15 for all claims where there are more than 30 pages and/or all hearings that have a listing time of 15 minutes or more. There is a strict policy of "no bundle, no hearing". Bundles should contain copies of all documents relevant to the hearing. The person seeking a remedy at the hearing is responsible for the bundle being lodged but the parties should liaise and reach agreement as to content whenever practical.

25.15 Requests to inspect the court file are made in insolvency proceedings under IR 7.31A and in company matters under CPR Part 5. Requests should be made electronically.

Listing

25.16 Work before a High Court Judge will be listed as part of the general listing jurisdiction of the Chancery Judges' Listing Office ("Chancery Listing"). Therefore Chapter 21 will apply.

25.17 Work assigned to a Registrar will be listed by their office. There are 6 lists, 3 being trial lists. Details can be found on the Daily List published at https://www.justice.gov.uk/courts/court-lists/list-cause-rolls. Trials normally last between 1-10 days. One clerk will have responsibility for a list on a rotated basis. The "Chambers Lists" will normally be heard in the hearing room of the assigned Registrar. The trials will be in hearing rooms or in court rooms as appropriate. All courtroom requirements should be directed to the Chancery Listing, who will allocate the required courtroom.

25.18 A listing certificate must be obtained from the court office and be completed and lodged in order to obtain a date for a hearing before a Registrar for more than half a day to be fixed. The time estimate must include specified time for pre-reading and for the hearing including estimated time for judgment.

25.19 To obtain an urgent application before a Registrar, a certificate of urgency must be completed and signed by the solicitor/counsel with conduct of the application or the litigant in person. The certificate must (i) state the nature of the application; (ii) explain why it is urgent; (iii) attach a draft order; and (iv) provide a time estimate for pre-reading and the hearing.

Hearings

25.20 Chapter 21 applies to all hearings and trials except hearings listed for 15 minutes or less. Chapter 21 paragraphs 15 and 16 of the Chancery Guide apply to all appeals before High Court Judges in the Bankruptcy and Companies Court.

25.21 The daily cause list will specify whether a hearing requires the legal advocate to be robed. This will occur for all final trials with witnesses and hearings of winding up petitions, CDDA direction hearings and final hearings concerning Capital Reduction.

Personal Insolvency

25.22 Whether applying for an interim order because a proposal for an individual voluntary arrangement is to be made or presenting a debtor's or creditor's petition, it will be necessary to decide whether the matter should be issued in the High Court or the County Court. Reference should be made to Rules 6.40A and 7.10ZA IR.

25.23 Applications to set aside statutory demands are made to the court which will hear a future petition presented by a creditor. They should be made within 18 days from the date of service. The application may be dismissed without a hearing if it fails to disclose sufficient times or if an extension of time is required but either not requested or should not be granted (see IR 6.4). If not, a first hearing for directions or disposal will normally be listed for 15 minutes.

25.24 Creditors' petitions other than Revenue petitions are to be issued by creditors in the Rolls Building only if the petition debt is £50,000 or more and allocated to the London Insolvency District under Rule 7.10Z of the IR. If the debt is below £50,000 but allocated to the London Insolvency District, it should be issued in the Central London County Court. Exceptions to this are: all petitions to which Rule 7.10ZA(c) or (d) IR applies must be presented in the Rolls Building; and all Revenue bankruptcy creditor petitions are issued in the Rolls Building wherever the debtor is located provided the petition debt is £50,000 or more (see generally Rule 6.9 IR).

25.25 Where the debtor is resident in England and Wales and the proceedings are not allocated to the London Insolvency District, the creditor must present the petition to the debtor's own county court hearing centre.

25.26 Debtors present their own petitions in the High Court only if their unsecured liabilities total £100,000 or more and the proceedings are allocated to the London insolvency district under 7.10ZA(a)(i) to (iv) IR. The £100,000 limit does not apply if proceedings are allocated to the London insolvency district under IR 7.10ZA(v) or (c)(ii) (see generally 6.40A IR).

25.27 All other debtor petitions are presented to the debtor's own county court hearing centre unless expedition is required and this is not possible in the county court or the debtor is no longer resident in England and Wales when presentation may be to the High Court (see generally 6.40A IR).

25.28 An exception to the above is when an individual voluntary arrangement is in force. Then presentation must be to the court at which the nominee's report was submitted under section 256 or 256(A) of the Insolvency Act 1986 ("IA").

Corporate Insolvency

25.29 The county court has concurrent jurisdiction with the High Court to wind up a company if the amount of share capital paid up or credited and does not exceed £120,000.

Chapter 26 Intellectual property proceedings

Introduction

26.1 Intellectual property proceedings are dealt with, under Part 63, in different lists within the Chancery Division depending on their subject matter. There are two specialist lists, the Patents Court and the Intellectual Property Enterprise Court. Patents, registered designs, semiconductor topography rights and plant varieties are assigned to either of these two specialist lists (CPR rule 63.2). Matters relating to other intellectual property rights may be heard by the Chancery Division itself, by the Intellectual Property Enterprise Court or (subject to PD 63) by a County Court hearing centre where there is a Chancery District Registry (CPR rule 63.13). A definition of "other intellectual property rights" is in PD 63 paragraph 16.1. It includes registered trade marks, community trade marks, passing off, trade secrets and copyright.

Appeals

26.2 Appeals in patent, design and trade mark cases are governed by Part 52 (CPR rule 63.16); reference should be made to Chapter 24 for the general procedure as regards such appeals. The following guidelines should be followed.

(a) Applications for Permission to Appeal.

The appellant's notice, skeleton argument and bundle should be lodged as required by PD 52C, section 3 and 14.

(b) Appeals

Where permission to appeal has been given by the lower court or granted by the Court of Appeal:

- The Civil Appeals Office will ask the parties to provide an agreed time estimate where possible or, where agreement cannot be reached, separate time estimates for the hearing of the appeal together with an agreed time estimate for any necessary pre-reading.
- The case will then be referred to the Supervising Lord Justice for listing directions.
- Once the appeal is listed, the parties will be asked to lodge an agreed timetable for the filing of skeleton arguments, appeal bundles and bundles of authorities for approval by the Supervising Lord Justice.
- Any subsequent request by the parties to amend the approved timetable will be referred to the Supervising Lord Justice for determination.

The Patents Court

26.3 The procedure of the Patents Court is broadly that of the Chancery Division as a whole, but there are important differences. The Patents Court has its own Court Guide which is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433315/patent-court-guide.pdf. That Guide must be consulted for guidance as to the procedure in the Patents Court. See also a Practice Statement (Listing of Cases for Trial) dated 7th December 2015.

26.4 The Patents Court's diary can be accessed on the https://www.gov.uk website. The Patents Court will endeavour, if the parties so desire and the case is urgent, to sit in September.

The Intellectual Property Enterprise Court, including small claims track

26.5 The Intellectual Property Enterprise Court (IPEC) has its own Court Guide which is available at https://www.gov.uk/government/publications/intellectual-property-enterprise-court-guide. The small claims track in the IPEC also has its own Court Guide, available at https://www.gov.uk/government/publications/intellectual-property-enterprise-court-a-guide-to-small-claims These Guides must be consulted for guidance as to the procedure in the IPEC and IPEC small claims track. See also a Practice Note dated 17th December 2015.

Registered trademarks and other intellectual property rights

26.6 Part II of Part 63 (rule 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. Claims under the Trade Marks Act 1994 must be brought in the Chancery Division. Cases not specifically assigned to the Patents Court or IPEC may be heard by any judge of the Division, and may also be heard in certain Chancery District Registries (see PD 63 paragraph 16).

26.7 Among the Chancery Masters, intellectual property cases are dealt with as set out at Chapter 15 paragraph 12.

Chapter 27 Financial List

27.1 The Financial List is a specialist list. It was brought into being in October 2015 in response to changing financial markets and the need to meet the requirements of the international financial community.

27.2 A “Financial List claim” means any claim which relates principally to loans, project finance, banking transactions, derivatives and complex financial products, financial benchmark, capital or currency controls, bank guarantees, bonds, debt securities, private equity deals, hedge fund disputes, sovereign debt, or clearing and settlement, and is for more than £50 million or equivalent; requires particular expertise in the financial markets; or raises issues of general importance to the financial markets.

27.3 The Chancellor of the High Court and the Judge in Charge of the Commercial Court have joint overall responsibility for all claims in the Financial List. A claim in the Financial List may be commenced in either the Chancery Division or the Commercial Court. It will be allocated at the time of the first case management conference to a designated judge of either the Chancery Division or the Commercial Court who has been authorised to try claims in the Financial List.

27.4 The Chancery Issue Section in the Rolls Building is the administrative office of the court for all proceedings in the Financial List commenced in the Chancery Division. (The Admiralty and Commercial Registry is the administrative office of the court for all proceedings in the Financial List commenced in the Commercial Court).

27.5 Applications for the transfer of proceedings to or from the Financial List must be made to a Financial List judge.

27.6 The procedure relating to claims in the financial list, which is based largely on the existing procedures in the Commercial Court Guide, is set out in CPR Part 63A and PD 63AA.

The Financial Markets Test Case Scheme

27.7 This pilot is operating, within the Financial List, from 1 October 2015 for two years to 30 September 2017. The Scheme applies to a claim started in the Financial List which raises issues of general importance to the financial markets in relation to which immediately relevant authoritative English law guidance is needed (“a qualifying claim”).Where there is a qualifying claim a person in business in the relevant market may, by mutual agreement, issue proceedings against another person in business in the relevant market who has opposing interests as to how the issue(s) of law raised by the qualifying claim should be resolved, even if there is no present cause of action between the parties to the proceedings. See generally PD 51M.

27.8 The claim form must indicate clearly that the claim is brought pursuant to the Financial List, Financial Markets Test Case Scheme. The judge hearing the first case management conference or summary application has to be satisfied that it is a qualifying claim, that it can be satisfactorily determined as a test case and that the arguments of all those with opposing interests in relation to the issues in question will be properly put before the court. The parties will then seek to agree the facts and in a case of particular importance or urgency the trial may, at the court’s discretion, be heard by a court consisting of two Financial List Judges, or a Financial List Judge and a Lord or Lady Justice of Appeal. As a general rule there will be no order as to costs;

Chapter 28 Shorter Trials and Flexible Trials

General

28.1 A Practice Direction made under rule 51.2 provides for a pilot of two schemes, the Shorter Trials Scheme and the Flexible Trials Scheme: see PD 51N. The pilot for both schemes operates from 1 October 2015 until 30 September 2018, in all the courts in the Rolls Building. Although included within one Practice Direction, the two schemes are distinct.

Shorter Trials Scheme

28.2 This scheme may be used in any Part 7 claim which is a 'business claim'. The term is not defined but is likely to be construed widely. The scheme enables some business disputes to be resolved more quickly and less expensively than if case managed and tried under the conventional CPR approach.

28.3 The scheme can only be used if the trial of the claim will last no longer than 4 days, including judicial reading time, and a case will not be suitable for the Scheme if it appears that it will require a longer trial.

28.4 The Scheme will not normally be suitable for cases including an allegation of fraud or dishonesty, cases which are likely to require extensive disclosure and/or reliance upon extensive witness or expert evidence, or cases involving multiple issues and multiple parties, cases in the Intellectual Property Enterprise Court ("IPEC") and public procurement.

28.5 All claims will be allocated to a designated High Court judge or to a Chancery Master if the parties consent, at the time of the first case management conference ("CMC") or earlier if necessary and all proceedings will normally be heard or determined by that designated Judge or Master except urgent or vacation applications if the designated judge is not available. An application to transfer a case into the scheme may be made to a Judge or, in the Chancery Division, a Master.

28.6 Costs management does not apply to claims in the Shorter trials scheme unless the court directs otherwise.

28.7 Details of the procedure to be followed are set out in the Practice Direction. Particular features include:

- Statements of case in a specified form and accompanied by the documents relied upon. If a case is transferred into the scheme, the court will consider whether Statements of Case which have already been served should be amended to put them into the specified form. Statements of Case which have already been served will not however normally need to be amended.
- Special provisions for disclosure, witness statements and witness evidence at the trial and expert evidence.
- At the Pre-trial review ("PTR") the judge will fix the trial timetable including the time for speeches and cross-examination.
- The trial will be managed to ensure the time estimate is adhered to and cross-examination will be strictly controlled by the court.
- The court will endeavour to hand down a judgment within six weeks of the trial.
- Costs are summarily assessed.

The Flexible Trials Scheme

28.8 This scheme enables the parties by agreement to adapt the procedure, including disclosure, witness evidence, expert evidence and submissions at trial, to suit their particular case. The purpose of the scheme is to encourage parties to limit disclosure and to confine oral evidence at trial to the minimum. Its aim is to reduce costs, reduce the time required for trial and to enable earlier trial dates to be obtained.

28.9 Under the scheme the parties may agree to invite the court to determine identified issues on the basis of written evidence and submissions. If necessary the court may call for oral evidence to be given or oral submissions to be made on any of the identified issues. Where an issue is to be determined in writing it is not necessary for a party to put its case on that issue to the other party's witnesses.

28.10 The scheme provides a standard trial procedure (the Flexible Trials Procedure, which is set out in the Practice Direction). This may be varied by agreement between the parties. If the parties wish to adopt the Flexible Trials Procedure, or a variation of it, they should agree to do so in advance of the first Case Management Conference and inform the court accordingly. Once the parties have adopted the Scheme the court will give directions in accordance with the agreed procedure unless there is good reason not to do so.

Chapter 29 Specialist work

Introduction to the specialist work of the Chancery Division

29.1 This Chapter deals with those claims which have to be brought in the Chancery Division and may therefore be referred to as its specialist work. This must be distinguished from specialist lists, which are defined in CPR rule 2.3(2) as being designated as such by a rule or Practice Direction (for example the Commercial List in the Commercial Court and IPEC and the Patents Court in the Chancery Division) and generally operate under their own Practice Direction or rules; and must also be distinguished from specialist proceedings, as defined by Part 49, although these include, under 52 PD (routes of appeal), proceedings under Part 57 (probate and inheritance) which are included in this Chapter.

29.2 Among those claims that must be brought in the Chancery Division are:

- claims for the sale, exchange or partition of land, or the raising of charges on land;
- mortgage claims;
- claims relating to the execution of trusts;
- claims relating to the administration of the estates of deceased persons;
- bankruptcy matters;
- claims for the dissolution of partnerships or the taking of partnership or other accounts;
- claims for the rectification, setting aside or cancellation of deeds or other instruments in writing;
- contentious probate business;
- claims relating to patents, trade marks, registered designs, copyright or design right;
- claims for the appointment of a guardian of a minor's estate;
- jurisdiction under the Companies Act 2006 and the Insolvency Act 1986 relating to companies;
- some revenue matters;
- claims relating to charities;
- some proceedings under the Solicitors Act 1974;
- proceedings under the Landlord and Tenant Acts 1927 (Part I), 1954 (Part II) and 1987 and the Leasehold Reform Act 1967;
- proceedings (other than those in the Commercial Court) relating to the application of Articles 101 and 102 of the Treaty on the Functioning of the European Union and the equivalent provisions of the Competition Act 1998; and
- proceedings under other miscellaneous statutory jurisdictions.

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

29.4 Claims in the Financial List must be started in either the Chancery Division or the Commercial Court.

29.5 Certain appeals lie to the Chancery Division under statute: see the list in PD 52D paragraph 5.1, see Chapter 24. Intellectual property appeals are covered in Chapter 24 and the Patents Court Guide (see Chapter 26).

29.6 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 Tribunal and the Competition Appeal Tribunal; but this Guide does not deal with those jurisdictions.

29.7 Further information about the most common proceedings is provided below.

(1) TRUSTS

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

29.9 The topics covered in this Chapter are (a) applications by trustees for directions and related matters, including *Beddoe* and *Benjamin* orders; (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; (h) judicial trustees/substitute personal representatives, and (i) *bona vacantia* and trusts.

Trustees' applications for directions

29.10 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 Practice Directions.

29.11 Rule 8.2A (issue of claim form without naming a defendant) can also be relevant. Normally, permission to issue the claim form under rule 8.2A is required (see Chapter 7 paragraphs 15-16 above). In urgent cases this can be obtained on an application without notice. But in some cases the claim form may be issued under rule 8.2A without first seeking permission.

29.12 One example is where the only possible defendant(s) cannot be located (*eg* no address can be given, or it is unknown if they survive), or there are too many possible defendants. The Master will then give any directions required. Applications for *Benjamin* orders may also fall into this category, as well as applications for permission to distribute the estates of deceased Lloyds' names (see below). Other cases are where the claim is for approval of a sale, purchase, compromise or other transaction by a trustee (PD 64A paragraph 1A.2), and where it is made under section 48 of the Administration of Justice Act 1985 (PD 64A paragraph 5).

Proceeding without a hearing

29.13 Once the defendant has acknowledged service the Master will consider the papers, and in particular whether it is possible to deal with the application on paper without a hearing. (In a case where there is no defendant named the Master will consider the papers immediately after issue of the claim form.) Where the claim is for approval of a sale, purchase, compromise or other transaction by a trustee, the court may be requested to deal with the case without a hearing (CPR PD 64A paragraph 1A.1), and may proceed to do so (PD 64A paragraph 1A.4)

Parties

29.14 Where a claim is between trustees or personal representatives on the one hand and third parties on the other there is generally no need to join any of the beneficiaries: CPR rule 18.7A. But where the claim relates to the internal affairs of the trust or estate it may be appropriate for at least some of the beneficiaries to be parties; if need be, the court may make representation orders in certain cases: CPR rule 18.7.

29.15 An alternative procedure is at a later stage to seek a direction from the court to serve notice of the claim (or a judgment) on a person who is not a party but may be affected by it. That person may file an acknowledgement of service and become a party, but in default of doing so is bound as if he or she were a party: CPR rule 19.8A.

Costs

29.16 Normally the trustees' costs of a proper application will be allowed out of the trust fund, on an indemnity basis (CPR rule 46.3), subject to their conduct of the proceedings having been proper and reasonable (CPR PD 46 paragraph1). The costs of beneficiaries joined as defendants may also be so allowed, in a proper case (see *Re Buckton* [1907] 2 Ch 406). Attention is drawn to PD 3F paragraph 5 which applies where a claim may be made for payment out of a trust fund (which includes the estate of a deceased person). Paragraphs 5.4 to 5.6 contain provisions which are mandatory although there is no direct sanction for non-compliance.

Beddoe Applications

29.17 Trustees or executors should bear in mind that they may need to apply, under CPR rule 64.2(a), for directions as to whether or not to bring or defend proceedings (*Re Beddoe, Downes v Cottam* [1893] 1 Chapter 547). If costs or expenses are incurred in bringing or defending the proceedings without the approval of the court or the consent of all the beneficiaries, it may not be possible to recover them from the trust fund. The application must be made by separate claim form issued under CPR Part 8, to a Master other than the assigned Master. It is likely that the Master will be able to give directions regarding costs at any stage of the proceedings.

Prospective costs orders

29.18 The court has power to make a prospective costs order in limited circumstances. Such an order directs 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: see *McDonald v. Horn* [1995] 1 All ER 961. The 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.

29.19 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 PD 64A paragraph 6 to which is annexed a model form of order.

Charity trustees' applications for permission to bring proceedings

29.20 In the case of a charitable trust, the trustees should first apply to the Charity Commission. If the Charity Commission refuses its consent to the trustees applying to the court for directions under Charities Act 2011 section 115(2), and also refuses to give the trustees the directions under its own powers, for example under sections 105 or 110, the trustees may apply to the court under section 115(5).

29.21 On such an application, which may be dealt with on paper, the Judge or Master may call for a statement from the Charity Commission of its 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. The court may, if appropriate, require notice of the hearing to be given to the Attorney-General.

Variation of Trusts Act 1958

29.22 An application for an order under the Variation of Trusts Act 1958 should be made by a Part 8 claim form. Formerly Masters could make orders under the Act only in limited circumstances, but the restrictions have now gone (they remain for District Judges). Accordingly the Master will normally exercise jurisdiction and hear the case, unless it is appropriate for some reason (eg particular complexity) to refer the matter to the Judge. It would be exceptional for an order to be made on paper, without a hearing.

29.23 If the application is to be heard by a judge, it will be listed in the General list. The previous practice of listing these applications before a judge without reference to the Master no longer applies Following the decision by Morgan J in *V v T [2014] EWHC 3432 (Ch)* it will be unusual for Variation of Trust cases to be heard in private. However, the Master or judge will consider at the hearing whether parts of the evidence should not be available for inspection on the file and whether additional safeguards are needed to protect children, born and unborn. The parties should, when they are ready to issue proceedings, attend the Master at an AWN, having lodged the papers beforehand. Provided that there are prima facie grounds for protecting confidentiality the Master will be likely to order that access to the court file should be restricted, and that the parties should be anonymous, until the hearing. In such a case the Claim Form should be issued on an anonymised basis. The Master will also consider at the AWN whether there is a reason why the application should be heard by a judge.

29.24 Where any children or unborn beneficiaries will be affected by an arrangement under the Act, evidence must normally be before the court which shows that their litigation friends (in the case of children) or the trustees (in the case of unborn beneficiaries) support the arrangement as being for their benefit, 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.

29.25 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.

29.26 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. But 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.

29.27 Where parties are represented by the same solicitors and counsel from the same chambers the court is unlikely to assess costs summarily, or to dispense with an assessment of costs on the basis that they have been agreed, 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

29.28 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.

29.29 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 is for an order to authorise the trustees to act on the basis of a legal opinion, which may deal with construction issues; it should not seek a decision of the court itself on the construction of any instrument.

29.30 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.

29.31 When the file is placed before the Master he or she will consider whether the evidence is complete and, if it is, whether it is appropriate for the Master to deal with the matter, or to send the file to the Judge.

29.32 The Master or Judge will consider the papers and, if necessary, direct service of notices under CPR rule 19.8A or request further information. If the court is satisfied that the order sought is appropriate, it will be made and sent to the claimant.

29.33 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, the Master will ordinarily direct that the case proceeds as a Part 8 claim.

29.34 If on the hearing of the claim the court 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 the court's discretion it may order such party to pay all or part of any costs thrown away.

Vesting orders – property in Scotland

29.35 In applications for vesting orders under the Trustee Act 1925 any investments or property situate in Scotland (which cannot be the subject of such an order: see the Trustee Act 1925, section 56) should be set out in a separate schedule to the claim form, and the claim form should ask that the trustees have permission to apply for a vesting order in Scotland in respect of them.

29.36 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 hereto."

Disability of Trustee

29.37 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.

29.38 The witness statement or affidavit should also show incapacity to execute transfers, where a vesting order of stocks and shares is asked for.

29.39 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.

Estates of Deceased Lloyd's Names

29.40 The procedure concerning the estates of deceased Lloyd's names is governed by a *Practice Statement* [2001] 3 All ER 765. If personal representatives need the court's

permission to distribute the estate of a deceased Lloyd's Name they should apply by 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. Ordinarily, the claim form need not name any other party and may be issued without a separate application for permission under rule 8.2A (see the *Practice Statement*).

29.41 The claim should be supported by a witness statement a form of which, together with a form of order, may be found on the gov.uk website (http://hmctsformfinder.justice.gov.uk/HMCTS/GetForms.do?court_forms_category=Chancery). 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. If not so satisfied, the Master may give directions for the further disposal of the application.

Judicial Trustees and substitute personal representatives

29.42 Judicial trustees may be appointed by the court to replace existing personal representatives 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. It should include a draft order. 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).

29.43 In practice the appointment of judicial trustees is no longer sought. Instead application is made, under s 50 of the Administration of Justice Act 1985, for the removal of a PR and the appointment of a substitute. The application will be made by Part 8 claim form, unless it is made within an existing claim, in which case it may be made by Part 23 application (CPR rule 57.13(5)). Every personal representative of the estate must be party to the claim (CPR rule 57.13(3)).

29.44 The claim can be determined by the Master, but where there is particular complexity or some other good reason it may be referred to the Judge to hear. Although such applications are required to be brought in the High Court, and are assigned to the Chancery Division, jurisdiction can be conferred upon the County Court by transfer out in an appropriate case.

Bona vacantia and trusts

29.45 Where the property of a deceased person or a dissolved company is *bona vacantia*, the relevant Crown department to be joined to legal proceedings is the Treasury Solicitor (a corporation sole). But where the deceased or the company held assets on trust, they are not *bona vacantia*: see *Re Strathblaine Estates Ltd* [1948] Ch 228. In such a case a vesting order may be sought under the Trustee Act 1925. In practice it is still the Treasury Solicitor that considers the evidence, but the relevant representative of the Crown that should be joined to the application is the Attorney General: see *Orwin v A-G* [1998] FSR 415, 419.

(2) PROBATE and INHERITANCE

Probate claims

29.46 The rules relating to contentious probate claims are contained in Section 1 of Part 57 (rules 57.2 to 57.11). The remaining provisions of Part 57 deal with other types of claim. A probate claim is defined in Part 57.1(2) as meaning "a claim for:

(i) the grant of probate of the will, or letters of administration of the estate, of a

deceased person;

(ii) the revocation of such a grant; or

(iii) a decree pronouncing for or against the validity of an alleged will;

not being a claim which is non-contentious business (or common form) probate business."

29.47 Probate claims broadly follow the same pattern as ordinary claims but there are significant differences and the rules and PD 57 should be carefully studied.

29.48 All probate claims are allocated to the multi-track and are issued using Form N2. In the Rolls Building, claims cannot be issued using Electronic Working unless (exceptionally) the court permits. This is because Part 57.5 requires the claimant to lodge the original 'testamentary documents' (see the wide definition in CPR rule 57.1(2)(c)). Original documents cannot be filed using electronic working but must be filed physically with the court. The will, and other original documents, must be clearly marked as an original document, with a front sheet marked in a font of not less than 14 point:

"CLAIM NO. XXXXXX

ORIGINAL DOCUMENT – NOT TO BE DESTROYED"

29.49 The claimant and every defendant who files an acknowledgement of service must file and serve written evidence about testamentary documents (see CPR rule 57.5(3)). A specimen form is annexed to PD57. This is an important requirement because the information provided by the parties enables the court to decide whether it is necessary for other parties either to be joined or given notice of the claim under Part 19.8A.

29.50 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 proceeds to trial and seek a direction that the claim be tried on written evidence.

29.51 If a defendant has given notice under CPR rule 57.7(5) that they raise no positive case but require that the will be proved in solemn form and that, to that end, they wish 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.

29.52 A claim may sometimes be commenced under Part 8 in which it later becomes apparent that there are substantial factual issues which need to be resolved; 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 their 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.

29.53 The proceedings may not be discontinued without permission. Particular care is needed in the compromise of probate claims and the court will not approve an arrangement unless it is satisfied the order will lead to a grant. The approach to be adopted in the order settling the claim will depend upon what is in issue in the claim, whether there are competing wills and who might benefit under the will(s) or on an intestacy. The compromise may be either under CPR rule 57.11 (leading to a grant in common form), or after a trial on written evidence under PD 57 paragraph 6.1(1) (leading to a grant in solemn form) or under s. 49 of the Administration of Justice Act 1985 and PD 57 paragraph 6.1(3) (again leading to a grant in solemn form). Under s.49 all 'relevant beneficiaries' must have agreed to the order. The class of relevant beneficiaries may be very wide and it may not be possible to obtain all the consents which are needed.

29.54 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 Rolls Building or the District Registry at which the documents are lodged.

29.55 Where an attesting witness is unable to attend the Rolls Building 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 Masters' Appointments or from 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.

29.56 When a probate claim started in the Rolls Building is transferred to or listed for trial at a court outside London, the solicitor for the party responsible for preparing the court bundle must write to Masters' Appointments (ground floor, Rolls Building) and request that the testamentary documents be forwarded to the appropriate District Registry.

29.57 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.

Rectification of wills

29.58 CPR rule 57.12 and PD 57 paragraphs 9 to 11 contain provisions which apply where a claim is made to rectify a will under s.20 of the Administration of Justice Act 1982.

Substitution and removal of personal representatives

29.59 Applications made under s.50 of the Administration Act 1985 are governed by CPR rule 57.13 and PD 57 paragraphs 12 to 14. The information specified in paragraph 13.1 of the PD is essential and must be set out fully. The application should include a draft order in Form CH 41 (http://hmctsformfinder.justice.gov.uk/HMCTS/GetForms.do?court_forms_category=Chancery), adapted as appropriate to the circumstances

29.60 Attention is drawn to the requirements of paragraph 13.2 of the PD which apply where the claim is for the appointment of a substituted personal representative. The court will not be able to make an appointment without a signed consent to act and written evidence of fitness. If the defendant proposes substitution, the provisions must also be complied with.

Inheritance (Provision for Family and Dependants) Act 1975

29.61 Claims under the Inheritance (Provision for Family and Dependants) Act 1975 in the Chancery Division 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 the County Court for trial. They are governed by Part 57 Section IV and PD 57 Section IV.

29.62 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.

29.63 A defendant must file and serve an 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. 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 PD 57 paragraph 16.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. Original documents cannot be filed using electronic working but must be filed physically with the court. The grant must be clearly marked as an original document, with a front sheet marked in a font of not less than 14 point:

"CLAIM NO. XXXXXX

ORIGINAL DOCUMENT – NOT TO BE DESTROYED"

29.64 If the court makes an order under the Act, the original grant together with a sealed copy of the order must, under PD 57 paragraph 18.2, 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.

29.65 Where claims under the 1975 Act are compromised the consent order filed must comply with Chapter 22 paragraphs 8-10.

Presumption of Death Act 2013

29.65.1 **Presumption of Death Act 2013**

A claim may be made under s.1 of the Presumption of Death Act 2013 for a declaration of presumed death where a missing person is thought to have died or has not been known to be alive for at least 7 years. Under s.5 a claim may be made for a variation order, varying or revoking the declaration. Under s.4 the court may also determine any questions relating to an interest in property and may make an order in relation to any interest in property acquired as a result of the declaration.

The claim may be issued in the Family Division or the Chancery Division. The proceedings are governed by Part 57 section V and PD 57B. The claim must be issued by Part 8 claim form (rule 57.19(1)), which must include the information required by PD 57B para1.1. It should be noted that in addition to this required information the Registrar General, who maintains a register of presumed deaths, also requires information as to the time of presumed death, and this should also be included. A draft order in form CH 42 (available at http://hmctsformfinder.justice.gov.uk/HMCTS/GetForms.do?court_forms_category=Chancery) should always be attached to the claim form, with Annex A (a Schedule of prescribed information for the General Register Office) completed.

Notice of the claim must be given by serving a copy, within 7 days after its issue, on the persons specified in PD 57B para 20(1) or (2) as appropriate. The claimant must also, within 7 days after issue of the claim form, ensure that notice of the claim is published in at least one local newspaper as specified in PD 57B para 2.1. The claimant must file a copy of the relevant page and its date of publication at least 5 days before the hearing.

Rule 8.2A (issue of claim form without naming defendants) is applied by rule 57.19 as if it read "without serving notice on any person". PD57B para 1.3 specifies that an application to issue a claim form without serving notice on any person may only be made if the application explains why the claimant believes that there is no person within rule 57.20(1) or (2).

A directions hearing will invariably be required; the role of the court in these proceedings is quasi-inquisitorial and the court must satisfy itself that the requirements of the Act are fulfilled before making a declaration. It may for example (under s.12 of the Act) at any stage require a non-party to provide information that it considers relevant to the question

whether the missing person is alive or dead. The claim should be listed for a Directions hearing not less than 28 days (and where practicable not more than 56 days) after issue, allowing time for response to notice or advertisement of the claim by persons who may be entitled to intervene – see rule 57.22 and PD 57B para 3).

Further information for litigants may be found at https://www.gov.uk/get-declaration-presumed-death/attend-a-hearing.

(3) RECTIFICATION

29.66 Claims for rectification of documents are assigned to the Chancery Division by schedule 1 of the Senior Courts Act 1981.

29.67 Rectification is a discretionary remedy and it has been said that it is a jurisdiction which is to be treated with caution: see *Racal Group Services Ltd v Ashmore* [1995] STC 1151 per Peter Gibson LJ.

29.68 It is not the practice of the court to make an order for rectification by default or by consent. The court is sometimes asked to make an order for rectification to which all relevant parties consent, but the court will not, even in such a case, make an order without being satisfied that it is justified by the evidence. The court will therefore wish to scrutinise carefully the changes that are proposed, the reasons for them and the evidence in support.

29.69 If there are fiscal consequences which will arise from the changes to the document, HMRC should be notified, preferably before the claim is issued, and invited to say if they wish to be joined as a party to the claim in order to make representations. In some circumstances the court may be able to make an order for rectification which is consented to without a hearing provided that the reasons for rectification are clearly made out in evidence and there is no objection from HMRC. However, in most cases it will be necessary for there to be a hearing at which a full explanation of the basis for making the order is explained and the court has an opportunity to raise any concerns.

29.70 Since 6th April 2015 the Masters have jurisdiction to deal with all rectification claims. The Master will only refer an application which is consented to the judge if it raises issues of particular difficulty.

(4) APPOINTMENT OF RECEIVERS

29.71 The procedure for the appointment of receivers by the court is governed by Part 69 and its PD. Applications should normally be made to a Master rather than to a High Court Judge in the Applications Court. A Guide for receivers in the Chancery Division is available on request from the Chancery Operations Manager, and is also available on the gov.uk Website http://www.gov.uk.uk//. The guide sets out brief notes on the procedure to be followed after an order has been made appointing a receiver in the Chancery Division.

29.72 Where an order has been made appointing a receiver, it is generally necessary to apply for directions, by application notice under Part 23. PD 69 paragraph 6 lists the matters on which directions will usually be given. A draft order should normally be submitted with the application notice. The application for directions should normally be made immediately after the making of the order appointing the receiver.

29.73 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 PD 69 paragraph 8).

29.74 The order appointing a receiver will normally include directions in relation to giving security, remuneration and accounts.

29.75 When a receiver has completed his or her duties, the receiver or any party should apply for an order discharging the receiver and cancelling the security.

(5) PARTNERSHIP CLAIMS

29.76 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. The Master will decide whether such issues should be tried by the Master or by a Judge. Unless they are of particular complexity (factual and/or legal) they will normally be tried by the Master. The taking of accounts will follow on from the trial.

29.77 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 of the claim. The court will, if appropriate, make a summary order under PD 24 paragraph 6 for the taking of an account by the Master (see PD 40A Accounts, Inquiries etc.).

29.78 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, e.g. 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.

29.79 The expense of taking an account in court may be disproportionate to the amount at stake. Parties are strongly encouraged to refer disputes on accounts to a jointly instructed accountant for determination as an expert or an arbitrator. Partnership claims are often suitable for mediation or alternative dispute resolution by the court (early neutral evaluation or financial dispute resolution – see Chapter 18).

29.80 The parties should try to agree a way in which the value of the partnership business and assets can be preserved. If this is not possible, the court may appoint a receiver. The functions of a receiver in a partnership claim are limited. Unlike the liquidator of a company it is not the receiver's duty to wind up the partnership. The receiver's primary function is to get in the debts and preserve the assets pending winding up by the court and the receiver has no power of sale without the permission of the court.

(6) PENSIONS

Introduction

29.81 Pensions cases form a regular part of the Chancery Division's work. Very many pension schemes, particularly occupational pension schemes, are established under trust and the court will often be asked to exercise its jurisdiction in relation to trusts. While this section highlights certain features particular to pensions schemes, reference should therefore also be made to the section of this Chapter dealing with trusts ((1) above), CPR Part 64 and PD 64A and 64B.

29.82 Not all pensions cases however are brought under the court's trusts jurisdiction. Examples are claims by trustees and/or employers for professional negligence against former advisers, or action taken under statutory powers, for example by the Pensions Regulator, or statutory appeals, for example from the Pensions Ombudsman.

29.83 If it is considered that specialist knowledge of pensions is required, application may be made to the Chief Master for a pensions case to be assigned to Master Teverson: see Chapter 15 paragraph 12.

Starting proceedings

29.84 Many pensions claims are brought under Part 8. This is suitable where there is unlikely to be a substantial dispute of fact, and is required by CPR rule 64.3 where the claim is for the determination of any question arising in the execution of a trust or under s. 48 of the Administration of Justice Act 1985. The trustees are usually the claimants, applying to court for the determination of questions of construction, or seeking directions, but questions arising in the execution of the trusts can be brought before the court by any party with a sufficient interest. If the trustees are not the claimants they should be joined as defendants even if no specific relief is sought against them. Pensions proceedings may be entitled "In the Matter of the [ ] Pension Scheme" (see Chapter 8 paragraph 8 (iv)) and it is often helpful to do so.

29.85 Some claims may be capable of being issued without naming any defendants under CPR rule 8.2A. If the trustees consider that their case is in that category they must apply to the court in accordance with PD 64B paragraph 4.2. More usually, the trustees will wish to ensure that all those potentially interested in the question, which will very often be both the employer(s) and the members, are made parties or represented. See below under Representative Beneficiaries.

29.86 It may be necessary to consider the potential impact of the litigation on the Pension Protection Fund: see the comments of Morritt C in *Capita ATL v Zurkinskas* [2010] EWHC 3365 (Ch) at [22].

29.87 Claims may sometimes be commenced under Part 8, but in which it becomes apparent that there are substantial factual issues which need to be resolved; in such a case the court may order the claim to continue as if commenced under Part 7, or may give specific directions for statements of case on particular issues, attendance of witnesses for cross-examination, disclosure etc.

29.88 Some pensions claims are more suited to Part 7 and should be issued under Part 7 in the first place. Examples include actions by trustees and/or employers against former advisers for professional negligence, and actions to recover trust property paid away in breach of trust. No special provisions apply to such claims, but trustees who are proposing to sue third parties, or who are sued by them and wish to defend the action at the expense of the trust fund, may wish to apply for directions in accordance with the *re Beddoe* procedure: see under Trusts ((1) above) paragraph 17, and PD 64B paragraphs 7.1 to 7.12. Trustees and their advisers should consider whether *Beddoe* proceedings are necessary: if trustees are adequately indemnified against costs in any event (for example by the principal employer), applying for *Beddoe* relief is likely to be unnecessary; there are also cases in which it is likely to be so clear that the trustees ought to proceed as they wish that the costs of making the application may not be justified in comparison with the size of the fund or the matters in issue.

29.89 If such an application is made, it is made by Part 8 claim and must be made in separate proceedings from the main proceedings, and assigned to a different Master. When issuing the *Beddoe* claim therefore, the issuer needs to know the name of the Master assigned to the main claim in order to be able to tell the court staff that he/she should not be allocated to the *Beddoe* claim. Although the general rule under CPR rule 39.2 is that hearings are to be in public, *Beddoe* proceedings are usually heard in private, and will be listed in private in the first instance (PD 39A paragraph 1.5(10)). Even if heard in private, the court may think it appropriate to publish the judgment, if necessary in a redacted form: see eg *Spencer v Fielder* [2014] EWHC 2768 (Ch).

29.90 Actions for rectification of a scheme's trust deed or other governing documentation, if likely to be contentious, must be commenced by Part 7 claim. Some rectification cases are in practice uncontentious; if it is known that there will be no significant dispute, the claim may be commenced under Part 8, or, (whether commenced under Part 7 or Part 8), may be made the subject of an application for summary judgment under Part 24. Rectification is always a matter for the court however and cannot be obtained in default or by consent: see under Rectification ((3) above, paragraphs 1-5). See below under Representative Beneficiaries for the procedure where a defendant to a rectification claim is acting in a representative capacity and considers it appropriate not to defend the claim.

Representative beneficiaries

29.91 The use of one or more representative beneficiaries to represent the interests of members under CPR rule 19.7(2) is a standard feature of most pensions claims. The number of representatives and classes represented should be kept to the minimum necessary to enable the court to be satisfied that it has heard full argument on behalf of all those interested. It is often convenient to make an "issue-based" representation order, that is for the representative to be appointed to represent all those interested in an issue being resolved in a particular way: see *Capita ATL v Zurkinskas* [2010] EWHC 3365 (Ch). If the trustees are in doubt as to who to join, see PD 64B paragraph 4.3.

29.92 Representative beneficiaries will almost always have to be funded at the expense of the scheme and for that purpose it will be necessary to obtain a prospective costs order. Details of a proposed order are usually agreed by the trustees' solicitors and solicitors for the proposed representative and put before the Master for approval at the first hearing. For the procedure generally see under Trusts (1 above) and note the reference to a model order annexed to PD 64A.

29.93 CPR rule 19.7(2) does not specifically require that the representative be a member of the class represented, although this is usually the case. The court's overriding concern is to see that the interests of all those represented are protected, and for this purpose the court will be willing to appoint a non-member of the class if the circumstances warrant it: see eg *Sovereign Trustees v Glover* [2007] EWHC 1750 (Ch) and *Walker Morris Trustees Ltd v Masterson* [2009] EWHC 1955 (Ch), in each of which solicitors were appointed representatives. In some circumstances a person may even act as a representative for a class although his personal interests are opposed to the position he is advancing: see *Thompson v Fresenius Kabi Ltd* [2013] Pens LR 157.

29.94 Moreover, in some cases the interests of some classes of members are aligned with those of the employer(s), and an employer can properly be appointed to represent their interests; in other cases, the trustees (who would normally be neutral) may agree to be appointed to represent the members or some class of them to save costs: see eg *Premier Foods v RHM Pension Trust* [2012] EWHC 447 (Ch), *Arcadia Group Ltd v Arcadia Group Pension Trust Ltd* [2014] EWHC 2683 (Ch). This procedure is a useful one, particularly on pure questions of construction or law where there are only two possible outcomes; it is not suitable for all cases and is unlikely for example to be suitable where there are questions as to what the trustees did, particularly if there is any criticism of the trustees' conduct.

29.95 If a compromise is proposed in proceedings in which a representative is to be or has been appointed under CPR rule 19.7, the court's approval is required, and the court may only approve the compromise where it is for the benefit of the represented persons; CPR rule 19.7(5) and (6). For this purpose it will almost invariably require an opinion on the merits of the proposed compromise from counsel instructed on behalf of the represented class. Such an opinion is normally confidential and not served on or shown to the other parties. The application for the court's approval should be in public, but discussion of the merits of the proposed compromise from the point of view of the represented class will usually take place in private and in the absence of the other parties.

29.96 A similar practice applies where a defendant acting as a representative does not consider it appropriate to oppose the relief sought. Examples of this have arisen in claims for rectification of pension scheme rules. In such unopposed applications for summary judgment, a practice has built up for the hearing to be held in open court, but submissions on behalf of the representative party as to the merits of the summary judgment application to be held in private and in the absence of the claimant: see eg *Misys Ltd & Anor v Misys Retirement Benefits Transfers Limited & Anor* [2012] EWHC 4250 (Ch) at [20] and *Konica Minolta Business Solutions (UK) Limited v Applegate & Ors* [2013] EWHC 2536 (Ch) at [7]. The position is however currently unsettled: in *Saga Group Limited v Paul [2016] EWHC 2344 (Ch) at [22]* the Court concluded that the applications should not be heard using the confidential approach, and in *Sovereign Trustees Limited v Lewis [2016] EWHC 2593 (Ch) at [37]* (heard before Saga but judgment given later) Chief Master Marsh observed that the confidential approach worked well before him.

Consultation or notification

29.97 Although there is no requirement to consult with or notify members of a pension scheme when it is proposed that a person be appointed under CPR 19.7(2) to represent their interests, in the context of unopposed summary judgment applications it has been said that notification is desirable or good practice: *Industrial Acoustics Company Ltd v Crowhurst* [2012] EWHC 1614 (Ch) at [60] and *CitiFinancial Europe Plc v Davidson* [2014] EWHC 1802 (Ch) at [7]. The scheme's trustees would ordinarily be the appropriate persons to notify members of what is proposed.

29.98 The same considerations would also apply where the court's approval is sought under CPR 19.7(6) to the settlement of a claim.

29.99 Where members have not been notified and are unaware of the proposed compromise, the court might decide to postpone the effective date of any order for a short period to allow any person affected by it to apply to the court if he or she considers that, due to circumstances which are particular to them, they should not be bound: *Smithson v Hamilton* [2008] EWCA Civ 996 at [13]-[15] (period 28 days), and *Archer v Travis Perkins PLC* [2014] EWHC 1362 (Ch) at [26]-[28] (period 42 days).

s 48 Administration of Justice Act 1985

29.100 The jurisdiction conferred on the High Court by s. 48 of the Administration of Justice Act 1985 may be invoked by trustees where any question of construction has arisen out of the terms of a trust. See generally under Trusts ((1 above).

29.101 Whilst the jurisdiction is particularly well suited to construction issues arising in relation to a trust of modest value where a conventional *inter partes* application would be prohibitively expensive, it may be (and has been) successfully invoked in cases involving occupational pension schemes of substantial size where the question concerned has been sufficiently clear so as to be an appropriate one to deal with under s. 48.

29.102 In the case of a pension scheme, the employer is not a necessary party to the application, nor will any order made either be directed to it (as opposed to, and affording protection to, the applicant trustees) or prevent a member from subsequently asserting a claim, either by legal proceedings or before the Pensions Ombudsman, which is inconsistent with an order made under s. 48. The effect of an order under s. 48 is to protect the trustees against any complaint that they have wrongly administered the scheme but it does not bind any of the members or potential beneficiaries of the scheme: see *re BCA Pension Plan* [2015] EWHC 3492 (Ch) at [36].

29.103 S.48 is intended for use in clear cases only; it will not provide, and an applicant therefore should not seek, a binding decision on the question of construction which has arisen. In a particular case the court may consider that, as a matter of discretion, it would be preferable to have the issue finally and bindingly resolved at a substantive hearing, as

opposed to its merely being made the subject of directions to the trustees, especially where conflicting opinions have been expressed by different counsel advising the trustees: see *Greenwold v Pike* [2007] EWHC 2202 (Ch).

29.104 Where the court makes an order, it may require the trustees to notify the members in some suitable fashion: see generally *re BCA Pension Plan* [2015] EWHC 3492 (Ch) at [37]-[43].

Appeals from the Pensions Ombudsman

29.105 Appeals from determinations or directions of the Pensions Ombudsman lie on a point of law to the High Court under s.151(4) of the Pension Schemes Act 1993, and are assigned to the Chancery Division by PD 52D paragraph 5.1(8). The permission of the High Court is required for such appeals under CPR rule 52.29.

29.106 Although the default time limit for filing an appellant's notice is 21 days from the date of the decision appealed against (CPR rule 52.4(2)(b)), the Ombudsman may direct a longer period (CPR rule 52.4(2)(a) and see CPR rule 52.1(3)(c) under which "lower court" includes the person from whose decision an appeal is brought) and has given a general direction for England and Wales that the person wishing to appeal must lodge the appeal within 28 days after the date of an Ombudsman determination.

29.107 The attention of appellants is drawn to PD 52D paragraph 3.4(1) under which the appellant must serve the appellant's notice on the person from whose decision the appeal is brought. This is particularly important in the case of Ombudsman appeals as the Ombudsman may wish to appear on the appeal if it potentially affects his jurisdiction or practice.

29.108 Where scheme members appeal, they are frequently unrepresented. In such a case the respondent (trustees or employer or other as the case may be) should take it upon themselves to confirm both that the Ombudsman has been served with the appellant's notice and that the material put before the court includes all material that was before the Ombudsman and is potentially relevant to the appeal.

(7) COMPETITION LAW CLAIMS

Introduction

29.109 Proceedings (other than those in the Commercial Court) relating to the application of competition law, namely the application of Articles 101 and 102 of the Treaty on the Functioning of the European Union ("TFEU") (formerly Articles 81 and 82 of the EC Treaty) and the equivalent provisions of the Competition Act 1998, must be brought in the Chancery Division. They are governed by CPR Part 30 and its Practice Direction.

29.110 Many Judges of the Chancery Division also sit in the Competition Appeal Tribunal ("CAT"), in their capacity as Chairmen of the CAT. This Guide discusses the jurisdiction of the CAT only insofar as it is relevant to the transfer of competition law claims from the High Court to the CAT and from the CAT to the High Court. Further information about the CAT is available on its website at www.catribunal.org.uk.

Nature of competition law claims

29.111 Claims relating to the application of competition law brought in the Chancery Division typically take the form of injunction applications seeking to restrain alleged breaches of competition law, or private actions for damages for alleged breaches of competition law.

29.112 Private actions for damages may be characterised as "follow-on" claims, "stand-alone" claims or a hybrid of both types of claims. So-called "follow-on" claims follow on from a pre-existing finding, by one of the UK competition authorities or by the European Commission (or by a court or tribunal on appeal from one of those bodies), that there

has been an infringement of UK or EU competition law. In contrast, "stand-alone" claims are claims in which the court is asked to make a finding of infringement.

29.113 Competition law claims are by their nature complex and frequently involve consideration of economic or technical issues.

Practice Direction – Competition law

29.114 The Practice Direction on Competition Law (Claims relating to the application of Articles 81 and 82 of the EC Treaty (now Articles 101 and 102 of the TFEU) and Chapters I and II of Part I of the Competition Act 1998) sets out certain requirements in relation to competition law claims. Many of these requirements are derived from those provisions of Council Regulation (EC) No.1/2003 (on the implementation of the rules on competition laid down in the Treaty) which provide for co-operation between the European Commission and the national courts of EU Member States.

29.115 In addition to transfers of competition law claims (discussed in further detail below), the Practice Direction covers the following matters relevant to claims raising Article 101/102 issues:

- The requirement to serve a copy of the statement of case on the Competition and Markets Authority (formerly the Office of Fair Trading) at the same time as it is served on the other parties to the claim;
- The procedure by which national competition authorities and the European Commission may submit observations to the court on issues relating to the application of Articles 101 or 102;
- The obligation on the parties and the national competition authorities (where those authorities have been served with a copy of the statement of case) to notify the court of any decision, or contemplated decision, of the European Commission which has or would have legal effects in relation to the particular agreement, decision or practice in issue before the national court, in order to avoid a conflict with any such decision; and
- The requirement to notify relevant judgments to the European Commission.

Transfer of competition law claims to the Chancery Division from other divisions of the High Court or the County Court

29.116 Where a party's statement of case raises an issue relating to the application of competition law and the claim has not been commenced in the Chancery Division (or, if applicable, the Commercial Court), the claim must be transferred to the Chancery Division, in accordance with and subject to the provisions of CPR rule 30.8 and paragraph 2 of the Practice Direction on Competition Law. The claim, or part of the claim, may subsequently be transferred to another court if the issue relating to the application of competition law has been resolved, or the judge considers that the claim or part of the claim to be transferred does not involve any issue relating to the application of competition law.

Transfer of competition law claims to or from the CAT

29.117 In an appropriate case, competition law claims may, in whole or in part, be transferred from the Chancery Division to the CAT pursuant to section 16(1) of the Enterprise Act 2002 and the Section 16 Enterprise Act 2002 Regulations 2015 (S.I. 2015 No. 1643), and/or section 16(4) of the Enterprise Act 2002. Paragraphs 8.1-8.6 and 8.10-8.13 of PD 30 (as in force from 1 October 2015) make provision for such transfers. The High Court may order a transfer on its own initiative or on application by the claimant or defendant. When deciding whether to make an order, the court must consider all the circumstances of the case including the wishes of the parties. The first such transfer order was made in *Sainsbury's Supermarkets Ltd v MasterCard Incorporated and Others*

[2015] EWHC 3472 (Ch), in which Barling J considered the reasons why such a transfer might be appropriate.

29.118 Similarly, the CAT may, in an appropriate case, direct that all or part of a claim before it be transferred to the Chancery Division, pursuant to section 16(5) of the Enterprise Act 2002. PD 30 paragraphs 8.7-8.9 make provision for such transfers. Following any such transfer, the High Court must allocate a case number and list the case for a case management hearing before a judge.

Damages Directive

29.119 Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, known as the Damages Directive, is due to be implemented in the UK by 27 December 2016. The implementation of the Damages Directive may necessitate amendments to the CPR prior to the end of 2016.

(8) COURT FUNDS (Payments into and out of court)

29.120 Reference should be made to CPR Part 37 and PD 37, and the Court Funds Rules 2011.

Payments into court

Mortgagees

29.121 Mortgagees wishing to lodge surplus proceeds of sale in court under s.63 of the Trustee Act 1925 must in their witness statement, in addition to the matters set out in 37PD 6.1:

(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 prior chargees (if any) and the mortgagor, and why those steps have not been successful;

(2) exhibit office copy entries of the mortgaged property.

29.122 Failure to do so will usually result in their application being rejected by the court.

Payments out

Application

29.123 Applications under PD 37 for payment out of money held in court must be made by Part 23 application notice (Form N244). The application notice and the court fee should be sent to the Miscellaneous Payments Clerk – Masters' Appointments/Case Management Section. The following details must be included in Part C of the application notice:

- The reasons why the payment should be made
- A statement confirming that no-one else has any claim to the money (or if there is another claimant providing details of that person and their interest)
- Bank details of the person to whom the payment out of court should be made including the name and address of the bank/building society branch, its sort code, and the account title and number

29.124 The Statement of Truth must be completed and signed.

29.125 Copies of documents which show an entitlement to the money in court and as to identity (as to which see below) must be exhibited to the application notice. The court may in some cases require certified copies or the original documents. Documents may be certified by a solicitor or any other person on the list of persons who may approve a passport application as long as the certifier provides his/her name and status legibly and

signs each copy; or copies may be certified at a Post Office. Where an original document is sent, this should be stated in the covering letter and its return requested.

29.126 Approval is shown not by a formally drawn order, but by signing the payment schedule in Form CFO 200. Failure to set out what steps have been taken and why they were unsuccessful will usually result in the application being rejected by the court.

Determination of the application by the court

29.127 If there is a dispute as to entitlement to money in court, the Master will generally transfer the matter to the County Court. If, exceptionally, it is appropriate for the case to be retained in the High Court in London (for example if significant sums are involved or there are other linked proceedings) the Master may order it to proceed by Part 8 claim form (see Chapter 8 above) and may list it for disposal or directions. If there is no agreement it may be necessary for there to be an inquiry into competing claims; for example, where moneys have been paid into court under the Trustee Act following sale by a mortgagee, there may need to be an inquiry into the beneficial interests of joint owners and/or priorities between other secured lenders. In all other cases (except as stated below) the application will be considered without a hearing and if the application makes out an entitlement to the funds in court, or part of them, the payment out of court will be approved.

29.128 Where the applicant is a joint owner of property the Master will normally allow payment out of one-half of the money in court, but not of the other half unless the joint owner consents.

29.129 If the application is made by a person with a benefit of a charging order, the Master will require to be satisfied

(1) in the case of joint ownership, as to whether that charging order extends to the whole of the proceeds of sale or only to the share of the proceeds of sale of one of the co-owners;

(2) that there are no persons with a prior interest e.g. legal or equitable chargees.

Evidence of entitlement

29.130 The person claiming to be entitled to funds held in court must produce evidence of their entitlement to the fund. This may be one of the following documents:

- CFO account statement
- Sealed copy of court order
- Where the person entitled to the funds has died, a sealed copy of the grant of representation (grant of probate or letters of administration)
- Where there is more than one personal representative the written consent (or death certificate, if deceased) of every other representative (together with evidence of their identity – see below)
- Where the value of the estate is less than £5,000, a copy of the will (or written declaration of kinship if the person died intestate) and death certificate of the deceased, rather than a copy of the grant of representation
- In the case of money paid in by a bank or building society (as mortgagee), or by a trustee, the paying-in witness statement or affidavit
- Where the application is made by a dissenting shareholder, the relevant share certificates
- Where the applicant is the former land owner in an application for payment of monies paid into court following a compulsory purchase, documents evidencing title to the land at the relevant time and notice of the compulsory purchase order

Evidence of identity

29.131 The person claiming entitlement must normally produce evidence of their identity (unless the application is made on their behalf by a solicitor or other legal representative). This may be one of the following documents:

- Passport or UK travel document
- Driving licence
- UK identity card for foreign nationals, residence permit or travel documents issued by the Home Office
- European Community or European Economic Area identity card
- Alternatively, a birth or adoption certificate may be provided, but is not absolute proof of identity and must be accompanied by one other supporting document:
- National insurance card or a letter from the Department of Work and Pensions showing NI number
- The front page of a benefits book or a letter concerning state pension and showing NI number
- P45, P60 or payslip
- Student union card
- Marriage certificate
- Decree nisi or decree absolute
- Bank or building statement issued in the last 3 months

Evidence of name or address change

29.132 Where the person claiming entitlement has changed their name, they must also produce

- Marriage or civil partnership certificate
- Decree nisi or decree absolute
- Deed poll declaration
- Adoption certificate

29.133 The evidence must show a clear link between the name shown on the evidence of entitlement and the person's current name.

29.134 Where the person claiming entitlement has changed their address, they must produce

- 2 of the following documents evidencing their previous address – utilities or council tax bill, or bank/building society statement from the relevant time
- Utilities bill or bank/building society statement issued within the last 3 months

29.135 Reference should be made to CPR Part 37 and the accompanying PD, 37PD, and the Court Funds Rules 2011.

Chapter 30 Chancery business outside London

1. Outside London there are ten Chancery District Registries. These are located at Court centres in Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle-upon-Tyne, Preston, Mold and Caernarfon. Hearings may also take place in other court centres. The Registries are divided into two areas, one comprising the Midlands, South West and Wales and the other the North and North East. A Chancery High Court Judge located in the Rolls Building supervises each area. Disputes are determined by a High Court Judge, a specialist Chancery Circuit Judge or a District Judge, depending upon the complexity, value and length of the proceedings.

2. The supervising Judge for the Midlands, South West and Wales areas is Mr Justice Newey. His clerk is Gary Clark (020 7200 7467, email gary.clark@hmcts.gsi.gov.uk).

3. The Midland circuit has three Chancery Senior Circuit Judges: Judge Charles Purle QC, Judge David Cooke and Judge Simon Barker QC. They are all based at the Birmingham Civil Justice Centre, the address of which is Priory Courts, 33 Bull Street, Birmingham B4 6DS and the telephone number of which is 0121 681 4441. Emails can be sent to birmingham.chancery@hmcts.gsi.gov.uk .

4. The Chancery Senior Circuit Judge in the Western circuit is Judge Patrick McCahill QC. He is based at the Bristol Civil Justice Centre, the address of which is 2 Redcliff Street, Bristol BS1 6GR and the telephone number of which is 0117 366 4800. Emails can be sent to BristolChancerylisting@hmcts.gsi.gov.uk.

5. The Chancery Senior Circuit Judge in Wales is Judge Milwyn Jarman QC. He is based at the Cardiff Civil Justice Centre, the address of which is 2 Park Street, Cardiff CF10 1ET and the telephone number of which is 029 2037 6400. Judge Jarman also sits elsewhere in Wales on a regular basis. Emails can be sent to enquiries@cardiff.countycourt.gsi.gov.uk .

6. The supervising Judge for the Northern areas is the Vice-Chancellor of the County Palatine, Mr Justice Norris. His clerk is Adham Harker (020 7073 1728, email adham.harker@hmcts.gsi.gov.uk.

7. At Manchester Civil Justice Centre (1 Bridge Street West, Manchester, M60 9DJ) the Chancery Senior Circuit Judges are HHJ Pelling QC, HHJ Hodge QC and HHJ Bird. The Mercantile Judge, HHJ Moulder, and the TCC Judges, HHJ Raynor QC and HHJ Stephen Davies, are cross-ticketed to hear Chancery cases. The Chancery District Judges are DJ Khan, DJ Obodai, DJ Bever, DJ Matharu and DJ Richmond.

8. At the Liverpool Civil and Family Court (35 Vernon Street, Liverpool, L2 2BX) a Chancery judge is listed to sit one week each month (and otherwise by arrangement). The judge responsible for the Court is HHJ Hodge QC. The Chancery District Judges are DJ Sykes, DJ Wright and DJ Benson.

9. At Preston Combined Court (Openshaw Place, Ringway, Preston, PR1 2LL) the Chancery District Judges are DJ Anson, DJ Burrows and DJ Knifton.

10. At Leeds Combined Court Centre (1 Oxford Row, Leeds, LS1 3BG) the Chancery Senior Circuit Judge is HHJ Davis-White QC. The TCC judge, HHJ Raeside QC, is cross-ticketed to hear Chancery cases. HHJ Saffman also hears Chancery matters (by arrangement with the Designated Civil Judge). The Chancery District Judges are DJ Goldberg, DJ Troy, DJ Pema and DJ Siobhan Kelly.

11. At Newcastle Combined Court Centre (Quayside, Newcastle upon Tyne, NE1 3LA) a Chancery judge is listed to sit at Newcastle one week each month (and otherwise by arrangement). The judge responsible for the court is HHJ Davis-White QC. The Chancery District Judges are DJ Kramer, DJ Loomba, DJ Atherton, DJ Jackson, DJ Pescod and DJ Derek Morgan. DJ Temple also sits in Chancery matters.

12. The following are the court addresses, telephone and email addresses for the courts at which there are regular Chancery sittings outside London:

Birmingham	The Priory Courts, 33 Bull Street, Birmingham B4 6DS Chancery Listings: Christine Baker 0121 250 6229 Email chris.baker@hmcts.gsi.gov.uk Shared in box birmingham.chancery@hmcts.gsi.gov.uk
Bristol	Bristol Civil Justice Centre, 2 Redcliff Street, Bristol BS1 6GR DX95903 BRISTOL 3 General switchboard: 0117 3664800 Chancery listings: Amy Smallcombe 0117 3664833 Email: amy.smallcombe@hmtcs.gsi.gov.uk bristolchancerylisting@hmcts.gsi.gov.uk
Cardiff	The Civil Justice Centre, 2 Park Street, Cardiff CF10 1ET Diary Manager for Wales: Annette Parsons 02920 376424 Email: annette.parsons@hmcts.gsi.gov.uk hearings@cardiff.countycourt.gsi.gov.uk
Leeds	The Court House, 1 Oxford Row, Leeds LS1 3BG Chancery Listings: Richard Marsland 01132 458788 Email: richard.marsland@hmcts.gsi.gov.uk Applications/orders: orders@leeds.districtregistry.gsi.gov.uk Skeletons: hearings@leeds.countycourt.gsi.gov.uk
Liverpool	35 Vernon Street, Liverpool, Merseyside L2 2BX DX 702600 Liverpool Chancery Listings: Liz Taylor 0151 2962445 0151 Email: elizabethtaylor6@hmcts.gsi.gov.uk No shared Inbox

Manchester	Manchester Civil Justice Centre, 1 Bridge Street West, Manchester, Greater Manchester M60 9DJ DX 72483 Manchester 44 Chancery Listings Manager: Julie Bagnall 0161 240 5223 Email: juliebagnall@hmcts.gsi.gov.uk Shared Inbox manchester.chancery@hmcts.gsi.gov.uk
Newcastle	The Law Courts, Quayside, Newcastle-upon-Tyne NE1 3LA Chancery Listings: Brian Redhead 0191 2302056 Email: brian.redhead@hmcts.gsi.gov.uk Shared Inbox: civil@newcastle.countycourt.gsi.gov.uk
Preston	The Law Courts, Openshaw Place, Ringway, Preston PR1 2LL Diary Manager: Bernadette Gregson 01772 844713 Email: bernadettegregson@hmcts.gsi.gov.uk Angela Moizer centralisedcivillisting@hmcts.gsi.gov.uk
Mold	Listings Managers (Based in Wrexham): Beth Sear 01978 317406 Tracey Patterson Email: northwalescivillisting@hmcts.gsi.gov.uk
Caernarfon	Caernarfon County Court & Family Court Hearing Centre Llanberis Road Caernarfon Gwynedd LL55 2DF Listing staff: Jared Hughes 01286 684600 Email: enquiries@caernarfon.countycourt.gsi.gov.uk

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 Region):

West Side:07748 542966

East Side: 07748 613886

Bristol: 07795302944

South-East Wales: 07699618086
North Wales: 07699618087
Manchester: 07554459626
Preston: 07554459606
Newcastle 07917270988
Leeds: 07810181828