Courts and Tribunals Judiciary

The Business and Property Courts of England & Wales

Chancery Guide 2022

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Chapter 1 Introduction

About the Business & Property Courts

1.1 The Business & Property Courts ('B&PCs') comprise the Chancery Division, the Commercial Court and Admiralty Court and the Technology and Construction Court. The B&PCs became operational on 2 October 2017. The Chancellor of the High Court (the 'Chancellor'), currently Sir Julian Flaux, has oversight of the day-to-day running of the B&PCs in consultation with the President of the King's Bench Division. Details about the operation of the B&PCs can be found in CPR PD 57AA.

1.2 The B&PCs are part of the High Court. In **London** they are based in the Rolls Building at 7 Rolls Buildings, Fetter Lane, London EC4A 1NL. Contact details for the B&PC Judges in London can be found at Appendix B. The Chancery Division in London is referred to in this Guide as "ChD B&PCs London".

1.3 Business and Property Courts District Registries ('B&PC District Registries') have been established in **Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester and Newcastle.** Cases that fall within the ambit of the B&PC District Registries are heard there by specialist Business and Property judges.

1.4 The Chancellor supervises the Chancery lists in the B&PCs in London and on the South Eastern Circuit. A Chancery Division High Court Judge ('HCJ') supervises the Chancery work including the Business and Property lists outside the South-East ('Supervising Judge'). Mr Justice Fancourt is the Vice-Chancellor of the County Palatine of Lancaster and Supervising Judge for the Northern and North-Eastern Circuits. Mr Justice Michael Green is the Supervising Judge for the Midlands, Wales and Western Circuits.

1.5 There were previously an additional 3 regional Chancery District Registries: Caernarfon, Mold and Preston. Since the advent of electronic working, no new Chancery Business and Property Courts claims are issued in these District Registries, though B&PC specialist judges may hear cases at them. Contact details for each of the B&PC District Registries (and the former Chancery District Registries) are at Appendix C. Further details can be found on the judiciary website.

1.6 The work of the Chancery Division is divided up between several specialist lists, sub-lists and courts. A complete list of the Chancery Division lists and sub-lists and courts (together with a non-exhaustive description of the types of cases dealt with in each list, sub-list and court) is found at Appendix F.

1.7 A claim should be issued in the list and/or sub-list and/or court with which its subject-matter has the closest connection. In addition to the Chancery Division, lists, sub-lists and courts in the B&PCs include the Commercial Court, the Admiralty Court, the Circuit Commercial Court (formerly known as the Mercantile Court) and the Technology and Construction Court. The Financial List is a joint list of the Chancery Division and the Commercial Court. Cases issued in the ChD B&PCs London will be assigned to and heard in the relevant list, sub-list or court by a B&PCs judge.

1.8 Cases in the B&PC District Registries issued in the specialist lists, sub-lists and courts will be listed in the Business and Property lists and heard by specialist B&PC judges. Further details can be found on the Judiciary website including links to any local guidance.

1.9 In addition to the ChD B&PCs London and the 7 B&PC District Registries some specialist work of the type undertaken in the B&PCs is undertaken in specialist Business and Property lists by the County Court at 9 of its hearing centres around the country: Birmingham, Bristol, Cardiff, Leeds, Liverpool, Central London, Manchester, Newcastle and Preston (as defined in CPR PD 57AA, para 4.2). In London that work is undertaken in the County Court sitting at Central London. The County Court at Central London has its own Guide to Business & Property Work at Central London.

1.10 Contact details for each of the County Court hearing centres are at Appendix C. Further details can be found on the gov.uk website.

About the Chancery Division

1.11 The Chancery Division is based in the Rolls Building and in the B&PC District Registries. The Rolls Building is the largest court centre for handling specialist financial, business and property cases in the world. The Chancery Division undertakes a broad range of civil work, much of which is business and property litigation. There is a strong international element to much of the work and many claims are high value and complex. See Appendix F for a brief description of each specialist list, sub-list and court.

1.12 There are currently 18 HCJs (in addition to the Chancellor) attached to the Chancery Division. Other HCJs may sit in retirement. They generally sit in London (other than the Supervising Judges, who regularly sit on circuit) but will be deployed to B&PC District Registries as required to try the most substantial cases. There are also 6 Judges called ‘Masters’ (one of whom is the Chief Master) and 7 Insolvency and Companies Court Judges (‘ICC Judge(s)’) (one of whom is the Chief ICC Judge), who sit in the Rolls Building. A list of the judges and their clerks is in Appendix B.

1.13 In addition to the HCJs, ICC Judges and Masters, the business of the Chancery Division is conducted in the B&PC District Registries by specialist civil judges authorised to sit as judges in the High Court pursuant to section 9(1) of the Senior Courts Act 1981 (‘Section 9 Judges') and by specialist District Judges. The work of these specialist civil judges is supplemented by fee-paid deputy HCJs appointed pursuant to section 9(4) of the Senior Courts Act 1981 (‘Deputy HCJs’), deputy ICC Judges, deputy Masters and, in the B&PC District Registries, by Recorders and deputy District Judges. All such deputies are approved specialist judges.

About this Guide

1.14 This is the first new edition of the Chancery Guide (the ‘Guide’) since February 2016. Much has changed since that time and the Guide has been wholly re-written to take account of changes in the way that the Chancery Division courts operate,

technological changes, and new practices that have evolved, particularly during the COVID-19 pandemic.

1.15 Work has been carried out to seek to align the content of this Guide, the Commercial Court Guide and the Technology and Construction Court Guide where practices in the Chancery Division and in those courts should be substantially the same, though there are many areas of practice that are different and where different guidance is appropriate. There has also been alignment of guidance on work of the Masters and deputy Masters with guidance on work of the HCJs, Section 9 Judges and Deputy HCJs. To that end, this Guide uses the term 'judge' to refer to Masters, ICC Judges, HCJs Deputy HCJs and Section 9 Judges alike. Where it is necessary to distinguish between them, the terms 'Master', 'ICC Judge', 'Section 9 Judge' 'Deputy HCJ' and 'High Court Judge' or 'HCJ' are used.

1.16 In the B&PC District Registries there are specialist B&PC District Judges and deputy District Judges. The allocation of work between the Section 9 Judges and the District Judges in the B&PC District Registries is a matter of local practice and may be the subject of local guidance. However, where appropriate, references to 'judge' in this Guide includes District Judge and deputy District Judge.

1.17 This Guide applies in general to cases in the Chancery lists in all the B&PCs (including the B&PC District Registries). Some chapters, sections and particular guidance are, however, specific to the working of the lists in the Rolls Building in London. Where that is so, any local guidance or established practice in the B&PC District Registries should be followed. Links to current regional guidance can be accessed through Appendix C and/or may be found on the judiciary website which has separate pages for each B&PC District Registry.

1.18 Where there is no specific local guidance, parties should apply the Guide in an analogous way that is most likely to serve the overriding objective and, if in doubt, consult the local court.

1.19 The distribution of cases between judges in the Chancery Division in London and in the B&PC District Registries is governed by the practice of the court in which the case is being conducted, the availability of judicial resources and any limits on jurisdiction set out in PD2B 'Allocation of cases to level of the Judiciary'. Further guidance is provided in relation to the distribution of business between different levels of judge in the ChD B&PCs London throughout this Guide, with links where appropriate to information concerning the distribution of business between different levels of judge in the B&PC District Registries.

1.20 For guidance on the distribution of business for Insolvency and Companies List ("ICL") cases, see Chapter 21 and the Insolvency PD paragraph 3. Much of the work in the ICL is done by ICC Judges in London, though very large or complex cases are heard by HCJs, Section 9 Judges and Deputy HCJs. In the B&PC District Registries, the District Judges deal with shorter hearings and Section 9 Judges with longer hearings and most trials. Allocation and distribution of business between the judges and as between the B&PC District Registries and the County Court outside London is a matter for the local judges and/or as provided for in the Insolvency PD.

1.21 This is the first digital edition of the Guide. The Guide is written so as to be clear and easily used and navigated online. There is substantial use of hyperlinks to other parts of the Guide and its appendices and to related content, such as the Civil Procedure Rules (the 'CPR'), Practice Notes and other relevant statutory material. The Guide accordingly does not rehearse or repeat the content of these materials unless in giving guidance it is helpful to do so. A direct link is provided instead. The editors have aimed, in consequence, to shorten some of the narrative content, where possible. There are however some new chapters, and some existing material has been merged or relocated.

1.22 The reader will see that after this introductory chapter:

(a) Part 1 of the Guide follows a chronological line from the issue of the proceedings and the parties to them, through statements of case, case management and the procedures leading up to trial, whether of a Part 7 or Part 8 claim;

(b) Part 2 deals with applications and orders;

(c) Part 3 addresses in turn the work carried out in the various Chancery lists in the B&PCs and gives guidance on specialist Chancery work; and

(d) Part 4 deals with matters after the trial and ancillary issues.

1.23 There is a Glossary, which sets out the defined terms and abbreviations used frequently in this Guide. All terms and abbreviations are also defined when used for the first time in each chapter, even if also defined in the Glossary, to make this Guide more accessible to users. Where a defined term or abbreviation is used only infrequently in this Guide, it is defined in the relevant chapters or sections only and omitted from the Glossary.

1.24 The Chancery Guide is intended to promote the efficient conduct of litigation in the Chancery lists. The Guide does not however provide a complete blueprint for litigation and should be seen as providing guidance, which should be adopted flexibly (where appropriate) and adapted to the circumstances of the particular case. The Guide does not substitute or override the CPR, including relevant Practice Directions ('PDs'), and all litigants are expected to familiarise themselves and comply with the rules and PDs. In the event of inconsistency between this Guide and any rule or PD the provisions of the CPR must prevail. It is not the function of the Guide to provide legal advice.

1.25 The CPR, its PDs and pre-action protocols are found on the gov.uk website. Example forms and orders which can be used for Chancery cases can be found in Chancery Forms.

1.26 The Guide is published on the Judiciary website. The Guide will continue to be kept under review in the light of practical experience and changes made to the CPR and PDs. Amendments will be made from time to time as necessary. The Guide is also printed in the main procedural reference books.

1.27 Suggestions for improvements to this Guide or the practice or procedure of the Chancery Division are welcome, as are any corrections and comments on the text of

the Guide. These should be addressed to the Chancellor's Private Office at ChancellorsPO@judiciary.uk.

CE-File and electronic filing

1.28 Proceedings issued in the B&PCs are stored by the court as an electronic case file, currently known as CE-File. Electronic filing is mandatory for professional court users and is strongly encouraged for litigants in person. It is the principal mode of communication with the court about a claim and the B&PCs increasingly expect all court users who have internet access and the means to send emails with attachments to register for CE-File.

1.29 The system is easy to use. To file a document using electronic filing, a party should register for an account, enter the case details, upload the appropriate document and pay any required fee. Both professional court users and litigants in person are able to pay court fees through CE-File either by account or card payment. If a party wishes to apply for Help With Fees, they must contact the relevant court office to process their application for Help With Fees before filing a document using electronic filing. Details on how to register for the HMCTS e-filing service can be found at HMCTS E-Filing service for citizens and professionals - GOV.UK (www.gov.uk). Please also see PD 51O for more information about electronic working.

1.30 The electronic file contains those documents the court is required to hold under the CPR, and contains notes, emails and letters added by court users or court staff, as did the previous paper file. All documents lodged with the court are held on CE-File. Documents accepted in paper form will in general be restricted to (i) original wills or similar documents, where it is necessary to lodge an original; and (ii) cases where the court has expressly directed that particular bundles or documents are to be filed in hard copy format (for more information about CE-File see Appendix E). For the position with litigants in person, see paragraphs 2.44 to 2.54 below.

1.31 Parties e-filing a claim form or an application notice with supporting documents should not file them as a single pdf. Each document should be clearly labelled (see PD 51O paragraph 5.1). For example, an application notice, witness statement and exhibit should be filed in pdf together with a draft order in Word and should each be filed and labelled separately, as four documents. This also makes it easier for a judge and court staff to identify documents and, if necessary, to comply with any request under CPR 5.4C. Mislabelled or composite documents can cause confusion, delay and unnecessary costs.

1.32 A party to the case may make a request for copies of documents to which they are entitled under CPR 5.4B. A non-party may make a request for copies of documents to which they are entitled as set out in CPR 5.4C.

General information

1.33 For contact details for staff in the Rolls Building, please see Appendix A. Contact details for the judges in the Rolls Building are given in Appendix B. Contact details for the B&PC District Registries are given in Appendix C.

Chancery Division court users' committees

1.34 The Chancery Division is keen to hear the concerns and views of the litigation community, particularly in times of continuous improvement and change. Several user committee groups exist to allow a steady flow of information and constructive suggestions between the court, litigants and professional advisers. The committees usually meet three times a year or more often as necessary. A list of the Chancery Division's current court user committees and their contact details, in London and the B&PC District Registries, is found at Appendix D.

Assistance for litigants in person

1.35 Many forms of help are available to the increasing numbers of individuals who, for various reasons, bring and defend claims without legal representation. An individual who exercises their right to conduct legal proceedings on their own behalf is known as a 'litigant in person'. It is important for litigants in person to be aware that the CPR (the rules of procedure and 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. Further guidance can also be found in Chapter 2 Parties and representation.

1.36 Appendix H provides a non-exhaustive list of sources of assistance for litigants in person such as CAS, and Support Through Court.

1.37 Neither the court staff nor the judges can provide advice or assistance in relation to the conduct of a claim or defence.

1.38 There are voluntary schemes to provide assistance to litigants in person in respect of applications in the Judges' Applications List (which list is described in Chapter 15) and corporate insolvency in the winding up court.

Chapter 2 Parties and representation

General

2.1 A claimant who issues a claim must give an address for service within the United Kingdom in compliance with CPR 6.23. The same applies to other parties to the proceedings. Where any party's address for service changes, the party must notify the other parties and the court in compliance with CPR 6.24.

2.2 In all claims, the claimant must consider carefully which parties are necessary to the proceedings before issuing the claim. Any number of claimants or defendants may be named: CPR 19.1 but it will rarely be appropriate for a person to be named more than once, even if having more than one capacity.

2.3 In the case of a claimant or claimants seeking a joint remedy, attention is drawn to CPR 19.3.

2.4 It is usually necessary for at least one defendant or respondent to be named in any proceedings or application. However, in some limited circumstances it may be possible or appropriate to issue a claim or application without naming another party. For further guidance see CPR 8.2A and Chapter 13.

2.5 The claimant should comply with the relevant pre-action protocol or procedure in respect of all defendants to the claim, except where compliance is not appropriate, for example in trust cases where consultation under CPR PD 64B paragraph 7.7 is preferred or where an urgent without notice application is made in accordance with the guidance in Chapter 15.

2.6 Parties can be added or substituted at any time need. The court's permission will be needed unless the claim form has not yet been served: CPR 19.2 and CPR 19.4. Special considerations apply where a relevant limitation period has expired: CPR 19.6.

2.7 Where a defendant is out of the jurisdiction consideration must be given to whether permission is required to serve the claim form on that defendant (CPR 6.12 and CPR 6.30 – CPR 6.37). If it is, the claimant should apply for permission in advance of service. The application should be supported by evidence, and will usually be considered on paper, without notice, or at a hearing of any pre-issue interim relief application (see Chapter 3 and Chapter 15 for further guidance).

Representative parties

2.8 In claims brought in the Chancery Division parties sometimes act or seek permission to act in a representative capacity. Attention is drawn generally to CPR 19.8 to CPR 19.13.

2.9 This most commonly occurs in the case of trusts and estates. Further guidance can be found in Chapter 25 Trusts paragraphs 25.10 to 25.14 and Chapter 26 Pensions paragraphs 26.21 to 26.29 and in CPR 19.9 and 19.10.

2.10 Particular considerations arise where a party dies during ongoing proceedings. Where there is a personal representative, whether an executor with or without a grant of probate, or an administrator pursuant to a grant of representation, the personal representative should be substituted for the deceased person under CPR 19.2 to represent the deceased's estate. Where there is no such representative, CPR 19.12 applies, and the court may order the claim to proceed in the absence of a person representing the estate of the deceased or may order that a person be appointed to represent the estate of the deceased. Such an order is for the purposes of the proceedings only. It is not a grant of representation, nor does it entitle the person appointed to obtain a grant of representation.

2.11 Orders that the claim may proceed in the absence of a person representing the estate of the deceased are very rare. The best person to represent the estate of the deceased is likely to be the person, or a person, entitled to a grant of representation. However, the court is very unlikely to order somebody to represent the estate of the deceased if that person is unwilling to do so.

2.12 In cases where the parties cannot find a person willing to act as representative of the estate of a deceased party, an application for directions should be made to the court under CPR 19.12. The court will consider what steps can be taken in light of evidence concerning attempts to locate a representative. The court will also consider what costs order is just in the event of such an application being made.

Group litigation including Group Litigation Orders

2.13 Where numerous claims may or will give rise to common or related issues of facts or law, parties must consider carefully whether to apply for a group litigation order ('GLO') or whether another form of bespoke case management such as managed claims or a representative claim would be suitable.

2.14 The specific rules in relation to GLOs are set out in CPR 19.21 to 19.26, together with PD 19B. The rules relating to representative parties with the same interest are set out in CPR 19.8.

2.15 Parties are expected to collaborate to identify any common or related issues of fact or law as early as possible and to have considered whether to apply for a GLO or whether bespoke case management or conjoined case management of the claims up to a certain stage is more appropriate and cost and resource efficient. Examples of case management techniques that can be used within or outside the GLO regime

include the use of preliminary issues, sampling or test cases. In such cases the court is likely to wish to identify common issues or test cases for early trial.

2.16 If the parties in a claim involving multiple claimants or defendants seek bespoke case management, including for example sampling or test cases, other than as part of a GLO they should inform the court as early as possible and apply to defer the application of cost budgeting and PD 57AD until after a first case management conference (for further guidance on docketing and case management see Chapter 6).

2.17 An application for a GLO must be made by application notice under Part 23 in accordance with the requirements of CPR PD 19B (Group Litigation). The application should be made to the Chief Master, or in a specialist list, to the judge in charge of that list. The making of a GLO requires the approval of the Chancellor, who will usually docket such a case to a HCJ or a HCJ and Master in partnership for case management. A draft GLO can be found in Chancery Forms at CH6.

2.18 An applicant considering applying for a GLO may wish to 'mention' the matter to the Chief Master in advance of issue and seek guidance. In such circumstances an email addressed to the Chief Master should be sent to chancery.mastersappointments@justice.gov.uk

2.19 Where a GLO has been made, a claimant wishing to join the group register should issue the claim and apply to the lead solicitors to be joined on the register, or as may be required by the terms of the GLO.

2.20 A list of GLOs is published on the gov.uk website.

Capacity and litigation friends

2.21 Attention is drawn to CPR 21 where a party is a child or protected party. In insolvency cases attention is drawn to Insolvency Rules 12.23 to 12.26.

2.22 A child must have a litigation friend to conduct proceedings on their behalf unless the court otherwise orders: CPR 21.2(2) and CPR 21.2(3).

2.23 A person lacks capacity to litigate, and so is a protected party, when they do not have capacity within the meaning of the Mental Capacity Act 2005 (the 'MCA 2005'), see in particular sections 2 and 3.

2.24 The MCA 2005 contains an assumption that a person has capacity unless it is established that they do not: section 1(2). A person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success: section 1(3). Even where a person lacks capacity, regard must be had to whether the purpose for any act taken on the person's behalf can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action: section 1(6). Special attention is drawn to these and the other principles contained in section 1 of the MCA 2005.

2.25 Capacity, including the capacity to conduct proceedings, may fluctuate. Under section 4(3) and 4(4) of the MCA 2005, any person, including the court, determining a

protected party's bests interests, or the bests interests of somebody who it is reasonable to believe may be a protected party (see section 4(8)(b)), must consider whether it is likely that the person will at some time have capacity in relation to the matter in question; and must, so far as reasonably practicable, permit and encourage the protected party to participate, or to improve their ability to participate, as fully as possible in any act done for them and any decision affecting them.

2.26 Where a party lacks capacity when proceedings are issued, a litigation friend must be appointed: CPR 21.2. Those representing a protected party or a child must ensure that a litigation friend is appointed in accordance with CPR 21.5. A certificate of suitability signed with a statement of truth must be filed either when a claim is made or when the first step in the proceedings is taken on behalf of a defendant.

2.27 Where a protected party or a child does not have a litigation friend or where a party loses capacity during proceedings, no further step can be taken in the proceedings concerning the protected party or child without the courts' permission and any step that has been taken has no effect unless the court orders otherwise: CPR 21.3 (3) and (4). Unless CPR 21.5 applies, a litigation friend must be appointed, by application to the court for an order under CPR 21.6.

2.28 In the case of a certificate of suitability, attention is drawn to CPR 21.4 (3) and CPR 21.5(4). In the case of an application for an order, attention is drawn to CPR 21.6 and CPR 21.4 (3). In either case, the court will expect there to be cogent evidence that the person lacks capacity to conduct proceedings, by way of a medical report from a suitably qualified medical professional.

2.29 The Court of Protection may exercise powers in respect of those who lack capacity. The Court of Protection may appoint a deputy with power to conduct proceedings on behalf of a person who lacks such capacity, in which case the deputy is entitled to act as the person's litigation friend in any proceedings to which his power extends: CPR 21.4(2). An application may be made to the Court of Protection for the appointment of a deputy. Attention is drawn to section 19 of the MCA 2005, and to the Court of Protection Rules 2017.

2.30 If no litigation friend can be found to act, the Official Solicitor may act as litigation friend. The Official Solicitor is, however, a litigation friend of last resort. In such circumstances, provision must be made in any order for the payment of the Official Solicitor's charges: CPR 21.6(6).

2.31 Where a party has reason to believe that another party lacks capacity to conduct proceedings, considerable care should be taken. The question of capacity engages rights safeguarded by the European Convention on Human Rights. Where a party is reasonably concerned that another party does or may lack capacity, the issue should be raised with the court promptly, and fully investigated. The court will also investigate capacity of its own motion where there is reason to believe it is lacking. Attention is drawn to *Masterman-Lister v Brutton & Co (Nos 1 and 2)* [2003] 1 WLR 1511.

2.32 Where the person whose capacity is in doubt is unrepresented, the other party should write to that person setting out in clear language the nature of their concerns and inviting the person whose capacity is in doubt to obtain and disclose a medical report

addressing their capacity to conduct proceedings. If that person refuses, or if the medical report shows that the person lacks relevant capacity, but no litigation friend is appointed, the other party should apply to the court for directions.

2.33 Where an unrepresented litigation friend purports to be acting for a protected party, but another party has reason to believe that the protected party in fact has capacity, the other party should write to the litigation friend and the protected party setting out in clear language the nature of their concerns and inviting the litigation friend and the person whose capacity is in doubt to obtain and disclose a medical report addressing their capacity to conduct proceedings. If that person refuses, or if the medical report shows that the protected person retains relevant capacity, the other party should apply to the court for directions.

Vulnerability

2.34 Where a party or witness may be vulnerable even if no capacity issue arises the parties should consider the application of PD1A 'Participation of Vulnerable Parties or Witnesses'. The parties should seek to identify any vulnerable party or witness at an early stage and assist the court to take proportionate measures to address any issues of vulnerability where necessary, and to make such directions about their participation as may be appropriate, consistent with the overriding objective. This may include concealing the address or contact details of a party or a witness.

Rights of audience and representation

2.35 The conduct of litigation and the exercise of a right of audience (such as the right to appear before and address the court at a hearing) is a reserved activity under section 12 of the Legal Services Act 2007. Subject to limited exceptions only a person authorised under the Legal Services Act 2007 may exercise a right of audience.

2.36 Who has an automatic right of audience to appear before and address the court at a hearing depends on the type of hearing and the level of court. For all hearings before a HCJ in the High Court only counsel, or a solicitor or a registered European lawyer who have successfully completed the appropriate higher courts advocacy qualification may appear.

2.37 Counsel, solicitors and registered European lawyers generally have rights of audience in all other types of hearing. Legal executives who are members of CILEX, costs lawyers, patent attorneys and trademark attorneys have rights of audience for some types of hearings. Trainees, paralegals, and agents may also have a limited right to represent a party at some types of hearing.

2.38 Those representing a party should satisfy themselves that they have the requisite right of audience to appear before and address the court at any hearing they attend and if there is any doubt seek permission to address the court at the outset of the hearing. Anyone representing a party at a hearing should be in a position to direct the judge to the relevant provisions that provide them with a right of audience for the hearing.

2.39 Alternatively, parties are entitled to represent themselves in any court proceedings (see paragraph 2.44).

Legal representatives

2.40 Usually, parties find it helpful to instruct authorised legal representatives to assist them in the conduct of litigation and at court hearings.

2.41 If a party instructs an authorised legal representative to commence a claim or acknowledge a claim on their behalf that legal representative will be on the court file as the party's address for service and as representing the party until a Notice of Change [N434] is filed under CPR 42.

2.42 If a party instructs an authorised legal representative after either issuing a claim or filing an acknowledgment of service or defence, that legal representative will have to file a Notice of Change to notify the court of their instruction. They will then be on the court record and their address will be the address for service in the jurisdiction for the party to the proceedings.

2.43 A legal representative remains on the court record until either a Notice of Change is filed either by the party stating they are no longer represented or by a new legal representative on behalf of that party stating that they are the new representative, or the existing legal representative makes a successful application to be removed. Particular attention is drawn to CPR 42 where there is a change of legal representation and the need to comply with CPR PD 42.5. Where a party ceases to be legally represented attention is drawn to the requirements set out in CPR 6.23 and CPR 6.24.

Litigants in person

2.44 Individuals who conduct legal proceedings on their own behalf are known as a 'litigants in person'. A company can also conduct legal proceedings on its own behalf but will need to obtain permission for an authorised employee to represent it at a hearing: CPR 39.6.

2.45 An authorised employee of a company should ensure that they are able to provide evidence of such authorisation by the board of the company or evidence that they are a sole director if requested by the judge.

2.46 Unless an individual or a company is acting as a litigant in person, anyone exercising a right of audience on their behalf (for example addressing the court at a hearing) must be authorised to exercise a right of audience (see paragraphs 2.35 to 2.38 above).

2.47 The rules and practice directions in the CPR apply to litigants in person in the same way as to represented parties.

2.48 Proceedings issued in the B&PCs are stored by the court as an electronic case file, currently known as CE-File. Electronic filing is strongly encouraged for litigants in person. It is easy to use for anyone with an email address and access to the internet, and is the principal mode of communication with the court about a claim.

2.49 Fees can be paid online when using CE-File, using a credit or debit card or by providing a Help With Fees number. See paragraphs 1.28 to 1.32 and Appendix E for further information about the use of CE-File.

2.50 Litigants in Person who are unable to use CE-File can submit paper copies of forms or documents to the court by post together with payment for any fees or a completed Help With Fees Form.

2.51 Alternatively, litigants in person can submit paper copies of forms or documents to the court in person. Payment in person can be made by cheque or card or by using Help With Fees.

2.52 Any forms or documents submitted as paper copies will be uploaded to CE-File. No paper file will be retained. See Appendix E.

2.53 The court will not accept forms and documents by email. Any correspondence, forms or documents should be uploaded to CE-File, not sent by email. If that is not possible it should be sent by post or delivered by hand.

2.54 Litigants in person should consider carefully the time it might take for documents to be delivered to the court by post when considering using post rather than CE-File.

McKenzie Friends

2.55 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] P33). 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.

2.56 The McKenzie Friend is allowed to help by taking notes, quietly prompting the litigant and offering advice and suggestions to the litigant.

2.57 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 Guidance: McKenzie Friends (Civil and Family Courts) issued on 12 July 2010 which can also be found at Note (McKenzie Friends: Civil and Family Courts) [2010] 1 WLR 1881.

2.58 Different considerations may apply where the person seeking the right of audience is acting for remuneration, and any litigant should be prepared to disclose whether the proposed McKenzie Friend is acting for remuneration and, if so, how the remuneration is calculated.

2.59 Where a litigant wants assistance at a hearing from a McKenzie Friend, they and their McKenzie Friend will be asked to complete a McKenzie Friend Notice (Appendix J).

2.60 The completed Notice will be provided to the judge who will consider it at the start of the hearing.

2.61 A new Notice will need to be completed for each hearing at which assistance is required and the request will be considered by the judge afresh. The completed Notice will be retained on the electronic court file.

2.62 Further guidance for unrepresented parties can be found in Chapter 1 and Appendix H.

Chapter 3 Commencement and transfer (Part 7)

Starting a claim

3.1 The Civil Procedure Rules ('CPR') permit claims to be issued by following one of two different procedures that are governed respectively by CPR 7 and Part 8. This chapter addresses claims brought under Part 7, which is usually appropriate where the claim is likely to involve a substantial dispute of fact. For Part 8 claims see Chapter 13.

3.2 Parties are referred to Part 7 and Practice Direction ('PD') 7A (How to start proceedings – the claim form) as well as the provisions of Part 16 and PD 16 (Statements of case) in relation to the contents of the claim form and particulars of claim (and see Chapter 4).

3.3 Additional claims may also be brought in existing proceedings using the procedure set out at CPR 20.

3.4 Some specialist Companies Act and insolvency proceedings are required to be issued by petition or originating application rather than by Part 7 or Part 8 claim form (see Chapter 21).

Pre-action behaviour

3.5 The Practice Direction – Pre-Action Conduct and Protocols applies to cases in the Chancery Division where they are begun as a Part 7 or Part 8 claim. It does not apply to claims which are started by some other means (e.g. petition).

3.6 The provisions of this PD or any applicable specialist Pre-Action Protocol should ordinarily be observed, although it is sometimes necessary or proper to start proceedings without following the relevant procedures, for example where telling the other party in advance would defeat the purpose of the application (e.g. an application for a freezing order).

3.7 Subject to complying with the PD and any applicable Pre-Action Protocol, the parties are not required, or generally expected, to engage in elaborate or expensive pre-action procedures, and restraint is encouraged.

3.8 Thus, the letter of claim should be concise, and it is usually sufficient to explain the proposed claim(s), identifying key dates, so as to enable the potential defendant to understand and to investigate the allegations. Only key documents need be supplied. Any period specified for a response should be reasonable and comply with any applicable Pre-Action Protocol.

3.9 A potential defendant should acknowledge a letter of claim promptly and then respond in detail within any reasonable time specified or in accordance with the relevant Pre-Action Protocol. A potential defendant who needs longer should explain the reasons when acknowledging the letter of claim. Only key documents need be supplied with the response.

3.10 The court has the power to impose sanctions for substantial non-compliance with the PD or any applicable Pre-Action Protocol.

Place of issue

3.11 The claimant should consider carefully whether the Chancery Division, as part of the Business and Property Courts of England and Wales ('B&PCs'), is the appropriate court in which to issue the claim, and if so whether the Rolls Building in London ('ChD B&PCs London') or one of the Business and Property Courts District Registries (the 'B&PC District Registries') is the right venue. The principal considerations are:

(a) Does paragraph 1 of Schedule 1 to the Senior Courts Act 1981 require the claim to be issued in the Chancery Division?

(b) Does any other statute, regulation or provision of the CPR, including PD 7A (How to start proceedings – the claim form) or PD 57AA (Business and Property Courts) require the claim to be brought in a particular venue? Note that even if the value of the claim exceeds the minimum £100,000 High Court threshold (see paragraph 2.1 of PD 7A), it may nevertheless be more appropriate to issue the claim in the County Court. The value of the claim is only one of several criteria which should be considered and as a general starting point the ChD B&PCs London will scrutinise a claim with a value of less than £500,000 to see if it should remain in the High Court.

(c) Do the issues raised by the claim suggest that it would be preferable to issue it in another Division of the High Court?

(d) Does the claim have significant links to one of the regional circuits, such that it should be issued in the relevant B&PC District Registry (paragraph 2.3 of PD 57AA). The value of the claim or, with certain exceptions, the perceived need for a specialist judge is not of itself a good reason to issue in the ChD B&PCs London. That is because the appropriate judge will, where necessary, travel to hear the claim or deal with case management (where it is not appropriate to hold a case management hearing remotely). The exceptions are certain Competition List claims, the Financial List, and the Patents Court sub-list of the Intellectual Property List, where claims must be issued in the ChD B&PCs London (see Chapter 19, Chapter 20 and Chapter 22).

3.12 The claimant must take care to issue the claim in the correct list or sub-list. This will depend on the principal subject matter of the dispute. For example, if the dispute involves land, even if the land is for commercial use, it should be assigned to the Property, Trusts and Probate List. Similarly, a dispute about pensions should be assigned to the Business List, Pensions sub-list, even if professional negligence is involved. Where different aspects of the dispute indicate that the claim may be issued

in different courts, lists or sub-lists, the claimant must consider whether there are aspects requiring the expertise of a specialist judge and, if so, must select the court, list or sub-list in which the relevant specialist judges sit (for information as to the availability of specialist judges, contact the relevant Listing Office). Only one court, list or sub-list may be chosen.

3.13 See Appendix F for details of the available lists and sub-lists for claims in the Chancery Division (and the B&PCs generally). If claimants are in doubt as to which list or sub-list is appropriate, they should seek guidance from a Master. This should be by letter sent to chancery.mastersappointments@justice.gov.uk setting out briefly what the issue is. The Master will either address the request for guidance on paper or fix a short without notice hearing. In the B&PC District Registry the guidance should be sought from a specialist B&PC District Judge.

3.14 All Part 7 claims issued in London are triaged by a Master upon the particulars of claim being filed. At this stage the Master will consider the value and nature of the claim and whether any early case management is necessary, including for example consideration of docketing or transfer (see paragraphs 3.24 to 3.28 below), or dealing with early applications that do not require a hearing (see Chapter 15), or making any directions that appear appropriate, such as to direct the filing of compliant particulars of claim or the listing of a hearing to consider striking out the claim of the court's own motion. Practice in the B&PC District Registries may vary.

Financial List

3.15 The Financial List is a single specialist list defined in CPR 63A and PD 63AA. Claims in the Financial List may be commenced in either the Chancery Division in London or the Commercial Court (See Chapter 20).

Shorter Trials Scheme

3.16 The claimant may start a claim in the Shorter Trials Scheme in the B&PCs including any B&PC District Registry if the trial will not exceed 4 days, including judicial reading time and time for preparing and delivering closing submissions, and if the claim is otherwise appropriate for the Scheme. Claims may also be transferred into the Shorter Trials Scheme in some circumstances (See PD 57AB (Shorter and Flexible Trials Schemes) and Chapter 17).

Arbitration claims

3.17 Applications to the court under the Arbitration Acts 1950 – 1996 and other applications relating to arbitrations are known as ‘arbitration claims’. The procedure applicable to arbitration claims is set out in CPR 62 and PD 62. Arbitration claims relating to partnership or landlord and tenant disputes must be issued in the Chancery Division.

Titles and numbering of claims

3.18 See paragraph 16.15 and Appendix F for information on titles and numbering of claims.

Expedition

3.19 The court may expedite the trial of a claim in cases of sufficient urgency and importance.

3.20 A party seeking an expedited trial should make an application on notice to all parties at the earliest possible opportunity. This will normally be on the hearing of an early interim application on notice or after issue and service of the claim form and particulars of claim but before service of a defence (see Chapter 15). The application to expedite must be made to a HCJ in London (see paragraph 4.1 of PD 2B (Allocation of cases to levels of judiciary)) and to a Section 9 Judge in the B&PC District Registries.

3.21 If the court makes an order for expedition, it will ordinarily fix a date for trial and refer the case to a Master for an urgent case management conference ('CMC') or costs and case management conference ('CCMC'), but in an appropriate case the court may consider giving case management directions at the same time as making the order for expedition. Exceptionally and where necessary, the court may order that the case shall proceed without the filing or service of particulars of claim or defence or of any other statement of case.

3.22 If directions are given for an urgent CMC or CCMC, it is the responsibility of the parties to provide the Master's clerk or the District Judge (via CE-File) with: (a) a combined list of dates to avoid; (b) a realistic time estimate for the hearing and any pre-reading; (c) a copy of the order for expedition; and (d) (if known) the date or window for the trial. The urgent case management conference is unlikely to be listed until this information is provided. The parties should file a bundle for the case management conference in accordance with this Guide.

Docketing

3.23 See Chapter 6 paragraphs 6.19 to 6.27 for a description of the four alternative case management tracks used to manage claims in the ChD B&PCs London, and the procedure to be followed where the parties wish to request that a case be docketed to a HCJ or made subject to an order for partnership management (i.e. case management by a HCJ and a Master, with trial by a HCJ).

Transfer

3.24 As noted at paragraph 3.14 above, all Part 7 claims are reviewed by a Master upon the particulars of claim being filed. If (at that stage or subsequently) it is considered

that the Chancery Division in the Rolls Building is not the appropriate venue, or that the claim has been issued in an inappropriate list, an order for transfer will be made of the court's own motion, with or without notice to the parties (but once the order for transfer is made, the parties will be notified: see CPR 30.4(1)). An order may be made transferring the case:

(a) To the County Court.

(b) To another list or sub-list within the Chancery Division.

(c) To a B&PC District Registry having regard to the factors in paragraph 3.1 of PD 57AA (Business and Property Courts)).

(d) To the Commercial Court or Technology and Construction Court (subject to the consent of the Chancellor and the judge in charge of the receiving court).

(e) To another Division of the High Court outside the B&PCs, whether in London or a District Registry.

A party may also apply for an order transferring the case as set out in any of (a) to (e) above. In cases (c) and (d), the application should be accompanied by confirmation that the applicant has obtained the consent of the receiving court (and for this purpose see the contact details for the B&PC District Registries at Appendix C). See CPR 30 (Transfer) and PD 57AA (and CPR 63.18 in relation to transfers to the Intellectual Property Enterprise Court).

3.25 Sometimes a party to a claim in one of the Chancery B&PC lists such as the Business List will also be a party to a related claim/petition in the Insolvency and Companies List (the 'ICL' see Chapter 21). It is not always possible to issue a Part 7 claim in the ICL and it is not possible to present a Petition in the Business List. Such proceedings will usually relate to the same dispute and will feature the same parties, or some of them. Sometimes a claim is made by the assignee of a claim from an office holder by Part 7 claim in the Chancery B&PC lists because the claim cannot be issued in the ICL even if it is a claim that if made by the office holder would be issued in the ICL.

3.26 In either case, but particularly where the value of the claim indicates that it might otherwise be transferred out, the claimant should provide a covering letter when issuing the claim explaining the position and their intentions in relation to the claim and/or its transfer.

3.27 The parties should consider carefully whether the substance of the claim indicates that one list should be preferred for the future conduct of the claims and, if so, lodge a consent order for transfer in the list out of which transfer is sought as soon as possible. Where consent is not possible and a party considers that both claims should be heard in the same list, this should be raised at the first hearing when either claim comes before the court and, at the latest, at the first CMC listed in either claim.

3.28 The bundle for that hearing should include the statements of case and other relevant documents in both sets of proceedings to enable the ICC Judge or Master (or District Judge outside London) to consider whether to make an order for transfer of the proceedings into the same list for effective case management.

Applications made pre-issue or at point of issue

3.29 Some types of application may be made pre-issue or at the point of issue of the claim form (see Chapter 15).

3.30 For guidance on applications to issue proceedings without naming defendants, or for anonymity and/or confidentiality see paragraphs 13.38 to 13.42 and paragraph 3.32 onwards below.

3.31 If a pre-issue application is made (eg for service out of the jurisdiction or anonymity/ confidentiality), when the claim to which the application relates is subsequently issued it will often be given a separate claim number by CE-File. The claimant must file a letter on CE-File when issuing the claim requesting that the claim be assigned to the same Master who dealt with the pre-issue application (in London) and that the two be linked together.

Privacy, anonymity and confidentiality

3.32 Open justice is a fundamental principle of common law. Any derogation from the principle of open justice should be the minimum strictly necessary in the interests of justice and for the proper administration of justice.

3.33 Applications for part or all of a hearing to take place in private, or for anonymity and/or confidentiality in respect of some or all of the court file must be supported by evidence. Applications for anonymity and/or to limit access to the court file are often made in the same application but may be made as separate applications. In all cases the evidence in support must justify the derogation from the principle of open justice. Such applications are often made before issue or at the point of issue although they can be made at any stage including after judgment. Further guidance can be found in CPR 39.2, Chapter 15 (Urgent Applications), Chapter 25 (Trusts) and Chapter 26 (Pensions) of this Guide.

Privacy

3.34 As a general rule, hearings take place in public. The circumstances in which a hearing must be held in private are set out in CPR 39.2(3).

3.35 Even if the parties are in agreement, the court will have to be satisfied that one or more of the matters set out in CPR 39.2 (3 (a) to (g)) applies and that it is necessary to hold part or all of the hearing in private to secure the proper administration of justice. An order that a hearing to be held in private will rarely be made without a hearing. It will usually be considered at the commencement of the hearing in respect of which privacy is sought. However if, unusually, an order is made on paper or an interim order has been made, even if not contentious between the parties, it will be considered afresh at the start of the hearing. Any order for privacy once made shall be published on the judiciary website unless the court orders otherwise (see CPR 39.2(5) and the Practice Guidance: Publication of privacy and anonymity orders. Even if part or all of a hearing takes place in private the court may consider it appropriate to publish any judgment, if necessary in redacted form.

Anonymity

3.36 In an appropriate case the court may order that the identity of a party or witness is not disclosed where this is necessary to secure the proper administration of justice and in order to protect the interests of that party or witness (CPR 39.2(4)). It most commonly arises where additional safeguards may be needed to protect the identity of children or protected parties or where an application for a freezing injunction or search order is issued. Further guidance on anonymity applications can be found at paragraphs 15.66 to 15.68 (Urgent Applications) and paragraphs 25.39 to 25.45 (Trusts). In some circumstances it may be considered appropriate to issue an application to seek permission to anonymise some or all of the identities of the parties to a claim prior to issue. In such a case the applicant should have regard to the guidance in paragraph 13.39. In a simple case the judge may be willing to deal with such an application on paper.

Confidentiality

3.37 CPR 5.4B, 5.4C and 5.4D set out the rules on the provision of documents from the court file (upon payment of the prescribed fee) to parties and non-parties with and without permission of the court. Where permission is required the party or non-party should apply using form N244. Although the application can be made without notice the court may direct that notice should be given to any person who may be affected by the decision.

3.38 However, CPR 5.4C(4) enables the court to restrict who can access documents and what documents (individually or as classes) may be accessed by non-parties. In every case the court will need to consider the balance between the importance of open justice, the risk of harm and the legitimate interests of others.

Chapter 4 Statements of case and service (Part 7)

Statements of case: form and content

4.1 Parties are referred to Part 16 of the Civil Procedure Rules ('CPR') and Practice Direction 'PD' 16 (Statements of Case) which must be complied with in all cases brought under Part 7.

4.2 The following principles apply to all statements of case as defined in CPR 2.3, i.e. particulars of claim (including where set out in the claim form and in any additional claim form issued pursuant to Part 20), defence, counterclaim, reply to defence, defence to counterclaim and any further information given in relation to any of them:

(a) The document must be as concise as possible.

(b) The document must be set out in separate consecutively numbered paragraphs and sub-paragraphs.

(c) The document must deal with the case on a point by point basis to allow a point by point response. In particular, each separate cause of action, or defence, should be pleaded separately wherever possible.

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

(e) Special care should be taken to set out only those factual allegations which are necessary to establish the cause of action, defence, or point of reply being advanced, to enable the other party to know what case it has to meet. Evidence should not be included, and a general factual narrative is neither required nor helpful (and is likely to contravene paragraphs (f), (h) and/or (k) below).

(f) Particulars of primary allegations should be stated as particulars and not appear as if they are primary allegations.

(g) A party wishing to advance a positive case must set that case out; and reasons must be set out for any denial of an allegation.

(h) Where particulars are given of any allegation or reasons are given for a denial, the allegation or denial should be stated first and the particulars or reasons for it listed one by one in separate numbered sub-paragraphs.

(i) Where they will assist:

i. headings should be used; and

ii. abbreviations and definitions should be established and used.

(j) Contentious headings, abbreviations 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.

(k) In rare cases where it is necessary to give lengthy particulars of an allegation, these should be set out in schedules or appendices.

(l) A response to particulars set out in a schedule should be set out in a corresponding schedule.

(m) In a rare case where it is necessary for the proper understanding of the statement of case to include substantial parts of a lengthy document the passages in question should be set out in a schedule rather than in the body of the statement of case.

(n) Contentious paraphrasing should be avoided.

(o) The document must be signed by the individual person or persons who drafted it. If drafted by a solicitor it must be signed in the name of the firm PD 5A 2.1. The requirement for a signature on a document can be satisfied by a printed name in accordance with CPR 5.3.

4.3 The document must be accompanied by a Statement of Truth: see CPR 22, which must always be signed in the name of an individual.

4.4 A statement of case should be no longer than is necessary, should generally not exceed 25 pages and, save in exceptional circumstances should not exceed 40 pages. The court will expect a party to be able to justify the need for any statement of greater length.

4.5 Where, exceptionally, a statement of case is longer than 40 pages a summary of the statement of case (of no more than 5 pages) must also be served. The summary should be a concise summary of the statement of case and should not include any matters not set out in the statement of case. It does not form part of the statement of case and does not need to be responded to separately by any other party. Where a statement of case is longer than 40 pages, it must also be accompanied by a brief note explaining why the greater length is appropriate.

4.6 For these purposes a statement of case includes schedules and appendices annexed to it or served with it, and for all the documents referred to in this paragraph a minimum 12 point font and 1.5 line spacing must be used.

The purpose of statements of case

4.7 A statement of case serves three purposes (as summarised by Cockerill J in *King v Stiefel* [2021] EWHC 1045 (Comm): see paragraph 145 et seq), which should also be borne in mind by parties preparing any statement of case in the Chancery Division:

(a) It enables the other side to know the case it has to meet.

(b) It ensures that the parties can properly prepare for trial – and that unnecessary costs are not expended, and court time required chasing points which are not in issue or which lead nowhere.

(c) The process of preparing the statement of case operates (or should operate) as a critical audit for the claimant or defendant and its legal team that it has a complete cause of action or defence.

Setting out allegations of fraud

4.8 Paragraph 8.2 of PD 16 requires the claimant specifically to set out any allegation of fraud relied on. Parties must ensure that they state:

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

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

4.9 A party should not make 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: for the relevant principles, see *El Haddad v Al Rostamani* [2024] EWHC 448 (Ch) at [177]-[182].

Defence to counterclaim and reply

4.10 Where a party serves a defence to counterclaim and reply, the defence to counterclaim is due to be filed 14 days after the defence and counterclaim (see CPR 15.4, 20.3 and 20.4(3)), subject to the parties' agreement to extend that period by up to 28 days (see CPR 15.5). However, the reply is due to be filed only with the directions questionnaire (see CPR 15.8), which is likely to be some time later.

4.11 Where that is the case, the parties should cooperate and seek to agree that the reply and defence to counterclaim should be filed and served at the same time. This may either be by agreeing that the reply is to be filed and served early and at the same time as the defence to counterclaim or, if there is no particular urgency for the defence to counterclaim, by seeking to agree an extension of time to serve the defence to counterclaim (and where necessary file a consent order to obtain the

court's approval to such an extension) so that the defence to counterclaim and reply are due to be filed at the same time at some agreed later date.

4.12 Despite the deadline set out at CPR 15.8, claimants should, if possible, file and serve any reply (and, where the above applies, any defence to counterclaim) before they file their directions questionnaire. This will enable other parties to consider the defence to counterclaim and reply before they file their directions questionnaire.

Initial disclosure

4.13 Parties are referred to paragraph 5 of PD 57AD which requires parties to give Initial Disclosure at the same time as serving a statement of case (subject to the exceptions set out in that PD). Chapter 7 provides further guidance on disclosure.

Service

Service of claim form by claimant

4.14 Parties are referred to CPR 6 in relation to the service of claim forms (and other documents)

4.15 The current practice in the ChD B&PCs London is that all claim forms are served by the claimant and not the court. Claimants must ensure that they serve a sealed copy of the claim form (downloading the sealed copy from CE-file) rather than the unsealed copy as submitted to the court to be issued (see *Ideal Shopping Direct Ltd v Mastercard Incorporated* [2022] EWCA Civ 14 and *R.(Good Law Project) v Secretary of State for Health and Social Care* [2022] EWCA Civ 355). Any other document filed electronically using CE-File shall be served by the parties unless the court orders otherwise CPR PD51O paragraph 8.2.

4.16 A claim form must be served within 4 months of issue (6 months if it is served out of the jurisdiction): see CPR 7.5.

4.17 In most cases the claim should be served promptly and, if necessary, an application for an order for alternative service or to dispense with service under CPR 6.15 or 6.16 should be made without delay.

Extension of time for service

4.18 The parties may agree to the period of time for service of the claim form being extended by an agreement in writing.

4.19 The court may grant an extension of time for service of a claim form on an application by the claimant under CPR 7.6, and subject to the requirements of that rule. Such an application is invariably made without notice, and any order granted is vulnerable to being set aside on an application made later by the defendant under CPR 23.10, which may be a particular risk if an extension is granted at or towards the end of the limitation period.

Address for service

4.20 Unless the court orders otherwise, a claim when issued must include an address at which the claimant resides or carries on business which need not be the same as the address for service (PD 16.2.1). Where the defendant is an individual the claim form should also provide an address at which the defendant resides or carries on business (PD 16.2.2). (see paragraph 2.34 and PD 1A).

4.21 Unless the court orders otherwise, all parties, whether represented or not, must give an address for service in the United Kingdom: see CPR 6.23. For the claimant, the address will be in the claim form or other document by which the proceedings are brought. For the defendant, it will be in either the defence or the acknowledgment of service form filed under CPR 10. A failure by either party to comply with this requirement is likely to result in sanctions, such as a stay of the action (for a claimant's failure) or an unless order (for a defendant's failure).

4.22 It is essential that the court should be notified promptly of any change of address. A letter notifying the new address should be filed via CE-File and served on all other parties: see CPR 6.24.

Service out

4.23 Applications for service out of the jurisdiction are normally made before or at the same time as the claim is issued. However, the claim form may be issued even though one or more defendants is resident outside the jurisdiction without first obtaining permission to serve out of the jurisdiction. In that case the claimant may apply for permission to serve out after the claim form has been issued. The procedure for the application is the same as an application made before issue of the claim: see Chapter 15.

4.24 A claim form can be served out of the jurisdiction without the court's permission under CPR 6.32 or 6.33. A claim form cannot otherwise be validly served out of the jurisdiction without permission of the court (see CPR 6.36 and 6.37 and PD 6B).

4.25 An application for service out of the jurisdiction must be supported by evidence and, where appropriate, a skeleton argument, even if the application is to be considered on paper and without a hearing. The evidence must set out clearly the basis on which it is said that (i) the applicant has a good arguable case that the application comes within one of the jurisdictional gateways set out in PD6B, (ii) there is a serious issue to be tried in respect of each cause of action for which permission to serve out is sought and (iii) the courts of England and Wales are the *forum conveniens*. The applicant will be expected to have addressed the matters raised in the checklist at Appendix 9 of the Commercial Court Guide where relevant.

4.26 The applicant has a duty of full and frank disclosure (see paragraph 15.33) to draw to the attention of the court in the evidence all relevant matters whether they help or hinder the application.

4.27 If the application and evidence does not set out with clarity the basis on which the application is sought and why it is justified, and set out the information required by paragraphs 4.25 and 4.26 above, the application will either be rejected on paper or listed for a hearing.

4.28 A draft form of order can be found in Chancery Forms at CH5. Note that orders permitting service out of the jurisdiction do not include provision to apply to set aside or vary in accordance with CPR 23.10. Applications to challenge the jurisdiction are governed by a separate regime set out in CPR 11.

4.29 For service of a claim form on a State see CPR 6.44 and section 12 of the State Immunity Act 1978.

4.30 An application to challenge the court's jurisdiction (whether it is a challenge to the grant of permission to serve out of the jurisdiction, a challenge to the court's jurisdiction or exercise of jurisdiction on another ground, or a challenge to the effectiveness of service) must be made under CPR 11.

4.31 If parties seek, in addition, prior to service, and without notice, either an extension of time for service of the claim form, permission to service by an alternative means or to dispense with service, they should give careful consideration to terms of any provision in the order setting out the right to apply to set aside or vary such order under CPR 23.10 to ensure that it does not conflict with a parties' rights under CPR 11.

4.32 Where an order has been made granting permission to serve a claim form out of the jurisdiction, or permission is not required, any other application notice, order or other document required to be served on the same defendant may be served without further permission being granted (CPR 6.38).

Chapter 5 Judgment in default

Granting a default judgment

5.1 Default judgment may be available in Part 7 claims where, at the date at which a judgment is entered, a defendant (or defendant to counterclaim/additional claim) has failed to file an acknowledgment of service (CPR 10) or, having filed an acknowledgement of service, has failed to file and serve a defence (CPR 15), and the time for doing so has expired. The default judgment may be sought in a Request for Default Judgment or an Application for Default Judgment (CPR 12.1 and CPR 12.3). For additional claims which are not counterclaims see CPR 20.11.

Request for Default Judgment

5.2 A Request for Default Judgment is an administrative process which can only be used where a claim is a money claim for a specified amount or for damages to be assessed. If the request satisfies the requirements of CPR 12.3 judgment will be entered either for the specified amount (plus interest, if validly claimed) or for damages to be assessed (CPR 12.4).

5.3 If a claim is for both a money claim and another remedy (for example an injunction) default judgment for the money claim only may be entered following a request under CPR 12.1 if the other remedies are waived (CPR 12.4(3) and (4)).

Application for Default Judgment

5.4 An Application for Default Judgment (CPR 12.3), which should be supported by evidence, will rarely be suitable for determination on paper. A hearing will usually be necessary. Applications for Default Judgment are usually determined by a Master or District Judge.

5.5 An application will be necessary either if the defendant falls within the class of defendants identified in CPR 12.10 or if the claim seeks any other remedy (CPR 12.4(2)). This includes any discretionary relief such as a declaration, rectification or an injunction.

5.6 Default judgment shall be such judgment as it appears to the court that the claimant is entitled to. If the claimant seeks discretionary relief the judge will need to be satisfied that the relief is necessary and ought to be granted.

5.7 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 default judgment.

5.8 A claimant may not obtain default judgment if the defendant has applied to strike out the claim (CPR 3.4) or for summary judgment (CPR 24) and/or if any of the other provisions of CPR12.3(3) apply.

5.9 Default judgment is not available in Part 8 claims (CPR 12.2) or where the CPR otherwise provides, for example in a Probate Claim (CPR 57.10).

Setting aside a default judgment

5.10 An application to set aside or vary a default judgment should be made promptly and served on the claimant, supported by evidence and (if possible and where appropriate) include a draft defence. A hearing will usually be necessary.

5.11 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 before judgment was entered) the court must set it aside, regardless of the merits (CPR 13.2).

5.12 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 or allow the defendant to defend (CPR 13.3 and 13.4). A defendant must apply promptly.

Chapter 6 Case and costs management in Part 7 claims

General

6.1 This chapter applies to all Part 7 claims issued in the Chancery lists of the Business and Property Courts in London (as set out in Appendix F – the 'ChD B&PCs London'), except for those claims in:

(a) The Patents Court;

(b) the Shorter and Flexible Trials Schemes (see PD 57AB (Shorter and Flexible Trials Schemes) and Chapter 17); or

(c) the Financial List (see Chapter 20).

Guidance about case and costs management for claims issued in 6.1(a) to (c) above can be located using the hyperlinks provided.

6.2 The practice in B&PC District Registries will be broadly similar, though with some differences, in particular as regards the time at which a District Judge first reviews the court file, triage, case management by District Judges alone, and the practice for listing a CMC or CCMC. Where there is no specific local guidance this Chapter applies to costs and case management in the B&PC District Registries directly or by analogy in a way most likely to serve the overriding objective. Links to any local guidance can be found in Appendix C.

6.3 For case management in Part 8 claims, see Chapter 13.

Before the first Case Management Conference ('CMC') / Costs and Case Management Conference ('CCMC')

Allocation

6.4 All cases appropriately issued in the ChD B&PCs London will either have been automatically allocated to multi-track (see for example CPR 63 and CPR 57) or if not automatically allocated, will invariably be allocated to the multi-track. Once all defences have been filed, a court officer will serve on each party a Notice of Proposed Allocation in Form N149C confirming this proposed allocation and providing a date for the filing of Directions Questionnaires (N181). Where a party is unrepresented the court will at the same time serve that party with a Directions Questionnaire (N181).

6.5 If any defendant does not file a defence, the sending of the Notice of Proposed Allocation may not be triggered on CE-File. Accordingly, if a Notice of Proposed Allocation has not been received within 21 days of the last deadline for filing a defence, the claimant should contact the court by letter filed on CE-File to request that a Notice of Proposed Allocation be sent to the parties.

Directions Questionnaires ('DQs')

6.6 Form N149C requires the parties to file and serve DQs and attempt to agree directions (see paragraphs 6.17 to 6.18 below) by the deadline specified therein. The parties may extend the deadline for a period or periods of up to 28 days, provided that in such event the parties agree and file a consent order recording the extension of time before the expiry of the relevant deadline, and that order is approved by the court (even if that approval occurs after the deadline has passed). For guidance on consent orders see paragraphs 16.34 to 16.39.

6.7 A failure to file the documents specified in Form N149C by the original or the revised deadline may lead to the claim, or the defence, being struck out or some other sanction being imposed.

6.8 On receipt of the DQs the court will list a CMC / CCMC with a time estimate of 1½ hours plus 1 hour pre-reading. If the CMC / CCMC is likely to require a hearing of more than 1½ hours plus 1 hour pre-reading when filing the DQs the parties should provide: (i) an agreed realistic time estimate for the hearing; (ii) estimated pre-reading time; (iii) if appropriate the proposed format for the hearing with brief reasons (see paragraph 6.44)); and, (iv) dates to avoid for a period of 3 months following the filing of the DQs if they want the court to take them into account when considering the listing of the CCMC or CMC.

6.9 Parties must not, however, expect that a CMC / CCMC will be delayed for a substantial length of time in order to accommodate the advocates' availability, and it is a matter for the court to decide whether the hearing is listed taking dates to avoid into account, particularly where the availability of counsel is limited.

Preliminary issues and split trials

6.10 Costs and time can sometimes be saved by identifying decisive issues, or potentially decisive issues, and ordering that they are tried first. A trial of a preliminary issue may also be appropriate where its determination, although not itself decisive of the whole case, may enable the parties to settle the remainder of the dispute or otherwise shorten the proceedings. An example would be a relatively short question of law which can be tried without significant delay (or much in the way of disclosure or witness evidence) but which would be determinative of one or more of the key issues in dispute.

6.11 Parties should actively consider at the earliest opportunity, and certainly in advance of the first CMC / CCMC, whether there are any issues which are suitable for determination as a preliminary issue, or which should be tried separately such as a split between liability and quantum. If possible, parties should indicate when filing DQs whether a preliminary issue or split trial is under consideration and provide a summary of the proposed approach in Section I of the DQ. Parties should give careful consideration to the approach to costs budgeting and disclosure where a preliminary issue or split trial is proposed or agreed (see paragraph 6.37 and paragraph 7.13).

6.12 If a party considers a preliminary issue or split trial would be appropriate, the matter should ideally first be discussed, and where possible agreed, in correspondence between the parties.

6.13 An application for a preliminary issue or split trial should be made in accordance with Chapter 14 and CPR 23. The application would normally be determined at the first CMC / CCMC. Parties are not, however, precluded from bringing an application following the first CMC / CCMC should they consider it desirable for the effective conduct of the litigation.

6.14 The court will expect the application to explain the precise scope of the issue or issues proposed to be determined separately, why that is proposed and why a preliminary issue or split trial would be in furtherance of the overriding objective to deal with cases justly and at proportionate cost. This should include information about the likely effect on costs, the scope of disclosure and evidence. In the case of proposals for split trial, very careful consideration must be given as to where the issues to be determined are split, including whether the proposed split will genuinely assist the efficient case management of the proceedings and whether the issue(s) to be considered first would assist in the resolution of the remaining issues to be determined.

6.15 Parties should also consider the level of judge required to try the preliminary issue. Relevant considerations would be whether the issue is of great substance and/or great complexity and/or of public importance (which may make it more suitable for determination by a High Court Judge ('HCJ'), a specialist civil judge authorised to sit as a judge in the High Court pursuant to section 9(1) of the Senior Courts Act 1981 (a 'Section 9 Judge'), or a Deputy HCJ), and how long the preliminary issue trial is likely to be, and whether examination of witnesses and/or experts is likely to be required.

6.16 The court may make an order for a preliminary issue or split trial of its own motion. However, any such order will not usually be made without the agreement of at least one of the parties.

Draft directions

6.17 Draft case management directions suitable for claims in the Chancery Division are available in Chancery Forms CH1 and these should be used or varied as appropriate, in all cases. 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. Parties in cases in the B&PC District Registries should check for any local practices and guidance: see Appendix C.

6.18 The parties' proposed draft directions must include allocation to multi-track, if it is not automatic, and a time estimate for trial and a trial window - see paragraphs 6.75 to 6.78 below.

Case management allocation and docketing

6.19 Cases in the ChD B&PCs London will be managed in accordance with one of four management tracks:

(a) Case management by Master and trial by High Court Judge (HCJ), Section 9 Judge or Deputy HCJ (which is the most common track);

(b) Case management and trial by docketed HCJ (full docketing);

(c) Case management and trial by Master; and

(d) Case management by a docketed HCJ and Master or ICC Judge and trial by the docketed HCJ (partnership management).

6.20 For distribution of business between judges in proceedings commenced in the Insolvency and Companies Court List ('ICL') see Chapter 21 paragraphs 21.26 to 21.28.

6.21 The parties may, before the CMC / CCMC, request that a case be made subject to full docketing or partnership management, providing reasons why and indicating whether they consider that it would be helpful for the docketed HCJ to have any particular specialist knowledge.

6.22 A request may be made by correspondence to the Master or in section I ('Other information') of the parties' DQs, and may be made by the parties jointly or, if the parties are not agreed, separately. The Master may request written submissions or direct that a hearing take place to resolve the issue.

6.23 Alternatively, the Master may, without any application, consider whether full docketing or partnership management would be appropriate.

6.24 The parties will be informed of the Master's decision and, if the Master considers that the case should be subject to full docketing (or partnership management), the Master will ask the Chancellor to nominate a HCJ to take charge of the case. The Chancellor, or the HCJ to whom the case has been docketed, may direct that the case should be subject to partnership management.

6.25 The following factors are to be taken as pointing towards full docketing or partnership management:

(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 HCJ;

(c) Claims where there will be a 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 HCJ 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 (GLO) and other substantial group claims requiring active case management by a HCJ assigned to try them;

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

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

6.26 A decision about docketing may be reconsidered at the CMC / CCMC.

6.27 A Deputy Master will not make a decision about full docketing or partnership management but will refer it to a Master.

Costs management and budgeting

6.28 All Part 7 claims shall be subject to costs management in accordance with Section II of CPR 3 and PD 3D, except where different rules or guidance apply such as in the Patents Court, the Shorter or Flexible Trials schemes or the Financial List or where the circumstances set out at sub-paragraphs (a) to (c) apply:

(a) The claim is stated or valued at £10 million or more (CPR 3.12). However, subject to 6.28(c) below, where there is no statement of value on the claim form costs management will apply, even if the potential value of the claim is £10 million or more.

(b) The court orders otherwise, typically following an application by the parties (CPR 3.12). If the parties agree that the court should exercise its case management powers to direct that a costs management order will not be made, a consent order should be lodged in advance of the CCMC, with a short explanation of why the order is sought. If the order has not yet been approved, the parties must still exchange costs budgets in advance of the CCMC in accordance with CPR 3.13.

(c) The parties have been unable to agree whether the value of the claim should be assessed at £10 million or more and therefore whether costs management shall apply (and the court has not determined the issue) (see paragraphs 6.29 and 6.30).

6.29 Where the defendant disagrees with the claimant's assessment of the value of the claim as stated in the claim form (or considers that the claim form should have included a statement that the claim is valued at £10 million or more), and therefore disagrees with the claimant's assessment as to whether costs management applies in accordance with Section II of CPR 3 and PD 3D, the parties should seek to resolve the issue by agreement.

6.30 If the parties are unable to reach agreement by the time the DQs are filed, the issue should be raised with the court when filing the DQs. In those circumstances, the requirements for filing and exchanging costs budgets will not apply until the matter is resolved by either agreement between the parties or determination by the court. If the parties have agreed that the claim is valued at £10 million or more, but that is not

stated on the face of the claim form, a consent order should be lodged in advance of the CMC / CCMC disapplying Section II of CPR 3 and PD 3D, with a short explanation of why the order is sought. If the parties have agreed that the claim is not valued at £10 million or more, they should proceed to file budgets in accordance with CPR 3.13. A claim form which seeks only non-monetary relief falls within CPR 3.13(1)(b).

6.31 It is the court's experience that it is often helpful for costs budgets to be exchanged in cases in the ChD B&PCs London even if costs budgeting would not otherwise apply. Parties should consider exchanging costs budgets and/or opting into costs management even in cases which are outside the costs management regime. If the parties agree that a costs management order should be made, a consent order should be lodged in advance of the CMC including proposed directions for costs management.

Litigants in person

6.32 Litigants in person are not required to file costs budgets, unless otherwise ordered by the court, but may do so. The court may order litigants in person to file costs budgets where the litigant is likely to incur substantial costs or disbursements. Litigants in person should have regard to CPR 46.5 and PD 46 paragraph 3.

6.33 Litigants in person are encouraged to participate in the costs management process and are able to agree or challenge cost budgets.

Updating budgets before costs management order made

6.34 In the B&PCs where costs budgets are required (see CPR 3.12 and 3.13), they must be filed and exchanged not later than 21 days before the first CMC / CCMC (CPR3.13(1)(b)) unless the court orders otherwise.

6.35 However, costs budgets may become out of date if a CMC / CCMC is relisted or adjourned. In such cases, if permission has not already been given, it may be appropriate to seek permission to serve an updated costs budget before any CMC / CCMC or relisted CMC / CCMC. (See also paragraphs 6.67 and 6.74 in relation to budget revisions after a costs management order has been made.)

6.36 Parties may seek an order for part or all of the costs management to be adjourned to a later date to enable them to revisit their costs budgets in light of case management directions made at the CMC / CCMC (for example as to the scope of disclosure, a direction for a split trial or preliminary issues, whether the court gives permission for experts, and trial length).

6.37 Parties should also note paragraph 22.2 of PD 57AD which allows the parties to agree to postpone completion of the disclosure phase of their costs budgets until after the CMC.

Disclosure

6.38 Further information regarding the approach to disclosure in proceedings issued in the B&PCs is set out in Chapter 7.

6.39 Parties are reminded that proceedings issued in the ChD B&PCs London, and in the District Registries in Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester and Newcastle (the 'B&PC District Registries') are all subject to PD 57AD.

6.40 If PD 57AD does not apply, the parties should approach disclosure in accordance with CPR 31. However, consistent with the overriding objective, the court will still expect the parties to approach the disclosure exercise having regard to the duties set out in PD 57AD and to adopt the high degree of cooperation expected under PD 57AD.

Triage by the Master

6.41 After DQs are filed and before the first CMC / CCMC, if any of the issues at (a) to (h) below are raised either in the DQ or in any letter accompanying them, the Master will review the DQs and the draft directions, and consider:

(a) Whether the claim should remain in the ChD B&PCs London (see Chapter 3 for further guidance).

(b) Whether a listing of more than 1½ hours is required for a CCMC or CMC.

(c) The appropriate hearing format for the CMC / CCMC.

(d) Whether cost management applies (if the parties disagree about that: see paragraph 6.29 and 6.30 above), whether or not a costs management order is required and/or whether costs management should be deferred in whole or in part.

(e) Whether completion of the DRD should be deferred, in whole or in part, if for example, there are contested issues about the appropriateness of preliminary issues, split trials or sampling.

(f) (If requested) whether there should be a stay of proceedings, or a continuation of an existing stay.

(g) (If requested) whether the claim should be docketed (see Chapter 3 and paragraph 6.25 for further guidance).

(h) Whether the CMC /CCMC can be listed taking into account any dates to avoid that have been provided.

6.42 The Master may make an order in respect of any of matters (a) to (h) above in advance of the CMC / CCMC.

The CMC / CCMC

6.43 The CMC / CCMC is a very significant stage in the proceedings, and its importance should not be underestimated. Parties are expected to liaise and cooperate to promote the efficient preparation for and conduct of the CMC / CCMC.

Preparation for the CMC / CCMC

6.44 The court will fix a date for a CMC / CCMC after DQs have been filed, with a time estimate of 1½ hours and 1 hour pre-reading unless the parties provide a different agreed time estimate for both the CMC / CCMC and pre-reading. A CMC / CCMC with a time estimate of half a day or less (and no more than 90 mins pre-reading) will take place remotely unless the court orders otherwise (see paragraphs 6.8 and 6.9 above). For further guidance on the preparation and conduct of remote and hybrid hearings see Appendix Z.

6.45 Wherever possible, an advocate instructed or expected to be instructed to appear at the trial should attend the CMC / CCMC. Where a party has retained more than one advocate (e.g. leading and junior counsel), there is no requirement that all of them attend. The experience of the court is that on many case management issues, junior advocates within a team may be well placed to assist the court. Parties should consider in every case whether attendance by the more (or most) senior advocate instructed in the case is reasonably required, and (b) whether, even where that is the position, at least some of the matters arising may appropriately be dealt with by the more (or most) junior advocate.

6.46 If the parties wish the court to have regard to the availability of counsel when fixing the CMC / CCMC, dates to avoid may be provided with the DQs (see paragraphs 6.8 and 6.9 above).

6.47 Before the first CMC / CCMC, and before any subsequent CMC / CCMC at which disclosure is to be considered, the parties shall have regard to their disclosure obligations, including the information required pursuant to PD 57AD and necessary for the completion of the Disclosure Review Document ('DRD') or Less Complex Claims DRD (the 'LCCDRD'), as applicable (see PD 57AD and Chapter 7 for further guidance).

6.48 If the parties are required to complete a DRD, the parties should ensure they complete, or substantially complete, Section 2 of the DRD before the hearing. A failure to do so may restrict the ability of the court to determine any disclosure matters in dispute between the parties and may result in costs sanctions being imposed.

6.49 The parties should also consider who is the most appropriate person to assist the court when seeking Disclosure Guidance pursuant to PD 57AD, or a determination of any disputed disclosure issue. The solicitor with conduct of the disclosure exercise or a junior advocate may be best placed to deal with some or all of the matters in respect of which guidance is sought.

6.50 A case management bundle is needed at every CMC / CCMC. See Appendix X for further guidance regarding the preparation of bundles. The bundle should be in electronic form unless otherwise ordered (and the court may order, or the parties may agree, that some or all of the CMC/CCMC bundle should be filed in hard copy in addition). The bundle should contain only the following (unless, exceptionally, additional documents are essential to the CMC / CCMC):

(a) An agreed case summary (not normally exceeding 2 pages). The case summary should contain:

i. a short and uncontroversial description of what the case is about; and

ii. a short and uncontroversial summary of the material procedural history of the case.

(b) An agreed list of issues for trial (not normally exceeding 3 pages).

(c) An agreed list of issues to be resolved at the CMC / CCMC.

(d) Statements of case.

(e) Orders.

(f) DQs.

(g) Draft directions substantially in form CH1.

(h) The DRD (including section 2) or the LCCDRD, where applicable, prepared in accordance with PD 57AD.

(i) Costs budgets (if applicable).

(j) Budget discussion reports in the form of Precedent R (if applicable, and if a costs management order is to be made). If the budget discussion reports are not available at the time the bundle is filed, they should be added as soon as possible in advance of the hearing.

(k) Any application notice(s) and supporting evidence returnable for the CMC / CCMC.

(l) Correspondence between the parties (but only where it is essential for the court to have regard to it).

6.51 The parties are referred to Appendix X for general guidance on the preparation of bundles. They should prepare the bundle in such a way as to avoid duplication of documents. In appropriate cases exhibits or parts of exhibits and other documents can be removed to reduce the overall size of the bundle where they are not essential for the hearing.

6.52 A separate landscape bundle should be filed, whether in hard copy or electronic format, containing the DRD, costs budgets (if applicable) and Precedent Rs and any other landscape documents relevant for the CMC / CCMC.

6.53 Unless (exceptionally) the parties wish to request a CMC / CCMC on the documents (see paragraph 6.61 below), the case management bundle should be filed at court at least 2 clear days before the hearing of the first and any subsequent CMC / CCMC. (If for example the CMC / CCMC is on the Friday, the case management bundle should be filed by 4.30 pm on the Tuesday, three working days before the day of the CMC / CCMC.) For a definition and explanation of clear days see CPR 2.8.

6.54 The claimant shall be responsible for the preparation (and upkeep) of the case management bundle, including producing and filing the case summary, list of issues

for trial, and list of issues for the CMC / CCMC, and (where appropriate) updating those documents.

6.55 The parties shall endeavour to agree the contents of the bundle. If the parties cannot agree the case summary, list of issues for trial, list of issues for the CMC / CCMC, or draft directions, the parties should consider the best way of clearly setting out the differences between them for the court. This will ordinarily involve the preparation of composite versions of these documents setting out (if necessary, in different colours or highlighting) the elements which are not agreed. The parties shall, by 4pm the working day before the hearing, file with the court any updated draft directions indicating those directions which are agreed and not agreed.

6.56 Short notes or skeleton arguments from each party will almost invariably be essential and shall be filed with the court at least 2 clear days before the CMC / CCMC (see example at paragraph 6.53 above) in Microsoft Word format (or similar). If the parties require further time to prepare skeleton arguments, they shall seek to agree any revised timetable for exchange and filing between them and seek the consent of the judge.

6.57 Skeleton arguments should be no longer than is necessary. They should normally not exceed 15 pages. Even in the heaviest cases they should not exceed 25 pages (including any appendices and schedules). Should a party wish to file a longer skeleton argument, the senior legal representative whose name appears at the end of the skeleton argument must file a letter along with the skeleton argument explaining why this has been necessary. A desire to be of greater assistance to the court is rarely a good reason: overly long skeletons do not assist. If the Master or HCJ is not satisfied by the explanation the party may be required to re-draft the skeleton argument and/or costs sanctions may be imposed. For further guidance on skeleton arguments generally see Appendix Y.

Fixed trial dates

6.58 Trials are normally listed with a commencement date floating within a 3-5 day period, referred to as a trial window, but the court may (exceptionally) consider listing the trial for a fixed start where certain criteria are met. These will include such matters as the length of the trial, the number of parties and witnesses, and the need for parties or witnesses to travel from abroad to attend trial. Further guidance on the procedure for listing can be found at paragraphs 12.16 to 12.22.

6.59 Where any party wishes the court to consider directing that the trial be listed for a fixed start date, this should be raised with the court for consideration at the CMC / CCMC. Any such direction will be subject to approval by the court officer responsible for listing and confirmation by the trial judge at the pre-trial review ('PTR'), if there is one – (see further Chapter 11).

The hearing

6.60 In general, the most important matters to be discussed at the CMC will be: the issues in the case and how they are best to be tried, where and by whom; proposals for Alternative Dispute Resolution ('ADR'); the DRD/LCCDRD and the terms in which permission for any expert evidence will be granted. The court will want to:

(a) Discuss the issues in the case (including if appropriate questions of transfer, split trial or preliminary issues), having first reviewed: the case summary, the list of issues for trial, the list of issues for the CMC/CCMC and the notes or skeleton arguments filed by the parties;

(b) Discuss the requirements of the case with the parties / their advocates;

(c) Review and approve, amend or reject as may be appropriate the parties' proposals for disclosure;

(d) In light of those matters consider whether the trial judge will be assisted by a core bundle of key documents or a narrative chronology;

(e) Fix the pre-trial timetable to the fullest extent possible, having regard to (a) and (b) above, and any draft directions proposed and/or agreed by the parties.

(f) (If appropriate) make a costs management order, alternatively direct that a separate costs management hearing take place.

(g) (If appropriate) make an order staying the proceedings to permit the parties time to engage in ADR.

(h) (If appropriate) discuss with the parties the use of information technology to assist with case management, including the use of information technology at trial (see Chapter 12 paragraph 12.32: IT at Trial).

6.61 There may be exceptional cases where a CMC / CCMC can take place on the documents, if for example, the issues are straight-forward, and the costs of an oral hearing cannot be justified. If the parties wish to request a CMC / CCMC on the documents, they must file the case management bundle together with an agreed draft order at least one week before the date listed for the CMC / CCMC. It is unlikely that any case involving extended disclosure (other than on Models A or B (as explained in PD 57AD)), expert evidence or preliminary issues will be suitable for a CMC / CCMC on the documents.

6.62 The costs incurred by the parties in preparation for and the conduct of the CMC / CCMC will usually be costs in the case. However, the court has a broad discretion in relation to costs and if a party has failed to comply with any procedural step required to be taken and/or has failed to cooperate with the other parties in preparation for the CMC / CCMC (including, for the avoidance of doubt, in the provision and preparation of the hearing bundle) the court may adjourn the CMC / CCMC and/or may make an adverse costs order.

Interim applications at the CMC

6.63 CMCs are intended to consider and manage the future procedural conduct of the case. They are not an opportunity to make controversial interim applications without appropriate notice to the opposing party and an appropriate time allowance.

6.64 If, however, a party wishes to make an application to be heard at the CMC / CCMC, such an application should be made in accordance with CPR 23 and have regard to the provisions of PD 29 paragraph 5.8. Parties should also have regard to the provisions of paragraphs 14.39 to 14.41.

6.65 Where parties fail to comply with those provisions, or the time available is inadequate, it is highly unlikely that the court will entertain, other than by consent, an application which is not of a routine nature.

6.66 If a party making such an application considers that the time allowed for the CMC / CCMC is likely to be insufficient for the application to be heard they should inform the court at once. If this is done either before the listing of, or sufficiently in advance of, the CMC / CCMC, it may be possible, and the court may consider it appropriate, to extend the time estimate to allow the application to be heard at the CMC/CCMC. Otherwise, the application will be listed as considered appropriate by the court. This may require the CMC / CCMC to be vacated and/or for the application to be heard in place of the CMC/CCMC, or separately at a later date.

Costs management orders

6.67 At the CMC / CCMC the court will normally consider directions (including disclosure) first and costs management afterwards.

6.68 However, the directions made by the court are likely to be informed by the costs budgets and the court's consideration of the costs budgets will be informed by for example the scope of disclosure. 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 before considering the disputed budget phases.

6.69 The parties shall endeavour to discuss and agree costs budgets before the CCMC. If elements of the filed costs budgets have not been agreed, the court will consider the phases in respect of which costs have not been agreed and hear submissions from the parties. The court will then determine and approve a figure for the budgeted costs (i.e. those not yet incurred) for each disputed phase.

6.70 Subject to CPR 3.15A (where there is an application to revise an approved costs budget: see paragraph 6.73 and 6.74 below), incurred costs up to and including the date of any CCMC are not subject to the court's approval (CPR 3.17(3)). The court may record its comments on those costs which have already been incurred for any phase and take those costs into account when considering the reasonableness and proportionality of all budgeted costs for each phase. However, the power to make comments about incurred costs is likely to be used sparingly.

6.71 In practice given that costs budgets are necessarily prepared in advance of the CCMC, and the parties do not stop all work when costs budgets are filed, a small proportion of the budgeted costs approved by the court may in fact have been incurred by the time of the hearing.

6.72 The outcome of costs management in the ChD B&PCs London will typically be recorded by setting out all the budget phases, agreed and approved by the court, in an appendix to the costs management order.

6.73 In some cases, the court may direct a party to file a revised budget to reflect decisions at the CMC / CCMC in accordance with CPR 3.15(7).

6.74 Parties should also note CPR 3.15A which requires budgeted costs to be revised upwards or downwards if warranted by significant developments in the litigation after

the costs budget has been approved, and for the revised budget to be submitted promptly to the other parties for agreement and subsequently to the court.

Trial time estimate

6.75 All claims in ChD B&PCs London and the B&PCs District Registries are tried on the basis that the trial time estimate, which includes judicial reading time before the trial starts, is fixed. Estimates for judicial pre-reading must be realistic and regard should be had to any pre-reading that may be required before the commencement of trial, or following opening submissions, or in respect of witnesses who are to give evidence at trial (having regard, in particular, to the approach to witness evidence set out in PD 57AC). Estimates do not need to make provision for judgment writing.

6.76 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 / CCMC, 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; if so, this time must be included within the trial estimate. Parties should keep in mind that any written closing submissions will need to be considered by the trial judge and additional time may need to be included in the trial estimate for that purpose.

6.77 Inevitably there will be some uncertainties about the time estimate. 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 for any 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 typically be 4 weeks after the exchange of witness evidence, or alternatively expert evidence.

6.78 If there is a PTR the time estimate will be reviewed again at that stage, but if a substantial revision is needed the case may lose its trial date.

Trial date

6.79 The standard directions are required to include a listing trial window. Listing trial windows for trial by HCJ are set by the Chancery Judges' Listing Office ('Judges' Listing') and are updated monthly. The current listing trial windows can be found at Trial date windows for Chancery Division. Listing trial windows or dates for trial by a Master are set by Masters. The dates vary depending upon the length of the trial.

6.80 Following the CMC / CCMC, the parties are to liaise with Judges' Listing for trial by HCJ (as well as by a Section 9 Judge or a Deputy HCJ and) and Chancery Masters' Appointments for trial by Master in order to fix a date for trial within the listing trial window. Parties are reminded that all communication with the court is to be filed using CE-File unless otherwise directed. The parties should provide the court with (a) a combined list of dates to avoid, (b) a time estimate for the trial, and (c) a copy of the case management order. Typically, this is dealt with by counsel's clerks (see Chapter 12 paragraphs 12.16 to 12.22).

6.81 Normally, for trial by HCJ, once provided with the information set out at paragraph 6.80 above, Judges Listing will provide a narrower trial window,

with a commencement date usually floating within a 3-5 day period. In limited circumstances, Judges Listing may provide a fixed start date: see paragraphs 6.58 to 6.59 above. For trial by a Master, Chancery Masters Appointments will provide a fixed start date.

6.82 In every claim with a trial time estimate of more than 5 days (including judicial reading time) a PTR will be held approximately 4-6 weeks before the trial is due to commence. The date will be fixed when the trial date is fixed. In cases due to last 9 days or more the PTR will be conducted by the trial judge where possible. A PTR of half a day or less (and no more than 90 mins pre-reading) will take place remotely unless the court orders otherwise. If the parties propose a different format for the PTR this should be raised at the CMC / CCMC when the trial window is fixed. See Chapter 11 for further information about PTRs.

Trial category

6.83 Trials before judges in the ChD B&PCs London may come before:

(a) A HCJ (or retired HCJ);

(b) A Section 9 Judge; or

(c) A Deputy HCJ, Master, deputy Master, ICC Judge, or deputy ICC Judge.

6.84 Cases are listed by reference to the following listing categories:

A Cases of great substance and/or great difficulty or of public importance, suitable for trial only by a HCJ.

B Cases of substance and/or difficulty suitable for trial either by a HCJ, a Section 9 Judge or a Deputy HCJ.

C Cases of lesser substance and/or difficulty than category B cases, suitable for trial by a Section 9 Judge, a Deputy HCJ, a Master, a deputy Master, and ICC Judge or a deputy ICC Judge.

6.85 The order for directions must specify the listing category approved by the court.

6.86 Masters will not normally try cases where the trial is estimated to last more than 5 days and will not normally try cases other than those which fall within listing category C but may do so in an appropriate case. For guidance in respect of ICL trials see Chapter 21.

Trial venue

6.87 Consideration will be given at the CMC / CCMC to whether London is a suitable trial venue, having regard to the links that the case, the parties and their representatives and the witnesses have with any circuit or region within any circuit in England and Wales. If it is suitable, the order must specify *'Trial in London'*.

6.88 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 B&PC District Registry for further case management and trial. A category A case should not be transferred out of London for trial without prior consultation with the

relevant Supervising Judge. No such prior consultation is required in the case of category B or C cases.

6.89 If a claim is to be transferred out of London but case management of the claim is to remain in London until shortly before the trial, the claim must be formally transferred at that stage. If the claim is being transferred out of London for trial:

(a) the PTR shall be ordered to take place before the trial judge in the relevant B&PC District Registry; or

(b) if there is no PTR, the parties shall jointly liaise with the trial venue so that any directions for trial are appropriate for the trial venue.

For guidance on general listing arrangements in the B&PC District Registries see Appendix C and follow the links for any local guidance.

Other guidance

6.90 Follow the hyperlinks below for further guidance in relation to:

(a) Disclosure (Chapter 7)

(b) Witness statements (Chapter 8)

(c) Expert evidence (Chapter 9)

(d) Alternative dispute resolution (Chapter 10)

(e) PTR (Chapter 11)

(f) Trial (Chapter 12)

(g) Part 8 (Chapter 13)

(h) Cases within the Insolvency and Companies List (Chapter 21)

(i) Appeals including Arbitration Appeals (Chapter 30)

Chapter 7 Disclosure

General

7.1 Disclosure and production of documents in the Business and Property Courts (the 'B&PCs') is conducted in accordance with Practice Direction ('PD') 57AD of the Civil Procedure Rules ('CPR'), as amended, save where one of the exceptions set out in paragraph 1 of PD 57AD applies.

7.2 PD 57AD is substantially in the form of (and replaced) PD 51U. Its commencement date was 1 October 2022. It applies to existing and new proceedings in the B&PCs.

PD 57AD

7.3 PD 57AD applies to all relevant proceedings in the B&PCs, whether started before or after 1 January 2019, when PD 51U came into force, even in a case where a disclosure order was made before 1 January 2019 under CPR 31: see *UTB LLC v Sheffield United & Ors* [2019] EWHC 914 (CH).

7.4 If proceedings are transferred out of the BP&Cs, any order for disclosure made under PD 57AD will stand unless and until any other order is made by the transferee court.

7.5 For the avoidance of doubt unless one of the exceptions applies, CPR 31 does not apply to any claim issued in the B&PCs and any order for disclosure will be made in accordance with the principles and approach set out in PD57AD. An order for standard disclosure cannot be made and should not be sought.

7.6 The duties of parties and their lawyers are set out in paragraphs 3 and 4 of PD 57AD. These are important and breach of any of the duties will be treated as a serious matter by the court and may result in sanctions.

7.7 Unless dispensed with by agreement or order, or an exception applies, the parties must give Initial Disclosure in accordance with paragraph 5 of PD 57AD.

7.8 An application to dispense with Initial Disclosure under paragraph 5.10 of PD 57AD will, save in exceptional circumstances, be dealt with on paper and without a hearing but should be made by application notice using an N244 (CPR 23) on notice to the other parties and be supported by evidence explaining why the applicant considers that compliance will incur disproportionate cost or will be unduly complex.

7.9 A party wishing to seek disclosure of documents in addition to, or as an alternative to, Initial Disclosure must request Extended Disclosure in accordance with paragraph 6 of PD 57AD. The Disclosure Models for Extended Disclosure are set out in paragraph 8 of PD 57AD.

7.10 Unless Extended Disclosure is to be restricted to non-search-based models i.e. Models A and B, the parties and their advisers must discuss and complete a joint

Disclosure Review Document ('DRD') (including completing section 2) before the first case management conference / costs and case management conference ('CMC' / 'CCMC') in accordance with paragraph 10 of PD 57AD. In a less complex claim the parties must complete a Less Complex Claim DRD ('LCCDRD') (see Appendix 5 PD 57AD).

7.11 The parties are obliged to cooperate: paragraph 3.2 of PD 57AD; they should not allow the settling of the DRD or the LCCDRD to become contentious, time consuming or expensive. The court has power to impose sanctions including costs orders if a party fails to engage constructively.

7.12 The DRD (where applicable) should be kept simple and concise. In particular, all parties should have regard to the guidance contained in paragraphs 7.6 to 7.8 of PD 57AD when drafting Issues for Disclosure. When completing a LCCDRD parties should, in addition, consider the guidance provided in paragraph 10.5 of Appendix 5. The proliferation of different Models for Extended Disclosure should be avoided where possible and kept to a minimum where it cannot be reasonably avoided.

7.13 Parties must cooperate and seek to resolve any issues over the scope of Extended Disclosure in advance of the CMC / CCMC. This should include those relating to documents held by third parties and/or documents said to have been lost or destroyed and/or where retrieval may still be possible. In an appropriate case this may include agreeing to seek deferral of some of the steps in PD57AD (see paragraph 6.41(e)). A narrow point on the scope of Extended Disclosure may be suitable for Disclosure Guidance in advance of a CMC / CCMC (see paragraph 7.19 below).

7.14 There is no obligation on a disclosing party to obtain translations of documents that are wholly or partially not in English when giving Extended Disclosure unless the court orders otherwise. They must, however, disclose such translations as they have already obtained as part of their Extended Disclosure.

7.15 Where it is known or becomes apparent that Extended Disclosure will include a substantial number of documents which are wholly or partially not in English the parties should cooperate at an early stage to seek to agree proposals for the identification of documents for which translation may be necessary. This should be considered by the parties in advance of the CMC / CCMC. In some cases, it may be appropriate to seek directions at the CMC / CCMC.

7.16 Parties should give careful consideration in every case, whatever its financial value or general complexity, to whether it may properly be treated as a Less Complex Claim, as defined in paragraph 3 of Appendix 5 of PD 57AD. Issues for Disclosure in a Less Complex Claim must be brief, drafted at a high level of abstraction, and rarely exceed five in number (see paragraph 10 of Appendix 5).

7.17 Explanatory notes for the DRD are set out in Appendix 2 of PD 57AD and, for a LCCDRD, in Appendix 7 of PD 57AD. The notes at paragraph 8 of Appendix 2 of PD 57AD include a summary of the timeline of steps to be completed in advance of the first CMC, unless otherwise agreed between the parties or ordered by the court. Some sections of the DRD do not need to be completed where there is likely to be

limited disclosure, or the identification and retrieval of documents is straightforward. See paragraph 13 of Appendix 7 for the timeline in relation to a LCCDRD.

7.18 Further disclosure, for example for specific documents or where there has been or may have been a failure to comply adequately with an order for Extended Disclosure, may be sought in accordance with paragraphs 17 and 18 of PD 57AD.

7.19 A party may seek Disclosure Guidance in accordance with paragraph 11 of PD 57AD for guidance from the court at any time (before or after the first CMC / CCMC) on any point concerning the operation of PD 57AD to address differences between the parties, including in relation to settling Issues for Disclosure and the selection of Extended Disclosure Models, without a formal determination.

7.20 The provisions relating to Disclosure Guidance do not affect or limit the court's power to determine any point about disclosure at any time by application of a party in a hearing convened for that purpose ('Disclosure Hearing') or without a hearing (see paragraphs 6.8 to 6.11 of PD 57AD).

7.21 The court will not typically list a Disclosure Hearing in advance of the CMC / CCMC though it may list an application for Disclosure Guidance to encourage cooperation and agreement in respect of the DRD or LCCDRD.

7.22 However, the court will expect to be able to determine whether to order Extended Disclosure, and to deal with any issues arising from and to approve the DRD or LCCDRD (where applicable), within the time estimate allowed for the CMC / CCMC. Parties should carefully consider the time estimate for the CMC / CCMC. If the issues raised by disclosure are likely to take up more than 1 hour of the court's time the parties should consider whether a longer time estimate or separate Disclosure Hearing may be appropriate (see Chapter 6 paragraphs 6.8 and paragraphs 6.44 to 6.46).

7.23 Where the judge considers it would be beneficial to the parties, the court will seek to list any Disclosure Hearing before the same judge who dealt with any Disclosure Guidance Hearing or CMC/CCMC.

7.24 Parties should consider who is the most appropriate person to assist the court when seeking Disclosure Guidance or a determination in relation to any disclosure issues. The solicitor with conduct of the disclosure exercise or junior advocates may be best placed to deal with some or all of the matters in respect of which guidance is sought.

7.25 The steps for compliance with an order for Extended Disclosure are set out in paragraph 12 of PD 57AD.

Continued application of CPR 31 to cases subject to PD 57AD

7.26 CPR 31.16 (disclosure before proceedings start), CPR 31.17 (orders for disclosure against a person not a party), CPR 31.18 (rules not to limit other powers of the court to order disclosure), CPR 31.19 (claim to withhold inspection of a document (public

interest immunity)) and CPR 31.22 (subsequent use of disclosed documents and completed Electronic Disclosure Questionnaire) continue to apply and are set out in section II of PD 57AD.

Where PD 57AD does not apply

7.27 Paragraph 1.4 of PD 57AD sets out those claims which are excluded from the operation of PD 57AD. In such claims CPR 31 will continue to apply. (Note that CPR 31 is modified in intellectual property cases: see CPR 63.9 and 63.24 and PD 63 paragraphs 6.1 to 6.3). For further guidance on Part 8 claims see paragraph 7.29.

7.28 Even in claims to which PD 57AD does not apply, the court will have regard to the principles and general duties set out in paragraphs 2 and 3 of PD 57AD and have regard to the overriding objective when considering the appropriate form of disclosure in accordance with CPR 31 including which of the options in CPR 31.5.(7) is appropriate.

Part 8 claims

7.29 PD 57AD does not apply to claims proceeding under Part 8 unless otherwise ordered (PD 57AD paragraph 1.4 (7)). However, where a party seeks an order for disclosure in a Part 8 claim they must comply with paragraph 1.12 of PD 57AD which requires them to serve and file a List of Issues for Disclosure in respect of the disclosure being sought. The parties can request and the court has power to order Extended Disclosure in accordance with paragraph 6 of PD 57AD in a Part 8 claim. The court may adapt the provisions of PD 57AD as appropriate when making an order for disclosure in a Part 8 claim. However, the parties approach to disclosure should be consistent with the principles and duties set out in PD 57AD. See also Chapter 13.

Insolvency and Companies List (ICL)

7.30 The provisions of PD 57AD apply to the Insolvency and Companies List unless excluded. See Chapter 21 for further guidance and the Chief ICC Judge's Practice Note.

Pre-action and non-party disclosure

7.31 An order for disclosure before proceedings have started is made in accordance with CPR 31.16 in Section II of CPR PD 57AD. It comprises a two-stage test:

(a) Parties must first satisfy the four-part jurisdictional test set out in CPR 31.16(3). This includes consideration of whether such disclosure is desirable in order to dispose fairly of the anticipated proceedings, or to assist the parties to avoid litigation, or to save costs; and

(b) If the court is satisfied that the application meets the jurisdictional threshold, it will then consider whether it is appropriate to make an order for pre-action disclosure as a matter of discretion, which has to be considered on all of the facts and not merely in principle but in detail: see *Black v Sumitomo* [2001] EWCA Civ 1819; [2002] 1WLR 1562; [2003] 3 All ER 643.

7.32 The jurisdictional criteria in CPR 31.16 still requires consideration of whether the documents would fall within the scope of 'standard disclosure' under CPR 31.6. However, when considering whether to make an order, the court should take into account that if proceedings are brought they are likely to be subject to PD 57AD, where the court would work with the parties to define the issues for disclosure and apply the most appropriate disclosure model (paragraph 8 of PD 57AD): see also *Willow Sports Ltd v SportsLocker24.com Ltd* [2021] EWHC 2524 (Ch).

7.33 An order for disclosure against a person who is not a party is made in accordance with CPR 31.17 (see Section II of CPR PD 57AD and Chapter 14).

7.34 For applications for disclosure pursuant to *Norwich Pharmacal v Customs and Excise Commissioners* [1974] AC 133 see Chapter 14.

7.35 Applications pursuant to CPR 31.16 and CPR 31.17 should be made by application notice in accordance with CPR 23 (see also Chapter 14). They should be issued to be heard by a Master or an Insolvency and Companies Court Judge (as applicable) unless, exceptionally, the weight and complexity of the application warrants it being released to be dealt with by a HCJ, Section 9 Judge or Deputy HCJ. For further guidance on applications see Chapter 14 and Chapter 15.

Chapter 8 Witness evidence

Form and content of witness statements

8.1 Witness statements must be prepared in accordance with Part 32 (Evidence) of the Civil Procedure Rules ('CPR')) and CPR 22 (Statements of Truth) and their practice directions ('PDs'), including in particular paragraphs 17 to 22 of PD 32, and (for trial witness statements for use in the Business and Property Courts ('B&PCs')) in accordance with PD 57AC (which applies to all Part 7 and Part 8 claims except those specifically excluded at paragraph 1.3 of PD 57AC). Parties should have regard to paragraph 3.3 of PD 57AC when considering the language in which to draft any witness statement. For these purposes, a 'trial witness statement' is one falling within the definition in paragraph 1.2 of PD 57AC which includes written evidence filed in accordance with either CPR 8.5 or 8.6.

8.2 These rules and practice directions contain a detailed code for the preparation of witness statements. PD 57AC was introduced in the light of consistent failure by parties in B&PCs cases to prepare trial witness statements that contained only the evidence that the witness would be able and allowed to give orally. Failure to comply with these provisions can have serious consequences. See, for example, CPR 32.10, paragraph 25 of PD 32 and paragraph 5 of PD 57AC.

8.3 When preparing trial witness statements in any claim, careful thought therefore needs to be given to compliance with (or dispensation from) some or all of the requirements of PD 57AC.

8.4 Parties should note, in addition, that under CPR 32.2(3) the court may give directions:

(a) identifying or limiting the issues to which factual evidence may be directed;

(b) identifying the witnesses who may be called or whose evidence may be read; or

(c) limiting the length or format of witness statements.

8.5 In all cases parties should give careful thought to whether in addition to witness statements the judge would be assisted at trial by an agreed bundle of key documents and an agreed narrative chronology with reference where appropriate to those key documents. If so, appropriate directions should be sought at the CMC / CCMC.

8.6 Where there is disagreement between the parties, the narrative chronology should identify each of the parties' respective positions, making clear there is divergence between them on a particular issue. The bundle of key documents and the narrative chronology (in Word format) should be provided to the trial judge by the PTR and/or with skeleton arguments.

Documents referred to in witness statements

8.7 Paragraph 3.4 of the Appendix to PD 57AC provides that a trial witness statement should refer to documents, if at all, only where necessary. Where it does so, the document should not be exhibited, but a reference should be given enabling the document to be identified. The same approach should generally be adopted for trial witness statements where PD 57AC does not apply.

8.8 For these purposes, the disclosure numbers assigned on disclosure should be used (defaulting to the claimant's disclosure if a document is disclosed by more than one party) unless otherwise agreed.

8.9 If a document has not previously been made available on disclosure, it may be helpful for the document to be exhibited to the witness statement. However, the claim form, statements of case, other witness statements, orders of the court, and judgments should not be exhibited, nor should documents already before the court.

8.10 Where documents are exhibited, the exhibit should not be included in the trial bundles in that form. The documents in the exhibit should be included in the trial bundles in an appropriate location (or locations) which should be cross-referenced from the witness statement in the trial bundles. See also Chapter 12 and Appendix X.

Witness statement as evidence in chief

8.11 Where a witness is called to give oral evidence, the witness statement of that witness is to stand as the witness's evidence in chief unless the court orders otherwise: CPR 32.5(2).

8.12 The trial judge may direct that the whole or any part of a witness's evidence in chief is to be given orally, either on the judge's own initiative or on application by a party. Any application for such an order should normally be notified in good time before, and made at, the pre-trial review ('PTR') (or, if there is no PTR, as early as possible before the start of the trial).

8.13 Any objection to the court treating some or all of the content of a witness statement as evidence in chief at trial should be raised when the case is next before the court following service of the statement in question. If there is no further hearing before the trial, then the objection should be notified to the other parties as soon as possible and raised in the objecting party's skeleton argument for trial.

8.14 Any application for permission to rely on reply witness evidence should identify the specific issues on which it is to be provided and why it is reasonably required. Careful consideration should be given to the need for such evidence which should comply with the provisions of PD 57AC.

Hearsay, supplemental statements, corrections and amplification

8.15 Parties must ensure that the statements of all factual witnesses intended to be called, or whose statements are to be tendered as hearsay statements, are exchanged simultaneously (unless otherwise ordered) by the date the court has directed for the service of witness statements. Witnesses additional to those whose statements have been initially exchanged may only be called with the permission of the court, which will not normally be given unless prompt application is made supported by compelling evidence explaining the late introduction of that witness's evidence.

8.16 Where a party has served a witness statement and later decides not to call that witness to give oral evidence at trial, prompt notice of this decision should be given to all other parties indicating whether the party proposes to put, or seek to put, the witness statement in as hearsay evidence: see CPR 32.5(1). Parties should note that, if they do not put the witness statement in as hearsay evidence, CPR 32.5(5) allows any other party to put it in as hearsay evidence.

8.17 Where a witness proposes materially to add to, alter, correct or retract from what is in the witness's original statement, a supplemental witness statement should be served. Permission will be required for the service of a supplemental statement, unless the content of the statement falls within the terms of a direction already given for the service of evidence in reply or all parties consent to the service of the supplemental statement. Any supplemental or reply witness statements must be served in accordance with any directions given for them.

8.18 A party should not seek the court's permission for service of a supplemental statement unless it has first provided a copy of the statement to all other parties and sought their consent to service. The request for consent should be made without delay. Where an application for permission is necessary, the application should be made at the PTR or, if there is no PTR, as early as possible before the start of the trial. If the application is made at any later stage, the applicant must provide compelling evidence explaining its delay in adducing such evidence.

8.19 Witnesses are expected to have re-read their witness statements shortly before they are called to give evidence. If any corrections are needed, a list of such corrections should be provided to the court and to all other parties at least 24 hours before the witness is called.

8.20 CPR 32.5 provides that a witness giving oral evidence at trial may, with the court's permission, amplify the witness statement and give evidence in relation to new matters which have arisen since the witness statement was served. Permission will be given only if the court considers that there is good reason not to confine the evidence of the witness to the contents of the witness statement. Any proposal for amplification or new evidence should be discussed between advocates for each party before the witness is called.

Witness statements for applications

8.21 Witness statements in support of applications should be prepared in accordance with CPR 32 and PD 32. PD 57AC applies only to trial witness statements.

8.22 In some cases, it may be convenient for the evidence in support of an application to be given by way of a witness statement from a party's legal representative, based on instructions, rather than serving statements from those with direct knowledge of the matters in question. Such a statement must however comply strictly with paragraph 18.2 of PD 32, which requires a witness statement to indicate which of the statements in it are made from the witness's own knowledge and which are matters of information or belief, and the source for any matters of information or belief.

Witness summaries

8.23 A party who is required to serve a trial witness statement but cannot obtain one may apply without notice for permission to serve a witness summary instead: see CPR 32.9.

8.24 In considering whether to grant permission, the court will consider various factors including the extent to which the witness is likely to be able to give relevant evidence, whether the proposed witness summary satisfies the requirements of CPR 32.9, and whether permitting service of the witness summary is likely to further the overriding objective.

Other guidance

8.25 Follow the hyperlinks below for further guidance in relation to witness evidence:

(a) Expert Evidence (Chapter 9)

(b) Trial (Chapter 12)

(c) Business List rectification (Chapter 18)

Chapter 9 Expert evidence

General

9.1 The use of expert evidence is governed by Part 35 of the Civil Procedure Rules ('CPR'). Expert evidence is restricted to that which is reasonably required to resolve the proceedings (CPR 35.1 and see *British Airways Plc v Spencer* [2015] EWHC 2477 (Ch) [68-69]).

9.2 No party may rely on expert evidence at any stage during the proceedings without the permission of the court (CPR 35.4).

9.3 Expert evidence is generally limited to opinion evidence of a suitably qualified expert. Permission for such evidence is only given where the court is satisfied that there is a sufficiently recognised body of expertise on which to draw and that the court would be assisted by such evidence in determining one or more issues in the proceedings.

9.4 Permission should be sought only for expert evidence on identified issues, not generally.

Duties of an expert

9.5 Attention is drawn to the Practice Direction ('PD') to CPR 35, and in particular to the Civil Justice Council Guidance for the instruction of experts in civil claims which provides guidance on best practice in complying with CPR 35 and PD35 for both those instructing experts and for experts. PD35 sets out the duties of an expert and the form and content of an expert's report.

9.6 PD 35 paragraph 2.1 provides that expert evidence should be the independent product of the expert, uninfluenced by the pressures of litigation.

9.7 The primary duty of an expert witness is to provide independent unbiased and objective assistance to the court. They should not assume the role of advocate or judge.

9.8 An expert witness is personally responsible for the content of their report, regardless of whether others have assisted in its preparation.

9.9 An expert report must be verified by a statement of truth in the form set out in PD 35 paragraph 3.3.

9.10 Experts are reminded in particular of the seriousness with which the court will view any false statement contained in a written report (*Liverpool Victoria Insurance Co. Ltd v Zafar* [2019] EWCA Civ 392).

9.11 Other sanctions may be imposed on parties if their experts do not comply with their duties to the court or the directions given by the court - see for example *Dana UK Axle Ltd v Freudenberg FST GMBH* [2021] EWHC 1413 (TCC).

9.12 Where the evidence of an expert is to be relied upon for the purpose of establishing primary facts, as well as for the purpose of expressing an opinion on any matter related to or in connection with the primary facts, that part of the evidence which is to be relied upon to establish the primary facts is to be treated as factual evidence to be incorporated into a factual witness statement to be exchanged in accordance with the order for the exchange of factual witness statements. The purpose of this practice is to avoid postponing disclosure of a party's factual evidence until service of expert reports.

Case Management Conference

9.13 Draft case management directions which include suitable directions for both single joint experts and separate experts are available at Chancery Forms and should be adapted as appropriate.

9.14 The question of whether expert evidence is necessary or likely to be of assistance to the trial judge, the scope of the evidence and the timing and sequence of the provision of reports, will usually be considered at a case management conference ('CMC') (see Chapter 6).

9.15 The court will expect the parties to have discussed in advance of the CMC the scope of any expert evidence they think appropriate and, if possible, to have agreed the list of issues to be addressed by the experts (whether the parties seek the appointment of separate experts or a single joint expert).

9.16 When parties apply for permission for expert evidence, they must identify the relevant field of expertise or experience and the issues for expert evidence and be able to justify the need for expert evidence on those issues. Where practicable, they should identify the name of the proposed expert (CPR 35.4). They must also provide an estimate of the costs of the proposed expert evidence (whether or not there is a requirement to file costs budgets in the case).

9.17 The exchange of expert evidence will normally take place simultaneously after both disclosure and the exchange of witness evidence. However, in an appropriate case, the parties and the court should consider earlier exchange of expert evidence and/or sequential exchange.

9.18 Sequential reports may 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 or help the second party to understand the first party's case. For example, sequential exchange may sometimes be appropriate where the court gives permission for forensic accountancy or foreign law expert evidence.

9.19 Where experts are proposed in several disciplines, it may assist with overall case management for the experts in one discipline to exchange their reports ahead of experts in other disciplines.

9.20 Parties should be aware that the court discourages the practice of 'expert shopping', in the sense of casting around for a more favourable expert opinion in place of one already obtained. The court can, and ordinarily will, require a party to waive privilege

in a previous expert's report as a condition of granting permission to adduce evidence from a different expert (see, for example, *Edwards-Tubb v J D Wetherspoon* [2011] EWCA Civ 136).

Single joint expert

9.21 The court will consider the appointment of a single joint expert ('SJE') where it is reasonable and proportionate to do so and consistent with the overriding objective.

9.22 Factors the court will take into account in deciding whether there should be a SJE include those listed in PD 35 paragraph 7. SJEs are often appropriate to assist the court on lower value and/or less complex claims. They may also be appropriate where issues of quantum or valuation arise, but where the primary issues to be determined are ones of liability. A SJE may provide assistance to the court where expert evidence is required on matters of expert fact such as technical evidence, as opposed to opinion.

9.23 It is not a sufficient objection to an order for a SJE that the parties have already appointed experts to assist them. An order for a SJE does not prevent a party from appointing their own expert to advise them, but they are unlikely to be able to recover the cost of doing so in the litigation.

9.24 Where a SJE is to be appointed the parties will be expected to cooperate to seek to agree the terms of reference, identify any documentary material the SJE is to be asked to consider and specify any assumptions the SJE is to be asked to make.

Separate experts

9.25 In cases where liability will turn on expert opinion evidence or quantum will be a primary issue; it is more likely to be appropriate for the parties to be permitted to instruct their own experts. For example, in cases where an issue for determination is whether a party acted in accordance with proper professional standards, it is likely to be of assistance to the court to hear expert evidence from separate experts who will be likely to represent the range of opinion, which can then be tested in cross-examination. However, it is not an invariable practice and in all cases the court will consider what is reasonable and proportionate.

Exchange of reports

9.26 Whilst the most common order is for expert reports to be exchanged simultaneously, in an appropriate case the court will direct that experts' reports are delivered sequentially (see paragraphs 9.17 and 9.19 above).

Joint meetings and statements of issues agreed and disagreed

9.27 Where the court gives permission to rely on expert evidence, it will usually give directions for the experts to meet and prepare a joint statement of those matters that are agreed or not agreed between them – see CPR 35.12 and PD 35 paragraph 9.

9.28 The court may also direct discussion between experts before reports are exchanged, particularly where there is a need to refine the issues on which the expert evidence may assist the court, or to identify the extent of any disagreement between the experts in relation to the issues.

9.29 Unless the court orders otherwise, the structure and content of the joint meeting (or meetings) are matters solely for the experts and should not be controlled by the parties. The meetings may be held in person or remotely, as the experts find most convenient.

9.30 The discussions between the experts are without prejudice, to enable a free-flowing discussion. The content of the discussions will not be referred to at trial unless the parties agree (CPR 35.12(4)).

9.31 Parties must not seek to restrict their expert's participation in any discussion, or the preparation of a joint statement, directed by the court.

9.32 The joint statement is to be the work of the experts alone. Whilst the parties' legal advisers may assist in identifying issues which the statement should address, they must not be involved in either negotiating or drafting the statement.

9.33 The experts may provide a draft of the joint statement to the parties' legal advisers, but the legal advisers should not suggest amendments to the draft statement save in exceptional circumstances, for example where there are serious concerns that the court may misunderstand or be misled by the terms of that joint statement, where a party has sought to introduce new issues into a statement which were not in the agreed list of issues to be addressed by the experts or were not in their report, or where issues have been overlooked by the experts.

Written questions to experts

9.34 A party can seek clarification of either a SJE's report or another party's expert report. Written questions that are more than clarificatory can only be raised by agreement of the parties or with the permission of the court – see CPR 35.6 and PD 35 paragraph 6.

9.35 The court has the power to disallow some or all of the written questions and impose sanctions in relation to costs, for example if the questions are oppressive in number or content, or if they extend beyond clarification without permission of the court or agreement between the parties.

9.36 This procedure is separate to, and should not interfere with, the joint expert meeting, discussions or statement.

Request by an expert to the court for directions

9.37 An expert may seek directions from the court (CPR 35.14). Unless the court orders otherwise the expert must provide a copy of the request to all parties. The expert should guard against accidentally informing the court about communications that are without prejudice or privileged.

Role of experts at trial

9.38 The trial judge may disallow expert evidence which is not relevant to the issues to be determined at trial or which the judge regards as excessive or disproportionate in all the circumstances, even though permission for the evidence has been given.

9.39 The trial judge may order the experts to meet and attempt to agree further issues during the trial, with the aim of reducing the length of the trial or narrowing the issues for cross-examination.

9.40 The trial judge may direct that the evidence be given on an issue-by-issue basis, so that each party calls its expert to give evidence on a particular issue, followed by the other parties' experts on that same issue (see PD 35 paragraph 11.2). The experts should therefore be available throughout the trial period.

9.41 The unavailability of an expert or the late introduction of new expert evidence will rarely be a sufficient ground for varying a trial date or window.

Concurrent expert evidence: 'Hot Tubbing'

9.42 Parties should consider in advance of the CMC and/or any pre-trial review ('PTR') whether concurrent expert evidence, sometimes referred to as 'hot tubbing', would assist the court in the determination of the issues for trial - see PD 35 paragraph 11.

9.43 In an appropriate case the court may direct a mixture of approaches with the experts giving evidence and being cross examined on some issues before being asked to give concurrent expert evidence on other issues.

9.44 Concurrent expert evidence can be useful when there are a large number of issues of disagreement between experts of like discipline. The court can hear the evidence on each issue in turn, with questions being raised by the judge and the advocates. This can often achieve a clearer view of the extent of agreement and disagreement on a particular issue.

9.45 As an alternative to concurrent expert evidence the court may hear evidence from all parties' experts of like discipline or those dealing with one particular area of expertise

together in turn. So for example hearing all the expert valuation evidence and then all the expert accounting evidence in an appropriate case.

Expert evidence of foreign law

9.46 Foreign law is a matter of fact to be proved by evidence, but CPR 32.1(b)/(c), 35.1, 35.3 (1) and 35.5(1) give the court flexibility in determining how it is to be proved at trial.

9.47 The parties should consider and, if possible, agree in advance of the CMC what issues of foreign law are or may be disputed such that they may be issues for determination at trial.

9.48 The parties should consider and, if possible, agree in advance of the CMC what approach to invite the court to take, if there are foreign law issues to be determined. Various approaches can be adopted, including but not limited to the following:

(a) The court may make directions as set out above, treating an expert of foreign law in the same way as other experts providing evidence in the proceedings.

(b) The court may direct an exchange of expert reports and other procedural steps as set out above, but on the basis that the foreign law experts will not give evidence at trial, either at all or only on limited issues, although their evidence is not agreed. The trial advocates may make submissions at trial by reference to the reports and foreign law materials filed.

(c) The parties may agree the nature and importance of sources of foreign law, but choose not to file expert evidence, leaving the matter to submissions by the trial advocates, referring to source materials they have obtained from their own research.

(d) If the parties have retained foreign lawyers to advise them on issues of foreign law, they may agree it is not necessary to instruct a separate foreign law expert to provide the expert evidence, and instead their foreign lawyer may be directed to assist the court with source documents and /or witness evidence on relevant legal principles (see Chapter 8 on witness evidence).

(e) The court may limit the expert evidence to identification of the relevant sources of foreign law and relevant legal principles, with the trial advocates making submissions based on such materials.

9.49 It will be open to the court at the CMC to defer any decision on whether, and if so on what issues, the foreign law experts are to give evidence at trial.

9.50 Where there is a PTR and there is a previous direction of the court for foreign law expert evidence to be adduced at trial, the parties should consider in advance of the PTR whether, and if so to what extent, such evidence is still reasonably required for the trial (see Chapter 11 PTR).

Expert evidence for use in interim applications

9.51 No party may rely on expert evidence in support of an interim application without permission of the court.

9.52 Where an applicant considers that expert evidence is reasonably necessary for the fair disposal of their application they should, at the same time as issuing their application, apply for permission to rely on expert evidence.

9.53 If the respondent considers that expert evidence is reasonably necessary for the fair disposal of the application they should, at the same time as filing their evidence in response, apply for permission to rely on expert evidence.

9.54 Such an application may be dealt with on paper and without a hearing, in an appropriate case.

9.55 Parties should where possible seek to agree the scope of any expert evidence which may be reasonably necessary for the fair disposal of the application. If the expert evidence sought is expert evidence of foreign law, parties should have regard to paragraphs 9.46 to 9.50 which should be applied analogously.

Assessors

9.56 Under CPR 35.15 and PD 35 10 the court may appoint an assessor to assist it in relation to any matter in which the assessor has skill and experience. An assessor provides advice and assistance to the judge not the parties and cannot be cross examined or give evidence. However, any report of the assessor prepares for the court is made available to the parties.

9.57 It is rarely used both because parties often have their own experts whose duty is to assist the court and because save in exceptional cases the additional cost would be prohibitive. However, assessors have been used by the court to provide scientific or technical advice, assistance on complex costs disputes and in nautical collision cases.

9.58 The remuneration of the assessor is determined by the court and forms part of the costs of the proceedings.

Chapter 10 Alternative Dispute Resolution ('ADR')

Generally

10.1 ADR is a broad umbrella term for alternative types of dispute resolution and includes, but is not confined to, mediation, negotiation, early neutral evaluation, arbitration, adjudication, expert determination and financial dispute resolution. Parties should consider carefully whether ADR will be of assistance in resolving their dispute before and after the issue of any claim.

10.2 This chapter is focussed on those types of ADR that are primarily used to facilitate settlement before a trial or appeal in claims that have already been issued in the B&PCs.

10.3 The settlement of disputes by means of ADR can:

(a) save significant expense;

(b) provide a resolution expeditiously;

(c) preserve existing commercial relationships and market reputation;

(d) provide a wider range of solutions than those offered by the determination of the issues in the claim; and

(e) ensure confidentiality.

10.4 In all cases, legal representatives 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 points (a) – (e) above.

10.5 ADR should be considered before issue and at all stages of a claim. At the case management conference ('CMC'), parties should be prepared for a discussion about what steps have already been taken to try to resolve the claim, and in appropriate cases proceedings may be stayed and the parties may be ordered to participate in ADR.

Stays for ADR

10.6 Once a claim has been issued the most common forms of ADR used to facilitate settlement, outside the court process itself but in parallel with it, are negotiation and mediation. However, ADR is an umbrella term and parties should consider carefully

what type of ADR is most likely to assist them to resolve their dispute. Some types of ADR can be undertaken within the court process such as those set out below.

10.7 Parties who consider that ADR might be an appropriate means of resolving the dispute may apply for a stay at any stage, including before the first CMC. The court will readily grant a stay at an early stage in proceedings if the parties are agreed that there should be one. This can be dealt with by lodging a consent order, which should also specify the steps that the parties must take once the stay has expired (see form CH12 which can be adapted as appropriate to the circumstances).

10.8 A stay for ADR will normally be for a fixed period and 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 the order without reference to the court, provided they notify the court in writing. Any request for a further extension after 3 months must be referred to the court. 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.

10.9 The court may also stay the case or adjourn a hearing of its own motion to encourage and enable participation in an appropriate form of ADR and/or order the parties to use ADR. The stay will be for a specified period and may include a date by which representatives of the parties with authority to settle and their legal advisers are required to meet, or a requirement for parties to exchange lists of neutral individuals who are available to carry out ADR and seek to agree on one. If agreement cannot be reached, the CMC can be restored for the court to facilitate agreement. Although the court can assist the parties in reaching agreement or, for example, choose from a list of neutral individuals chosen by the parties, it will not recommend an individual or body to facilitate ADR.

10.10 For information and example only, but not by way of recommendation, a list of mediators and mediation providers can be found at https://civilmediation.org/mediator-search/.

10.11 Any order staying the case for ADR may (but is not required to) include an order as to the liability of the parties for the costs they incur in using or attempting to use ADR. Such order will usually be (a) costs in the case or (b) each side to bear its own costs.

10.12 Once directions have been given and a trial date fixed, a stay or further stay for ADR may be inappropriate if it will interfere with the directions timetable. ADR can take place without a stay of the proceedings and in parallel with the continuing case management directions timetable, so as not to endanger the trial date.

10.13 Where an application is made for permission to appeal, the court may adjourn that application to allow the opportunity for ADR. Failing settlement within a specified period, the application for permission to appeal will be restored.

High Court Appeals Mediation Scheme

10.14 Where a High Court Judge (‘HCJ’) grants permission to appeal against a decision of the County Court or adjourns the application for permission to appeal or permission

to appeal out of time, or both, for a hearing, the appeal will be recommended for mediation unless the HCJ otherwise directs.

10.15 All parties will be notified of the recommendation, as will the Centre for Effective Dispute Resolution ('CEDR'), which operates the scheme. The recommendation will be accompanied by a letter explaining the operation of the scheme. CEDR will liaise with the parties to facilitate the mediation (further information about the scheme can be found on the CEDR website).

10.16 A failure to mediate following a recommendation may have consequences for any order for costs at the end of the appeal.

10.17 There is no stay of the appeal proceedings where a recommendation to mediate is made. The parties are expected to agree suitable extensions of time for any procedural steps required, to allow time for the mediation to take place.

Early neutral evaluation ('ENE')

10.18 ENE is a simple, independent evaluation of the merits of a dispute or a particular issue, by a judge or someone with relevant expertise. This evaluation is non-binding and without prejudice unless the parties agree otherwise. It is given after time-limited consideration of core materials, the judge having read or listened to concise submissions.

10.19 The court may order ENE at a case management conference if it deems it appropriate. Following *Lomax v Lomax* [2019] EWCA Civ 1467, this may be ordered even if one or more party does not consent.

10.20 There is no one type of case which is suitable, though complex factual and legal disputes are generally unsuited to ENE. It can be particularly effective where the claim turns on an issue of interpretation or an issue of law, where the case involves the court forming an impression about infringement of intellectual property rights, or where the case is an appeal against a decision of a lower court, tribunal or office holder.

10.21 ENE may be provided by appropriate third parties or by the court pursuant to its powers under rule CPR 3.1(2)(m) of the Civil Procedure Rules ('CPR'). If it is provided by the court, the ENE will generally be conducted by a judge of the same level as would be allocated to hear the trial (or appeal), but the parties may agree otherwise.

10.22 There are no set procedures for ENE. The judge who is to conduct the ENE will give such directions for its preparation and conduct as they consider appropriate. The court will usually direct the parties to provide and exchange written position papers and to agree a bundle of core documents. The ENE can be on paper but in some cases the judge will direct a short hearing of up to half a day (2.5 hours).

10.23 Unless the parties have agreed that the ENE will be 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 evaluation.

10.24 The judge conducting the ENE will have no further involvement with the claim unless both parties agree otherwise.

10.25 A draft ENE order can be found at Appendix K.

Chancery Financial Dispute Resolution ('Ch FDR')

10.26 Ch FDR is a form of ADR in which the court facilitates negotiations and may provide the parties with an opinion about the claim or elements of it. It is without prejudice and non-binding and will not be ordered unless all parties consent.

10.27 It is generally necessary for the parameters of the dispute to have crystallised before a Ch FDR takes place. This will generally not be before completion of statements of case or the exchange of evidence in a Part 8 claim.

10.28 However, if once acknowledgments of service have been filed, the parties consider that an early Ch FDR would be beneficial, they do not need to wait for the first hearing but can make an application using form N244. They should file a consent order substantially in the form to be found at Appendix L.

10.29 At all stages the parties should give careful consideration to what information may need to be exchanged in advance of any Ch FDR to facilitate any negotiations and enable the court to provide an opinion on the claim or particular issues. This may include agreeing to early limited disclosure or expert evidence (see paragraph 10.36). This is particularly important if the Ch FDR is to take place at an early stage.

10.30 The parties should consider who needs to participate in the Ch FDR to ensure it is effective. This includes ensuring all relevant decision makers are present and/or whether representation orders are necessary or appropriate and/or how different interests are to be represented at the Ch FDR.

10.31 If non-parties are to attend (by agreement between the parties) the parties should notify the court and seek permission by letter filed on the CE-File. Usually the court would expect this to be limited to, for example, a family member or close friend supporting a party to the claim. They would have to sign a confidentiality agreement.

10.32 However, if the parties consider it necessary for a non-party to be present for the purposes of the negotiations because they have an interest in or are necessary for any overall resolution of the dispute, but are not a party to the claim itself, consideration should be given to the need for them to sign a confidentiality agreement and/or what role they are to have at the Ch FDR. It may affect the terms and form of any agreement reached by the parties at the Ch FDR and how it is to be approved or implemented.

10.33 Ch FDR has been particularly effective in resolving disputes about shares in property, business partnerships, probate and inheritance.

10.34 Ch FDR will usually be undertaken in London by a Master or an Insolvency and Companies Court Judge and in the B&PC District Registries by specialist B&PC District Judges, or where the case warrants it by a Section 9 Judge.

10.35 Ch FDR is a dynamic process. There will be a Ch FDR meeting in which the court plays the role of both facilitator and evaluator. Parties must be present at this meeting. The court will try to lead the parties to agree terms but will not make a determination. If the parties request it, the court may express an opinion about an issue or the claim as a whole.

10.36 In advance of the Ch FDR meeting the court will give directions which 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 expert evidence is likely to be required or helpful for the Ch FDR, the court may permit that evidence to be filed and exchanged for the purposes of the Ch FDR without the need for a CPR compliant report.

10.37 The court will allocate time for initial discussions between the parties before the commencement of the Ch FDR meeting.

10.38 Unless the parties have agreed otherwise, the court will not retain on the court file any of the papers lodged for the Ch FDR or a record of the judge's opinion.

10.39 The judge conducting the Ch FDR will have no further involvement with the claim.

10.40 A draft Ch FDR order can be found at Appendix L.

Chapter 11 Pre-trial review and trial timetable

Timing and attendance

11.1 Pre-trial reviews ('PTRs') are typically held in all cases where the trial is estimated to last for more than 5 days (including time for pre-reading and writing closing submissions). PTRs are not typically held in cases where the trial is estimated to last 5 days or less (including time for pre-reading and, where appropriate, preparing closing submissions). Where a PTR would not normally be held it is the responsibility of the parties to consider whether the trial or any part of it should be conducted remotely or as a hybrid hearing and to raise the matter with the court (by way of a letter sent via CE-File) in good time; the court may then direct a short PTR if necessary.

11.2 Where a case with a time estimate of more than 5 days is fixed for final hearing, the Chancery Judges' Listing Office (or Masters Appointments) will at the same time fix a PTR before an appropriate judge. A PTR will usually be fixed to take place about 4-6 weeks before the start of the trial. A PTR will usually be listed for half a day (2.5 hours). A PTR of half a day or less (and no more than 90 mins pre-reading) will take place remotely unless the court orders otherwise. For guidance on the preparation and conduct of remote and hybrid hearings see Appendix Z.

11.3 For guidance on PTR listing arrangements in the B&PC District Registries follow the links in Appendix C. For guidance on PTR listing arrangements before ICC Judges see paragraph 21.35.

11.4 If the trial judge has already been nominated, the PTR will, if possible, be heard by that judge.

11.5 A PTR should be attended by at least one of the advocates who are to represent each party at the trial. Any unrepresented party should also attend.

Documents

List of matters to be considered at the PTR

11.6 In cases where there is to be a PTR, the parties must attempt to agree a list of matters to be considered at the PTR, including:

(a) any outstanding procedural matters, directions or steps still to be taken, including the status of the trial bundle (but note paragraph 11.18 below);

(b) proposals as to how the case should be tried, including all questions of timetabling of witnesses (see paragraphs 11.9 to 11.12 below), the use of

technology and whether any parts of the trial should be heard remotely or by a hybrid hearing;

(c) any possible changes in the time estimate for the trial (see further paragraph 11.17 below and paragraphs 12.13 to 12.15 of Chapter 12); and

(d) any arrangements for witnesses to give evidence remotely. Where such evidence is to be given from out of the jurisdiction, parties will be expected to provide confirmation that any necessary permissions have been obtained (see paragraph 33 of Appendix Z).

11.7 The parties should be prepared to update the court on the state of preparedness of the trial bundle and should consider whether, in an appropriate case, the court would be assisted by the provision of the trial bundle at a time earlier than that provided for at paragraph 12.37.

11.8 Unless the court orders otherwise, the list of matters to be considered at the PTR should be prepared and provided to the court according to the following timetable:

(a) not less than 7 clear days before the PTR, the claimant must provide the other parties with a draft list of matters for their consideration;

(b) not less than 3 clear days before the PTR, the other parties should provide their comments on the draft list of matters to the claimant;

(c) by 10am two clear days before the PTR, the claimant must provide the draft list of matters, agreed, if possible, to the court (using CE-File, as part of the PTR bundle – see paragraph 11.13 below).

Trial timetable

11.9 The parties must attempt to agree a timetable for the trial. In cases where a PTR has been fixed, timetables (agreed if possible) must be included in the PTR bundle (see paragraph 11.13 below). In cases where a PTR has not been fixed, the trial judge will determine the timetable at trial. The parties should co-operate to seek to agree a draft timetable, which should be filed at court at the same time as skeleton arguments when required by paragraph 12.50 of Chapter 12. The advocates for the parties should be ready to assist the court in this respect if so required. See further paragraph 12.5 of Chapter 12.

11.10 Trial timetables are always subject to any further order by the trial judge.

11.11 The timetable should allow a realistic time for pre-reading by the judge as well as opening and closing submissions, witnesses of fact and experts. If written closing submissions are contemplated, the timetable must allow time for the parties to prepare and lodge them, and for the judge to have read them before oral closing submissions. It is not usually necessary to allow time for judgment.

11.12 Where the parties put forward rival timetables, any differences of view should be clearly identified and briefly explained in a neutral manner using the template set out below (which includes space for the court to record its decision on the disputed matters):

Trial day	Claimant's proposed timetable	Defendant's proposed timetable	Explanation of parties' difference	Court's decision
Day 1 – am	Judge's pre-reading	Judge's pre-reading		
Day 1 – pm	Claimant's opening	Judge's pre-reading		
Day 2 – am	Witness A	Claimant's opening		
Day 2 – pm	Witness B	Defendant's opening		
Etc				

PTR bundle

11.13 The claimant, or another party if so directed by the court, must deliver to the court, using CE-File, by 10 am two clear days before the PTR, a bundle including:

(a) the list of matters to be dealt with (whether agreed or not), a list of agreed proposals and the parties' respective proposals for matters which are not agreed;

(b) the trial timetable, with any differences of view clearly identified and briefly explained using the template set out in paragraph 11.12 above;

(c) all current statements of case;

(d) all orders made in the proceedings;

(e) all witness statements filed for the trial (without exhibits);

(f) all experts' reports filed for the trial (without exhibits);

(g) any core bundle intended to be used for the trial; and

(h) such other documents (not generally more than 100 pages in total at most) as the parties consider are reasonably necessary for the PTR.

11.14 Unless the court orders otherwise, the PTR bundle should be electronic, not hard copy. It should be prepared and provided to the court in accordance with the guidelines in Appendix X.

11.15 If there are any substantial matters in dispute, the parties must file skeleton arguments with the PTR bundle. Skeleton arguments should be no longer than is necessary and should not exceed 15 pages (including any appendices and schedules). Should a party wish to file a longer skeleton argument, the senior legal representative whose name appears at the end of the skeleton argument must file a letter along with the skeleton argument explaining why this has been necessary. If the judge is not satisfied by the explanation the party may be required to re-draft the skeleton argument and/or costs sanctions may be imposed. For further guidance on skeleton arguments generally see Appendix Y. If there are no substantial matters in dispute, a short note to explain the agreed proposals will suffice.

At the PTR

11.16 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 – see paragraph 6.60 of Chapter 6 (Case Management) and paragraph 12.32 Chapter 12 (IT at Trial).

11.17 The court may give directions as to how the case is to be tried, including (i) directions as to the order in which witnesses are to be called (for example all witnesses of fact before all expert witnesses), (ii) whether the trial judge will be assisted by the provision of a core bundle of key documents and/or a narrative chronology, (iii) whether and the extent to which expert evidence (particularly foreign law evidence) is still reasonably required at trial, (iv) the time to be allowed for particular stages in the trial or (v) matters relating to the trial bundle requiring the court's direction (see paragraph 12.36 of Chapter 12 (Documents for trial) and (vi) will the judge or witnesses be assisted if some or all of the trial bundle is provided in hard copy as well as electronically. 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. If the trial timetable is not agreed, the court will impose one.

Pre-trial applications

11.18 It is sometimes the case that there are still outstanding steps to be taken at the time of the PTR. This may be due to one or more parties' failure to comply with an earlier direction of the court. In such cases, the court is likely to require prompt compliance, and may make adverse costs orders to reflect the delays.

11.19 Parties should, where possible, avoid making applications with a view to their being heard at the same time as the PTR. It is preferable for applications to be made and heard well in advance of the PTR.

11.20 If it is not practicable to make an application before the PTR, the court should be asked to allocate additional time for the PTR in order to accommodate specific applications. If additional time is not available, such applications will not generally be entertained.

11.21 Urgent applications in the run up to trial but after the PTR should be made to the trial judge if known. If the trial judge is unidentified or unavailable, such an application should be made to the assigned Master, who will if possible or appropriate determine it on an urgent basis or refer it to the Judges' Applications List (described in Chapter 15) to be heard by a HCJ. Alternatively, such an application may be made directly to the Judges' Applications List if the application needs to be heard by a HCJ.

Vacating the PTR

11.22 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 within 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, and in that situation will indicate to the parties those issues that should be addressed at the PTR.

Chapter 12 Trial

Procedural and preliminary matters

12.1 A trial is a final hearing of any claim (under Part 7 or Part 8 of the Civil Procedure Rules ('CPR')), petition or other originating application, in whole or in part, whether with or without live evidence. Trials in the Chancery Division may be conducted by High Court Judges ('HCJs'), specialist civil judges authorised to sit as judges in the High Court pursuant to section 9(1) of the Senior Courts Act 1981 ('Section 9 Judges'), fee paid deputy HCJs appointed pursuant to section 9(4) of the Senior Courts Act 1981 ('Deputy HCJs'), Masters and deputy Masters and Insolvency and Companies Court Judges ('ICC Judges') and deputy ICC Judges – see Chapter 6 (Case Management) at paragraph 6.83 and Chapter 21 (Insolvency and Companies List) at paragraphs 21.7 to 21.9. In the B&PCs District Registries trials may be conducted by B&PC District Judges.

12.2 Parties should also have regard to other parts of this Guide potentially relevant to trials, including the Shorter and Flexible Trials Schemes (Chapter 17 – see also CPR Practice Direction ('PD') 57AB and Chapter 3 at paragraph 3.16), expedition (Chapter 3, at paragraphs 3.19 to 3.22), and trials of preliminary issues (Chapter 6 at paragraphs 6.10 to 6.16).

Proper preparation for trial

12.3 Parties will be expected to have taken all reasonable steps to ensure that their cases are adequately prepared in sufficient time to enable a trial which has been fixed to proceed. This covers, among other things:

(a) the timely production of any document (including written evidence) required to be served on any other party in sufficient time to enable the other party to be adequately prepared;

(b) the preparation and exchange of skeleton arguments in accordance with this Chapter and Appendix Y, chronologies and other documents to assist the trial judge;

(c) compiling and filing bundles of documents in accordance with this Chapter and Appendix X (Preparation of bundles);

(d) dealing out of court with queries that need not concern the court;

(e) giving consideration to the use of information technology at trial where this would save time and cost or increase accuracy (as addressed further at paragraphs 12.32 to 12.34 below);

(f) compliance as appropriate with Appendix Z where the court has directed that part or all of the trial take place as a remote or hybrid hearing; and

(g) the identification, and where possible agreement, of the main issues in dispute.

12.4 A failure to provide the court or other parties with documents in accordance with the relevant provisions of the CPR and this Guide or a court order may result in sanctions which could include the matter not being heard on the fixed date, the costs of preparation being disallowed, and an adverse costs order being made. See also paragraphs 12.27 to 12.31 below in relation to adjournments.

Trial timetable

12.5 See paragraphs 11.9 to 11.12 of Chapter 11 for an explanation of the process by which a timetable for the trial is set at the pre-trial review ('PTR') (if there is one) or at the start of trial. During the course of the trial, the parties should check each day whether the timetable is being adhered to and, if it is not, be ready to assist the trial judge with proposals (agreed if possible) for revisions which will enable the trial to finish within the fixed trial period. If necessary, the court will impose a revised timetable. See also paragraphs 12.13 to 12.15 below for guidance on time estimates for trial and the importance of their accuracy.

Court dress for Judges and advocates

12.6 HCJs, Section 9 Judges and Deputy HCJs wear robes for all trials except fully remote hearings. Masters wear robes for all trials and disposal hearings in court rooms (but not in hearing rooms) except fully remote hearings. They do not robe for the oral examination of a debtor. ICC Judges robe for hearings when sitting in a hearing room or court.

12.7 Where the judge is robed, advocates, whether counsel or solicitor advocates, wear court dress for trials, appeals and committal applications.

12.8 Court dress is worn by barristers and other advocates in accordance with the updated guidance issued by the Bar Council (2020). The judge may dispense (in advance or at the hearing) with any requirement for advocates to be robed.

Listing

12.9 This section of the Guide applies to trials in the Business and Property Courts at the Rolls Building in London (ChD B&PCs in London'). The same general approach applies in the B&PCs District Registries, however for any local guidance on listing arrangements follow the links in Appendix C.

Responsibility for listing

12.10 The listing of trials before Masters is dealt with by Masters' Appointments in the manner described at paragraph 12.16 below. For guidance on listing trials before an ICC Judge see Chapter 21.

12.11 The Chancery Judges' Listing Officer is responsible for listing trials before HCJs (which may also be heard by Section 9 Judges or Deputy HCJ's). The Listing Officer is supported by a team in the Chancery Judges' Listing Office ('Judges' Listing').

12.12 Any party dissatisfied with a decision of the Listing Officer may apply to the Judges' Applications List following the procedure set out in Chapter 14.

Estimated length of trial

12.13 A time estimate for trial is usually fixed at a case management conference ('CMC') and confirmed at any PTR and when skeleton arguments are lodged. It is vital that the time estimates are kept under review and are updated (and the court informed) as soon as it becomes apparent that a change is required; the parties should also keep each other informed of any changes (see also Chapter 6 (Case Management) at paragraphs 6.75 to 6.78).

12.14 Only in exceptional circumstances will a trial be permitted to continue beyond the period allocated to it at the time of listing. Paragraph 12.16 below sets out the procedure to be followed in the event of a change in the time estimate after the trial date has been fixed.

12.15 Paragraphs 11.9 – 11.12 of Chapter 11 set out further considerations which should inform the parties' time estimates.

Procedure for listing

12.16 The procedure for listing a trial before a HCJ or Master has two stages.

Fixing of trial window

At an early stage in the claim, usually at a CMC or other directions hearing (see Chapter 6 (Case Management) paragraphs 6.79 – 6.82), for trials before a HCJ (as well as trials to be heard by a Section 9 Judge or a Deputy HCJ) the court will specify a listing trial window, usually of 3 months, during which the trial is to take place. This is known as the listing trial window. The listing trial window will usually be fixed by reference to the estimated length of the trial: the listing trial window for a shorter trial will normally be sooner than the window for a longer trial. This is to allow the parties sufficient time to complete their preparations for trial. Parties should note that a listing trial window, once fixed, will not readily be altered. A list of current listing trial windows is available online at Trial date windows for Chancery Division. For a trial before a Master the Master will specify the listing trial window, if applicable, when giving listing directions.

Fixing of trial date

(a) At the time the listing trial window is fixed, the court will usually set a date by which the parties must co-operate to allow the claimant to provide an agreed list of dates within the window to avoid when fixing the date on which the trial window will begin. In practice:

i. For trials before a HCJ (as well as trials to be heard by a Section 9 Judge or a Deputy HCJ), the date by which agreed dates to avoid must be provided to the court is known as the 'appointment to fix'. The claimant should send an email (copying the other parties) to Judges' Listing at ChanceryJudgesListing@Justice.gov.uk. Judges' Listing will then proceed to fix a date for the start of the narrower trial window (usually a period of 3-5 days) within which the trial will commence and will communicate this to the parties. Where one or more of the parties is

represented by counsel, it is normal for their clerks to liaise with Judges' Listing. In limited circumstances the court may provide a fixed start date: see paragraphs 6.58 – 6.59.

ii. For trials before a Master, the claimant should send the agreed list of dates to avoid to the court by CE-File and notify the other parties that it has done so. The dates to avoid and any other important information should also be included in the filing comments box on CE-File. Failure to do this may result in a delay in listing. Masters' Appointments will then proceed to fix a date for the start of trial and will communicate this to the parties.

12.17 For the procedure for fixing and listing trials before an ICC Judge, see Chapter 21 (Insolvency and Companies List).

12.18 In all cases, the court officer responsible for listing (whether within Judges' Listing or Masters' Appointments) will take into account, insofar as it is practical to do so, the times at which counsel, experts and witnesses are available. The officer will, though, try to ensure the speedy disposal of the matter by fixing a trial date as early as possible in the listing trial window. If, exceptionally, it appears to the officer responsible for listing that a trial date cannot be provided within the listing trial window, they may fix the trial date outside the listing trial window at the first available date.

12.19 In all cases with a time estimate of more than 5 days including judicial pre-reading, the officer responsible for listing will fix a date for a PTR at the same time as the trial date is fixed (see Chapter 11).

12.20 When the trial date is fixed, the court will specify the date by which the parties must file a pre-trial checklist (Form N170) and the trial fee - see further CPR 29.6.

12.21 A trial fee (where payable) must be paid by either the claimant or if the claim proceeds only by counterclaim, by the counterclaimant. Where the claimant files a pre-trial checklist via CE-File they will be required to pay the trial fee when the pre-trial checklist is filed. In any other case the claimant or counterclaimant must arrange to pay the trial fee by the date specified. A claim or counterclaim will be automatically struck out without further order if the trial fee is not paid unless the court orders otherwise (CPR 3.7A1 and CPR 3.7AA).

12.22 A trial date, once fixed, will only rarely be altered or vacated. Paragraphs 12.27 to 12.31 below set out the procedure to be followed where a party seeks an adjournment.

Part 8 claims

12.23 In most Part 8 claims, it will not be necessary to call oral evidence and a trial will be listed before the relevant level of judge as directed by a Master or ICC Judge.

12.24 In Part 8 claims which require a trial with oral evidence, the applicable procedures set out in paragraph 12.16 above for fixing a trial date before the relevant level of judge should be followed.

Changes to estimated trial length and settlement of case

12.25 If, after a case is listed, the estimated length of the trial needs to be varied the parties must immediately inform Judges' Listing or ICC Judges' Hearings, preferably by email, or Masters' Appointments through CE-File. Failure to do so may result in an adverse costs order. Unless the parties have agreed a reduction in the estimated trial length, a direction from the court will usually be required.

12.26 If the case is settled before the trial begins, a consent order should be filed on CE-File for approval by: (i) a docketed HCJ, if there is one; or (ii) the trial judge, if known; or (iii) the assigned Master, or (iv) an ICC Judge. The parties must also notify Judges' Listing, ICC Judges' Hearings or Masters' Appointments, as the case may be, by email or by telephone, in order that the case can be taken out of the list.

Adjournments

12.27 Once a trial date has been fixed, it will rarely be adjourned. An application for adjournment should only be made where there has been a change of circumstances not known at the time the trial was fixed. The application should be made as soon as possible and never, unless unavoidable, immediately before the start of trial.

12.28 Any application to adjourn, whether agreed or not, should be made on notice under CPR 23 and in accordance with the guidance in Chapter 14 and Chapter 15. Depending on how close to the trial date an application is made, it will be dealt with, on paper or at a hearing as may be directed, by:

(a) the docketed HCJ, if there is one; or

(b) the trial judge, if known; or

(c) the assigned Master or an ICC Judge; or

(d) the HCJ hearing the Judges' Applications List (described in Chapter 15).

12.29 Where an adjournment is sought on medical grounds, the applicant must, subject to any contrary direction by the court, provide medical evidence which satisfies the criteria set down in the judgment of Norris J in *Levy v Ellis-Carr* [2012] EWHC 63 (Ch).

12.30 If a failure by a party to take reasonable steps necessitates an adjournment, the court may impose sanctions which could include: disallowing costs as between solicitor and client; ordering the person responsible to pay the costs under CPR 46.2 or CPR 46.8; dismissing the application; or making any other order (including an order for the payment of costs on the indemnity basis).

12.31 The court may order an adjournment of its own motion where, at a prior hearing, it becomes apparent that the trial date cannot stand without injustice to one or both parties.

Information technology ('IT') at trial

12.32 Parties and their legal representatives should seek to minimise the use of paper at trial. In any event, no hard copy trial bundle, only electronic trial bundles, should be lodged for use by the court, unless specifically requested at any stage by the court. See Appendix X for details on electronic bundles.

12.33 Parties are strongly encouraged to consider the use of IT at, or in preparation for, trial beyond just the use of electronic bundles. This will range from consideration of the provision of transcripts to a full trial support package. The court will expect proposals to be made, or an explanation of why it is not proposed to make wider use of IT at trial, at the PTR, if there is one, and in the parties' pre-trial checklists. This will not be necessary if directions for the use of IT in the case, including at trial, have been made at an earlier stage (see Chapter 6 paragraph 6.60) and there is no proposal to alter those directions.

12.34 In deciding whether and to what extent IT should be used at the trial, the court will have regard to the financial resources of the parties and the value of the claim. Where financial resources are unequal, it will consider whether it is appropriate for the party applying for the use of such IT to bear the cost initially, subject to the court's ultimate orders as to the overall costs of the case following judgment.

Documents for trial

12.35 Documents to be referred to at trial must be filed in one or more bundles of documents. Bundles of documents for the trial, including bundles of authorities, must be prepared in accordance with Appendix X (Preparation of bundles).

12.36 It is the responsibility of the claimant's legal representative to prepare and provide the agreed trial bundles: see CPR PD 32 paragraph 27.7. If the claimant is unrepresented, the court may direct that another party must prepare and provide the trial bundles. The preparation of bundles requires a high level of co-operation between the legal representatives for all parties. 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 with the other parties' legal representatives.

12.37 The trial bundles should be prepared as follows, unless the court directs, or the parties agree, otherwise:

(a) the claimant must submit proposals to all other parties at least 6 weeks before the date fixed for trial;

(b) the other parties must provide the claimant with details of any additions they require or revisions they suggest at least 4 weeks before the date fixed for trial (and in any event before the PTR, if there is one); and

(c) preparation of the trial bundles must be completed no later than 10 days before the date for service of skeleton arguments.

12.38 The number, content and organisation of the trial bundles must be approved by the advocates with the conduct of the trial. The court and the advocates should all have exactly the same bundles (see CPR PD 32 paragraph 27.13).

12.39 If hard copy trial bundles are to be provided, in no case must a bundle contain more than 300 sheets of paper (i.e. 600 pages if double-sided) see Appendix X 'Preparation of bundles'.

Filing and delivery

12.40 The general rule (which may be modified by the court) is that the claimant must ensure that the full set of properly prepared trial bundles is delivered in accordance with the guidance set out in Appendix X paragraphs 15 to 18 for electronic bundles and/or that any hard copy trial bundles are delivered at the same time to Judges' Listing (for trials before HCJs, Section 9 Judges and Deputy HCJ's) or Masters' Appointments (for trials before Masters) or ICC Judges' Hearings (for trials before an ICC Judge) not less than 3 clear days (and not more than 7 clear days) before the start of the trial or, if applicable, not less than 3 clear days (and not more than 7 clear days) before the start of the designated pre-reading period. For a definition of clear days see CPR 2.8.

12.41 Appendix X (Preparation of bundles) provides further information about the filing and delivery of both electronic and hard copy bundles to the court.

12.42 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, except for good reason. Appendix X explains how changes to electronic bundles should be made.

12.43 Where oral evidence is to be given at trial, and if, exceptionally, the entire trial bundle is in hard copy, the claimant should bring to court at the start of the trial an unmarked copy of the bundle for the use of the witnesses (see CPR PD 32 paragraph 27.13). Unless otherwise ordered by the court, the claimant is responsible for ensuring that these bundles are kept up to date throughout the trial.

12.44 Where a witness has access to the hearing bundle only in electronic form, and the witness is asked a question about a document appearing in the bundle, the court and the advocates should ensure that the witness is given a proper opportunity to orientate or familiarise themselves with the document (for instance by being shown the front page, or the pages before/after the section they are being asked about) before answering.

12.45 The parties are expected to cooperate in respect of the arrangements for witnesses to give evidence remotely and are referred to Appendix Z paragraphs 36 and 39. Where a witness who will be giving evidence remotely requires a hard copy bundle in addition to or in place of an electronic bundle it will be the responsibility of the party for whom the witness is giving oral evidence to arrange for a hard copy bundle to be available to the witness.

12.46 Any party preparing a trial bundle should provide all other parties who are to take part in the trial with an electronic copy free of charge, and, if a hard copy is required, one

copy at the cost of the receiving party. Further copies should be supplied on request, again at the cost (if there is a cost) of the receiving party.

Physical exhibits

12.47 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.

12.48 Some cases involve recordings, video or other electronic media. The parties should seek to agree in advance how those are to be made available to the judge and any witness. It is the responsibility of the parties to liaise with the court in advance of any hearing to ensure either that the court has appropriate facilities or to arrange to make appropriate facilities available to the court.

Skeleton arguments, reading lists and authorities

Skeleton arguments at trial

12.49 Written skeleton arguments should be prepared by each party. Guidelines on the preparation and filing of skeleton arguments are set out at Appendix Y (Skeleton arguments).

12.50 Unless otherwise ordered, skeleton arguments (and any other documents – see paragraphs 12.52 and 12.55 below) should be served on all other parties and provided to the court, via CE-File and, if the name of the trial judge is known, by email to their clerk, not less than 2 clear days before the date or the first date on which the trial is due to come on for hearing; or, if earlier, one clear day before the trial judge is due to begin pre-reading. For a definition of clear days see CPR 2.8.

12.51 Trial skeleton arguments should be no longer than is necessary, and they must be skeletons. Full written arguments on issues in the case, if needed, should be prepared for closing submissions. Skeleton arguments normally need not exceed 25 pages. Even in the heaviest cases they should not exceed 50 pages in length, including appendices and schedules (minimum font size of 12 point and 1.5 line spacing). Where the advocates for trial consider that it is not reasonably possible to comply with that page limit given the complexity of the claim, permission for a longer skeleton argument must be sought at the PTR or by filing a letter from the senior advocate for the trial judge's urgent attention, copied to all parties. Where a party fails to comply with this guidance they are likely to be required to re-draft the skeleton and/or it is likely to lead to costs sanctions. For further guidance on skeleton arguments generally, see Appendix Y.

Lists of issues, lists of persons, chronologies and indices

12.52 In most trials, a list of the persons involved in the facts of the case, a chronology and a list of the main issues for decision will be required. In certain cases, the use of indices (i.e. documents that collate key references on particular points, or a substantive list of the contents of a particular bundle or bundles) may also be helpful

for the court. Unless otherwise ordered, the claimant is responsible for preparing and delivering these documents to the court with their skeleton argument.

12.53 These documents should be non-contentious and agreed between the parties, if possible. If there is a material dispute about a particular event or description, it should be stated in neutral terms and the competing versions shortly stated.

12.54 Once prepared, these documents can be easily updated and may be of continuing usefulness throughout the case.

12.55 The documents should be no longer than is necessary and should be cross-referenced to the trial bundles and core bundle.

Reading lists

12.56 The documents which the trial judge should, if possible, read before the trial 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.

12.57 The reading list must be lodged at court with the trial bundles, together with a realistic estimate, if possible agreed, of the time required for the reading. Advocates should remember, when specifying the time estimate, that the trial judge may have no familiarity with the case. It is the regular experience of the judges that pre-reading is seriously under-estimated.

12.58 If any party objects to the trial judge reading any document, witness statement or expert report in advance of the trial, the objection and its grounds should be clearly stated in a letter accompanying the trial bundles and in the skeleton argument of that party. In the absence of objection, the trial judge will be free to read the witness statements and documents in advance. The parties may agree that the trial judge should read a witness statement or document in advance on the basis that argument objecting to the witness statement or document will be heard in due course and, if that objection is upheld, the trial judge will reach their decisions in the case without taking the witness statement or document into account.

Authorities

12.59 An agreed, single joint bundle of the authorities cited in the parties' skeleton arguments should be provided to the court by 4.00 pm on the day before the start of the trial or, if the pre-reading includes any authorities, at least one clear day before the start of the pre-reading. The authorities bundle should be filed using CE-File and, where the trial judge has requested a hard copy, by delivery to Judges' Listing or Masters' Appointments, as appropriate.

12.60 Unless otherwise agreed or directed, the preparation of the bundles of authorities for trial is the responsibility of the claimant, who should provide copies to all other parties. Advocates should liaise to ensure that the same authority does not appear in more than one bundle.

12.61 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. Citations should comply with Practice Direction (Judgments: Neutral Citations) [2002] 1 WLR 346.

Oral opening statements, applications during trial and closing submissions

Oral opening statements

12.62 Subject to any direction to the contrary by the trial judge, there should be an oral opening statement on behalf of the claimant. The appropriate length of that opening statement will depend on the nature of the claim. At the conclusion of the claimant's opening statement, the trial judge will invite short opening statements on behalf of the other parties. The trial timetable should set out the time allowed for oral openings (see paragraphs 11.9 to 11.12 of Chapter 11 for guidance on the trial timetable).

12.63 Oral opening statements should, so far as possible, be uncontroversial and no longer than the circumstances require. Their purpose is to explain the party's case, on the key issues for trial, introduce the trial judge to the significant facts of the case, including any important documents, and to identify the points of contention expected to arise; they are not an opportunity to repeat the parties' skeleton arguments or to make closing submissions on questions of law.

12.64 Unless notified otherwise, advocates should assume that the trial judge will have read their skeleton arguments and the principal documents referred to in the reading list lodged in advance of the hearing. The trial judge will state at an early stage, and in any event before any oral opening statement, how much they have read and what arrangements are to be made to read any documents not already read, for which an adjournment of the trial after opening speeches may be appropriate. Sometimes it is more helpful for a judge to read witness statements and expert reports shortly before the relevant witness is called. If the trial 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.

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

Oral advocacy

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

12.67 Where a party is represented by more than one advocate at the trial, the advocates may share the oral advocacy, though no more than one advocate for each party may address the court on the same issue without the court's permission. The court's permission is also required for more than one advocate for a party to cross-examine the same witness and will rarely be granted. The court however encourages oral advocacy to be undertaken by junior advocates.

Evidence

12.68 When agreeing bundles for trial, the parties are reminded that pursuant to CPR 32.19 documents disclosed in the course of any claim are deemed to be authentic unless a notice to prove has been served. Parties should establish through their legal representatives, whether the deemed agreement that the documents in the bundles are authentic includes agreement that the documents may be treated as evidence of the facts stated in them.

12.69 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 (via CE-File), with a copy to all other parties, stating that it is not willing to agree, and explaining why.

12.70 Even where it is agreed that the documents may be treated as evidence of the facts stated in them the fact that a document is in an agreed bundle does not mean that every such document is (without more) part of the evidence given to the trial judge. It is the responsibility of a party to identify any documentary evidence on which it relies. An advocate should avoid, so far as reasonably possible, identifying a document relied on as evidence for the first time in their closing submissions. Failure to comply with this guidance may well lead to an adverse costs or wasted costs order if time and costs are incurred dealing with an objection.

Documents and authorities

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

12.72 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. Such material may include a note, in narrative or chronological form, of the factual case that a party invites the court to accept, which should if possible be cross-referenced to documents in the bundle and oral evidence. Any such material should also be available to the trial judge in electronic form.

Applications during trial

12.73 It will not normally be necessary for an application notice to be issued for an application which is to be made during the course of the trial, but all other parties should be given adequate notice of the intention to apply.

12.74 Unless the trial judge directs otherwise, the parties should prepare skeleton arguments for the hearing of the application. Such skeleton arguments should be concise and no longer than is necessary.

Closing submissions at trial

12.75 After the evidence is concluded, and unless the trial judge directs otherwise, 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.

12.76 In a lengthy and complex case each party should provide written summaries of their closing submissions. Advocates should be ready to discuss with the court, in advance

of their preparation, the form, scope and length of any written closing submissions. In the absence of any specific guidance from the trial judge, written closing submissions should be concise and no longer than is necessary. Any court time to prepare written submissions should have been included in the trial timetable fixed at the PTR or at the start of trial.

Recordings and transcripts

Recordings

12.77 Hearings in the B&PCs, whether the hearing is held in person or remotely, are recorded.

12.78 Hearings in private will also be recorded, but a note will be made by the court to the effect that the hearing, or part of it as the case may be, was in private. If any party wishes different arrangements to be made, they should raise the issue with the court by way of letter sent via CE-File and, for trials before HCJs and where the name of the HCJ is known, to the HCJ's clerk.

12.79 No party or member of the public may record or transmit any part of court proceedings, however the relevant hearing is conducted, without the court's permission. Parties should note carefully and comply with the provisions of Appendix Z (the remote and hybrid hearings protocol) in relevant cases.

Real-time or daily transcripts

12.80 Various services are available for the transcription of proceedings at trial on either a real- time basis or in a transcript delivered at the end of each day. 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.

12.81 If a real-time service is proposed, the matter should be raised at the PTR, if there is one. Otherwise, inquiries should be made of the trial judge (via Masters' Appointments, ICC Judges' Hearings, Judges' Listing or, where the trial judge is a known HCJ through their clerk) and sufficient time for the installation of the equipment necessary and for any familiarisation on the part of the trial judge with the system should be found. In all cases, the requesting party must complete and provide to the court a completed Form EX107OFC. Parties should also familiarise themselves with the relevant provisions of Appendix Z (the remote and hybrid hearings protocol) in relevant cases. If special transcript-handling software is to be used by the parties, consideration should be given to making the software available to the trial judge, though it will not be possible to load software (as opposed to the text of transcripts) on the trial judge's computer.

12.82 If the shorthand writers make transcripts available in digital form (as nearly all do) the trial judge should be provided with a digital version of the transcripts as they become available, if they require them.

Transcripts prepared after the trial

12.83 A party wishing to obtain a transcript of the judgment or the proceedings must make a request to the Court Recording and Transcription Unit using Form EX107 and pay the appropriate transcript fee to the court transcriber chosen by the party. Parties should consult the Guidance Notes to Form EX107 which sets out the procedure to be followed and contains details of the different transcription services available and the names of authorised court transcribers.

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

Judgments and consequential orders

12.85 Unreserved judgments (which is to say judgments that are given immediately or shortly after oral argument has concluded) and some reserved judgments are delivered orally. A party wishing to obtain a transcript of the judgment must make a request to the Court Recording and Transcription Unit, following the procedure set out in paragraph 12.83. The transcriber will supply a copy once it has been approved by the trial judge.

12.86 Most reserved judgments are delivered and published electronically, or by the trial judge handing down the written text without reading it out in open court. Where this course is adopted, the procedure set out in PD 40E will be followed. That includes, unless otherwise directed in a particular case, providing the parties in confidence with a draft of the judgment proposed to be handed down. The requirement stated on the front of the draft to treat the draft judgment as confidential must be strictly observed. Failure to do so amounts to a contempt of court. Draft judgments so provided are generally confidential to the parties and their legal representatives only, but in an appropriate case the judge may approve provision to an additional person, such as an insurer, on confidential terms. This must be specifically requested in writing (via CE-File and, in the case of a HCJ, by email to the HCJ's clerk) and approved by the trial judge before the draft is shared with such a person.

12.87 Advocates should inform the trial judge in the manner set out on the draft judgment or otherwise via Judges' Listing, Masters' Appointments, ICC Judges' Hearings or the clerk to a HCJ within the time specified or (where no time is specified) not later than 12 noon on the business day before the judgment is to be handed down of any typographical or other obvious errors or corrections of a similar nature which the trial judge may wish to correct. This is not to be used as an opportunity to attempt to persuade the trial judge to change the decision on matters of substance. Parties are reminded that the handing down of a reserved judgment will take place promptly after the provision of a draft to the parties.

12.88 The judgment does not take effect until formally delivered. Unless otherwise directed, reserved judgments in the Chancery Division will be handed down remotely, in accordance with the procedure set out in the Chancellor's Practice Note dated 5 October 2022. Judgments will be handed down remotely by circulation to the parties or their legal representatives by email and by release to The National Archives. The

judgment will become available on the National Archive, 'Find Case law' website shortly thereafter.

12.89 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 trial judge with a draft, it is not necessary for the parties to attend any hearing at which the judgment is to be handed down.

12.90 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 (subject to any direction that the judge has already given) 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. A draft order to be made on handing down the judgment should be provided.

12.91 Parties are reminded that if permission to appeal is to be sought from the trial judge such an application must be made when judgment is handed down unless the parties have obtained an extension of time for doing so. Such an extension if granted will usually be up to the date of any later consequentials hearing and should be included in any order made at the time the judgment is handed down.

12.92 Consequential matters that cannot be agreed on or shortly after the date of handing down the judgment, including applications for permission to appeal, are in most cases suitable for determination on paper. In such cases the parties should provide a draft composite order, concise grounds of appeal (where relevant), and brief written submissions, which should be no longer than necessary and in any event no longer than 15 pages. Unless the judge directs a hearing they will proceed to determine the outstanding matters on paper.

Consequentials Hearing

12.93 If the judge directs or one or more parties certifies that a hearing is needed to dispose of any consequential matter, any such matter will be determined at a short oral hearing, usually of no more than 1 hour. This must take place no later than 28 days after the judgment has been handed down, regardless of availability, unless the court orders otherwise. Any request for a longer hearing must be made in writing, with reasons.

12.94 Any skeleton argument or note for the consequentials hearing should be no longer than is necessary and no more than 15 pages unless the court orders otherwise and should be filed by 12 noon on the working day before the hearing, or as directed by the judge.

12.95 The court may order otherwise if the consequential matters are likely to involve substantive arguments or consideration of the nature of the remedy/relief and/or where it is necessary to give substantive directions in relation to, for example, a second trial and/or if the trial has been particularly significant or complex (length of trial itself would not justify a longer consequentials hearing).

12.96 Although the court will seek to take into account the parties availability, parties' unavailability will not justify a lengthy delay in listing the consequentials hearing.

12.97 Any application or renewed application for permission to appeal a judgment must be made to a single HCJ or the Court of Appeal within 21 days of the date on which the judgment was handed down by the trial judge (and not the date of any later hearing to consider consequential matters unless the time for doing so has been extended). A party wishing to extend the period in which permission to appeal may be sought either from the trial judge or from a HCJ or the Court of Appeal must make an application in good time to the trial judge. See further the judgment in *McDonald v Rose* [2019] EWCA Civ 4.

Chapter 13 Part 8 claims

13.1 The alternative procedure for claims under Part 8 of the Civil Procedure Rules ('CPR') is flexible and is used for a range of disputes. As a general rule the procedure will lead to a final hearing, typically referred to as a 'disposal hearing', far more quickly than a Part 7 claim. In ChD B&PCs London the majority of Part 8 claims are dealt with by Masters and Insolvency and Companies Court Judges ('ICC Judges'). In the B&PCs District Registries specialist B&PC Circuit Judges and District Judges deal with Part 8 claims.

When Part 8 is appropriate

13.2 Part 8 claims are appropriate in particular where there is no substantial dispute of fact, such as where the case raises only questions of the interpretation of a document or a statute or questions of law. Other statutes, rules or practice directions may require or permit the use of Part 8, of which the following are commonly seen:

(a) Claims under CPR 64. See Chapter 25.

(b) Claims under the Inheritance (Provisions for Family and Dependants) Act 1975. See Chapter 23.

(c) Claims for the removal of trustees and personal representatives where the guidance in *Schumacher v Clarke* [2019] EWHC 1031 (Ch) applies. See Chapter 23.

13.3 Part 8 is supplemented by PD 49E which is divided into three parts. Section A, which sets out general provisions applicable to Part 8 Claims, Section B which provides a table of specific claims which must be issued using the Part 8 procedure as modified, and Section C which sets out those modified provisions. In addition, certain applications under the Companies Act 2006 are governed by CPR PD 49A. See Chapter 21.

13.4 In cases in which both Part 7 and Part 8 could be used, caution should be exercised to avoid the inappropriate use of Part 8, and attention is drawn to the guidance given in *Cathay Pacific Airlines Ltd v Lufthansa Technik AG* [2019] EWHC 484 (Ch) 6 March 2019 unrep. (at paragraphs 31-42) and in particular that generally in such cases:

(a) the proposed defendant ought to be notified that the use of CPR 8 is being contemplated;

(b) a brief explanation ought to be provided as why CPR 8 is considered to be more appropriate than CPR 7 in the particular circumstances of the case;

(c) a draft of the precise issue or question which the claimant is proposing to ask the court to decide ought to be supplied to the defendant for comment; and

(d) any agreed facts relevant to the issue or question ought to be identified.

13.5 The Shorter Trials Scheme or the Flexible Trials Scheme may well be suitable for the determination of a limited factual dispute if Part 8 is unsuitable: see Chapter 17.

Initial steps

13.6 A claimant who wishes to commence a claim under CPR 8 must use Form N208.

13.7 Attention is drawn to the requirements in CPR 8.2(a) and PD 7A paragraph 3.3 including that the claim form must state that Part 8 applies and either that the claimant wishes the claim to proceed under Part 8 or that the claim is required to proceed under Part 8. These requirements ensure that anyone commencing Part 8 claims has given proper thought to whether or not Part 8 properly applies.

13.8 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 sought, should complete and file the acknowledgment of service in Form N210 not more than 14 days after service of the claim form (CPR 8.3). A defendant should state in the acknowledgment of service any different remedy that they seek. A failure to file an acknowledgement of service has serious consequences: a defendant may only attend the hearing(s) but may not take part without the court's permission (CPR 8.4). Where an acknowledgement of service has not been filed within the time limit, the court will normally fix a hearing date and make an order for a hearing for disposal of the claim, or further directions (Form CH 44).

13.9 There is no requirement to file a defence to a Part 8 claim and therefore various rules of the CPR are disapplied to such claims (CPR 8.9).

Evidence

13.10 Part 8 provides a strict set of rules regarding the evidence which may be relied upon by the parties. Attention is drawn to CPR 8.5 and 8.6.

13.11 It is not unusual for an extension of time to be agreed between the parties for the service of evidence. Attention is drawn to CPR 8.5 (8) to CPR 8.5 (10) . Any agreement to extend time must be filed with the court. If an extension cannot be agreed, or a longer extension than is permitted by agreement is required, an application should be made to the court. In substantial matters the court will normally be willing to grant a reasonable extension.

13.12 Parties should note that PD 57AC applies to trial witness statements (as defined in PD 57AC paragraph 1.2) filed in Part 8 proceedings (see paragraph 13.26 below).

Case management

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

13.14 Claims issued under the Part 8 procedure are treated as having been allocated to the multi- track and CPR 26 does not apply (CPR 8.9(c)). 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.

13.15 The court file will generally 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 (see paragraph 13.20).

13.16 If a defendant has not acknowledged service, and a certificate of service has been filed, the assigned Master will typically make an order substantially in the form of CH44, however, see paragraph 13.18.

13.17 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 and avoids delay.

13.18 If 21 days after the expiry of any extended period for service of evidence no notice of a directions hearing has been received, the claimant should file a certificate of service if they have not already done so, and contact the court by letter filed on CE-File together, if appropriate, with a draft order substantially in form CH44, requesting either a directions or disposal hearing. The letter should provide dates to avoid, and a realistic time estimate for both the hearing and any pre-reading.

13.19 The procedure adopted by ICC Judges is set out at paragraph 13.22 below.

13.20 After the time for acknowledgment of service has expired or any extended period for the service of evidence, the Master will then consider the claim and decide:

(a) Whether the claim may be capable of being dealt with 'on paper'.

i. 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 on paper.

ii. Examples of Part 8 claims which are dealt with on paper 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.

(b) If not, whether directions may be given without a hearing. 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. The court will give notice of the hearing to all the parties, and the notice or order will specify to whom the notice has been sent.

(c) Whether the claim is likely to be referred to a different level of judge for disposal.

13.21 A directions hearing with a time estimate of half a day or less (and no more than 90 mins pre-reading) will take place remotely unless the court orders otherwise. If a party considers that the directions hearing should take place using a format other than the default format, they should CE-File and serve on the other parties a letter setting out their alternative proposal, together with brief reasons, within 7 days of receipt of the Notice of Hearing. For further guidance on the preparation and conduct of remote or hybrid hearings see Appendix Z.

13.22 At a directions hearing the court will generally wish to establish whether:

(a) the court has all the evidence it will need (including expert evidence)

(b) the claim is ready for a disposal hearing;

(c) any witnesses will need to attend the final hearing for cross-examination, in which case the court will give directions with a view to fixing the period during which the case will be heard;

(d) the disposal hearing should be dealt with by a Master or by a HCJ, Section 9 Judge or Deputy HCJ.

13.23 Some Part 8 claims are, by virtue of their subject matter, exceptions to this general approach. Pension claims and Inheritance Act claims (see Chapter 26 and Chapter 23) are examples.

13.24 Some Part 8 claims are complex and raise a number of issues. In such cases, the parties should prepare an agreed list of issues, stating briefly the position that each party will take. The court may, in appropriate cases, direct that such an agreed list of issues is prepared and/or that the parties file an agreed statement of law/fact in relation to specific issues, including in advance of skeleton arguments. In an appropriate case the court may direct points of claim and defence within the framework of Part 8.

13.25 In the Insolvency and Companies Court List ('ICL'), Part 8 claims will be listed on issue for an initial hearing with a time estimate of 15 minutes, unless the claimant requests a longer hearing or invites the court to consider the claim on paper. The court will only determine Part 8 claims on paper in clear cases in which the other parties have stated that they will not oppose the relief sought. The first hearing will take place before an ICC Judge, unless otherwise directed, at which the ICC Judge may decide some or all of the claim or give directions as to its future conduct.

13.26 Company Directors' Disqualification Proceedings follow a modified procedure. See Chapter 21 and Practice Direction: Directors Disqualification Proceedings.

Disclosure

13.27 Attention is drawn to the paragraphs 1.4(7) and 1.12 of PD 57AD and Chief ICC Judge's Practice Note concerning the application of PD 57AD to Part 8 claims and ICL claims including Part 8 claims. PD 57AD applies to all claims issued in the B&PCs unless excluded. PD 57AD does not apply to Part 8 claims when issued, and it is rare for an order for disclosure to be made in a Part 8 claim. However, if any form of disclosure is ordered the court will adopt such parts of PD 57AD as are appropriate (and CPR 31 does not apply). For further guidance on disclosure, see Chapter 7.

Witness Statements

13.28 PD 57AC applies to Part 8 claims unless the type of proceedings is excluded pursuant to PD 57AC paragraph 1.3. For further guidance on witness statements see Chapter 8.

Objection to the Part 8 procedure

13.29 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 also object to proceedings being brought within the Part 8 procedure in the acknowledgment of service (CPR 8.8). The parties are encouraged to try to reach agreement on the use of Part 8 where possible. Use of the steps suggested in *Cathay Pacific Airlines Ltd v Lufthansa Technik AG* [2019] EWHC 484 (Ch) at paragraph 42 will help to identify and resolve issues with the use of Part 8.

13.30 If the court accepts the objection, it may direct the claimant's evidence to stand as particulars of claim, or direct that the claimant must file particulars of claim or short points of claim. The court will wish to avoid adopting a procedure which incurs unnecessary expense. Part 8 is flexible and the court can adopt a hybrid procedure under which limited factual disputes requiring oral evidence or disclosure can be accommodated within Part 8 proceedings – see *Vitpol Building Service v Samen* [2008] EWHC 2283 (TCC) (paragraph 18). However, it is unsatisfactory in a case of complexity for the claimant's case to be pleaded informally in a witness statement.

Continuing under Part 7

13.31 The court may at any stage order a claim started under Part 8 to continue as if commenced under Part 7 if it becomes clear that there are significant issues of fact which make the Part 8 procedure inappropriate (CPR 8.1(4)): see *Canary Wharf (BP4) T1 Ltd v European Medicines Agency* [2019] EWHC 335 (Ch) (paragraph 47) and *Cathay Pacific Airlines Ltd v Lufthansa Technik AG* [2019] EWHC 484 (Ch). 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 the existence of any factual issue is sufficient to require conversion to Part 7. This provision only applies where the claim could have been issued under either Part 8 or Part 7.

Costs and costs management

13.32 Costs management does not apply to Part 8 claims unless the court orders otherwise (CPR 3.12). PD 3D paragraph 2 gives examples of the type of Part 8 claim in which costs management may be appropriate.

13.33 A party seeking an order that costs management should apply to a Part 8 claim 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.

13.34 Attention is drawn to PD 3E (Costs Capping), Section II which affects all claims in which a party is intending to seek an order for costs out of a 'trust fund', including Part 8 claims. For further guidance see Chapter 25 Trusts.

Listing Part 8 claims

13.35 The final hearing of a Part 8 claim that does not involve oral evidence, known as a disposal hearing, should be listed in accordance with the guidance set out in Chapter 12. This will apply to most Part 8 claims. Where a Part 8 claim will involve oral evidence at the final hearing and directions have been given, it should be listed as a trial in accordance with the guidance in Chapter 12.

13.36 The final hearing of a Part 8 claim is usually listed before a Master however when directed to be tried by a HCJ, Section 9 Judge or Deputy HCJ they will be listed in the appropriate Chancery list by the Chancery Judges' Listing Office (see Chapter 12 for further guidance).

13.37 Part 8 claims in the ICL directed to be heard by an ICC Judge should be listed in accordance the guidance in Chapter 21 and Chapter 12.

Issuing claim form without naming defendant

13.38 CPR 8.2A permits a Part 8 claim form to be issued without naming a defendant, where this is provided for in a practice direction. In some cases, the permission of the court will be required in advance.

13.39 The following practice directions or rules permit the issue of a Part 8 claim form without naming a defendant and do not require permission of the court to do so:

(a) PD 57B 1.1-1.5: Claims for declaration of presumed death (see Chapter 23 Probate);

(b) CPR 57.16 (3A): Claims under the Inheritance (Provision for Family and Dependants) Act 1975 where no grant has been obtained (see Chapter 23 Probate);

(c) PD 64A paragraphs 1A.1 & 1A.2: Claims for an order approving any sale, purchase, compromise or other transaction by a trustee (see Chapter 25);

(d) CPR 64: Application for permission to distribute the estate of a deceased Lloyd's name (see Chapter 25 and Chancery Form CH 38);

(e) PD 64A paragraph 5: Application by trustees under section 48 of the Administration of Justice Act 1985 for authority to act in reliance on a legal opinion (see Chapter 25);

(f) PD Application for Warrant under Enterprise Act 2002, paragraph 2.3; and

(g) PD Application for Warrant under the Competition Act 1998, paragraph 2.3.

13.40 PD 64B, paragraph 4 permits a Part 8 claim form to be issued without naming a defendant in cases concerning an application to the court by a trustee for directions as to which persons should be defendants but requires permission to be sought from the court in advance.

13.41 Where permission is needed, it is to be sought by application notice in accordance with Part 23, in advance of issuing the claim. The application should be listed before a Master. The evidence should carefully explain why the order is appropriate and be accompanied by the proposed claim form. In a simple case the Master may be willing to deal with it on paper. The Master will give directions for the future conduct of the case on the application.

13.42 If a pre-issue application is made (e.g. for permission to issue a claim form without naming a defendant or for anonymity/confidentiality) when the claim to which the application relates is subsequently issued it will be given a separate claim number by CE-File. The claimant must file a letter on CE-File when issuing the claim requesting that the claim be assigned to the same Master who dealt with the pre-issue application and that the two be linked together.

Chapter 14 General applications

Introduction

14.1 Applications are governed by Part 23 of the Civil Procedure Rules ('CPR') and Practice Direction 23A ('PD 23A') which contain detailed rules about how applications should be made. This chapter contains guidance in respect of general applications (whether ordinary or heavy, as explained further below). Urgent applications are dealt with in Chapter 15. The operation of this chapter in respect of applications within the Insolvency and Companies List ('ICL'), as well as the ICL Interim Applications List, is addressed in Chapter 21.

14.2 This Chapter provides guidance on the practice in the ChD B&PCs in London. The guidance applies generally or by analogy to the B&PC District Registries subject to any necessary local variations or guidance. For any local guidance follow the links in Appendix C.

14.3 Applications are usually supported by evidence in the form of a witness statement. Where convenient the written evidence relied on in support of an application may be included in the application notice itself rather than in a separate witness statement. Even where no specific requirement for evidence is set out in the CPR the court will in practice often need to be satisfied by evidence of the facts that are relied on in support of, or in opposition to, the application.

14.4 Applications may be dealt with at a hearing either in person or remotely (which includes telephone and video hearings) or without a hearing (on paper) (see paragraphs 14.59 to 14.66 below).

14.5 An application made in existing proceedings is called an interim application. In certain cases, applications may be made before a claim has been commenced. Except where a CPR rule or PD specifically requires otherwise, applications should be made by application notice form N244 (or form N244(CHFL) for the Chancery Division Financial List).

14.6 The party (or parties) making the application is called the applicant and the party (or parties) against whom the application is made is called the respondent. References in this section to 'parties' are to the applicant(s) and respondent(s) to the application unless otherwise specified.

14.7 In the ChD B&PCs London the court reviews all applications before they are listed for a hearing and may give directions before listing, in particular in heavy applications referred to at paragraphs 14.44 to 14.58 below. A deputy Master will refer a heavy application to a Master. An application will not be referred to a judge, and will not otherwise be heard, until the necessary court fee has been paid and a Word version of the order sought has been filed in accordance with the requirements of Chapter 16 paragraphs 16.15 to 16.21.

14.8 Normally, applications are made on notice to the respondent. At least 3 clear days' notice to the respondent is required before any hearing. However, in cases of urgency or for other good reason the application can be made without giving notice at all or on short notice. Permission to serve on short notice may be obtained on application without notice to the Judges' Applications List in the case of applications to a HCJ, or a Master, and will generally be dealt with on paper. For a definition of clear days see CPR 2.8.

14.9 For further guidance on urgent and without notice applications, and the Judges' Applications List, see Chapter 15.

14.10 The remainder of this chapter deals with non-urgent applications on notice to a respondent.

14.11 Applications will be heard in public in accordance with CPR 39.2, except where otherwise ordered. For further guidance on hearings in private see Chapter 3 and Chapter 15.

Division of responsibility for applications between HCJs, ICC Judges and Masters

14.12 There is now a significant overlap between the responsibilities of HCJs, Insolvency and Companies Court Judges ('ICC Judges') and Masters. There are relatively few matters which may not be dealt with by either a Master (see PD 2B, and PD 25A, paragraphs 1.1- 1.4) or an ICC Judge (see Insolvency PD, paragraph 3.2 and Chapter 21). These include the grant of freezing injunctions, search and imaging orders, extended civil restraint orders, contempt applications and applications made pursuant to CPR 25.1(1)(g). In each case the parties should indicate clearly that the application is an HCJ application when issued. Masters may grant all types of interim injunctions including interim injunctions which are secondary to the main relief sought. However, they will not generally hear applications for interim injunctions where the court needs to consider the American Cyanamid principles.

14.13 Some claims are docketed to be case managed and tried by a HCJ (see Chapter 6 paragraphs 6.19 to 6.27). In docketed cases all applications are to be heard by the docketed HCJ and should be provided to the HCJ's clerk at the same time as being issued on CE-File.

14.14 In claims that are being managed in partnership, applications may be heard by either the docketed HCJ or the assigned Master, or when appropriate the HCJ and Master may sit together. Applications should initially be issued on CE-File for consideration by the Master, however, where appropriate or necessary, they should be emailed to the HCJ's clerk at the same time.

14.15 For more information about the procedure for making applications to HCJs and ICC Judges in the ICL, see Chapter 21 paragraphs 21.41 to 21.56.

14.16 General applications should be made to a Master or District Judge unless there is a special reason for making the application to a HCJ or Section 9 Judge. If an application which should have been made to a Master is made to a HCJ without following the procedure in paragraph 14.20 below, the HCJ (or Section 9 Judge or Deputy HCJ) may refuse to hear it.

14.17 If an application can or should only be dealt with by a HCJ, the application notice should indicate that it is considered to be a HCJ application. In all other cases where a Master has jurisdiction, but a party wishes an application to be heard by a HCJ, the process and principles set out in paragraphs 14.20 to 14.23 below apply.

14.18 In the rest of this chapter other than paragraphs 14.77 and 14.87 'HCJ' includes a Section 9 Judge and a Deputy HCJ.

14.19 The allocation of general applications between Section 9 Judges and District Judges in the B&PC District Registries is determined locally. Please see Appendix C and follow the links for guidance on any local practice.

Release of applications to a HCJ

14.20 Except for cases which have been docketed to a HCJ, applications in the Judges' Applications List and urgent applications to a HCJ (see Chapter 15), a party wishing an application to be heard by a HCJ should apply to the Master for the application to be released to a HCJ. The application to release the substantive application should be made by letter and filed on CE-File at the same time as the application notice. The letter requesting release must be copied to the respondent.

14.21 The following criteria will point to the application being heard by a HCJ:

(a) Complex legal issues, particularly where there are conflicting authorities.

(b) Complex issues of construction.

(c) Substantial media interest.

(d) Claims which by their subject matter require the specialist knowledge of a HCJ, such as the more complex intellectual property claims and those commercial claims whose subject matter is highly involved or technical (such as sophisticated types of commercial instrument or securitization), complex trust claims and some large multi-jurisdiction trust and estate claims.

(e) Difficult cases involving litigants in person.

(f) Particularly lengthy applications (2 days or more).

14.22 In exceptional circumstances, the refusal to release an application to a HCJ may be informally reviewed by the HCJ hearing the Judges' Applications List on an application by letter (see Chapter 15).

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

Time estimates

14.24 Parties must be realistic about the length of time required to determine applications. The court's experience is that parties under-estimate the time required for pre-reading, for the hearing, or both, far more often than they over-estimate time. Where pre-reading or hearing time is under-estimated, the hearing may be adjourned and/or there may be costs sanctions.

14.25 If at any time either party considers that there is a material risk that the hearing of the application will exceed the time allowed, it must inform the court immediately.

Ordinary applications

14.26 Applications to be listed for a hearing (including oral argument, the delivery of judgment, dealing with costs (including summary assessment where appropriate) and/or other consequential matters, including any application for permission to appeal) of half a day (2.5 hours) or less, with additional time for pre-reading of no more than 90 minutes, are regarded as 'ordinary' applications.

14.27 An application should not be treated or listed as an ordinary application unless the parties reasonably expect to require no more than one and a half hours to one and three quarter hours to argue the application. The application notice should state the total time required for the hearing.

Procedure to be followed in respect of ordinary applications

14.28 Ordinary applications will be listed as remote hearings unless the court orders otherwise. For further guidance on the preparation and conduct of remote and hybrid hearings see Appendix Z. If the parties consider that an alternative format is more appropriate, the applicant (if the position is agreed) or the relevant party, should file a letter on CE-File setting out brief reasons why they consider that the alternative format is appropriate or necessary, at the same time as providing dates to avoid (see paragraph 14.32).

14.29 Before issuing an application, the applicant and the respondent should, if possible, agree a realistic time estimate for both the hearing and pre-reading and dates to avoid.

14.30 A timetable for ordinary applications directed under PD23A, paragraph 9 will typically be as follows:

(a) Evidence in support must be filed and served with the application;

(b) Evidence in response must be filed and served within 14 days thereafter;

(c) Evidence in reply (if any) must be filed and served within 7 days thereafter.

14.31 This timetable may be abridged or extended by agreement between the parties provided that the date fixed for the hearing of the application is not affected. The parties should file a consent order for approval.

14.32 At the time of issuing the application, the applicant should, wherever possible, provide to the court the agreed time estimate for the hearing and pre-reading, dates to avoid, any agreed directions and any request for an alternative format. The applicant should add a note to the comment box on CE-File saying 'Ordinary Application' and, where necessary, indicate the date by which the agreed dates to avoid and time estimate will be provided. This will assist the court staff when processing the application. If no comment saying 'Ordinary Application' is added to CE-File it may delay when the application is processed.

14.33 If appropriate the applicant must, at the same time, also file any request for the application to be released to be heard by a HCJ, following the process set out in paragraph 14.20 and 14.21 above, indicating whether or not this is agreed.

14.34 If it is not possible to agree the time estimate or dates to avoid promptly, and by the date provided in the comment box on CE-File, the applicant should file a letter on CE-File (adding a note to the comment box) which sets out, briefly and in neutral terms, why it has not been possible to agree the time estimate or dates to avoid.

14.35 The application will not be referred to the Master to be reviewed and/or listed for hearing until the information or letter referred to above has been received.

14.36 The court will list the application for hearing on the first available date before a Master or a HCJ as appropriate having regard to the parties' time estimate and dates to avoid and, if approved, provide the applicant with a sealed order reflecting the terms of any agreed directions.

14.37 In an appropriate case, the court may refuse to list the hearing of an application until further information has been provided or listing issues have been raised with the respondent which may include consideration of the format of the hearing.

14.38 Where the time estimate for pre-reading or hearing the application(s) has been under-estimated, the hearing may be vacated or adjourned and/or there may be costs sanctions.

14.39 Where an application has been listed for hearing and an additional application is then made, the approval of a Master must be obtained if the additional application is to be heard at the same time as the first. In the case of an additional application made in a claim with a docketed HCJ, the approval of the docketed HCJ, and not a Master, is required.

14.40 The applicant wishing to make the additional application must:

(a) Seek to agree with the respondent: (i) a separate time estimate for the extra time required to hear the additional application (including additional pre-reading, oral argument, the delivery of judgment and dealing with costs and other consequential matters, including any application for permission to appeal); (ii) that the additional application will not affect the overall time estimate for the hearing (if that is the case); or (iii) that the determination of the application issued earlier will necessarily determine the additional application or the matters raised in the additional application are not contested; and, (iv) that the additional application will not affect the format of the hearing or if the parties agree that a different format is now more appropriate a request should be made to change format.

(b) At the time of issuing the additional application, write to the court confirming the matters set out in paragraph 14.40(a) above.

14.41 The Master (or HCJ) will then either list the additional application for the hearing, give directions or (in the case of applications to a HCJ) refer the matter to the HCJ.

Skeleton arguments for ordinary applications

14.42 Skeleton arguments must be provided by all parties in accordance with the guidance at Chapter 12 and Appendix Y. They must be provided to the court in Word version in accordance with the guidance in Appendix Y and served on the advocates for all other parties by 10am on the working day before the date fixed for the hearing.

14.43 Skeleton arguments for ordinary applications should be no longer than is necessary. They should not exceed 15 pages (including any appendices and schedules) and should be skeletons, not full written arguments. Should it exceptionally be considered necessary to file a longer skeleton argument, the legal representatives whose names appear at the end of the skeleton argument must file a letter along with the skeleton argument explaining why this has been necessary. A desire to be of greater assistance to the court is rarely a good reason: overly long skeletons do not assist. If the Master or HCJ is not satisfied by the explanation, the party may be required to re-draft the skeleton argument and/or costs sanctions may be imposed. For further guidance on skeleton arguments generally, see Appendix Y.

Heavy applications

14.44 Applications to be listed for a hearing longer than half a day (2.5 hours) (including oral argument, delivery of judgment, costs (including summary assessment where appropriate) and/or other consequential matters including any application for permission to appeal) and/or with pre-reading of more than 90 minutes are regarded as 'heavy' applications. Heavy applications normally involve a greater volume of evidence and other documents and more extensive issues. They accordingly require serious co-operation between the parties.

14.45 Heavy applications will be listed as in person hearings unless the court orders otherwise. If the parties consider that an alternative format is more appropriate, the applicant (if the position is agreed) or the relevant party, should file a letter on CE-File setting out brief reasons why they consider that an alternative format is appropriate or necessary, at the same time as providing dates to avoid (see paragraph 14.32).

14.46 A timetable for service of evidence in heavy applications directed under PD23A, paragraph 9 will typically be as follows:

(a) Evidence in support must be filed and served with the application;

(b) Evidence in response must be filed and served within 28 days thereafter;

(c) Evidence in reply (if any) must be filed and served as soon as possible, and in any event within 14 days of service of the evidence in response.

Procedure to be followed in respect of all non-urgent, on notice, heavy applications

14.47 In all heavy applications the applicant and the respondent should, either before or promptly after the issue of the application notice, seek to agree the time estimate and dates to avoid for the hearing.

14.48 The agreed time estimate must identify separately the time for the judge to pre-read any documents required to be pre-read; a sufficient and not under-estimated time for the hearing of the application(s); and the time to give any judgment at the conclusion of the hearing, if an ex tempore judgment is required or likely to be given. The time for judgment should also take into account any further time that may be required for the judge to assess costs, and deal with consequential matters including any application for permission to appeal.

14.49 When a heavy application is issued the applicant should add a note in the comment box on CE-File saying 'Heavy Application'. When issuing the application, the applicant should provide the agreed time estimate for the hearing and pre-reading, dates to avoid, any draft directions and any request for an alternative format to the court or add a note to the comment box on CE-File indicating the date by which that information will be provided. This will assist the court staff when processing the application. If no comment saying 'Heavy Application' is added to CE-File it may delay when the application is processed.

14.50 If appropriate the applicant must also file any request for the application to be heard by a HCJ, following the process set out in paragraphs 14.20 and 14.21 above, indicating whether or not this is agreed.

14.51 If it is not possible to agree the time estimate or dates to avoid promptly, the applicant should file a letter on CE-File (adding a note to the comment box) which sets out, briefly and in neutral terms, why it has not been possible to agree the time estimate or dates to avoid.

14.52 The application will not be referred to the Master to be reviewed and/or listed for hearing until the information or letter referred to above have been received.

14.53 The court will list the application for hearing on the first available date before a Master or a HCJ as appropriate having regard to the parties' time estimate and dates to avoid and, if approved, provide the applicant with a sealed order reflecting the terms of any agreed directions.

14.54 In an appropriate case, the court may refuse to list the hearing of an application until further information has been provided or listing issues have been raised with the respondent which may include consideration of the format of the hearing.

14.55 Where the time estimate for pre-reading or hearing the application(s) has been under- estimated, the hearing may be vacated or adjourned and/or there may be costs sanctions.

14.56 Paragraphs 14.36 to 14.40 above apply equally to heavy applications.

Skeleton arguments for heavy applications

14.57 Skeleton arguments must be provided by all parties in accordance with the guidance at Chapter 12 and Appendix Y. They must be provided to the court in accordance with the guidance in Appendix Y and served on the advocates for all other parties by 12pm two clear days before the date fixed for the hearing. This means that if a hearing is listed on a Friday the skeleton argument should be filed by 12pm on

Tuesday being the third working day before the hearing. For a full definition and explanation of clear days see CPR 2.8.

14.58 Skeleton arguments for heavy applications should be no longer than is necessary. They should normally not exceed 25 pages (including any appendices and schedules) and should be skeletons not full written arguments. Should it exceptionally be necessary to file a longer skeleton argument, the legal representatives whose names appear at the end of the skeleton argument must file, in good time, a letter (copied to any respondents) marked urgent seeking permission to do so and explaining why it is necessary. A desire to be of greater assistance to the court or to set out a full written argument is not a sufficient reason. Where a party fails to comply with this guidance they are likely to be required to re-draft the skeleton and/or it is likely to lead to costs sanctions. For further guidance on skeleton arguments generally see Appendix Y.

Applications without a hearing

14.59 Although contested applications are usually best determined at an oral hearing, some applications may be suitable for determination on documents (i.e. without a hearing). CPR 23.8 makes provision for applications to be dealt with without a hearing. This is not generally appropriate for contentious matters but may be appropriate for instance in cases where the parties consent to the terms of the order sought, or agree that a hearing is not necessary (often filing 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, in reality, unopposed. 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.

14.60 If a party inappropriately seeks a determination on paper and without a hearing this is likely to result in delay since the court will order a hearing on notice in any event. It may also give rise to adverse costs orders. It is not usually appropriate 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.

14.61 Whether an application is suitable to be determined without a hearing should be considered by the parties before filing an application notice. A heavy application and/or one which requires more than 90 mins pre-reading will not generally be suitable for determination without a hearing.

14.62 If the applicant and the respondent agree that the application is suitable for determination without a hearing and agree a timetable for exchange of evidence and written submissions, the applicant should file the application notice together with any supporting evidence. At the same time, the applicant should inform the court by letter that the parties have agreed the application is suitable for determination without a hearing and of the agreed timetable. If the judge concludes that, despite the agreement of the parties, a hearing is required, the court will inform the parties.

14.63 If either the applicant or the respondent considers that the application is suitable for determination without a hearing but the other does not agree:

(a) The applicant should file the application notice together with any supporting evidence and a brief letter setting out whether the application is suitable for determination without a hearing;

(b) Within 3 clear days of service of the application notice and the other documents referred to in paragraph 14.63(a) above, the respondent should file a brief letter setting out whether the application is suitable for determination without a hearing.

14.64 If the court determines that the application is suitable for determination without a hearing, it will give directions for the service of evidence and submissions.

14.65 If the court determines that the application is not suitable for determination without a hearing, the procedure for ordinary applications or heavy applications, as appropriate, is to be adopted.

14.66 For consent orders, see Chapter 16, paragraphs 16.36 to 16.41.

Consent to relief beyond the scope of an application notice

14.67 It is commonly the case on an interim application that 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.

14.68 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.

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

(a) 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.

(b) 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 signature is that of the respondent, and 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).

14.70 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. If the respondent is acting in person, the court will usually

require the respondent to attend to give the undertaking in person, so that the importance of the undertaking can be explained to them.

Application bundles and evidence

14.71 For guidance on the preparation and delivery of bundles (including electronic bundles) for both ordinary and heavy applications, see Chapter 12 and Appendix X.

14.72 An electronic bundle should be lodged in all cases. Whilst for most applications electronic bundles and documents will be sufficient, the parties should consider whether a hard copy of the bundle, part of a bundle, core documents, skeleton arguments or other documents would be of particular assistance to the court. The court may request hard copies of some or all of these documents, and the parties (normally the applicant) should provide these promptly to the court on request.

14.73 Bundles should be filed whether electronically and/or in hard copy 2 clear days before the hearing of an ordinary or heavy application unless the court orders otherwise.

14.74 If no bundle has been filed it is very likely the hearing will be adjourned to the next available date. This may result in the imposition of sanctions including as to costs.

Remote hearings

14.75 For remote hearings, including telephone and video hearings, see Appendix Z.

Specific applications

14.76 For applications generally made without notice, including for permission to serve out of the jurisdiction, see Chapter 15.

Vacation arrangements

14.77 There is a Chancery HCJ available to hear urgent applications in vacation. This is always a HCJ not a Section 9 Judge or a Deputy HCJ. In the long vacation, two vacation HCJs sit each day to hear vacation business. In other vacations there is one vacation HCJ. Tuesdays and Thursdays are made available for urgent interim applications on notice. The vacation HCJ is available on the remaining days for business so urgent that it cannot wait until the next Tuesday or Thursday.

14.78 There is no distinction between term time and vacation so far as business before Masters is concerned or in the B&PCs District Registries. They will deal with all types of business throughout the year.

Pre-action disclosure and non-party disclosure

14.79 Applications made pursuant to CPR 31.16 and CPR 31.17 may be made by application notice using N244 and will be heard by a Master unless exceptionally the weight and complexity of the application warrants it being released to be dealt with by a HCJ, in accordance with the procedure at paragraph 14.20 above.

14.80 The application must be supported by a witness statement and 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 (see also Chapter 7).

Norwich Pharmacal orders

14.81 Applications for disclosure pursuant to *Norwich Pharmacal v Customs and Excise Commissioners* [1974] AC 133, [1973] 2 All ER 943, HL should be made by Part 8 claim form unless made within existing proceedings when an application can be made under Part 23. An application under Part 23 is otherwise likely to be rejected.

14.82 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.

14.83 Applications should be made in the first instance to a Master. The application will be referred to a HCJ if the complexity and/or importance of the application warrants it. If the applicant wishes to apply direct to a HCJ, release from a Master should be sought in accordance with the procedure at paragraph 14.20 above.

Summary judgment/strike-out

14.84 Applications for summary judgment under CPR Part 24 or for a statement of case to be struck out under CPR 3.4 should generally be heard by a Master (see PD paragraph 24.3). It is commonly the case that a Part 24/strike out application will constitute a heavy application and in a weighty or important matter may be released to be heard by a HCJ.

14.85 Requests for an application for summary judgment or strike-out to be released to a HCJ should be made in accordance with the practice set out at paragraph 14.20 above.

Applications for expedition

14.86 For applications for expedition of claims, see Chapter 3, paragraph 3.19 to 3.22.

Contempt applications

14.87 Contempt applications are governed by CPR 81 and must be dealt with by a HCJ or a Section 9 Judge or, with the permission of the Chancellor, a Deputy HCJ (PD 2B, paragraph 3.1). An application made within existing proceedings is made by an application under CPR 23. An application in relation to alleged interference with the due administration of justice otherwise than within existing proceedings is made to the High Court by Part 8 application. Some types of contempt application require permission (CPR 81.3(5)). Generally the first hearing of a contempt application will be a directions hearing whether brought by Part 23 application or Part 8 application. Because the liberty of the respondent is potentially at stake, great care must be taken to comply with the procedural requirements set out in CPR 81.

Appointment of receivers

14.88 It is often appropriate to make applications for the appointment of receivers under CPR 69 and PD 69 to a HCJ in the Judges' Applications List if the matter is urgent and/or weighty. However, the Masters and ICC Judges have jurisdiction to appoint receivers and an application should otherwise be listed before a Master or ICC Judge

who may release the application to a HCJ in accordance with the procedure at paragraph 14.20 above.

14.89 Where an order is made appointing a receiver it is generally necessary to apply for directions. This can either be at the same time as the appointment or immediately after the appointment but the receiver may apply at any time during the receivership for further directions.

14.90 The court may give directions in relation to the matters set out in PD 69 paragraph 6 and 7. An order appointing a receiver will usually include directions in relation to security, remuneration and accounts. The court is likely to require a receiver to either give security by guarantee or bond or satisfy the court that they already have sufficient security in force to cover any liability for their own acts of omissions before they begin to act or within a specified period of time after appointment (see CPR 69.5 and PD 69 paragraph 7). The court may terminate a receivers' appointment if there is any failure to provide security to the satisfaction of the court in accordance with CPR 69.5.

14.91 When a receiver has completed their duty, they or any party should apply for an order discharging the receiver and cancelling the security.

Possession claims against trespassers

14.92 For guidance regarding possession claims against trespassers, see Chapter 27.

Chapter 15 Applications without notice and urgent applications

15.1 Any application to the ChD B&PCs London which the parties consider cannot wait its due turn to be heard and which needs to be heard on an expedited basis (i.e. urgently and ahead of other general applications in the list) should be issued and listed for hearing in accordance with the guidance provided in this chapter rather than the guidance in Chapter 14.

15.2 This chapter also provides guidance in relation to applications without notice including when they may be appropriate and the procedures to be followed. Whether an application is genuinely urgent, and whether or not an application should be made on notice, are separate questions both of which must carefully be considered.

15.3 Separate guidance applies to urgent applications in the Insolvency and Companies List ('ICL') in London including applications in the ICC Judges' Applications List. For further guidance see Chapter 21.

15.4 Whilst the general guidance in this chapter applies equally to the B&PC District Registries, separate local guidance applies to the listing of urgent applications. For further guidance on urgent applications in the B&PC District Registries please follow the links in Appendix C or contact the relevant B&PC District Registry as appropriate.

15.5 If the court is not satisfied that an application is urgent, or should be without notice, the judge may direct that it be listed as a normal ordinary or heavy application in accordance with the procedure in Chapter 14. This is likely to result in a delay in listing the application.

15.6 Failure to comply with the procedures and guidance set out below may result in the Master or a High Court Judge ('HCJ') refusing to hear the application and/or an adverse costs order being made.

15.7 In this chapter, other than in connection with the Judges' Applications List and out of hours emergency arrangements, HCJ includes a Section 9 Judge and a Deputy HCJ.

Urgent applications

15.8 Any urgent applications (whether on notice or without notice) which can or should only be dealt with by a HCJ must be certified as urgent business (see paragraph 15.12(a)). Arrangements for listing the application should be made with the Chancery Judges' Listing Office ('Judges' Listing').

15.9 If the overall time required to deal with the urgent application (including pre-reading, oral argument, the delivery of judgment, costs and/or consequential matters (including any application for permission to appeal)) is less than 2 hours, the

application should be listed in the Judges' Applications List. See paragraphs 15.16 to 15.27 below for guidance on cases that are suitable for the Judges' Applications List and its operation.

15.10 While the provisions for ordinary and heavy applications in Chapter 14 will not automatically apply to urgent applications, other than for applications in the Judges Applications List the default format for urgent applications will be as set out in Chapter 14 unless the court orders otherwise. A judge may direct that the format of or procedures for such applications, or a modified version of such procedures, shall apply before or at the hearing of, the application as appropriate.

15.11 All urgent applications other than those which can or should only be dealt with by a HCJ or which can be listed in the Judges' Applications List should be made to a Master. When issuing the application the applicant should add 'Urgent Application' to the comment box on CE-File to assist the court staff with processing the application promptly. This includes urgent applications before trial unless they are properly brought at a PTR. The procedure at paragraph 15.12 below should be followed. In an appropriate case an applicant may consider it necessary to take steps to have an urgent application heard in private, anonymise parties or seek to protect confidentiality in advance of or at the time of issue of the application (see paragraph 15.46, paragraphs 15.66 to 15.68, and paragraphs 3.32 to 3.38).

15.12 Where an urgent application is made to a Master:

(a) Applicants must certify the following on the application notice when issued: '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 certification and reasons for urgency may be attached in a covering letter which should be CE-filed and (unless the application is without notice) copied to the proposed respondent.

(b) Upon receipt of an application stated to be urgent, a Master will first consider whether that appears to be the case on the basis of the application, the evidence in support and any reasons for urgency provided by the applicant. If the Master is not satisfied as to the urgency of the application, the applicant will be directed to follow the ordinary or heavy applications procedures in Chapter 14 in the usual way.

(c) If the Master considers that the application is on its face urgent the Master may:

i. List the application for an urgent hearing before a Master if the overall time required to deal with the application is two hours or less and a Master has both jurisdiction and the capacity to hear the application on an urgent basis: the two hour maximum includes pre-reading, oral argument, the delivery of judgment and dealing with costs and/or consequential matters (including any application for permission to appeal);

ii. Direct that the application be referred to the Judges' Applications List if the Master considers that it should be heard by a HCJ and the overall time required to deal with the application is two hours or less, including

pre- reading, oral argument, the delivery of judgment and dealing with costs and/or consequential matters (including any application for permission to appeal);

iii. Release the application to a HCJ to be listed by Judges' Listing (whether because the overall time estimate exceeds two hours or for any other reason);

iv. Refer the question as to how the application is to be disposed of to a HCJ or to the Judges' Applications List; and/or

v. Make other directions for the disposal of the application by a Master (including where the overall time estimate exceeds two hours).

15.13 In cases of genuine urgency where it is not considered practicable to make an urgent application to a Master, the applicant should file a letter with the court explaining why it is not practicable to do so. The letter must be filed on CE-file and, unless the application is made without notice, copied to the respondent. The court will either list the application to be heard in the Judges' Applications List, or refer the issue to a HCJ for directions, which directions may include referral to a Master.

15.14 In respect of urgent applications to a Master or a HCJ:

(a) Application notices should be filed and served in the usual way except for applications where it is appropriate or necessary to proceed without notice or upon short notice (as addressed further at paragraphs 15.29 to 15.35 below).

(b) The directions set out in Appendix X, Appendix Y and Chapter 12 in relation to the delivery of bundles and skeleton arguments will apply unless otherwise directed.

(c) The application will not be referred to a Master or HCJ, and will not otherwise be heard, until the necessary court fee has been paid and a Word version of the order sought has been filed in accordance with the requirements of Chapter 16.

(d) Where the application is to be heard as a remote or hybrid hearing Appendix Z applies.

15.15 Further guidance in relation to particular urgent and without notice applications is set out at paragraphs 15.42 to 15.68 below.

Judges' Applications List

15.16 The Judges' Applications List in London is only for applications which are urgent and which need to be dealt with by a HCJ, as well as applications where a Master has made a direction in accordance with paragraph 15.12(c) above. In each case the time required for pre-reading, oral argument, the delivery of judgment and dealing with costs and/or consequential matters (including any application for permission to appeal) must not exceed two hours. The procedure for listing such an application is set out at paragraphs 15.8 to 15.14 above. Parties should take particular care to ensure that any bundle, evidence, or skeleton argument is filed on CE-File and,

where appropriate, is also sent by email to the judge's clerk or Judges' Listing in advance of the hearing.

15.17 Judges' Applications List sits in person in Court 10 in the Rolls Building unless, at the discretion of the HCJ hearing the Judges' Applications List, an alternative format is considered appropriate.

15.18 If the applicant considers that an alternative format may be appropriate they should file a letter on CE-File setting out brief reasons why they consider that the alternative format is appropriate or necessary when making arrangements with Judges' Listing to list the application. If the court directs that the application should proceed as a remote or hybrid hearing the applicant should prepare for and conduct the hearing in accordance with the provisions of Appendix Z as modified by any directions from the HCJ or as appropriate for the urgency of the application.

15.19 The HCJ hearing the Judges' Applications List sits each working day in term except for the last day of term and is always a HCJ. However, if the volume of applications requires it, any other HCJ, Section 9 Judge or Deputy HCJ who is available to assist will hear such applications as the HCJ hearing the Judges' Applications List may direct.

15.20 At the beginning of each day's hearing, the HCJ hearing the Judges' Applications List calls on each of the applications to be made that day in turn. This enables the HCJ 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. The HCJ will hear at that stage from any CLIPS representative on duty as to their need for any additional time. On completion of this process, the HCJ decides the order in which the applications will be heard and gives any other directions that may be necessary. Sometimes cases are released in accordance with the procedure described in paragraph 15.19 above.

15.21 If a case is likely to take more than 2 hours (including pre-reading, oral argument, the delivery of judgment and dealing with costs and/or consequential matters (including any application for permission to appeal)), the HCJ will either refer it to Judges' Listing to find another HCJ, Section 9 Judge or Deputy HCJ to hear it urgently or give directions for it to be heard as an application by order (either as an ordinary application or a heavy application) on a subsequent date and hear any application for interim relief to last until the application is heard fully.

15.22 In respect of in person and hybrid hearings, parties and/or their representatives should arrive at least ten minutes before the court sits. If the hearing is fully remote, parties and/or their representatives should attend the hearing, using the link provided by the court, at least 15 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 which will be given to the HCJ before they sit, as well as to allow any technical difficulties to be resolved.

15.23 Where agreement has been reached as to how the application should be disposed of, or is likely to be reached, the parties should also allow time before the court sits to agree a 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 an agreed order.

15.24 If an application 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.

15.25 If all parties to an application listed in the Judges' Applications List agree, it can be adjourned for not more than 14 days by notifying Judges' Listing and (if it is known which HCJ is listed to hear the application) the HCJ's clerk, at any time before 4pm on the day before the hearing of the application and producing consents signed by solicitors or counsel for all parties agreeing to the adjournment. This procedure may not be used for more than two successive adjournments and no adjournment may be made by this procedure on the last two days of any term or the first day of any term.

15.26 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 that must be dealt with by the court.

15.27 The B&PC District Registries in Leeds and Manchester each have Urgent Applications lists on Friday which are heard by a Section 9 Judge or the Vice-Chancellor, when sitting. They operate in a similar way to the Judges' Applications List in the ChD B&PCs London. However, they may be used for both urgent and non-urgent applications which need to be heard by a Section 9 Judge rather than a District Judge, where the time estimate is 2 hours or less (including pre-reading, judgment and costs). For local guidance on listing applications in these Urgent Applications lists please follow the links in Appendix C.

With or without notice applications for an extension of time

15.28 An application for an extension of time for compliance with a time limit set by the CPR or a time limit in an Order should be made to a Master using the urgent applications procedure set out in paragraphs 15.11 to 15.14 but does not need to be certified as urgent business. When issuing the application the applicant should add 'Urgent Application EOT' to the comment box on CE-File to assist the court staff to process the application promptly. The Master will consider the application on issue and may determine the application on paper and/or give directions for its determination with or without a hearing.

Without notice applications to HCJs and Masters

15.29 The guidance in this section applies to all without notice applications to a Master or a HCJ except for procedural applications to a Master addressed at paragraphs 15.36 to 15.37 below. Parties should be aware that certain applications may not be made to a Master as set out in Chapter 14.

15.30 Applications must usually be made on notice to the other parties (and the usual rule is that 3 clear days' notice must be given). There are, however, exceptions such as:

(a) Applications where the giving of notice might frustrate the order (e.g. a freezing or search order).

(b) 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. This is known as short notice.

(c) 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.

15.31 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. PD25A paragraph 3.4 requires that the evidence in support of an application without notice should explain why no notice was given.

15.32 Except for procedural applications to a Master addressed at paragraphs 15.36 to 15.37 below, on all applications made in the absence of the respondent, including applications made on paper, the applicant and their legal representatives owe a duty to the court to disclose all matters relevant to the application. This includes all matters of fact or law, whether known to the applicant or which would have been known had proper enquiries been made, which are or may be adverse to the applicant.

15.33 This requirement is known as the 'duty of full and frank disclosure', and parties are expected to familiarise themselves with that duty before making a without notice application. If made orally, the full and frank 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. The duty of full and frank disclosure also applies to litigants in person, who are also expected to familiarise themselves with this duty before making a without notice application. 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 regardless of the merits.

15.34 In cases where orders are sought without notice (except for orders sought on procedural applications to a Master addressed at paragraphs 15.36 to 15.37 below), parties' attention is also drawn to CPR 23.9 (service of application where application made without notice). Unless a rule or PD provides otherwise the draft order must comply with that provision, including a statement of the right to make an application to set aside or vary the order under CPR 23.10.

15.35 In the case of urgent and without notice applications, the parties and their legal representatives should ensure they provide realistic time estimates and reading lists. In both cases, care should be taken to ensure that sufficient time has been allowed to ensure that important material is brought to the attention of the court. It will often be better to take the judge hearing the application to such material in the hearing, rather than to expect it to be read, and time should be allowed for doing so. If the time

estimate is under-estimated for either pre-reading or the hearing, the hearing may be adjourned or vacated.

Procedural applications to a Master

15.36 Straight-forward procedural applications may be made to a Master without notice in respect of matters that are capable of being disposed of within 15 minutes or on paper and which do not require significant reading or investigation into the substance of the case. Examples of suitable matters might be an application for permission to serve a witness summary or to issue a Part 8 claim form without naming defendants (addressed further at paragraphs 15.64 to 15.65 below). Such applications should not be used for matters which should be dealt with on notice, without notice applications of the types addressed in paragraphs 15.29 to 15.35 above or applications which would be likely to be contentious if notice were to be given.

15.37 For procedural applications of this nature, the requirements of full and frank disclosure and other procedural safeguards referred to in paragraphs 15.32 to 15.33 above do not apply.

Out of hours emergency arrangements

15.38 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 sitting hours. It should be noted that normal sitting hours for court hearings before judges are 10.30 am to 1pm and 2pm to 4.15pm. Applications made during legal vacations must also be certified as being vacation business (i.e. being of such urgency they cannot await the start of term to be heard).

15.39 There is always a Duty Chancery HCJ available to hear urgent out of hours applications that are High Court Chancery business. The following is a summary of the procedure:

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

(b) Initial contact must be through the Royal Courts of Justice (tel: 020 7947 6000/6260), who should be requested to contact the Duty Chancery HCJ's clerk.

(c) When the clerk contacts the applicant, the clerk will need to know:

i. the name of the party on whose behalf the application is to be made;

ii. the name of the person who is to make the application and their status (counsel or solicitor);

iii. the nature of the application;

iv. the degree of urgency; and

v. contact telephone numbers for the persons involved in the application.

(d) The Duty Chancery HCJ will indicate to their clerk whether he or she is prepared to deal with the matter remotely (whether by telephone or video) or whether it will be necessary for the matter to be dealt with at an in-person hearing. The clerk will inform the applicant and make the necessary arrangements. The Duty Chancery HCJ will also indicate how any necessary papers are to be delivered (whether physically, by email, or by CE-file).

(e) Save in exceptional circumstances applications for interim injunctions will only be heard remotely where the applicant is represented by counsel or solicitors (PD 25A paragraph 4.5 (5)).

(f) Which HCJ 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 HCJ hearing the Judges' Applications List who is normally available from 4.15pm until 10.15am Monday to Thursday.

- **Weekends**. A different Duty Chancery HCJ is on duty for weekends, commencing 4.15pm Friday until 10.15am Monday.

- **Vacation**. The Vacation HCJ also undertakes out of hours applications.

15.40 If it is not possible to issue a sealed order electronically out of hours the HCJ may direct the applicant to email the draft order to their clerk by 10am on the following working day. The HCJ's clerk will then seal it manually if necessary.

15.41 Where the order is obtained pre-issue, on the subsequent issue of the claim or if later, as soon as the order has been sealed, the applicant must file the order on CE-File under the claim reference.

15.42 Similar arrangements exist for making urgent applications out of hours in High Court matters proceeding in the B&PC District Registries. The pager numbers for regional urgent business officers are given in Appendix C.

Specific urgent and/or without notice applications

Freezing Injunctions and search orders

15.43 The grant of freezing injunctions (both domestic and world-wide) and search and imaging orders is an important feature of the work of the Chancery Division. Such orders are of the utmost seriousness and exceptional by nature. Freezing and search orders, including orders made under CPR 25.1(g), will only be made by a HCJ, a Section 9 Judge or a Deputy HCJ. Masters can vary or discharge such orders by consent.

15.44 Attention is drawn to CPR 25, including PD 25A. In particular where the application is made without notice, the evidence in support must explain why no notice was given to the respondent (PD25A paragraph 3.4).

15.45 Where such an application is to be heard, the order sought, together with the application notice, should be sent to the clerk to the HCJ or Section 9 Judge hearing the application and copied to Judges' Listing by email (or in the case of a deputy HCJ, sent to Judges' Listing only). Alternatively, CE-file may be used if steps to protect confidentiality have been taken in advance or the application is for hearing on notice.

15.46 The applicant should consider whether providing hard copies of some or all of the documents (in addition to an electronic bundle) would be of particular assistance to the court. In cases of exceptional urgency, where it is not possible to lodge the application notice in advance of the hearing, the applicant will need to undertake to issue the application notice, and pay the relevant court fee, within a specified period of time.

15.47 Applications for such orders are often made without notice in the first instance. In a proper case the court will sit in private in order to hear such applications. If the application is to be made in private, it will be listed as 'application without notice' without naming the parties. The court will consider, in each case, whether publicity might defeat the object of the hearing and whether it is necessary to hear the application in private and, if satisfied, will hear the application in private: CPR 39.2.

15.48 When an application for an injunction is heard without notice, and the court decides that an injunction should be granted, it will normally be granted for a limited period only and a return date will be given – usually in 7 or 14 days.

15.49 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. The applicant must, on issue of the claim, or if later as soon as the order has been sealed, file a copy of the order on CE-File under the claim reference.

15.50 The standard form of wording for a freezing injunction is set out in Appendix M. A standard form of imaging order can be found at PD25A Annex B. Standard forms of wording for delivery up and non-disclosure orders are set out in Appendix N and Appendix P. The standard wording may be modified as appropriate in any particular case. But any modification to the standard form should be tracked on the standard form; identified and explained individually in a skeleton argument for the application and expressly drawn to the court's attention at the application hearing.

15.51 When seeking a freezing injunction, an applicant must consider what form of relief is necessary and appropriate, particularly where the application is without notice, and not simply apply for the widest possible terms and hope that the court does not question it. In particular, an applicant will always be expected to justify the factual basis for and need to freeze interests under trusts or assets of subsidiaries of, or entities controlled by, the respondent. An applicant should not without good reason (which must be explained to the judge) seek to expand the definition of assets that are to be captured by the freezing injunction.

15.52 An applicant for a search order is expected to consider what type of order is the minimum necessary to protect its interests, which in many cases will be an imaging order: see *TBD (Owen Holland) Ltd v Simons* [2020] EWCA Civ 1182; [2021] 1 WLR 992.

15.53 Full and frank disclosure is of the utmost importance on applications for freezing injunctions and search or imaging orders. For further guidance see paragraphs 15.32 to 15.33 above.

15.54 The applicant who is granted an injunction without notice is always required to provide to the respondent either a transcript or a detailed note of the without notice hearing, together with the evidence and any skeleton argument and/or other documents relied upon in support of the application.

15.55 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 applicant in favour of the respondent. The position is less clear where the applicant also gives an undertaking to the court. The parties should consider and, if necessary, raise with the court 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 whether a cross-undertaking should be given in favour of a person who is not a respondent to the application.

15.56 The applicant must ensure that an application notice for continuation of the injunction on the return date is issued (and the appropriate fee paid) and served on the other parties (normally at least 3 clear days before the return date). There will usually need to be an undertaking to this effect in the order granting the injunction. 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 (for a definition of clear days see CPR 2.8).

15.57 For the return date the applicant must lodge an up to date hearing bundle in accordance with Chapter 12 and Appendix X. This bundle must include copies of the interim injunction or order, the issued application notice for the relief originally granted, the transcript or note of the without notice hearing, 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 or both.

15.58 An order, the effect of which is to continue an injunction granted by an earlier order, may be drawn up in either of the following ways:

(a) by writing out in full in the new order the terms of the injunction granted by the earlier order, amended to give effect to a new expiry date or event; or

(b) by ordering in the new order that the injunction contained (in a specific paragraph or paragraphs) in the annexed earlier order is to continue until the new expiry date or event (and annexing the earlier order).

15.59 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.

15.60 The second alternative is also acceptable where the terms of the injunction are not substantially changed, but can be confusing, particularly where an order is continued several times or where the earlier order is detailed and much of it no longer relevant.

15.61 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 (see paragraphs 16.30 to 16.33).

15.62 It is good practice to recite in the new order the making of any earlier orders, including their dates and by whom they were made.

Applications for permission to serve out of the jurisdiction

15.63 Applications for permission to serve out of the jurisdiction are usually dealt with on paper, by the assigned Master unless the Master considers a short hearing would be of assistance. Such an application will only be referred to a HCJ in exceptional circumstances.

15.64 Applicants are reminded of the need to comply with the obligation of full and frank disclosure addressed in paragraphs 15.32 to 15.33 above. 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. It will usually be appropriate for the applicant to file a short skeleton argument dealing with the relevant legal issues. For further guidance see paragraphs 4.23 to 4.32.

Application to issue Part 8 claim form without naming defendants

15.65 CPR 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. For further guidance see Chapter 13.

15.66 These applications are often dealt with on paper by the assigned Master. Where the Master considers that a short hearing may be of assistance, in a simple case, they may be willing to deal with it in accordance with the procedure set out at paragraph 15.36 to 15.37 above (Procedural Applications to a Master).

Applications to issue the claim form with anonymous parties

15.67 In some cases the court will permit a claim form to be issued without the claimant and/or the defendant being identified. This is an exceptional order and must be fully justified with evidence.

15.68 An application for such an order should initially be made to a judge on paper. In a simple case the judge may be prepared to deal with such an application on paper. However, most cases are likely to require a short hearing. Only if it is urgent and non-contentious should the application be made to a Master in accordance with the procedure set out at paragraphs 15.36 to 15.37 above (procedural applications to a Master).

15.69 If it is appropriate to make an order preventing a party being identified the applicant may also wish to consider whether to apply under CPR 5.4C (4) for an order preventing a non- party from obtaining the statements of case, or perhaps any document, from the court file without permission. For further guidance see Chapter 3 and Chapter 25.

Chapter 16 Orders

Responsibility for preparation and service

16.1 Parties are generally responsible for providing the court with an order in a form which may be approved and sealed without amendment. The claimant or the party seeking the order ('the applicant'), as appropriate, will be responsible for providing the order to the court for approval unless the court orders otherwise.

16.2 A nominated party (usually the claimant or applicant) will then be required to serve an order once it has been sealed. An unrepresented party will not generally be nominated as the serving party. Where an order is required to be served personally, the party who seeks that order will be responsible for service.

16.3 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.

16.4 A number of editable procedural orders are available on the gov.uk website for the use of parties. See Chancery Forms.

Draft orders other than those following hearings

16.5 A draft order in the form sought by an applicant must always be filed by CE-File in Word format when an application is filed to enable minor changes to be made without either the court re-typing the order or it being returned to the legal representative for amendment. It must be drafted in accordance with this guidance.

16.6 Only where required by this guidance or requested by the court should a draft order in Word format also be provided by email to the clerk to the relevant High Court Judge ('HCJ') or Insolvency and Companies Court Judge ('ICC Judge').

16.7 In this chapter reference to a HCJ includes a Section 9 Judge and a Deputy HCJ.

Draft orders submitted following hearings

16.8 The responsibility for producing an accurate draft order reflecting in neutral terms the orders made by the court at a hearing will rest with either (a) the claimant, (b) the applicant or (c) the party nominated by the judge.

16.9 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 a represented party who will have responsibility. Where all parties are unrepresented, the court will draw up the order.

16.10 The terms of any order made must be noted by the legal representatives present and, in case of doubt about the terms of any order, they must be clarified with the judge at the hearing.

16.11 The draft order should always be filed on CE-File. In addition for an HCJ or ICCJ it should be sent by email as a Word document to the relevant HCJ's clerk or ICC Judge's clerk within two working days of the hearing (unless otherwise directed) and must be copied to the other parties. For a Master, the Word document should only be filed on CE-File within two working days of the hearing unless the Master directs otherwise.

16.12 Before filing the draft order, the parties should attempt to agree it. If (exceptionally) there is a genuine problem that the parties think can be resolved with a little extra time, they should communicate with the judge to seek a short extension.

16.13 The person lodging the draft should confirm if it is agreed by the other parties. 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 will determine the points in issue.

16.14 The judge who heard the hearing 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.

General content and format of an order

16.15 An order must include:

(a) the correct title and number of the proceedings;

(b) the title and name of the judge at the hearing: Mr/Mrs Justice [name]/Master [name]/ICC Judge [name];

(c) if the judge sat in private the words 'sitting in private' should be added after the judge's name;

(d) the date the order was made;

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

(f) and specify the party who will serve the order in the body of the order (for example claimant/defendant);

(g) the service note: see paragraphs 16.21 and 16.23 below;

16.16 The order should not:

(a) recite that the court has read the documents recorded on the court file as having been read. There is no such record;

(b) include internal references (for example in the footer) or logos.

16.17 Normally all the parties should be listed. There is generally no need to recite statutes, deeds etc in the title.

16.18 On an application without notice there should be a recital of the evidence before the court. Where more than one witness statement or affidavit was read, a list of what was read should usually be set out in a schedule to the order.

16.19 On an application without notice the order must usually include a statement of the right of the parties to make an application to set aside or vary the order under CPR 23.10. For further guidance see paragraph 15.34.

16.20 If the order directs a payment into or out of court, after that 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. In any other case the payment or lodgment schedule should be drawn by the parties using the appropriate Court Funds Office Form.

16.21 Backsheets are no longer used and must not be included. Instead, the names and addresses of the parties to whom the order has been sent, including any reference, should be recorded immediately below the last paragraph of the order in the format shown in the example form of order. This is referred to as 'the service note'.

16.22 Where an order is drawn and served by the court 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.

Example form of order

16.23 Orders should adopt the following format:

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
[LIST/COURT]*

**This is an example only. It will vary depending on the appropriate Chancery list and/or sub-list*

MR/MRS JUSTICE [NAME] or MASTER [NAME] or ICC JUDGE [NAME]
[DAY, MONTH, YEAR]

[IN THE MATTER OF [*insert any required reference to statute]*]

[IN THE ESTATE OF [NAME, DECEASED]]

BETWEEN:

[NAME]

Claimant

-and-

(1) [NAME]

(2) [NAME]

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] (solicitors for the Claimant)

**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/Part 8 claim should recite:

'**UPON THE TRIAL** of this claim'.

Where a declaration has been made it should normally be the first part of the order which should recite:

' IT IS DECLARED THAT:

1….*followed by:*

AND IT IS ORDERED THAT

Unless orders

16.24 These orders are made by the court under CPR 3.1(3) and 3.4(2)(c), which together give the 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:

'unless the [party] (*details of procedure to be complied with*) on or before (*time and date*) their/its claim/defence/counterclaim/defence to counterclaim shall be struck out and stand dismissed without further order [and the claimant/counterclaimant shall be entitled to apply for judgment]'

16.25 The party against whom the order is sought will usually be ordered to pay the costs of any application for an unless order.

16.26 This is a serious sanction and will be used sparingly by the court, usually as a last resort. Such an order will rarely be made on paper and/or without notice, except in connection with applications for permission to appeal where there is a persistent failure to comply with procedural requirements.

Permission/refusal of permission to appeal

16.27 It is important to include the correct wording in an order following the grant or refusal of permission to appeal. No distinction is now made between interim and final decisions and in general all appeals now lie to the next tier of the judiciary (see Chapter 30).

16.28 All appeals from Masters and ICC Judges, both interim and final, are to the High Court, to be heard by a HCJ, rather than the Court of Appeal, (Table 1 in PD 52A) unless the decision of the ICC Judge was itself made on appeal from the County Court, in which case the appeal will be to the Court of Appeal.

16.29 The order giving or refusing permission to appeal must state:

1. whether an appeal lies from the substantive decision and, if so, to which appeal court, with an indication of the appropriate division of the High Court where the High Court is the appeal court;

2. whether the court gives or refuses permission to appeal; and

3. if refused, the appropriate appeal court (including the appropriate division, where relevant) to which any further application for permission may be made.

4. The form of words to be used in an order is:

'This is an order from which an appeal lies to [a single judge of the High Court, Chancery Division] [the Court of Appeal]. [Permission to appeal is granted][Permission to appeal is refused].

A further application for permission may be made to [a single judge] [the Court of Appeal]'. (deleting as appropriate).'

Penal notices

16.30 If a party considers that enforcement of an order by an order for committal may be needed, the order should include a penal notice. A penal notice is a warning added to an order by or at the request of a party. Parties should consider carefully whether the penal notice should apply to all or only some parts of any order. The standard form of penal notice is described in CPR 81.2, but any wording to substantially the same effect is sufficient.

16.31 CPR 81.4(2) sets out the information to be included in any contempt application which includes whether any order alleged to have been breached or disobeyed included a penal notice, except where such a notice was inapplicable. A penal notice is not required in an order that records an undertaking given by a person to the court. Although Part 81 no longer says so expressly, it is not considered to have changed the procedural requirements in this respect.

16.32 Most orders are now drafted by a party nominated by the court. If the drafting party wishes to include a penal notice on an order to be sealed by the court, it should be added to the draft so that it is included on the face 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.

16.33 If the order is being drafted by the court, any party who wishes it to contain a penal notice should provide the proposed terms of the penal notice to the court.

Consent orders (including Tomlin Orders)

16.34 Parties can enter into consent orders both in relation to procedural matters and in respect of the substantive relief sought. The substantive relief sought in the body of 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.

16.35 If the parties wish the order to deal with other matters outside the scope of the claim, then an order in 'Tomlin' form may be appropriate (see paragraphs 16.42 to 16.44 below).

16.36 All consent orders, whether procedural or substantive, **must** be CE-filed. Only if requested by the court or it is necessary for them to be considered urgently (for example where a hearing is imminent) should they also be emailed to the clerk to the relevant judge at the same time as they are filed on CE-File.

16.37 Any applicable court fee must be paid on filing or sending the order, or an appropriate undertaking given by a legal representative that the court fee will be paid within two working days. An order will not be referred for approval until the fee has been paid or an appropriate undertaking given.

16.38 A version signed by the parties or their legal representatives confirming that they consent to an order in those terms must be filed in PDF format, together with a 'clean' copy of the order in Word format. The documents will not be referred for approval unless they comply with the following requirements:

(a) the title and preamble must be in the correct format;

(b) the draft must bear the words 'BY CONSENT' before the words 'IT IS ORDERED THAT';

(c) the word 'draft' or 'minute' must not appear;

(d) the signature provisions must not be included in the Word version of the order;

(e) the draft must specify the party who will serve the order in the body of the order;

(f) a service note must be included in the correct format.

16.39 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 court may choose to make the necessary amendments and approve the order.

Orders for a time limited stay of proceedings

16.40 Where the parties seek an order staying a claim during the course of the proceedings they must specify the period of the stay and the trigger for lifting the stay, including the next steps to be undertaken by the parties to notify the court (see for example CH12).

Form of Tomlin Order

16.41 All Tomlin Orders must be headed 'Tomlin Order' (not simply 'consent order'). A correct form of Tomlin Order (i.e. where proceedings are stayed on agreed terms scheduled to the order) will include the following provisions after any other necessary recitals:

> … '**AND UPON** 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*)] ('the Agreement') and to the terms of this Order
>
> **BY CONSENT IT IS ORDERED that**
>
> 1. All further proceedings in this claim [and counterclaim/additional claim] be stayed upon the terms set out in the Agreement except for the purposes of enforcing those terms. Each party shall have permission to apply to the court to enforce those terms without the need to bring a new claim.
>
> 2. There be no order as to costs [or such other costs order as the parties have agreed]
>
> 3. This order shall be served by the [party]
>
> *[Service note etc]'*

16.42 If the parties intend the settlement terms to remain confidential, they should not be filed with the court and the order must clearly identify the agreement (including its date) and where it is held.

16.43 It is not the normal practice when Tomlin Orders are approved for the court to inspect the settlement terms, but it may do so, particularly in claims pursuant to CPR 57. If sight of the settlement terms is requested, they should be sent separately, by email as directed. By approving a Tomlin order the court undertakes no responsibility for the settlement terms and cannot be taken to have approved them.

Corrections of errors in orders

16.44 An accidental slip or omission in a judgment or order may be corrected under what is called the 'slip rule' (CPR 40.12). This rule is intended to allow parties to amend or correct obvious typographical, numerical, date, transposition (for example reference to claimant rather than defendant) or formatting errors. It is not for the purpose of challenging the terms of an order or judgment or to add additional provisions not included in the original order made.

16.45 A party seeking to correct an order under the slip rule should provide a marked up copy of the order to be corrected showing any changes underlined or struck through in red as appropriate. The words "Amended pursuant to CPR 40.12" should be added to the top of the order in red. The corrected order should be submitted through the CE-File with a covering letter addressed to the judge who made the order explaining

the correction or error and asking for the order to be amended/corrected under the slip rule. For corrections to a judgment see 12.87.

Copies of orders

16.46 Copies of orders may be obtained upon payment of the appropriate fee.

Chapter 17 Shorter and Flexible Trials Schemes

Shorter Trials Scheme

17.1 The claimant may start a claim in the Shorter Trials Scheme in any of the Business and Property Courts ('B&PCs') if the trial will not exceed 4 days, including judicial reading time and time for preparing and delivering closing submissions, and if the claim is otherwise appropriate for the Scheme: see Civil Procedure Rules ('CPR') Practice Direction ('PD') 57AB (Shorter and Flexible Trials Scheme).

17.2 The aim of the Shorter Trials Scheme is to enable some shorter trials to be tried within a year from the service of the claim form and, so far as sensible, case managed by the designated trial judge.

17.3 A case management conference ('CMC') is fixed for about 12 weeks after acknowledgment of service is due, and then a trial date is fixed for not more than 8 months after the CMC. Statements of case and witness statements are subject to limits in length and there is only a limited disclosure procedure: PD 57AD does not apply. Oral expert evidence is limited to permitted issues.

17.4 The Shorter Trials Scheme is particularly suitable for cases where there are only limited factual disputes: see PD 57AB, paragraph 2.2. It has been successfully used in intellectual property disputes that are not suitable for the Intellectual Property Enterprise Court but may be equally suitable for other types of case.

17.5 A party may apply for a claim to be transferred into or out of the Shorter Trials Scheme: see paragraphs 2.9 to 2.15 of PD 57AB. The application must be made promptly and, in any event, not later than the first CMC. The court may, of its own initiative, suggest that a case be transferred into the Shorter Trials Scheme.

17.6 The court hearing the CMC and pre-trial review ('PTR') will ensure that the case is sensibly capable of trial within the 4 days allowed. The appropriateness of the allocation to the Shorter Trials Scheme needs to be kept under review and the court can, when appropriate, transfer a claim out of the scheme: *EMFC Loan Syndications LLP v The Resort Group plc, Practice Note* [2021] EWCA Civ 844; [2022] 1 WLR 717 at [111].

17.7 Specific procedural rules apply within the Shorter Trials Scheme: see paragraphs 2.16 onwards of PD 57AB.

Flexible Trials Scheme

17.8 The Flexible Trials Scheme applies to a claim started in any of the B&PCs: see paragraph 3 of PD 57AB. The aim of the Flexible Trials Scheme is to enable the parties by agreement to adopt a procedure to try their dispute, or identified issues in it, with limited disclosure and oral evidence.

17.9 Unlike the Shorter Trials Scheme, a claim may not be issued under the Flexible Trials Scheme: the parties have to agree after issue to adopt it. There are standard Flexible Trial directions that apply, subject to variation agreed by the parties: paragraph 3.9 of PD 57AB. These are designed to shorten the process of preparing for and conducting a trial. The disclosure process is limited and PD 57AD does not apply.

17.10 If the parties agree to use the Flexible Trials Scheme, they should inform the court in advance of the first CMC: see Chapter 6. The court will then direct that the Flexible Trials Scheme procedure or any variation of it that the parties have agreed will apply, unless there is good reason to order otherwise.

17.11 The parties may agree to use the Flexible Trials Scheme to have identified issues determined on the basis of written evidence and submissions: paragraph 3.4 of PD 57AB.

17.12 The Flexible Trials Scheme has been little used in practice. It is well suited to non-confrontational litigation where parties agree that there is an issue or issues that need to be resolved quickly and efficiently. It may also be used as an alternative to directing that a Part 8 claim continue as a Part 7 claim, where there are limited but important factual issues in dispute: see paragraph 13.4 of Chapter 13.

Chapter 18 Business List (BL)

General

18.1 The types of dispute which are suitable for the Business List are numerous and include all types of business dispute for which there is no specific list as set out in Appendix F.

18.2 Claims in the Business List can be commenced using the procedures within either Part 7 or Part 8 of the Civil Procedure Rules ('CPR') depending on the nature of the claim and the remedies sought. The general procedures set out in the CPR, its Practice Directions ('PDs') and this Guide should be followed in all Business List claims issued in the Business and Property Courts.

18.3 There are two specialist sub-lists:

(a) The Financial Services and Regulatory List (FS) (Appendix F) and,

(b) The Pensions List (PE) (Chapter 26)

18.4 This chapter provides particular guidance in relation to partnership claims and Business List rectification claims.

Partnership

18.5 This guidance relates to claims concerning partnerships under the Partnership Act 1890.

18.6 Partnership disputes which may require a trial include (but are not limited to) disputes as to:

(a) 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);

(b) the terms of the partnership (e.g. as to the profit sharing ratios);

(c) whether assets constitute partnership assets;

(d) the true status of a partner;

(e) allegations of fraudulent misappropriation of partnership assets;

(f) whether a '*Syers v Syers*' order should be granted (an order that the majority partners buy out the minority on the dissolution of a partnership);

(g) liability for annuities;

(h) partnership indemnities or contributions.

18.7 Allocation of claims for trial as between Masters and High Court Judges ('HCJs') will be decided in accordance with the guidance in Chapter 3 and Chapter 6.

18.8 The taking of accounts will typically follow on from a trial concerning issues of liability or deciding matters of principle, such as those outlined above. Partnership accounts and related issues (including following a trial) will usually be undertaken by a Master.

18.9 In claims for or arising out of the dissolution of a partnership where the only matters in dispute between the partners are matters of accounting, there will be no trial of the claim. The court will, if appropriate, make a summary order for the taking of an account by the Master (see PD 40A Accounts, Inquiries etc.).

18.10 The expense of taking an account in court may be disproportionate to the amount at stake. Partnership claims are often suitable for alternative dispute resolution (see Chapter 10). Parties are strongly encouraged to consider referring disputes on accounts to a jointly instructed accountant for determination, acting as an expert or an arbitrator.

18.11 Where resolution without the court's intervention is not possible, the parties must work with the court to identify the points in dispute and how each issue is best determined.

18.12 In many cases and in order to reduce costs, it may still be appropriate for the parties to invite the Master to determine discrete factual issues in advance of the taking of an account, e.g. issues as to terms of the partnership or assets comprised in it. The court will not simply order accounts and inquiries without identifying the issues.

18.13 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.

18.14 See Chapter 29 (Accounts and Inquiries), paragraphs 29.10 to 29.12, which provide guidance on directions for the taking of an account and the use of a Scott Schedule to identify the issues between the parties and facilitate early discussion about how the issues may be resolved. Cost budgeting for accounts and inquiries is considered at paragraph 29.16 to 29.17 of Chapter 29.

18.15 The parties should seek to agree a way in which the value of the partnership business and assets can be preserved. If this is not possible, the court has power to appoint a receiver and manager and confer powers on them to manage the ongoing partnership business where it considers it necessary to do so (see Chapter 14 paragraphs 14.88 to 14.91). The functions of a receiver in a partnership claim are, however, usually limited. Unlike a company liquidator, 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. The receiver has no power of sale without the permission of the court.

Rectification

18.16 Claims for rectification of documents are assigned to the Chancery Division by Schedule 1 to the Senior Courts Act 1981.

18.17 The court may in appropriate circumstances rectify the following classes of documents.

(a) Documents made by agreement between two or more parties, such as contracts. The scope of this remedy is quite general, although parties should be aware that it does not apply to certain specialised types of documents such as the articles of association of companies. Claims for rectification of consensual documents should be issued in the Business List.

(b) Voluntary documents, such as trusts (including pension trusts) – see Chapter 25 and Chapter 26. Claims to rectify pension documents should be issued in the Pensions sub-list of the Business List. Claims to rectify trust documents should be issued in the Property, Trusts and Probate List.

(c) Wills. This power is granted by section 20 of the Administration of Justice Act 1982, and is dealt with in Chapter 23 (Probate) and CPR 57. Claims to rectify testamentary documents should be issued in the Property, Trusts and Probate List.

18.18 Rectification is an equitable, 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.

18.19 Rectification as a remedy is distinct from the processes of construction and implication of terms and from the remedy of rescission, and parties should consider carefully before issuing proceedings whether and to what extent they need to seek the remedy of rectification (as opposed to some other remedy).

18.20 Rectification claims will be case managed and determined by a Master save in exceptional cases. In particular, the Master will only refer to a HCJ a claim which is consented to or not opposed if it raises issues of particular complexity or difficulty.

18.21 The parties should give careful consideration to whether the claim should be brought under the Part 7 or Part 8 procedure: attention is drawn to Chapter 13 (Part 8 Proceedings).

18.22 Where a claim is brought under Part 8, there will be no particulars of claim. The claimant should therefore consider whether to prepare a document which summarises the claim to be provided to the court and the parties with the claim form. This document, or the draft particulars of claim in an anticipated Part 7 claim, may usefully be provided to other potential parties in advance of issuing the claim in order to establish whether they will in clear cases not oppose a summary judgment application (in a Part 7 case) or a disposal application (in a Part 8 case).

18.23 It is not the practice of the court to make an order for rectification by default or by consent or without a hearing save in exceptional cases.

18.24 In all cases, even if unopposed, the court will not 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 and the reasons for them.

18.25 The evidence in support must establish the common or unilateral mistake on which the claim in rectification is based even where the parties consent to, or do not oppose, the claim. The court may direct that oral evidence be given even where all relevant parties consent (or do not oppose), with or without cross-examination. The court may also wish to hear argument on all relevant matters and may direct that arguments against the remedy are put, including if appropriate by directing that a party take such a role.

18.26 If there are fiscal consequences which will arise from the changes to the document, HMRC (or any appropriate foreign tax body or bodies) should be notified, preferably before the claim is issued, and invited to confirm whether they wish to be joined as a party to the claim in order to make representations. The evidence in support of the claim should include such notification, and the position of HMRC (or any appropriate foreign tax body or bodies).

18.27 Claimants (and any parties agreeing or consenting to the claim) are encouraged to consider carefully the form of order sought in advance of issuing the claim. The court is likely to wish to make the minimum possible changes in order to rectify the document in question. Claimants (and any parties agreeing or consenting to the claim) should also consider in advance of issuing the claim how the document in respect of which rectification is sought is intended be treated (i.e. whether the order will be indorsed on the document to be rectified, and, if so, how).

18.28 When preparing trial witness statements in a rectification claim, careful thought needs to be given to compliance with (or dispensation from) some or all of the requirements of PD 57AC where appropriate. This is a particularly important consideration in rectification claims where the passage of time or the nature of the rectification sought may mean that there is no witness able to give evidence as to the relevant events and/or where it is necessary for a witness to express a belief as to whether there has been a mistake and/or to explain what happened**.**

18.29 In all rectification claims whether proceeding under Part 7 or Part 8 the parties should consider whether it may be of assistance to the court (and the parties) in addition to any witness evidence to seek a direction for a narrative chronology with key documents. If such an order is made the parties should seek to identify and agree the key documents and a narrative chronology with reference where appropriate to those key documents. Where there is disagreement, the narrative chronology should set out each of the parties' positions making clear where there is a divergence between them on a particular issue. A bundle containing that narrative chronology and the key documents should be made available to the judge by any PTR and/or provided with skeleton arguments for trial or final hearing.

18.30 For further guidance in relation to claims for rectification of trusts or pension documents see Chapter 25 and Chapter 26.

Chapter 19 Competition List (ChD)

Introduction

19.1 In this Guide, 'competition law' has the same meaning as in paragraph 2(1) of Schedule 8A to the Competition Act 1998 and competition claim' has the same meaning as paragraph 2(2) of Schedule 8A of the Competition Act 1998.

19.2 Proceedings before the High Court relating to the application of competition law must be brought either in the Competition List in the Chancery Division or in the Commercial Court, if they fall within CPR 58.1(2). The transfer of competition claims is governed by rule 30.8 of the Civil Procedure Rules ('CPR') and Practice Direction ('PD') 30.

19.3 High Court Judges ('HCJs') assigned to the Chancery Division and some Commercial Court HCJs also sit in the Competition Appeal Tribunal ('CAT') in the capacity of a chairman of the CAT. This Guide discusses the jurisdiction of the CAT only insofar as it is relevant to the transfer of competition law claims between the High Court and the CAT. Further information about the CAT is available on its website at www.catribunal.org.uk.

Nature of competition law claims

19.4 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.

19.5 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 which is binding upon the court, by a competition authority (or by a court or tribunal on appeal from a competition authority), that there has been an infringement of competition law. In contrast, 'stand-alone' claims are claims in which the court is asked to make a finding of infringement. Claims that include allegations of infringement that 'follow on' from a decision and some that are 'stand-alone' are referred to as 'hybrid claims'.

19.6 Competition law claims are by their nature complex and frequently involve consideration of economic or technical issues.

Practice Direction – Competition law

19.7 The Practice Direction on Competition Law (Claims relating to the application of Chapters I and II of Part I of the Competition Act 1998) sets out certain requirements in relation to competition law claims that raise Chapter I or Chapter II issues.

19.8 In addition to transfers of competition law claims (discussed in further detail below), the Competition PD covers the following matters relevant to claims raising Chapter I or II issues:

(a) The requirement to serve a copy of the statement of case on the Competition and Markets Authority at the same time as it is served on the other parties to the claim; and

(b) The procedure by which a competition authority may submit observations to the court on issues relating to the application of Chapter I or II.

19.9 Claims that raise Chapter I or Chapter II issues must be issued in the High Court in London and will be assigned to the Competition List (ChD) except where the claim falls within CPR 58.1(2), when it may be issued in the Commercial Court.

19.10 A competition law claim may be issued in a B&PC District Registry pursuant to PD 57AA 2.5(2). Such claims should be referred to a B&PC Section 9 Judge on issue for triage.

Transfer of competition law claims to the Competition List from other divisions of the High Court or the County Court

19.11 Where a party's statement of case raises an issue relating to the application of competition law under Chapter I or Chapter II of Part I of the Competition Act 1998 and the claim has not been commenced in the ChD B&PCs London (or, where applicable, the Commercial Court), the claim **must** be transferred to the Competition List (ChD) at the Royal Courts of Justice (CPR 30.8). However, where CPR 30.8 (4) applies a party may apply for the claim to be transferred to the Commercial Court but if the application is refused the claim must be transferred to the Competition List.

19.12 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 court considers that the claim or part of the claim to be transferred does not involve any issue relating to the application of competition law.

19.13 In an appropriate case, competition law claims may be transferred between the Competition List and the Commercial Court. The High Court may order a transfer on its own initiative or on application by the claimant or defendant. In accordance with CPR 30.5(4), such an order may only be made with the consent of the Chancellor and the Judge in Charge of the Commercial Court.

Transfer of competition law claims to or from the CAT

19.14 In an appropriate case, competition claims may, in whole or in part, be transferred from the Competition List 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 (CPR 30.8 and PD 30, paragraph 8). When deciding whether to make an order, the court must consider all the circumstances of the case including the wishes of the parties. Barling J in *Sainsbury's Supermarkets Ltd v MasterCard Incorporated and Others* [2015] EWHC 3472 (Ch) considered the reasons why such a transfer might be appropriate.

19.15 In *Unwired Planet International Ltd v Huawei Co Ltd* [2016]EWHC 958 (Pat), Birss J explained that where not all issues in the case could be transferred to the CAT, the extent to which dividing the issues may cause difficulties in the proceedings was an important factor. In *Sainsbury's Supermarkets Ltd v Mastercard Incorporated and Others* [2018] EWCA Civ 1536, the Court of Appeal said at paragraph 357 that competition claims 'should in normal circumstances be transferred to the CAT'.

19.16 The CAT may, in an appropriate case, direct that all or part of a claim before it be transferred to the Competition List, pursuant to section 16(5) of the Enterprise Act 2002 (PD 30, paragraphs 8.7-8.9). Upon transfer the claim will be listed for a case management conference or costs and case management conference ('CMC' / 'CCMC') before a HCJ, Section 9 Judge or Deputy HCJ. For this purpose, the claimant should take out a listing appointment by emailing Judges Listing in the ChD B&PCs London. The parties should provide a time estimate which should include a realistic time estimate for both pre-reading and the hearing (which should as far as possible be agreed) and dates to avoid (See Chapter 14).

19.17 In all Competition List claims issued in the ChD B&PCs London, when a CMC / CCMC is to be listed consideration should be given as to whether the issues raised are of sufficient specialist complexity that it is appropriate to seek to have the claim docketed to a specialist HCJ for further case management. The parties are referred to the discussion of docketing in Chapter 3 for further guidance.

Disclosure in relation to competition law claims

19.18 PD 57AD does not apply to competition claims unless otherwise ordered. Specific rules apply to some aspects of disclosure. These are set out in PD 31C and in many cases include the need to make any relevant competition authority a party to any application for disclosure. A failure to take the relevant procedural steps before the first CMC / CCMC may result in sanctions. Disclosure in competition law claims is otherwise subject to CPR 31 and the parties to such claims are encouraged to further the overriding objective by adopting a co-operative, constructive and sensible approach.

Chapter 20 Financial List

20.1 The Financial List is a single specialist list defined in Part 63A of the Civil Procedure Rules ('CPR') and Practice Direction ('PD') 63AA. Claims in the Financial List may be commenced in either the Chancery Division in London or the Commercial Court.

20.2 There is a separate Financial List Guide, which is the primary source of guidance for proceedings in the Financial List. The Financial List Guide states that, for matters it does not address (and which are not dealt with in CPR 63A or PD 63AA), the Admiralty and Commercial Court Guide will apply. For any other issues not dealt with in those sources, this Guide will apply.

Chapter 21 Insolvency and Companies List (ICL)

Introduction and application of the Guide

21.1 The Insolvency and Companies List ('ICL') is a specialist list within the Chancery Division. It comprises two sub-lists: 'Insolvency' and 'Companies'. The work of the ICL covers both corporate and individual insolvency pursuant to the Insolvency Act 1986 ('IA 1986') and the Insolvency (England and Wales) Rules 2016 ('IR 2016'), as well as matters of company law outside the insolvency context, such as shareholder disputes, in claims or petitions under the Companies Act 2006 ('CA 2006'). It also includes claims for the disqualification of company directors under the Company Directors Disqualification Act 1986 ('CDDA 1986').

21.2 Proceedings are usually commenced in the ICL by petition, by an application under the IA 1986 or IR 2016 (an 'IA Application') or by a claim form pursuant to Part 8 of the Civil Procedure Rules ('CPR'), depending on the nature of the proceedings. Some proceedings under the CA 2006 are required to be commenced under Part 7 of the CPR; however, more commonly, Part 7 claims are not commenced in the ICL but will be transferred to the ICL from another list.

21.3 In the ICL in the ChD B&PCs London, Chapters 3 to 6 will not apply and the Insolvency and Companies Court Judge ('ICC Judge') will give directions as to the future conduct of all such proceedings, whether issued in the ICL or transferred to it.

21.4 However, in the B&PC District Registries, where a Part 7 claim is issued in the ICL, or a Part 8 claim is ordered to proceed as a Part 7 claim, Chapters 3 to 6 will apply unless modified by any local guidance.

21.5 In all cases, however, statements of case including points of claim, points of defence or points of reply should comply with the guidance in Chapter 4 of this Guide.

21.6 The remaining parts of this Guide apply to proceedings commenced in or transferred to the ICL as relevant, subject to the modifications in this chapter.

The Judges

21.7 In London, the judges who hear insolvency or companies cases are HCJs, Section 9 Judges, Deputy HCJs, ICC Judges and Deputy ICC Judges. In this chapter 'HCJ' includes Section 9 Judges and Deputy HCJs unless specified otherwise.

21.8 As explained in Chapter 30, both HCJs and ICC Judges hear appeals from the County Court on corporate insolvency matters, as well as exercising first instance jurisdiction in respect of applications and trials. ICC Judges also hear appeals in respect of claims under the CA 2006.

21.9 In B&PC District Registries, insolvency or companies work will be assigned between the visiting Chancery HCJs, Section 9 Judges and specialist B&PC District Judges as part of their general Chancery work. The allocation of work in the B&PC District Registries between judges will be a matter of local practice. For any local guidance, follow the links in Appendix C.

Court Rules and Practice Directions

21.10 Insolvency proceedings, whether personal or corporate, are governed by the IR 2016, as amended. The CPR apply as provided for by Rule 12.1, IR 2016. Those provisions are supplemented by the Practice Direction on Insolvency Proceedings (IPD). The IPD provides further general guidance and explains the requirements for particular applications.

21.11 Claims under the CDDA 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 apply to such claims, except when inconsistent with these rules. Regard should also be had to the Practice Direction: Directors Disqualification Proceedings.

21.12 Unfair prejudice petitions under section 994 CA 2006 are governed by the Companies (Unfair Prejudice Applications) Proceedings Rules 2009 (SI 2009/2469), as amended. The CPR apply, except when inconsistent with these rules or the CA 2006. Attention is drawn to IPD paragraph 22. Parties are warned against seeking alternative winding up relief as a matter of course. The petitioner in a contributory's petition (where the relief sought includes a winding up order) should indicate whether the petitioner consents or objects to a validation order under section 127 IA 1986 in the standard form and make consequential provision.

21.13 The CPR apply to all other companies cases. Attention is drawn to PD 49A, which sets out certain requirements for applications under companies legislation generally and also specific requirements in particular cases.

21.14 Reference should also be made to PD 57AA – Business and Property Courts.

21.15 The distribution of business between the ChD B&PCs London, the B&PC District Registries and their associated County Court hearing centres, the County Court at Central London, Specialist County Court hearing centres for non-local business and County Court hearing centres with insolvency jurisdiction is set out in paragraphs 3.6 and 3.7 of the IPD. The County Court hearing centres not located at B&PCs which are specialist for the purposes of the IPD are currently Brighton, Croydon, Medway, Preston and Romford.

Issuing proceedings and transfer of related claims

21.16 In order to start proceedings it is necessary to file a petition, an IA Application or a claim form. This cannot be done without payment of the required fee, unless the relevant party has obtained remission of fees. A fee is also payable on filing an interim application within proceedings.

21.17 A file will be created when proceedings are started. Cases will be opened electronically using the CE-File. Electronic filing of documents is compulsory for parties with legal representation and may be used by unrepresented parties. Attention is drawn to PD 51O of the CPR with regard to the operation of the electronic filing system. The CE-File can be accessed online through the HMCTS E-Filing service for citizens and professionals webpage.

21.18 Requests to inspect the court file are made in insolvency proceedings by application under Rule 12.39, IR 2016 and, in company matters, under CPR 5.

21.19 It sometimes happens that a party to proceedings in the ICL will issue proceedings in another list of the B&PCs that are closely related to the proceedings in the ICL. Such proceedings usually relate to the same dispute and feature the same parties, or some of them.

21.20 The parties should consider carefully whether the substance of the claim indicates that one list should be preferred to another for the future conduct of the claims and, if so, lodge a consent order for transfer in the list out of which transfer is sought as soon as possible. Where consent is not possible and a party considers that both sets of proceedings should be heard in the same list, this should be raised at the first hearing in time when either claim comes before the court and, at the latest, at the first case management conference in time.

21.21 The bundle for that hearing should include the statements of case and other relevant documents in both sets of proceedings, to enable the ICC Judge or Master (or District Judge outside London) to consider whether to make an order for transfer of the proceedings into the same list for effective case management.

21.22 The party who starts the proceedings is responsible for serving them on every other party.

Evidence

21.23 The parties should note that PD 57AC – Trial Witness Statements in the Business and Property Courts applies to Part 8 claims, unfair prejudice petitions under section 994 CA 2006 and a contributory's just and equitable winding up petition under section 122(1)(g) IA 1986. (For further guidance, including exclusions, see Chapter 8 and PD 57AC paragraph 1.3.)

21.24 It does not apply, unless otherwise ordered, to an application for an order under the IA 1986 (other than a contributory's just and equitable winding up petition, as above), under the IR 2016, or under certain other insolvency provisions. Nor does it apply to a

claim made under the CA 2006 listed in Part II of PD 49A or applications for an order under Part 26A CA 2006.

21.25 There are other exceptions and reference should be made to PD 57AC accordingly. Where the evidence in support of proceedings to which PD 57AC applies is necessarily of a formal and technical nature, an application can be made to dispense with some or all or the requirements of that practice direction.

Distribution of business between Judges

Personal and Corporate Insolvency

21.26 Paragraph 3 of the IPD sets out the level of judge required to hear certain applications and the criteria for transfer between levels of judge.

Companies (non-insolvency)

21.27 The ChD B&PCs London, the B&PC District Registries and the County Court have power to hear all non-insolvency corporate matters unless otherwise provided for in the CPR. In the ChD B&PCs London all shareholder disputes, schemes of arrangement, capital reductions.

21.28 If a derivative claim brought under sections 261-264 CA 2006 by a shareholder/member of a company in respect of a cause of action vested in the company is made in the ChD B&PCs London or in the B&PC District Registries, then the application for permission to bring the derivative claim must be decided by a HCJ. Reference should be made to CPR 19.14 – 19.20 and CPR PD 19A as to the practice of the court.

Listing of hearings

21.29 Hearings before a HCJ will be listed as part of the general listing jurisdiction of the Chancery Judges' Listing Office ('Judges' Listing') (addressed further in Chapter 12, Chapter 14 and Chapter 15 of this Guide).

21.30 Listing before an ICC Judge will take place as directed by the court. Listing queries in relation to ICC Judges should be directed to a member of ICL listing team. Listing of cases outside London will take place in accordance with local practice.

21.31 ICC Judges will ordinarily hear matters of up to 10 days' duration but longer hearings may sometimes be accommodated. Queries in relation to any hearings taking place before an ICC Judge should be directed to ICC Judges' Hearings at rolls.icl.hearings1@justice.gov.uk.

21.32 Bankruptcy and winding up petitions are listed for hearing in a general list in the first instance. These hearings take place in person.

21.33 Unfair prejudice petitions made for relief under section 994 CA 2006 have automatic directions that will be sent to the parties by the court on issuing the petition.

21.34 For all other matters before an ICC Judge, the listing team will list according to a time estimate provided by the issuing party and, if no time estimate is provided, it is likely that an initial hearing of 15 minutes will be listed for directions. Where possible, the parties should seek to agree directions before issue and file a consent order with the documents filed for issue.

21.35 The court may direct the filing of listing certificates before a final hearing or trial is listed and will list the case for hearing at a non-attendance pre-trial review, at which the court will consider the documents and the listing certificates filed by the parties and give appropriate directions. The ICC listing certificate form appears as Schedule 1 to this chapter. If the parties consider that an attended pre-trial review may be necessary, they should seek a direction for one when case management directions are given. The listing team may make use of a trial window if appropriate but trials and final hearings before ICC Judges will usually be directed to be listed on the first available date after completion of all other procedural steps.

21.36 The ICC Judges maintain an ICC Judges' Applications List in which urgent applications may be made (see paragraphs 21.44 to 21.53). This is separate from the ChD B&PCs London Judge's Applications List addressed further in Chapter 15.

21.37 Follow the links in Appendix C for any guidance issued in the B&PC District Registries in respect of local listing arrangements and applications lists.

Costs and case management

21.38 Case management directions will usually be given at the first hearing of the proceedings, except in the case of unfair prejudice petitions where standard directions are automatically given by the court when the petition is issued. Parties should seek to agree directions in advance of the hearing and, if agreed, these can be submitted in advance of the hearing so that, if approved, the hearing may be vacated.

21.39 Costs management under CPR 3 and PD 3D does not usually apply to proceedings in the ICL but is routinely ordered for unfair prejudice petitions. In other cases, the court may make provision for the preparation of budgets and costs management if it sees fit. A party seeking costs management should request it at the first opportunity.

Disclosure

21.40 PD 57AD applies to proceedings in the ICL to the extent set out therein. Petitions and IA Applications do not constitute 'statements of case' for the purposes of the practice direction and so many of the triggers for a step to be taken under it do not arise. In general, therefore, the obligation to provide Initial or Extended disclosure does not arise unless otherwise ordered. Such an order is made on issue of unfair prejudice petitions and the points of claim, points of defence and points of reply should be treated as statements of case for the purposes of the practice direction. The Chief ICC Judge has issued a Practice Note in relation to PD 57AD which sets out the approach to be adopted in the Insolvency and Companies Court List. Further

guidance on disclosure, including the process of Initial and Extended Disclosure, can be found in Chapter 7.

Interim Applications and IA Applications

21.41 For interim applications in proceedings under the Companies Acts (or related legislation) governed by the CPR, Chapter 14 should be followed, except that references to a Master should be construed as a reference to an ICC Judge and the first two sentences of paragraph 14.7 do not apply.

21.42 In IA Applications (whether applications starting proceedings or interim applications in insolvency proceedings), Chapter 14 should be followed except that –

(a) Applications will be made in accordance with the IR 2016 and, in the case of any inconsistency between the IR 2016 or the IPD and this Guide, the provisions of the Rules or IPD must be followed. This is particularly relevant to allocation of cases to different levels of the judiciary and the period of notice that must be given to the respondent.

(b) The first two sentences of paragraph 14.7 and paragraphs 14.30 and 14.46 do not apply. Applications will be listed for an initial hearing of 15 minutes before an ICC Judge unless the applicant requests a longer hearing, directions for the conduct of the case have been agreed and filed with the application, the case is appropriate for release to a HCJ or the court otherwise directs. The applicant should attempt to agree directions with the other parties before issuing the application.

21.43 The guidance in relation to applications to the HCJs' Applications List in paragraphs 15.1 to 15.10 and paragraphs 15.14 to 15.61 of Chapter 15 apply to applications to HCJs in ICL cases. The provisions relating to applications to Masters in Chapter 15 do not apply. Urgent and without notice applications to ICC Judges are dealt with below.

The ICC Judges' Applications List

21.44 The ICC Judges maintain an applications list for urgent applications. It takes place on Thursdays and Fridays of each week and every other Monday. The ICC Judges' listing team should be contacted if an urgent application needs to be heard on any other day.

21.45 The ICC Judges' Applications List operates in the same way as the HCJs' Applications List (see Chapter 15). Applications that may be brought in the ICC Interim Applications List may also be heard in the HCJs' Applications List if it is not possible to accommodate an urgent hearing before an ICC Judge or if the nature of the application warrants it.

21.46 The ICC Judges' Applications List sits in person in the Rolls Building unless, at the discretion of the ICC Judge hearing the ICC Judges' Applications List, an alternative format is considered appropriate.

21.47 If the applicant considers that an alternative format may be appropriate they should file a letter on CE-File setting out brief reasons why they consider that the alternative format is appropriate or necessary when contacting the ICC Judges' listing team. If the court directs that the application should proceed as a remote or hybrid hearing the applicant should prepare for and conduct the hearing in accordance with the provisions of Appendix Z as modified by any directions from the ICC Judge or as appropriate for the urgency of the application.

21.48 The ICC Judge's Applications List is used to hear applications for:

(a) administration orders;

(b) urgent injunctions to restrain presentation of a petition to wind up a company or to restrain advertisement of such a petition;

(c) appointment of an interim receiver under section 286 IA 1986;

(d) appointment of a provisional liquidator under section 135 IA 1986;

(e) search and seizure orders pursuant to section 365 IA 1986;

(f) validation orders; and

(g) other orders that might, depending on the circumstances, be urgently required, such as those made pursuant to section 125 CA 2006.

21.49 Unless otherwise directed a certificate of urgency is required, which must be signed by counsel or other advocate appearing or by a litigant acting in person. The form of the certificate should be as follows: *'I hereby certify that this is urgent business, and cannot await a hearing before the ICC Judge in its due turn, because [specify reasons]. [signed] [dated].'* Where practicable, the certificate should be included in the application notice.

21.50 Parties appearing in the ICC Judges' Applications List should report to the ICC Judges' clerks on the first floor of the Rolls Building before 10:30 am if the hearing is taking place in person. The ICC Judges will work from bundles provided by the applicant and not from CE- File. Bundles and skeleton arguments complying with Appendix X and Appendix Y should be provided to the ICC Judges' clerks no later than 10am on the day before the hearing unless otherwise directed. These should be CE-Filed and provided to ICC Judges' Hearings at rolls.icl.hearings1@justice.gov.uk (or the ICC Judge's clerk, if known). Paper bundles must not be provided unless requested.

21.51 The applications will be called on together. The ICC Judge will go through the list and ask whether the hearing is effective and for a time estimate. The ICC Judge will then decide the order in which to hear the applications.

21.52 Applications with a time estimate of more than two hours (including pre-reading time, judgment and consequential arguments) are not usually suitable for the ICC Judges' Applications List and will generally be listed by order, that is to say listed for a longer hearing on a fixed time and date.

21.53 For guidance on preparation for and hearing of urgent applications in the B&PC District Registries, follow the links in Appendix C.

Without notice applications

21.54 Paragraphs 15.29 to 15.35 of Chapter 15 apply to without notice applications to ICC Judges as if the reference to the assigned Master were a reference to an ICC Judge.

Applications for Validation Orders

21.55 A validation order is a court order which allows a company to continue trading or a debtor to deal with their property notwithstanding a winding up petition/bankruptcy petition being presented against the applicant. Section 127 IA 1986 is applicable in relation to a company and section 284 IA 1986 is applicable to an individual debtor.

21.56 It is imperative that the provisions for validation orders as set down in paragraphs 9.11 and 12.8 of the IPD are strictly complied with in order to allow the court to deal with the application in a timely manner. If those provisions are not complied with, the application will need to be adjourned to another day and a costs sanction may be imposed.

The Winding Up Court

21.57 The Winding Up Court sits in person at the Rolls Building each Wednesday during term time. The court deals with a large number of cases in a short timeframe and it will usually be inappropriate to file a skeleton or a bundle for the hearing of a winding up petition. The court will have before it the winding up petition and the judge's directions from any previous hearing. Where, exceptionally, a bundle or additional document is essential it must be lodged in hard copy by 10.30am on the Monday of the week of the hearing at the latest or it is unlikely to reach the judge. A copy should also be brought to the hearing. The Winding Up Court is not the proper forum for extended argument or prolonged consideration of documents, and the costs of preparation of unnecessary documents or bundles are likely to be disallowed.

21.58 The City Law School's Company Insolvency Pro Bono Scheme (CO.IN) was set up in 2015 to provide free legal advice and representation to assist litigants in person (including a company or corporation that is not represented by a lawyer) in the Winding Up Court in the Rolls Building. Further guidance in relation to CO.IN may be found at Appendix H.

21.59 It should be noted that a company must be represented by a barrister or solicitor with a right of audience, or by a director or an employee of the company duly authorised by the board of directors, to whom the court gives permission to be heard. Evidence of such authorisation must be supplied, except where the company is represented by its sole director.

21.60 Petitions will be listed to be heard 'not before' a certain time and will be heard in turn. If, exceptionally, the court requires further submissions or evidence, the ICC Judge may direct that the petition be taken 'second time around', which means that the petition will be put to the back of that day's winding up list.

21.61 Applications to rescind winding up orders are heard in the Winding Up Court once all the petitions have been heard. A bundle and skeleton arguments complying with Appendix X and Appendix Y are required.

21.62 Winding up petitions are also heard by District Judges in the B&PC District Registries, usually on a fortnightly or monthly basis. For any guidance on how they are listed follow the links in Appendix C.

General provisions as to hearings before an ICC Judge

21.63 Accurate time estimates must be given for all hearings, including for judicial pre-reading. If a time estimate proves inadequate it is likely that a hearing will be adjourned and a costs sanction applied.

21.64 Hearings with a time estimate of half a day or less (2.5 hours) (and no more than 90 mins pre-reading) will take place remotely unless the court orders otherwise. Hearings with a time estimate of over half a day (and/or more than 90 mins pre-reading) will be heard in person unless the court orders otherwise. If the parties consider that an alternative format is more appropriate, the applicant (if the position is agreed) or the relevant party, should file a letter on CE-File setting out brief reasons why they consider that an alternative format is appropriate or necessary.

21.65 A hearing bundle must be lodged for all hearings before an ICC Judge, apart from hearings of winding up petitions in the Winding Up Court. In respect of bankruptcy petitions all the necessary procedural documents demonstrating compliance with the IA 1986 and the IR 2016 must be produced and contained in the bundle.

21.66 The person seeking a remedy at the hearing is responsible for the preparation, filing and service of the bundle but the parties should liaise and reach agreement as to content whenever practicable.

21.67 The hearing bundle for the court must be in electronic format, complying with the provisions of Appendix X to this Guide. If a satisfactory bundle is not lodged, the hearing is likely to be adjourned and a costs order made against the defaulting party. A paper bundle should not be provided to the court unless requested by the ICC Judge's clerk and the party preparing the bundle should enquire of the clerk as to whether such a bundle is required. The party preparing the bundle should provide it to every other party as a paper bundle and/or in electronic format as the other party requests. Where the other party is a litigant in person, a paper bundle must be provided to them unless they confirm in writing that they only require an electronic bundle for use at the hearing or the court orders otherwise. Draft orders should be lodged in Word format.

21.68 Skeleton arguments must comply with Appendix Y.

21.69 Bundles and skeleton arguments must be CE-Filed and provided to ICC Judges' Hearings at rolls.icl.hearings1@justice.gov.uk (or the ICC Judge's clerk, if known). Further guidance on the filing and delivery of electronic bundles can be found in Appendix X.

21.70 The court will inform the parties whether the hearing is to be fully remote, hybrid or fully in person. Reference should be made to Appendix Z in relation to remote or hybrid hearings. Parties for an in-person hearing in the ChD B&PCs London should report to the counter on the first floor of the Rolls Building at least 15 minutes before the hearing.

21.71 Chapter 12 and the Appendices X, Y and Z apply to trials before ICC Judges. Where a PTR is ordered, the guidance in Chapter 11 should be followed.

21.72 ICC Judges robe for hearings when sitting in a hearing room or court room. The occasions when court dress is worn by barristers and other advocates is set out in the updated guidance issued by the Bar Council (2020).

Orders

21.73 Attention is drawn to Chapter 16, which must be complied with. Draft minutes of orders filed after a hearing must be in Word format and should be emailed to rolls.icl.hearings1@justice.gov.uk. The order should not include the word 'draft' or 'minute' and need not include the case number as this will be added automatically on sealing, provided that the file name includes the case number and short title of the case.

21.74 The court office will produce winding up and bankruptcy orders. Counsel need only draft such orders where they contain non-standard provisions.

21.75 The judge's judicial title and the date of the order should appear below the court details. 'Chief ICC Judge', 'ICC Judge' or 'Deputy ICC Judge', as appropriate, are acceptable abbreviations of the titles of the ICC Judges and their deputies in orders and other documents.

21.76 Where the parties wish a consent order to be approved, the signed consent order must be lodged in PDF format together with a copy for sealing in Word format without the signature block signifying the parties' agreement. Attention is drawn to the provisions of Chapter 16 relating to consent orders (including Tomlin Orders).

21.77 Parties are reminded that in insolvency cases or substantial company cases, multiple applications by various parties may have been filed under the same case number. When filing a consent order in any case the filing party should always submit a covering letter stating the date of the application to which the consent order relates and the reasons for the order. Where the consent order varies existing case management directions, it should explain whether the variation may have an impact on any hearing listed.

Appeals

21.78 ICC Judges have jurisdiction in appeals from District Judges in the County Court in relation to applications under the CA 2006 and in relation to corporate insolvency under the IA 1986. This includes proceedings under the CDDA 1986. Reference should be made to Chapter 30 of this Guide and Section III of PD52A of the CPR.

Court-to-Court communications in cross-border insolvency cases

21.79 Communication between courts in different jurisdictions may be of assistance in the efficient conduct of cross-border insolvency cases. Reference should be made to:

(a) The American Law Institute/International Insolvency Institute's *Guidelines for Court- to-Court Communications in International Insolvency Cases*

(b) The EU Cross-Border Insolvency Court-to-Court Cooperation Principles

(c) The Judicial Insolvency Network Conference's *Guidelines For Communication And Cooperation Between Courts In Cross-Border Insolvency Matters*

21.80 In a cross-border insolvency case, the insolvency practitioner involved, together with any other interested parties, should consider at an early stage in the proceedings whether the court should be invited to adopt one of these sets of guidelines for use in the proceedings, with such modifications as the circumstances of the case may require.

SCHEDULE 1

IN THE HIGH COURT OF JUSTICE **Case number:**
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

LISTING CERTIFICATE LODGED BY THE PETITIONER / RESPONDENT*

For the Non-Attendance Pre-Trial Review on: [20]

I / We _____

of _____

_____ (name & address)

confirm on behalf of the Petitioner / Respondent* as follows:-

EITHER:

A: that this case is ready for hearing ☐ (tick if case is ready)

1. The following witness statement(s) has / have* been filed:

Name of witness	Date of witness statement	Date filed
(a)		

2. The time estimate for judicial pre-reading is _____ hours _____ minutes
3. The time estimate for the hearing (including judgment) is_day(s)_____hours _____ minutes
4. My / our dates to avoid are:
5. I / we intend / do not intend* to instruct counsel who is:
   _____ of _____
6. Oral evidence will / will not be required (give reasons if an order for cross-examination is sought).
7. This case is / is not suitable for a remote hearing.
8. Number of people expected to attend hearing on your behalf:

OR:

B: that this case is not ready for hearing ☐ (tick if case is not ready)

This case is not ready because:

Signed:_____Solicitor / Litigant in Person* Date: _____

Note: If the case is not ready and/or this form has not been completed on time the court may fix an appointment for further directions. The party who has not complied with any directions given may be ordered to pay any costs unnecessarily incurred.

If a party considers that further directions other than those for the listing of a final hearing are required, a draft order should be submitted with this form.

*Delete as appropriate

Chapter 22 Intellectual Property List

Introduction

22.1 Intellectual property proceedings are dealt with, under Part 63 of the Civil Procedure Rules ('CPR') and Practice Direction ('PD') 63, within the Chancery Division depending on their subject matter and value. There are two specialist courts: the Patents Court and the Intellectual Property Enterprise Court ('IPEC'). The assignment of cases involving different intellectual property rights to specific lists or courts or as part of the general Chancery jurisdiction is set out in CPR 63.2 and CPR 63.13. Intellectual property claims issued under CPR 63 other than those to which CPR 63.27 are allocated to multi-track.

22.2 Although all intellectual property matters are assigned to the Intellectual Property List, some types of intellectual property claims must be dealt with in either the Patents Court or the IPEC. General intellectual property claims must be dealt with in either the Intellectual Property List or IPEC. As set out in CPR 63 Section I, higher value or more complex claims involving patents and registered designs are allocated to the Patents Court. Lower value or less complex claims falling with Section V of CPR 63 are allocated to the IPEC.

22.3 General intellectual property cases are assigned to Masters on a rota basis when issued in the same way as other types of claims. However, if the parties consider that their intellectual property claim requires specialist intellectual property knowledge, they can apply to the assigned Master copied to the Chief Master by letter filed on CE-File with brief reasons, asking for the claim to be re-assigned to Master Clark. To apply to have a claim docketed to a specialist High Court Judge ('HCJ') the parties should follow the guidance on docketing set out in Chapter 3. The majority of claims will remain with the assigned Masters. This procedure is only intended to be used for the most complex technical intellectual property claims where the knowledge of a specialist in the area may assist with case management.

22.4 Intellectual property cases are commenced by either Part 7 or Part 8 claim form and the provisions of this Guide apply.

The Patents Court

22.5 The procedure of the Patents Court is broadly that of the Chancery Division as a whole, but there are important differences, as set out in the Patents Court Guide, which must be consulted for guidance as to the procedure in the Patents Court. In particular Masters have limited jurisdiction in respect of Patents Court claims (see PD2B).

The Intellectual Property Enterprise Court, including small claims track

22.6 The IPEC has a significantly adapted procedure as set out in CPR 63 and PD 63. It has its own Intellectual Property Enterprise Court guide. The small claims track in the IPEC also has its own Court Guide, the Intellectual Property Enterprise Court: a guide to small claims. These Guides must also be consulted for guidance as to the procedure in the IPEC and the IPEC small claims track.

22.7 Both multi-track and small claim IPEC claims can be issued and heard in the B&PCs District Registries. Multi-track cases in the B&PCs District Registries are heard by HHJ Hacon or by one of the Deputy IPEC Judges or, where appropriate, by an HCJ nominated to hear IPEC cases.

Appeals

22.8 Most appeals from decisions of the Intellectual Property Office as well as the Patents Court and IPEC are governed by CPR Part 52 as stipulated by CPR 63.16. A reference to the Court by the Appointed Person is governed by paragraph 25 of PD 63. Chapter 30 provides guidance on the general procedure as regards such appeals and parties should also consult the Patents Court Guide and the IPEC Guide as appropriate.

For further guidance see:

- Appendix F (Lists and Sub Lists)
- Chapter 3 (Commencement)
- Chapter 6 (Case Management)
- Chapter 29 (Accounts and Inquiries)

Chapter 23 Probate, inheritance, presumption of death and guardianship of missing persons

23.1 The claims covered by this chapter fall within the Property Trust and Probate List (PT) and are generally governed by Part 57 of the Civil Procedure Rules ('CPR'), and, as applicable, Practice Directions ('PDs') 57, 57B, and 57C.

23.2 The court will generally expect a claim made under CPR 57 or CPR 64 to include an approximate value of the estate, fund or property in issue. This should be stated in the claim form.

23.3 PD 57AC does not automatically apply to claims brought under CPR 57 (see PD 57AC paragraph 1.3(6)) or CPR 64 (see PD 57AC paragraph 1.3(8). However, parties should be aware that in cases where there is likely to be contested factual evidence the court is likely to direct that trial witness statements should comply with PD 57AC.

Probate claims

23.4 The rules relating to contentious probate claims are contained in CPR 57.2 to 57.11 and PD 57, paragraphs 1 to 8. A probate claim is defined in CPR 57.1(2). Probate claims broadly follow the same procedure as Part 7 claims. Further guidance on general case management for Part 7 claims can be found at Chapter 6. However, there are important differences which are set out in CPR 57 and PD 57 with which parties are expected to be familiar.

23.5 Parties should bear in mind that a probate claim is akin to a claim *in rem* where the court undertakes an investigative role and makes declarations binding on the world at large.

23.6 All probate claims should be issued electronically using CE-File wherever possible. Where the claim is issued using the CE-File parties should comply with CPR 57.5 by lodging testamentary documents in accordance with the provisions of paragraph 23.9 below. Probate claims are allocated to the multi-track and issued using Form N2.

23.7 The claimant must also file and serve written evidence about testamentary documents (see CPR 57.5(3)) and lodge with the court any original testamentary documents held by them. A specimen form is annexed to PD 57. 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 CPR 19.13.

23.8 Similarly, every defendant who files an acknowledgement of service must lodge any original testamentary documents held by them, and file and serve their written evidence about testamentary documents.

23.9 Unless PD 57, paragraph 3.3 applies, where a claim or acknowledgment of service is filed electronically using CE-File, the claimant or defendant must file written confirmation that the original 'testamentary documents' (see the definition in CPR 57.1(2)(c)) will be lodged within 5 working days, or an explanation as to why they cannot be lodged.

23.10 Original documents 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'

23.11 In every case, the court will write to the Leeds District Probate Registry to ask if it holds any testamentary documents; and if it does, to send them to the court. Original testamentary documents are securely stored by the court.

23.12 Where a probate claim is transferred to or from the Rolls Building, to any Business and Property Courts District Registry or the County Court at Central London, Business and Property List, any original testamentary documents will remain securely stored at the transferring court until requested by the receiving court. The receiving court may call for the original testamentary documents at any stage after the transfer has been effected.

23.13 In all cases where the original testamentary documents were filed with the transferring court it is the responsibility of the party preparing the court bundle to write to the transferring court at least four weeks in advance of the trial to request that the original testamentary documents be forwarded to the receiving court if they have not already been requested by the receiving court. Such a request should be filed on CE-File where appropriate. Failure to request the original testamentary documents be sent to the receiving court may result in sanctions which could include an adverse costs order should that failure affect the trial date. This paragraph does not apply to cases that have been transferred to the County Court at Central London.

23.14 Original testamentary documents may be released to be sent to an expert for examination if a judge gives permission. An application should be made under CPR Part 23. The court will need to be satisfied that the examiner is suitably qualified, and generally that the proposed methods of examination will not unnecessarily damage the testamentary document. Normally, the court will require an undertaking by the solicitor or expert to preserve and return the documents to the court by a specific date (for guidance on the form of order see Form CH 27).

23.15 When the court orders the trial of a contentious probate claim on written evidence under PD 57 paragraph 6.1(1), or where the court is asked to pronounce in solemn

form under CPR Part 24, it is normally necessary for an attesting witness to sign a witness statement of due execution of any will or codicil sought to be admitted to probate.

23.16 If the attesting witness has not signed a witness statement of due execution of any will or codicil before the original testamentary documents are lodged at court, a party may request a certified photocopy of the original will or codicil in question. The witness statement must in that case state that the exhibited document is a certified copy of the original document signed in the witness' presence.

23.17 In exceptional cases it may be necessary for the original testamentary documents to be inspected before the attesting witness is able to sign a witness statement of due execution. Where a party is legally represented, their solicitor may seek the release of the testamentary documents by application or by consent. The court will require the solicitor to provide an undertaking to the court and an order in substantially the same form as CH27 (but adapted for the circumstances) before releasing the original testamentary documents.

23.18 In such exceptional cases unrepresented parties whose attesting witnesses need to inspect the original testamentary documents rather than a certified copy will need to attend the court in which the original testamentary documents are held in order to inspect them in the presence of an officer of the court before signing their witness statement.

Settlement of probate claims

23.19 Where a claimant or defendant seeks discontinuance or dismissal, attention is drawn to CPR 57.11. Particular care is needed in the compromise of probate claims. In particular the court will not approve an arrangement unless it is satisfied that the order will lead to a grant where one has not yet been made or an existing one is to be revoked.

23.20 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. Orders compromising probate claims must be drawn up carefully to ensure that any substantive orders to be made by consent, including the making of grants, are included in the substantive order and not in the schedule. For further guidance see CH26.

23.21 The compromise may be on any of the bases set out in PD 57, paragraph 6.1. Attention is also drawn to PD 57, paragraph 6.2. A settlement sought under section 49 of the Administration of Justice Act 1985, requires the consents of all the relevant beneficiaries. The class of relevant beneficiaries may be very wide, and it may not be possible to obtain all the consents which are needed.

Default judgment is not available in Probate claims

23.22 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.

Application for an Order to bring a will etc

23.23 An application under sections 122 and 123 of the Senior Courts Act 1981 should be made in an existing probate claim if it has been commenced. Where a probate claim has not been commenced, an application should be made to the Principal Registry pursuant to section 50(2) Non-Contentious Probate Rules.

Rectification of wills

23.24 CPR 57.12 and PD 57, paragraphs 9 to 11 contain provisions which apply where a claim is made to rectify a will under section 20 of the Administration of Justice Act 1982. In particular the parties must ensure that any grant of representation is lodged with the court when the claim is issued (PD 57.10).For general guidance on rectification see Chapter 18 and Chapter 26.

Substitution and removal of personal representatives

23.25 Applications made under section 50 of the Administration of Justice Act 1985 are governed by CPR 57.13 and PD 57, paragraphs 12 to 14. The information specified in paragraph 13.1 of PD 57 is essential and must be set out fully. The application should include a draft order in Form CH41, adapted as appropriate to the circumstances.

23.26 Parties should consider the requirements of PD 57, paragraph 13.2 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 from the proposed substitute personal representative and written evidence of fitness. Evidence of fitness must come from a person independent of the proposed substituted personal representative, which should generally not include employees or partners in the same firm as the proposed substituted personal representative.

23.27 In applications under section 50 of the Administration of Justice Act 1985 it is only in exceptional cases that oral evidence and cross examination will be required. The nature of the applications is such that they can usually be determined without issues of fact being resolved.

23.28 The original grant of representation must be lodged with the court by the personal representative at the final hearing. If the beneficiary does not have the original grant, they can lodge an office copy (PD 57.14).

Administration pending determination of a probate claim

23.29 Applications made under section 117 of the Senior Courts Act 1981 for the appointment of an administrator pending the determination of a probate claim are governed by PD 57, paragraph 8.

Inheritance (Provision for Family and Dependants) Act 1975

23.30 Claims made under the Inheritance (Provision for Family and Dependants) Act 1975 in the Chancery Division are issued by way of a Part 8 claim in the Property Trust and Probate List. They are governed by CPR 57.14 to 57.16 and PD 57, paragraphs 15 to 18.

23.31 Attention is drawn to CPR 57.15, and to section 25 of the County Courts Act 1984. Careful thought should be given to whether a claim should be commenced in the High Court, and, if so, whether it should be commenced in the Chancery Division or the Family Division. Ordinarily claims commenced in the Chancery Division in London will be tried by a Master unless an order is made transferring the claim to the County Court for trial.

23.32 On the hearing of a claim under the 1975 Act, the personal representatives must comply with PD 57, paragraph 18.1 and produce the original grant of representation. The original grant of representation 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'

Presumption of Death Act 2013

23.33 Claims made under the Presumption of Death Act 2013 are governed by CPR 57.17 to 57.24 and PD 57B.

23.34 The claim must be issued by Part 8 claim form (CPR 57.19(1)), which must include the information required by PD 57B, paragraphs 1.1 or 1.2. A claimant may seek permission to issue a claim form without serving notice on any person (CPR 57.19(3) and PD 57B, paragraph 1.3). Such an application should be made at the same time as the claim is issued and be supported by evidence.

23.35 In addition to the information required by PD 57B, the Registrar General, who maintains a register of presumed deaths, also requires information as to the time of presumed death. A draft order in form CH42 should always be attached to the claim

form, with Annex A (a Schedule of prescribed information for the General Register Office) completed which includes this requirement.

23.36 The claimant must give notice of the claim (CPR 57.20) and advertise (CPR 57.21 and PD 57B, paragraph 2.1). A copy of the advertisement and confirmation of the date of publication must be filed at least 5 days before the hearing.

23.37 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 Presumption of Death Act 2013 are fulfilled before making a declaration. It may for example (under section 12) 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.

23.38 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 (CPR 57.22 and PD 57B, paragraph 3). Exceptionally, if all the papers are in order at the first directions hearing, the court may be prepared to treat the hearing as a final disposal hearing.

23.39 Where the court makes a declaration of presumed death a copy of the declaration will be sent to the Public Guardian.

23.40 Further information for litigants may be found on the gov.uk website at Get a declaration of presumed death.

Guardianship (Missing Persons) Act 2017

23.41 Claims under the Guardianship (Missing Persons) Act 2017 (the '2017 Act') are governed by CPR 57.25 to 57.30 and by PD 57C. The 2017 Act contains detailed provisions that need to be considered carefully before the claim is issued. The claim must be issued by Part 8 claim form (CPR 57.27(1)), which must include the information required by PD 57C, paragraph 1.1 and be accompanied by a witness statement containing the information required by PD 57, paragraph 1.2 and, where appropriate, PD57C, paragraph 1.3.

23.42 The missing person is named as the defendant. However, the usual service requirements are varied by CPR 57.27(4). Notice of the claim must be given, and the claim must be advertised in accordance with CPR 57.29 and PD 57C, paragraphs 3.1 and 4.1.

23.43 The court will fix a directions/disposal hearing when the claim is issued to establish that: (1) the claim and the evidence provide the information that is required by the 2017 Act and the CPR; and (2) that the claim has been notified and advertised. Any applications to intervene will also be dealt with at the directions hearing. In a straightforward case, the court may be able to make an order appointing a guardian at the first hearing.

23.44 If there is a dispute about the appointment, or further steps are required, directions will be given, and a disposal hearing date will be fixed. It is very unlikely the court will permit a trial of disputed issues of fact other than in exceptional circumstances.

23.45 The court may hear an urgent application to appoint a guardian if the 'urgency condition', as it is defined in section 3(3) of the 2017 Act, is met (PD 57C, paragraphs 1.1(4) and 1.3).

23.46 Applications (made in accordance with CPR 23) may be made after the appointment of a guardian to vary or revoke the order and for other orders (CPR 57.28 and 57.30 and PD 57C, paragraph 2).

23.47 All claims and applications in respect of the 2017 Act made in the ChD B&PCs London, including urgent claims, are dealt with by Masters unless, exceptionally, they are released to be heard by a High Court Judge.

23.48 The court will send copies of orders made in such a claim to the Public Guardian in accordance with CPR 57.32.

23.49 If there is real doubt about whether the missing person is alive or the missing person is found to have died, parties should consider the provisions of CPR 57.33.

23.50 Attention is drawn to the Code of Practice issued by the Ministry of Justice in June 2019 pursuant to section 22 of the 2017 Act. It provides a useful summary of the legislative provisions and examples of how they may operate in particular circumstances. Useful guidance on managing a missing person's finances and property can be found on the gov.uk website at Manage a missing person's finances and property.

CPR 64 Claims in relation to the administration of estates

23.51 In some circumstances personal representatives and beneficiaries will wish to use the procedure under CPR 64 to seek directions from the court before distributing the assets of the estate of the deceased. For further guidance on the use of CPR 64 generally see Chapter 25 (Trusts) and Chapter 26 (Pensions).

23.52 In cases where historic child abuse claims are being made against an estate, or where there is more than a remote concern that such claims may be made it may be appropriate for executors or administrators to seek directions from the court under CPR 64. Parties are referred to *Re Studdert, deceased [2020] EWHC 1869 (Ch)*. Although the court will approach each case on its individual facts, it is expected that the court will consider the appropriateness or not of the steps identified at [22(2) and (3)], [30], [31], [35] of *Re Studdert*, and any person seeking directions should address the applicability of such directions in the evidence filed with the claim form. The personal representative(s), any beneficiary, or any claimant may seek the court's directions.

Overseas property and minor children

23.53 Where an application is made for permission to enter into a contract for the sale of land in another jurisdiction on behalf of a minor child habitually resident in England it should be referred to the Chief Master on issue.

23.54 A Part 8 claim should be made by the minor child acting through a litigation friend. Others with an interest in the immoveable property should be defendants.

23.55 Whilst the English court would have jurisdiction over the child, the capacity to deal with immoveable property is governed by the *lex situs* (where the property is) so the court would have to apply the law of the immoveable property.

23.56 The evidence in support should address the law which applies, why it is in the best interests of the child to sell the immoveable property, and the proposed application of the proceeds.

23.57 In *Re Shanavazi* [2021] EWHC 1832 (Ch) Master Clark considered the approach to such applications in the Chancery Division. However, cases relating to a child's interest in immoveable property in another jurisdiction are also sometimes brought in the Family Division (see *In Re B (A Child)* [2022] EWFC 7, [2022] 4 WLR 34).

Chapter 24 Non-contentious probate

General

24.1 Non-Contentious or common form probate business relates to obtaining probate and administration for estates both testate and intestate where the validity of a will is not in issue and/or there is no dispute about who is entitled to probate.

24.2 Any application made pursuant to the Non-Contentious Probate Rules 1987 and the Non-Contentious Probate (Amendment) Rules 2020 should be made to the relevant Probate Registry.

24.3 There are district probate registries undertaking non-contentious probate work in Brighton, Cardiff, Liverpool, Leeds, Oxford, Newcastle, and Winchester.

24.4 Applications **should not** be made to the B&PCs.

Chapter 25 Trusts

25.1 This chapter contains guidance on a number of aspects of proceedings concerning trusts, the estates of deceased persons (other than probate claims), and charities. Claims in relation to trusts generally concern matters which should be issued in the Property Trusts and Probate List (PT). A non-exhaustive description of the types of cases included in this list may be found in Appendix F.

25.2 Most claims relating to trusts, estates, and charities will be disposed of by a Master. The Master will only release a claim to be heard by a High Court Judge ('HCJ') if, exceptionally, the claim is of particularly high value, complexity, or legal novelty.

25.3 In this chapter unless indicated otherwise reference to a HCJ includes a Section 9 Judge and a Deputy HCJ.

25.4 The court will generally expect the evidence in support of the claim and/or the claim form to include an approximate value of the estate, fund or property in issue.

25.5 For further guidance on probate claims see Chapter 23 and for matters specific to pensions claims see Chapter 26.

Trustees' applications for directions

25.6 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 of the Civil Procedure Rules ('CPR'), and its Practice Directions ('PDs') (see in particular PD 64B).

25.7 When applying to the court for directions under CPR 64 it may be appropriate to seek permission to issue a claim form without naming a defendant (CPR 8.2A). Further guidance on such applications can be found in Chapter 13 paragraphs 13.38 to 13.42.

25.8 Such an application for directions may include applications under *Public Trustee v Cooper* [2001] WTLR 901, in particular category 2 cases where the blessing of the court is sought, applications for *Benjamin* orders, and applications for permission to distribute the estates of deceased Lloyd's names (addressed further below).

Proceeding without a hearing

25.9 Once the defendant has acknowledged service the Master will consider the papers on the court file (Chapter 13, paragraph 13.20). Where the claim is for approval of a sale, purchase, compromise or other transaction by a trustee, provided the claimant is able to satisfy the court that there is no conflict of interest or prejudice to beneficiaries, the court may deal with the claim on paper and without a hearing.

Parties

25.10 CPR 64.4 sets out the general rules about parties in trust claims. Where a claim is between trustees or personal representatives and third parties, consideration should be given to CPR 19.10.

25.11 Where the claim relates to the internal affairs of the trust or estate it may be appropriate for a representation order to be made so that the interests of all classes of beneficiaries are represented and protected but they are also all bound by the decision (CPR 19.9).

25.12 Alternatively, where appropriate the court may direct either of its own motion or on the application of the claimant that notice of either the claim or any judgment is served on a non-party pursuant to CPR 19.13.

25.13 A non-party who subsequently files an acknowledgement of service within the time specified becomes a party to the claim. A non-party who does not file an acknowledgment of service will still be bound by the court's decision. Further guidance on representative parties can be found in Chapter 26 (Pensions) paragraph 26.22 to 26.29.

25.14 In some cases it may be entirely appropriate and proper for one firm of solicitors to represent more than one party. However, particular attention is drawn to *South Downs Trustees Limited v GH* [2018] EWHC 1064 (Ch) where the parties are considering that course of action.

Costs

25.15 Although the general costs rules apply equally to claims involving disputes about trusts or estates, the court retains a broad discretion in relation to costs. However, the general rule in relation to the costs incurred by trustees' and personal representatives' is set out in CPR 46.3 and CPR PD 46, paragraph 1. The costs of beneficiaries joined as defendants may in appropriate circumstances be paid from the trust fund or estate (see *Re Buckton* [1907] 2 Ch 406).

25.16 Attention is also drawn to PD 3E, paragraph 5 which applies where any party intends to seek an order for the payment of costs out of a trust fund (which includes the estate of a deceased person). The court may also consider alternative costs orders having regard to *Spiers v English* [1907] P 122 in an appropriate case.

Beddoe applications

25.17 Trustees or personal representatives should consider whether they may need to apply, under CPR 64.2(a), for directions as to whether or not to bring or defend proceedings. This is known as a *Beddoe* application (*Re Beddoe, Downes v Cottam [1893] 1 Ch. 547*).

25.18 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 or estate.

25.19 If trustees are adequately indemnified against costs in any event, 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 should proceed as they intend to do that the costs of making the application may not be justified in comparison with the size of the fund or the significance of the matters in issue.

25.20 Where a claim by a third party may exhaust the trust fund or estate, consideration must be given to joining that third party to the application for a *Beddoe* order.

25.21 Where a third party has been joined as a party to the application for a *Beddoe* order, it may be necessary to redact or not serve privileged material on the third party and/or to exclude the third party from those parts of the hearing during which the privileged material is discussed (see *Re Moritz* [1960] Ch. 251), even when that third party is a beneficiary or potential beneficiary of the trust or estate. This material will generally consist of legal advice obtained by the trustees regarding the merits of the third party's claim or defence. This procedure does not breach the third party's human rights (*Three Professional Trustees v Infant Prospective Beneficiary* [2007] EWHC 1922 (Ch)), although the third party will generally be allowed to participate as fully as possible in the *Beddoe* application.

25.22 The Court may also need to consider whether, when a beneficiary of the trust or estate is on the other side of the third party claim, the claim should be continued by the trustee or PR, or by other beneficiaries by way of a derivative claim, and whether it should be funded by and at the risk of the trust or estate or the other beneficiaries personally.

25.23 The *Beddoe* application must be made by separate Part 8 claim form, with a request that it be assigned to a Master other than the Master assigned to the main proceedings which are the subject matter of the *Beddoe* application.

25.24 The applicant will therefore need to know the name of the Master assigned to the main claim and should add a note to the CE-File when issuing the claim so as to ensure that it is not allocated to the assigned Master on issue.

25.25 In some cases it may be necessary to issue a without notice application in advance of or at the same time as the substantive *Beddoe* application to seek directions in relation to any privileged material, confidentiality, redactions, or participation in and exclusion from the *Beddoe application* hearing before service.

25.26 *Beddoe* applications are usually heard in private, and will be listed in private in the first instance. A hearing in private always needs to be justified on an individual basis, CPR 39.2. Even if heard in private, the court may think it appropriate to publish the judgment, if necessary, in a redacted form: see e.g. *Spencer v Fielder* [2014] EWHC 2768 (Ch). For further Guidance see Chapter 3 'Privacy, Anonymity and Confidentiality'.

Trustees seeking court approval

25.27 Where trustees need to seek the court's approval of a decision under Category 2 of *Public Trustee v Cooper* [2001] WTLR 901, careful thought should be given by the trustees to the question of who should be joined as defendants: see *Denaxe Ltd v Cooper* [2023] EWCA Civ 752. They should ensure that the defendants, so far as practicable, represent the range of different views available which the court should consider.

25.28 Representation orders should be sought as appropriate for categories of beneficiary with concurrent interests. In such cases, the court will generally only be looking to confirm that the decision for which approval is sought is one which is within the scope of the trustees' powers, reasonable in the light of relevant considerations, and not vitiated by any conflict of interest.

25.29 The applicants should provide full and candid evidence, in order that the court can reach a fully informed view. A failure to supply all relevant evidence could lead to an order not being made at all or a risk of the order failing to protect the applicants from later challenge by disgruntled beneficiaries. The trustees' evidence should normally include details of their consultation with the relevant beneficiaries, and of any expert advice they have taken.

Prospective costs orders (CPR PD 64A.6)

25.30 The court has power to make a prospective costs order in limited circumstances. Such an order directs that the beneficiaries' costs are to be paid out of the trust fund in any event (both 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.

25.31 Applications for prospective costs orders by beneficiaries should be made on notice to the trustees. The court will need to be satisfied that there are matters which need to be investigated, and that any order is made for the benefit of the trust. 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, and attention is drawn in particular to PD 64A, paragraph 6.5.

25.32 The order may provide for payments out of the trust fund from time to time on account so that the beneficiaries' costs may be paid on an interim basis. 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, and reconsidered in the light of the position at the time of that application. A model form of order is appended to PD 64A, 6.8.

Rectification and rescission

25.33 Applications for the rectification of trust instruments, and other voluntary transactions, are brought in the Property, Trusts and Probate List. Further general guidance about rectification can be found at Chapter 18 (Business List Rectification) and Chapter 26 (Pensions) paragraphs 26.17 to 26.21.

25.34 The same principles also apply to the court's power to rescind for mistake the exercise of powers or the making of voluntary dispositions under the principles set out in *Pitt v Holt* [2013] 2 AC 108. Parties will be expected to approach claims for rescission in the same way as claims for rectification. In particular, attention is drawn to the court's practice not to make orders for rescission (as with rectification) by default or consent without a hearing, save in exceptional circumstances; and of the need to notify HMRC (or any appropriate foreign tax body or bodies) where rescission (as with rectification) will have fiscal consequences. The evidence in support of the claim should include such notification, and the position of HMRC (or any appropriate foreign tax body or bodies).

25.35 When preparing witness statements in any claim for rectification or rescission careful thought should be given to compliance with (or dispensation from) some or all of the requirements of PD 57AC. This is a particularly important consideration in rectification and rescission claims where the passage of time often means that there is no witness who able to give evidence as to the relevant events and/or where it is necessary for a witness to express a belief as to whether there has been a mistake and/or to explain what happened.

25.36 Claims to rescind trusts and other voluntary transactions on grounds other than mistake, such as fraud, undue influence, duress, or misrepresentation, are not subject to the guidance above. They will almost invariably be made by way of Part 7 claim in the usual way.

Variation of Trusts Act 1958

25.37 An application for an order under the Variation of Trusts Act 1958 ('VTA') should be made by a Part 8 claim form (see PD 64A, paragraph 4).

25.38 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 will consider at the hearing whether parts of the evidence should not be available for inspection on the court file and whether additional safeguards are needed to protect children, born and unborn, as to which attention is drawn to *MN v OP [2019] EWCA Civ 679*. Attention is also drawn to the Practice Note: Variation of Trusts dated 9 February 2017.

25.39 Where the parties consider that a question of confidentiality or anonymity arises, they should, when they issue proceedings, include a covering letter together with an application for confidentiality or anonymity if sought, requesting that the assigned Master consider the application before any other step is taken. Further guidance on

applications relation to privacy, anonymity and confidentiality can be found at paragraphs 3.32 to 3.38 and paragraphs 15.66 to 15.68.

25.40 In some circumstances it may be considered appropriate to issue an application to seek permission to anonymise some or all of the identities of the parties and/or for confidentiality in relation to some of the documents that would be on the court file before the claim is issued.

25.41 If the parties wish to apply for confidentiality or anonymity before the claim is issued, the application together with any covering letter requesting that the assigned Master consider the application on paper should be issued on CE-File as a pre-issue application and marked confidential. A note should be added to the Comment Box on CE-File so that the nature of the application is clear to the court staff. In an appropriately sensitive case in may be considered appropriate for the application and covering letter to be emailed to the Master's clerk to seek the order before even the application for anonymity and confidentiality is issued on CE-File. Such a course of action will be exceptional. However, as set out in Chapter 3 and Chapter 15 any derogation from the principles of open justice will be the minimum necessary.

25.42 If an order is made, when the claim is subsequently issued, the claimant must write to the court requesting that the claim be assigned to the same Master who dealt with the confidentiality or anonymity application and case managed with the application (the application and claim form will otherwise, generally, have been given separate case numbers).

25.43 The covering letter should propose case management directions so that the claim (whether issued or not) can be progressed following disposal of the confidentiality or anonymity application.

25.44 It will be unusual for a confidentiality or anonymity order to made without a hearing. The Master must be satisfied that it is necessary and in the interests of justice for an order to be made. Any order made will be the minimum necessary to achieve that purpose. Any order exceptionally made on the papers will be reviewed at the first directions hearing of the claim.

25.45 The orders may include anonymising some or all of the parties, listing the first hearing in private, listing the hearing in public but with a reporting restrictions order, managing how the parties and key facts are referred to in court. The court may order that parts of the court file, that might otherwise be available, will only be released to non-parties upon written application on notice and a hearing is likely to be listed. A Variation of Trusts Confidentiality Order is at Form CH43.

25.46 Applications under the VTA will require the court to consider the current trusts that are to be varied. It will assist the court and save time if the parties' representatives can agree a single summary of the trusts (and their tax effects) and where appropriate, a summary of the documents and events that have led to the current trusts. Such summaries might appear in or be appended to the claimant's (or some other) witness statement, or be contained in a separate document filed with the skeleton arguments. If other summaries appear in the documents (e.g. in opinions prepared for litigation friends) which the court need not consider in light of the agreed

summaries, their location should be identified in a pre-reading list with an indication that they need not be considered.

25.47 For cases involving children or unborn beneficiaries, and unless the court orders otherwise, a written opinion from the advocate representing the children or the unborn beneficiaries must be filed. For further guidance see PD 64A paragraph 4.1 to 4.4. Where a written opinion has been put in evidence and no additional matters beyond those appearing from the instructions or the opinion are to be relied on, a skeleton argument may not be needed. Where the Master considers it appropriate, they may dispense with the need for a written opinion.

25.48 Deputy Masters may only deal with VTA claims with permission of the Chief Master.

Applications under section 48 of the Administration of Justice Act 1985

25.49 The jurisdiction conferred on the High Court by section 48 of the Administration of Justice Act 1985 to authorise action based on a written legal opinion about an issue of construction of a trust document may be invoked by trustees where such a question has arisen out of the terms of a trust.

25.50 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 other cases. It is intended to be used in clear cases only.

25.51 Applications under section 48 of the Administration of Justice Act 1985 should be made by Part 8 claim form (PD 64A 5).

25.52 The claim should be supported by a witness statement 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.

25.53 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 binding decision of the court itself on the construction of any instrument.

25.54 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. This is more likely where conflicting opinions have been expressed by different counsel advising the trustees: see *Greenwold v Pike* [2007] EWHC 2202 (Ch).

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

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

25.56 The Master will consider the claim, and, if necessary, direct service of notices under CPR 19.13 or request further information. It is important that the evidence explains how those potentially affected have been identified, and what steps have been taken to consult them on the order sought. If the court is satisfied that the order sought is appropriate, it will be made without a hearing and sent to the claimant.

25.57 If following service of notices under CPR 19.13 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. The Master will ordinarily direct that the case proceeds as a Part 8 claim.

25.58 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

25.59 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.

25.60 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.'

Estates of deceased Lloyd's Names

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

25.62 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 CPR 8.2A (see the *Practice Statement*). Further guidance can be found in Chapter 13 at paragraphs 13.38 to 13.42.

25.63 The claim should be supported by a witness statement together with a form of order examples of both can be found in Chancery Forms at CH38 and CH39. The application will be considered by the Master who, if satisfied that the order should be made, may make the order on paper and without a hearing. If not, the Master may give directions for the further disposal of the application or list a directions hearing.

Judicial trustees and substitute personal representatives

25.64 Judicial trustees may be appointed by the court to replace existing trustees or personal representatives under the Judicial Trustees Act 1896, in accordance with the Judicial Trustee Rules 1983.

25.65 An application for the appointment of a judicial trustee should be made by Part 8 claim form (or, if in an existing claim, by an application notice in that claim) which must be served on every existing trustee or personal representative who is not an applicant and on such of the beneficiaries as the applicant thinks fit. It should include a draft order.

25.66 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).

25.67 In practice the appointment of judicial trustees is no longer sought. Instead application is made, under section 50 of the Administration of Justice Act 1985, for the removal of a personal representative and the appointment of a substitute; or an application for replacement of a trustee, under section 41 of the Trustee Act 1925 and/or the court's inherent jurisdiction.

25.68 Applications under section 50 are dealt with in Chapter 23 (Probate). Applications under section 41 or the court's inherent jurisdiction will usually be made by Part 8 claim form, unless made within an existing claim, in which case it may be made by Part 23 application: see *Schumacher v Clark* [2019] EWHC 1031 (Ch).

25.69 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.

25.70 Where the disability of a trustee or personal representative is alleged, there must be medical evidence showing incapacity to act as a trustee or personal representative 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.

25.71 The witness statement should also evidence incapacity to execute transfers, where a vesting order of stocks and shares is asked for.

25.72 The trustee or personal representative 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.

Bona vacantia and trusts

25.73 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 Attorney General. In practice it is still the Treasury Solicitor that considers the evidence, but the relevant representative of the Crown that should be joined to such an application is the Attorney General: see *Orwin v A-G* [1998] FSR 415, 419.

25.74 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.

25.75 Where a company owning property overseas is dissolved and the property escheats, the correct defendants are the Crown Estate Commissioners (see *UBS Global Asset Management (UK) Limited v Crown Estate Commissioners* [2011] EWHC 3368 (Ch), *Lizzium Ltd v The Crown Estate Commissioners* [2021] EWHC 941 (Ch) and *Hamilton v HM Attorney General and ors* [2022] EWHC 2131 (Ch)).

25.76 Responsibility for dealing with bona vacantia and escheat lies with the Duchy of Cornwall or Duchy of Lancaster where the relevant property or registered office address of any dissolved company is in either of the Duchies. There is no substantive difference in the procedures that apply to any application.

Charity trustees' applications for permission to bring proceedings

25.77 In the case of a charitable trust, the trustees should first apply to the Charity Commission for permission to commence charity proceedings. If the Charity Commission refuses its consent to the trustees applying to the court for directions under the 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).

25.78 An application should be made in accordance with the provisions of CPR 64.6 and PD 64A, paragraphs 7 to 10. An application for permission to commence proceedings is made to a HCJ: section 115(5) Charities Act 2011. In straightforward cases where all the papers are in order the HCJ may be prepared to deal with the application for permission on paper. However, the HCJ may request a statement from the Charity Commission setting out its reasons for refusing permission, if not already apparent from the papers (CPR 64.6(4) and PD 64A, paragraph 9.2).The court may require the trustees to attend a hearing 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 (PD 64A, paragraph 7).

Chapter 26 Pensions

Introduction

26.1 This chapter provides guidance in respect of claims brought in the Pensions sub-list. A description of the types of claims covered by the Pensions sub-list can be found in Appendix F. Claims in the Pensions sub-list relate to pension schemes, particularly occupational pension schemes, which are established under trust.

26.2 For claims which concern the trust aspects of pension schemes, parties should also consider the guidance provided in both Chapter 25 (Trusts), Part 64 of the Civil Procedure Rules ('CPR') and Practice Directions ('PDs') 64A and 64B.

26.3 Claims relating to occupational pension schemes in the Pension sub-list include professional negligence claims by trustees and/or employers against current or former advisers, claims by members and statutory appeals from the Pensions Ombudsman.

26.4 Claims issued in the Pensions sub-list should be entitled *'In the Matter of the [ ] Pension Scheme'*.

26.5 Pension cases are assigned to Masters on a rota basis when issued in the same way as other types of claims. However, if the parties consider that their pension claim requires specialist knowledge of pensions, they can apply to the assigned Master copied to the Chief Master by letter filed on CE-File with brief reasons, asking for the claim to be re-assigned to either the Chief Master or a master with specialist knowledge of pensions. This procedure is only intended to be used for the most complex technical pensions claims where the knowledge of a specialist in the area may assist. Deputy Masters may only deal with pension scheme rectification claims with the permission of the Chief Master.

26.6 Pensions cases issued in a B&PC District Registry should be referred to a B&PC Specialist Circuit Judge on issue for triage.

Starting proceedings

26.7 Many pension claims are brought under Part 8. For further guidance on Part 8 claims see Chapter 13. This is suitable where there is unlikely to be a substantial dispute of fact, and is required by CPR 64.3 where the claim includes the determination of any question arising in the execution of a trust or under section 48 of the Administration of Justice Act 1985. For further guidance on CPR 64 applications for directions see Chapter 25 (Trusts) paragraph 25.6.

26.8 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.

26.9 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, paragraph 26.21, for Representative Beneficiaries and Chapter 2, paragraphs 2.8 to 2.12.

26.10 Some claims may be capable of being issued without naming any defendants under CPR rule 8.2A (for further guidance on how to apply see Chapter 13, paragraphs 13.36 to 13.40 and Chapter 25, paragraph 25.7). Given the nature of members' interests under a pension scheme, this is likely to be quite rare (the only reported example being *Owens Corning Fibreglass UK Ltd* [2002] Pens LR 323).

26.11 It may be necessary to consider the potential impact of the litigation on the Pension Protection Fund: see the comments of Sir Andrew Morritt C in *Capita ATL Ltd v Zurkinskas* [2010] EWHC 3365 (Ch) at [22]. In addition, where proceedings raise an issue concerning the jurisdiction or practice of the Pensions Ombudsman, it may be desirable to inform the Office of the Pensions Ombudsman, as the Pensions Ombudsman may wish to be joined so as to make representations.

26.12 Where a claim commenced under Part 8 turns out to involve substantial factual issues the court will give directions for its future case management which may involve statements of case, disclosure or continuation under Part 7. For further guidance see Chapter 13 (Part 8 claims). The parties could alternatively agree to continue the claim under the Flexible Trial Scheme: see Chapter 17.

26.13 Some pensions claims are more suited to and should be issued under Part 7. Examples include actions by trustees and/or employers against current or former advisers for professional negligence, and actions to recover trust property paid away in breach of trust. No special provisions apply to such claims and parties should consider the guidance in Chapter 3 to Chapter 12 in respect of the conduct of Part 7 claims generally.

26.14 When preparing witness statements for pension claims, careful thought should be given to compliance with (or dispensation from) some or all of the requirements of PD 57AC where the passage of time often means that there is no witness who is able to give evidence as to the relevant events and/or where it is necessary for a witness to express a belief as to whether there has been a mistake and/or to explain what happened. However, pension rectification claims are excluded from the provisions of PD 57AC in relation to witness statements by PD57AC 1.3(10) see 26.19.

26.15 Sometimes the outcome of litigation is relevant to a separate professional negligence claim against advisers. There are several options to consider to avoid the risk of points being re-argued in separate proceedings. The advisers can agree to be bound by the outcome of the litigation, or joined as defendants for the purpose of being bound (as in *Shannan v Viavi Solutions UK Ltd* [2016] EWHC 1530 (Ch)). An alternative route is an application under CPR 19.13 for the court to direct notice of the claim to be served on the advisers (see Chapter 2 (Parties and Representatives) and Chapter 25 (Trusts)).

Beddoe applications

26.16 Pension 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. For further guidance see Chapter 25 (Trusts), paragraphs 25.17 to 25.26, and PD 64B, paragraphs 7.1 to 7.12.

Rectification claims

26.17 Claims for rectification of a scheme's trust deed or other governing documentation, if likely to be contentious, must be commenced by Part 7 claim. However, in an appropriate case they may still be suitable for summary judgment under CPR Part 24.

26.18 Some rectification cases are in practice uncontentious and can be commenced using Part 8 enabling the parties to seek an early or summary disposal hearing (see *Sovereign Trustees Ltd v Lewis* [2016] EWHC 2593 (Ch)).

26.19 PD 57AC does not apply to witness statements in any claim for rectification of pension scheme deeds, rules or other governing documents (CPR PD 57AC paragraph 1.3 (10)).

26.20 As rectification is a discretionary remedy, in granting it, the court has power to impose terms protective to members (or some of them) on which the scheme's governing documentation is rectified: see *Konica Minolta Business Solutions (UK) Ltd v Applegate* [2013] EWHC 2536 (Ch) at [49]-[63].

26.21 Further guidance on rectification claims generally can be found in Chapter 18 (Business List Rectification) and Chapter 25 (Trusts).

Representative beneficiaries

26.22 The use of one or more representative beneficiaries to represent the interests of members under CPR 19.9(2) is a common feature of most pension 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 Ltd v Zurkinskas* [2010] EWHC 3365 (Ch). If the trustees are in doubt as to who to join, an application in accordance with PD 64B paragraph 4.3 may be sensible. See also Chapter 2 (Parties and Representatives) and Chapter 25 (Trusts).

26.23 CPR 19.9(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 that the interests of all those represented are protected. The court will be willing to appoint a non- member of the class if the circumstances warrant it: see e.g. *Sovereign Trustees v Glover* [2007] EWHC 1750 (Ch) and *Punter Southall*

Governance Services Limited v Hazlett [2021] EWHC 1652 (Ch), in each of which solicitors were appointed as representatives.

26.24 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, but may sometimes be joined as a co-claimant: see, ***e.g.***, *Saga Group Ltd v Paul* [2016] EWHC 2344 (Ch)) may agree to be appointed to represent the members or some class of them to save costs. See e.g. *Premier Foods v RHM Pension Trust Ltd* [2012] EWHC 447 (Ch) and *Arcadia Group Ltd v Arcadia Group Pension Trust Ltd* [2014] EWHC 2683 (Ch). This procedure can be useful, particularly when the claim concerns pure questions of construction or law where there are only two possible outcomes. It may not be suitable for cases for example where the issue is likely to be a divisive one among the members or employers, or there are questions as to what the trustees did or intended, particularly if there is any criticism of the trustees' conduct. It is, though, equally capable of being adopted in a case involving the cross-examination of witnesses: see *BIC UK Ltd v Burgess* [2018] EWHC 785 (Ch).

26.25 In cases involving representatives and where directions are agreed the parties may invite the court to give case management directions without the need for a hearing which include a direction for representation orders of this type to be made.

26.26 If a compromise is proposed in proceedings in which a representative is to be or has been appointed under CPR 19.9, 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 19.9 (5) and (6)). The court will require an opinion on the merits of the proposed compromise from counsel instructed on behalf of the represented classes. Such an opinion is normally confidential and not served on or shown to the other parties.

26.27 Whilst the parties may make an application for a hearing to be heard in private (see CPR 39.2) any derogation from the principles of open justice should be the minimum required, and an application for the court's approval should generally be in public. However, a discussion of the merits of the proposed compromise from the perspective of the represented class will, where necessary and appropriate, take place in private and in the absence of the other parties.

26.28 A similar practice of having part of the hearing in private in the absence of the other parties is often adopted where a defendant acting as a representative does not consider it appropriate to oppose the relief sought. This can arise in claims for rectification of pension scheme rules. In such unopposed applications for summary judgment, the hearing will be held in open court, but submissions on behalf of the representative party as to the merits of the summary judgment application may be held in private and in the absence of the claimant. Any opinion provided for that purpose will normally be treated as confidential and not be served on or shown to the other parties.

26.29 Whilst the court may adopt this approach in many cases, see as one example the decision of Chief Master Marsh in *SPS Technologies Ltd v Moitt & Ors [2020] EWHC 2421* (Ch) at [6] it should be noted that it is not an invariable approach and different procedures may be appropriate in different cases. For an example of where the

parties have agreed on a different approach see *Saga Group Ltd v Paul* [2016] EWHC 2344 (Ch) at [22].

Costs orders

26.30 If no costs agreement is reached with the employer, representative beneficiaries will usually be funded at the expense of the scheme. In such cases it will usually 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 an early stage of case. For the procedure generally see Chapter 25 (Trusts), paragraphs 25.30 to 25.32 and the model order annexed to PD 64A.

26.31 See also Chapter 25 (Trusts) paragraph 25.16 in respect of payments of costs out of a trust fund and the court's power to make a costs capping order (see Chapter 13 paragraph 13.34).

Consultation or notification

26.32 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 19.9(2) to represent their interests, in the context of unopposed summary judgment applications it has been said that notification to affected members 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].

26.33 It is also expected that members will be notified about any proposed proceedings which may affect them. The scheme's trustees would ordinarily be the appropriate persons to notify members. The content of the notice(s), their timing and the process will vary depending on the nature of the case. Typically, a notice is sent before the proceedings are issued explaining their nature and later notices inform members of the date and place of any trial (or provide contact details for members to find out the date and place of trial) and the outcome. One of the notices should explain the stance proposed to be adopted by the representative beneficiary. Notice may be given by post or email or through other appropriate on-line access. It is usual to agree the terms of any notice(s) and the timing and process with the representative beneficiary's and employer's respective legal representatives.

26.34 A failure to give notice or to do so in a manner the court regards as adequate, risks the matter being adjourned for this purpose. For the avoidance of doubt, the same considerations would also apply where the court's approval is sought under CPR 19.9(6) to the settlement of a claim and any application under Section 48 Administration of Justice Act 1985 (see also paragraph 26.36 below)

26.35 Where members have not been notified and are unaware of a 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 they consider that, due to circumstances which are particular to them, they should not be bound.

(see *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

26.36 Section 48 of the Administration of Justice Act 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 section 48. For further guidance on the procedure and approach to such an application see Chapter 25 (Trusts), paragraphs 25.49 to 25.58.

26.37 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 section 48. The effect of an order under section 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].

26.38 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

26.39 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 52.29. For further guidance on appeals generally see Chapter 30.

26.40 The Ombudsman has given a general direction for England and Wales that a person wishing to appeal must lodge the appeal within 28 days after the date of an Ombudsman determination, instead of the usual period of 21 days. A different direction could be given by the Ombudsman in an individual case.

26.41 The appellant's notice must name the other party to the underlying original complaint as the Respondent to the appeal.

26.42 The appellant must serve the appellant's notice on the Ombudsman as well as the Respondent (PD 52D, paragraph 3.4(1)). Although there is no obligation to do so, the Ombudsman's Office often finds it helpful to be kept informed of the progress of the appeal and copied into relevant correspondence.

26.43 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 ensure

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. Failure to do so may result in an adjournment of the hearing.

26.44 The court has power under CPR 52.19 to make an order to limit the recoverable costs in such an appeal. Any application asking the court to exercise that power should be made as soon as practicable: see *Coats UK Pension Scheme Trustees Ltd v A Styles & Others* [2019] EWHC 35 (Ch).

26.45 It is desirable that the order made on appeal from a determination of the Pensions Ombudsman is clear about which aspects of the determination are upheld, set aside or remitted back to the Pensions Ombudsman for further determination. Therefore, where parties propose to compromise such an appeal, they should, where possible, liaise with the office of the Pensions Ombudsman about the wording of any consent order.

26.46 For Further Guidance see

(a) Chapter 3 (Commencement)

(b) Chapter 6 (Case Management)

(c) Chapter 13 (Part 8 claims)

(d) Chapter 18 (Business List Rectification)

(e) Chapter 25 (Trusts)

(f) Chapter 30 (Appeals)

Chapter 27 Property

General

27.1 As the names 'Business and Property Courts of England and Wales' ('B&PCs') and 'Property, Trusts & Probate List' suggest, property litigation is conducted in the Chancery lists in the High Court, as it always has been. Less valuable or complex property cases are, however, better suited to resolution in the County Court. Some property cases are statutorily required to be issued in the First-tier Tribunal (Property Chamber) or in the Upper Tribunal (Lands Chamber). Nevertheless, where an appropriate case exists, the judge will either retain it in the B&PCs or transfer it in from the County Court when asked to do so.

27.2 The B&PCs have judges at all levels with expertise in real property, personal property and landlord and tenant law.

27.3 There are, however, various inhibitions on bringing claims relating to property in the Chancery lists in the B&PCs. These can be summarised as follows:

(a) General jurisdiction limits for claims issued in the High Court;

(b) Part 55 and Part 56 of the Civil Procedure Rules ('CPR'), which apply to possession claims and certain types of statutory landlord and tenant claim;

(c) CPR Practice Direction ('PD') 57AA, which describes the specialist work conducted in the B&PCs and excludes certain work, including some property work;

(d) The availability of specialist Circuit Judges (including three Senior Circuit Judges) in the County Court at Central London, which runs a Business and Property List. Even when the value threshold for the High Court is exceeded, a case in London or the South-East that does not raise an important question of practice or law is often more suitable for resolution by a specialist judge of the County Court with property expertise.

(e) The suitability of the King's Bench Division for straightforward money claims relating to property.

27.4 The relevant factors for determining if a case should be brought in the High Court are the financial value of the claim or amount in dispute; complexity of the factual or legal issues; and the degree of public interest or importance of the outcome of the claim (which may include the need for an authoritative ruling setting a precedent) (PD 7A, paragraph 2.4).

27.5 The County Court has jurisdiction to hear equitable claims where the value of the property, mortgage or charge, estate or trust in issue does not exceed £350,000, or higher by agreement of the parties in writing (County Courts Act 1984, s.23, as amended). In the case of a claim for damages and in relation to money claims (for

example outstanding rent), a claim with a value below the £100,000 threshold for High Court jurisdiction will prevent the claim being issued in the High Court (PD 7A, paragraph 2.1) unless exceptionally the claimant is able to satisfy the criteria in PD7A paragraph 2.4.

27.6 High value is not of itself a good reason for bringing a claim in the High Court, if the issues raised are straightforward. Conversely, a low value claim that raises an important point of practice or law, or where there is real urgency, may be suitable to be issued in the High Court.

27.7 A claimant is expected to consider whether there are good reasons for bringing a claim in the High Court before doing so, and if so whether the Chancery Division or the King's Bench Division is the more appropriate Division. Except where the Practice Note on Possession Claims against Trespassers applies (see under CPR 55, below), there is no requirement to obtain prior approval from a Master to issue a property claim in the ChD B&PCs London, though a Master is always willing to give informal advice about such matters.

27.8 However, PD 57AA specifies that the following categories of claim (among others) are not specialist work of the type undertaken in the B&PCs:

(a) Claims for possession of domestic property, rent and mesne profits;

(b) Claims in respect of domestic mortgages;

(c) Claims for possession of commercial premises or disputes arising out of business tenancies that are routine in nature;

(d) Claims falling under the Trusts of Land and Appointment of Trustees Act 1996, unless combined with other specialist claims;

(e) Boundary and easement disputes involving no conveyancing issues;

(f) Applications under the Access to Neighbouring Land Act 1992.

27.9 It follows that claims of this kind may not generally be issued in the lists of the B&PCs unless they raise points of particular novelty or complexity.

Claims under CPR 55

27.10 Where a claim for possession of non-domestic property (or relief against forfeiture) falling within CPR 55 is sought to be issued in the High Court, the procedure in CPR 55.3(2) requiring certification of the appropriateness of issuing in the High Court must be followed. Guidance on the exceptional circumstances justifying issue in the High Court is given in PD 55A. These circumstances may be claims against trespassers where there is real urgency, and claims involving complicated disputes of fact or points of law of general importance. 'Exceptional' in this context means out of the normal run of cases, rather than very rare. However, the value of the property and the amount of any financial claim may be relevant circumstances, although these factors alone will not normally justify starting a claim in the High Court.

27.11 To deal with a particular problem of aggressive fly-tipping, the Chief Master and the Senior Master issued a joint Practice Note on 30 September 2016 which is set out in full at 55APN.1 of the White Book. It applies only to claims in the High Court in London and provides that in cases of real urgency the court may fix a hearing very soon after issue and give permission for short service of the claim.

27.12 Practice Note 55A provides that an applicant in such cases should, before issuing the application, speak first to the Chief Master or, if unavailable, to another Master. An applicant wishing to contact the Chief Master in relation to such an application should send an email to chancery.mastersappointments@justice.gov.uk marked as Urgent and referring to the Practice Note. The Master will consider the certificate and witness statement and decide whether the claim should be issued in the High Court, and whether short service is appropriate. If the Master agrees to the claim being listed urgently a date will be fixed straight away. The defendants must be notified and be told that they will have an opportunity to put their case if they attend the hearing. Form CH 47 (a tailor-made order for possession) should be used, if appropriate.

27.13 Accelerated possession claims against an assured shorthold tenant and a claim including a demotion claim must be issued in the County Court (CPR 55.11(2); PD 55, paragraph 1.9).

Claims under CPR 56

27.14 If the claim is a statutory landlord and tenant claim falling within CPR 56, the procedure in CPR 56.2(2) requiring the certification of the appropriateness of issuing the claim in the High Court must be followed. Guidance on exceptional circumstances justifying issue in the ChD B&PCs London is given in PD 56. These may be where the claim involves complicated disputes of fact or points of law of general importance. Again, ‘exceptional’ here means out of the normal run of cases, rather than very rare. Note that some landlord and tenant statutes require claims to be issued in the County Court, or in a tribunal, and in those cases, claims cannot be issued in the High Court.

27.15 In addition to the above restrictions, claimants should bear in mind, before issuing a property claim in the ChD B&PCs London, that there is a body of expertise in real property and landlord and tenant law among the judges sitting in the County Court at Central London. The need (or wish) for an expert judge to hear the case will therefore rarely justify starting the claim in the High Court, given the existence of the Business and Property List in Central London. However, a case of substantial importance that raises an issue that should be decided by a court of record may properly be brought in the B&PCs. In case of doubt, the appropriateness of issuing in the High Court can be raised informally with the Chief Master before issue, or a letter may be filed with the claim form explaining why it is considered to be suitable for the High Court.

27.16 Parties are generally discouraged from bringing claims for rent or other money sums relating to property in the B&PCs: see paragraph 27.8(a) above. Simple debt claims falling within the High Court’s jurisdiction (including claims against sureties for damages) are generally more appropriately issued in the King’s Bench Division. However, if it is known that the apparently straightforward claim will give rise to a more complex issue by way of defence, e.g. relating to the validity of a disclaimer,

the effect of an authorised guarantee agreement or an individual or corporate voluntary arrangement, it is likely to be appropriate to issue the claim in the Property, Trusts & Probate List in the B&PCs.

Bona vacantia, Crown disclaimer and escheat

27.17 Responsibility for dealing with bona vacantia, Crown disclaimer and escheat lies with the Crown, the Duchy of Cornwall or the Duchy of Lancaster.

27.18 Any application for a vesting order should be made using Part 8 and be supported by evidence.

27.19 Where the legal estate in property has been terminated due to the dissolution of a company, the court may order the creation of a corresponding estate and then vest it in the person who would have been entitled to the estate had it continued to exist (section 181 Law of Property Act 1925).

27.20 Alternatively it may be possible to apply for a vesting order under the Companies Act or the Insolvency Act. Further guidance on bona vacantia and escheat generally can be found in Chapter 25 (Trusts) at paragraphs 25.73 to 25.76.

27.21 Further guidance on Part 8 claims can be found in Chapter 13.

27.22 Further guidance on vesting orders in an insolvency context can be found in Chapter 21 (Insolvency and Companies List).

Reference to conveyancing counsel

27.23 CPR 40.18 and PD 40D paragraph 6 provide that the court may direct conveyancing counsel to prepare a report on title of any land or draft any document. Conveyancing Counsel's fees are governed by PD 44 paragraph 5.2.

27.24 It should now be extremely rare for this procedure to be used and the court is more likely to direct expert evidence on any issues relating to title.

27.25 If exceptionally it is necessary to invoke this procedure under CPR 40.18 any order directing the appointment of conveyancing counsel to determine an issue pursuant to CPR 40.18 must be notified to the Chief Master.

27.26 The Chief Master will then nominate one of the conveyancing counsel of the court and provide them with a copy of the court order and make such other directions as are appropriate in relation to the provision of documents or otherwise.

Chapter 28 Revenue List (RL)

General

28.1 The purpose of the Revenue List is to determine major points of principle where HMRC are a party.

28.2 The Revenue List should **not** be used for claims in respect of disputed tax liabilities, recovery of taxes or duties, which should either be brought in the First-tier Tribunal (Tax Chamber) ('FTT') or the Business List as appropriate.

28.3 The Revenue List should **not** be used for claims which can and should be raised by way of an appeal to the FTT under the statutory scheme. See for example Revenue and Customs v MCX Dunlin (UK) Ltd [2021] EWCA Civ 186.

28.4 Parties should consider carefully whether the proposed claim should be brought in the Revenue List at all and if so whether it should be by way of Part 7 or Part 8.

28.5 The general provisions of the Civil Procedure Rules, Practice Directions and this Guide apply to claims issued in the Revenue List.

Chapter 29 Accounts and inquiries

29.1 Proceedings for an account or an inquiry in the Chancery Division are regulated by the Civil Procedure Rules ('CPR') Practice Direction ('PD') 40A (Accounts, Inquiries etc.).

Inquiry as to damages

29.2 Where issues of causation and/or quantum are not addressed at the same time as issues of liability, the court may order an inquiry as to the level of damages or equitable compensation for loss suffered that is to be paid in a wide variety of circumstances. The provisions set out in PD 40A, as well as the additional guidance set out below, are of general application in relation to such inquiries. Issues arising in the intellectual property context are dealt with at paragraph 29.18 below. An inquiry may also be ordered in respect of undertakings as to damages given when obtaining an interim injunction or similar relief, as set out at paragraph 29.20 below.

Account

29.3 This is a discretionary remedy and may also be ordered in a wide variety of circumstances, with the following being the more common instances with cross-references to further parts of this Guide where appropriate:

Accounting for property held in a fiduciary capacity:

29.4 This form of account will commonly be ordered against trustees, executors, agents, receivers, guardians and others who hold property for others in a fiduciary custodial capacity, as well as those required to account as a constructive trustee in respect of the receipt of trust property. There are two types of account for property held in a fiduciary capacity. They are distinct from one another in principle. It is crucial that any party seeking either account against a custodial fiduciary should clearly plead on what basis the account is sought.

(a) The first is an account in common form. On such an account the fiduciary must account only for the fund they have received. Where the fiduciary has misapplied any property, that misapplication will be disallowed, and the fiduciary required to make good any loss by way of a payment of equitable compensation.

(b) The second is an account on the footing of wilful default. That is available where the fiduciary has failed by their default to bring into the fund property which they should have brought in. In such a case the account will be surcharged with the property which ought to have been included, and the

fiduciary will be required to make the loss good by payment of equitable compensation.

29.5 The court may decide, in a suitable case, either to order an account only of particular assets or transactions, on either the common basis or on the basis of wilful default and/or to order that an account of only some particular assets or transactions on one basis and some on another basis.

29.6 Following the taking of the account the court may order the accounting party to restore any shortfall found to exist, or in an appropriate case to make a direct payment to the party seeking the account.

Partnership accounts:

29.7 Particular considerations that arise between partners, including accounting for the assets and liabilities of a partnership upon dissolution, are addressed further at Chapter 18 (Business List: Partnership).

Accounts of profits:

29.8 This form of account will commonly be ordered following a finding of breach of fiduciary duty or confidence with the purpose of establishing the true measure of the profit or benefit obtained. However, even if a claimant elects as their remedy an account of profits this may only be ordered at the court's discretion in connection with disputes involving the infringement of intellectual property rights (see paragraph 29.18 below).

Co-ownership accounts:

29.9 Accounts may be ordered in respect of the income, capital, expenses and dealings with co- owned property, primarily land. In the context of land where one co-owner has occupied exclusively, the account will also establish the quantum of any occupation rent to which other co-owners are entitled, and any allowance to be made upon sale in respect of improvements or liabilities repaid, enhancing the value of the land. Co-ownership accounts will usually be ordered only after the parties' respective beneficial interests in the property concerned have been established.

Directions

29.10 Where a judgment or order directs the taking of an account or inquiry, it will usually give directions as to how the account or inquiry is to be conducted.

For accounts

29.11 The process of taking an account requires the accounting party to first render an account, with the party seeking the account then obliged to raise its objections to the same. Accordingly, the court will commonly give directions as to:

(a) who is to lodge the account and within what period, and how the same is to be verified;

(b) within what period objection is to be made, and how any notice of objection is to be verified;

(c) arrangements for inspection of books of account, vouchers or other relevant documents, and whether the relevant books of account are to be evidence of their contents; and

(d) whether statements of case (usually points of claim and points of defence) shall be served and filed, and if so, within what time period.

29.12 The parties are encouraged to consider whether the use of an adapted form of Scott Schedule may assist the parties and the court to identify issues between the parties in order to facilitate consideration with the court at an early stage as to how any issues should be addressed.

For inquiries

29.13 An inquiry as to damages/equitable compensation will usually commence with the claimant particularising and evidencing the loss and damage that is said to have been suffered, and proceed with the defendant challenging the same. The court will commonly give directions as to:

(a) whether the inquiry is to proceed on written evidence or with statements of case, usually points of claim, points of defence, points of reply, and whether schedules are to be produced for each party to comment upon;

(b) directions for service of such evidence, statements of case and schedules; and

(c) directions as to disclosure.

29.14 If directions are not given in the judgment or order, an application should be made to the assigned Master or ICC Judge as soon as possible to 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 attach copies of the applicant's letter to the other parties and of any response from them. The Master or ICC Judge will then consider what directions are appropriate. In complex cases the Master or ICC Judge may direct a case management conference.

29.15 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 or ICC Judge may direct that it be heard by a HCJ. The parties are under an obligation to consider whether, in any particular case, the inquiry is more suitable to be heard by a HCJ and should assist the Master or ICC Judge in this. Accounts, however long they are estimated to take, will normally be heard by the Master or ICC Judge, other than in intellectual property cases.

Costs budgeting

29.16 Where proceedings are for an account, costs budgeting (where applicable – see Chapter 6) includes the costs of taking the account. If accounts and inquiries follow as a separate process after the trial in which issues of liability or any points of

principle relating to the account are addressed, costs budgeting in relation to the account and inquiries should usually be deferred until after liability and issues of principle have been determined, and addressed as part of the directions before commencement of that later stage.

29.17 If the parties are unable to reach agreement as to whether costs budgeting in relation to the taking of the account should be included in the costs budget for the first trial, the parties should seek the input of the court at an early stage. Consideration should be given as to the utility of the parties having an understanding of the likely costs of taking the account as part of the first costs budget.

Intellectual property cases

29.18 In intellectual property infringement cases there is usually a split trial. Only after liability has been established will directions be given for a hearing to assess the quantum of loss or damage. The defendant's disclosure for the trial on liability will not usually include many documents relating to the quantity or value of sales of infringing products or services or to the cost of producing those goods or services. Where there is to be a split trial and there are likely to be alternative remedies if liability is established, it will rarely be useful to provide costs budgets for all those alternative remedies at the liability stage. Parties should therefore consider carefully the approach to be adopted in such cases (see paragraphs 29.16-29.17 above and Chapter 6).

29.19 Consequently, claimants typically seek either an inquiry as to loss and damage or an account of profits as alternative remedies. If so, then an election will usually need to be made as to which of the two the claimant wishes to proceed with, once liability has been established. In order for a successful claimant to have sufficient relevant information to enable such an election to be made, the court will usually make an order (following *Island Records Ltd v Tring International plc* [1996] 1 WLR 1256) for the defendant to give disclosure of financial information. The order then provides for the claimant to make the election within a short time period. Once the election has been made, the court will give directions for the further conduct of the account or inquiry, as above.

Interim injunctions etc.

29.20 Where an interim injunction, search order or freezing order is granted, the applicant is required to give a cross-undertaking in damages to compensate the respondent if the court subsequently determines that the applicant was not entitled to the relief granted. In those circumstances an inquiry as to loss or damage suffered by the respondent may be ordered to assess the quantum, following the procedure set out in PD 40A, as well as the additional guidance set out in this Chapter 29.

Chapter 30 Appeals

General

30.1 This chapter provides guidance about how to commence and pursue an appeal in the Chancery Division.

30.2 It should be read in conjunction with the detailed procedure for appeals is set out in CPR 52 and its Practice Directions 52A, 52B and 52D.

30.3 A High Court Judge ('HCJ') of the Chancery Division has jurisdiction to consider the following types of appeals:

(a) appeals from decisions of Circuit Judges and Recorders in the County Court (except where the decision was on an appeal from the decision of a District Judge);

(b) appeals from decisions of District Judges in the County Court in personal and corporate insolvency proceedings and proceedings brought pursuant to the Companies Act 2006 (appeals from decisions of District Judges in the County Court in other civil matters are considered by Circuit Judges);

(c) appeals from decisions of Chancery Masters;

(d) appeals from decisions of Insolvency and Company Court Judges ('ICC Judges') (where those decisions are not themselves made on appeal from the County Court);

(e) appeals from decisions of B&PC District Judges in a B&PC District Registry;

(f) appeals and applications arising from arbitration awards, pursuant to section 67 to 70 of the Arbitration Act 1996;

(g) specialist statutory appeals, such as appeals under section 217(1)of the Pensions Act 2004 and the Pension Schemes Act 1993.

30.4 Where the appeal is from the decision of a District Judge in the County Court made in proceedings pursuant to the Companies Acts, the appeal will be made to an ICC Judge where the appeal centre is the Royal Courts of Justice, and to a HCJ, Section 9 Judge or Deputy HCJ elsewhere.

30.5 ICC Judges also have an appellate jurisdiction in relation to decisions of District Judges sitting in the County Court on the South Eastern Circuit in corporate insolvency proceedings. Schedule 10 of the Insolvency (England and Wales) Rules 2016 sets out whether an appeal in such proceedings lies to a HCJ or Section 9 Judge in a District Registry or to an ICC Judge in the Rolls Building. Such proceedings also include appeals in claims under sections 6 to 8A or 9A of the Company Directors Disqualification Act 1986 and certain applications made under

section 17 of that Act for permission to act notwithstanding a disqualification order or undertaking.

30.6 Details relating to appeals and routes of appeal in insolvency proceedings are found in the Practice Direction on Insolvency Proceedings and in relation to company directors disqualification claims in the Practice Direction on Company Directors Disqualification Proceedings.

30.7 For further guidance on where to make an application for permission to appeal in respect of intellectual property claims: see CPR 63.16.

30.8 For further guidance on appeals in respect of the Pensions Ombudsman see Chapter 26 (Pensions).

30.9 Further guidance on the destination of appeals can be found at CPR 52.3(5) which sets out in two tables where to issue an application for permission to appeal on first appeals. There is no difference between an interim and final decision.

30.10 Further guidance on the destination of statutory appeals can be found in PD 52D. Where such an appeal is to be made to a HCJ in the Chancery Division, the procedures and time limits in this chapter apply except as varied by PD 52D or any specific statute.

30.11 Applications for permission to appeal a decision of a Master, Deputy Master or District Judge sitting in the King's Bench Division should not be issued in the ChD B&PCs London nor should an appeal from the County Court that by its subject matter is more suited for consideration in the King's Bench Division.

30.12 Applications for permission to appeal from a relevant decision of the County Court outside London and the South Eastern Circuit should be issued in the relevant B&PC District Registry.

Application for permission to appeal

30.13 Permission to appeal is required in all cases except appeals against committal orders and certain statutory appeals. Permission to appeal will be granted 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 52.6(1)).

30.14 Any party wishing to appeal a decision of the lower court (known as the appellant) must file an Appellant's Notice on Form N161 within the time limit set out in CPR 52 (21 days) or as varied in any order whether or not the judge of the lower court has granted permission to appeal, and must pay the appropriate fee. There are sometimes different time limits for statutory appeals and care should be taken to ensure that the party seeking to file an Appellants Notice complies with the relevant prescribed time limit. The time to file the N161 is counted from the date the decision of the lower court was made, *not* from the date that the formal order recording the decision was issued (CPR 52.12 (2)(b)) unless that time limit is varied by any order of the court.

30.15 Any application for an extension of time to issue the application for permission to appeal should be made in the N161. An explanation of why an extension of time should be granted must be provided.

30.16 An application for permission to appeal should usually first be made to the judge who made the decision against which the appellant wants to appeal. This should be made either at the conclusion of the hearing at which the decision is made or when a judgment is handed down. If the judgment is handed down on a non-attendance basis, any application for permission to appeal should be made or notified in writing in advance of the time at which the judgment or order is to be handed down. If the parties require a hearing of the application, the court should be requested to adjourn the hearing of the application for permission to appeal, for written submissions or a hearing, and to extend the time for filing an N161: McDonald v Rose [2019] EWCA Civ 4 at [21]. For further guidance see paragraphs 12.85 to 12.97.

30.17 If the lower court refuses permission to appeal, or permission is not applied for at the conclusion of the hearing or when judgment is handed down or at any adjourned hearing, the application for permission to appeal must then be made to the appeal court, by filing the N161, and paying the appropriate fee at the appeal court within the time permitted.

30.18 Applications for permission to appeal to a HCJ are filed through CE-File. A new file will be opened for the appeal and the parties must thereafter use the new reference for any filing in respect of the appeal, not the underlying case reference or file.

30.19 The use of CE-File is mandatory for professional court users and is strongly encouraged for litigants in person. Further guidance on the use of CE-File can be found in Chapter 2 and Appendix E. There is further general guidance for unrepresented parties in Appendix H.

30.20 If an unrepresented party is unable to use CE-File they may file their application for permission to appeal in person at the Chancery Judges' Listing Office ('Judges' Listing'), which in the Rolls Building is located on the ground floor, or by post.

30.21 The application for permission to appeal will then be uploaded to CE-File and an electronic court file will be created. Enquiries relating to such applications should be made through the CE-File. If an unrepresented party is unable to access CE-File, they should make their enquiry by letter to Judges' Listing.

30.22 Applications for permission to appeal for hearing by an ICC Judge are filed through CE-File or, as an alternative for unrepresented parties unable to use CE-File, in person to the ICC Issue Team, also located on the ground floor of the Rolls Building.

Stay of lower court's decision

30.23 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. An application for a stay of execution or enforcement of the lower court's decision should be made in the N161. Evidence in support, setting out the reasons for seeking the stay, should be included. The application is dealt with on the papers, without notice, unless the court

requires a hearing. Any person affected by the without notice decision may apply to set aside or vary the order made: PD 52B, paragraph 7.

Documents to be filed with Form N161

30.24 The appellant must lodge a copy of the sealed order appealed against and the grounds of appeal with Form N161, together with the documents as set out in PD 52B paragraph 4.2, and pay the appropriate court fee (unless exempt). The grounds of appeal should be individually numbered and concise, not in narrative form. They should make clear whether each ground is asserting an error of fact, an error of law or a procedural impropriety.

30.25 A skeleton argument is always needed in B&PC cases and must be filed within 14 days of filing the N161. It should be no longer than is necessary. The judge will have read the transcript of the judgment and the grounds of appeal. The skeleton argument should focus specifically on the reasons why it is said that the judge's conclusion of law or fact was wrong, or on the nature and seriousness of any procedural irregularity alleged. Permission to appeal skeletons should generally not exceed 15 pages (including any appendices and schedules). If exceptionally, the appellant considers that a longer skeleton argument is necessary, they must file a letter with the skeleton argument explaining why. If the HCJ is not satisfied by the explanation, the court may impose costs sanctions or require a re-drafted skeleton argument to be filed. For further guidance on skeleton arguments generally, see Appendix Y.

30.26 The remaining documents required to make up the appeal bundle, including a copy of judgment of the decision under appeal, must be filed within 35 days of filing the N161, or within any extended period ordered by the court.

30.27 If the judge handed down a written judgment setting out the decision which the appellant seeks to appeal, there is no need to obtain a transcript, but a copy of the written judgment must be included in the appeal bundle.

30.28 If a written judgment is not available, the appellant must obtain a transcript of the judgment or the decision which they seek permission to appeal. Where a judgment has been officially recorded, the appellant must apply for an approved transcript within 7 days of filing an N161. To obtain a transcript the appellants should complete Form EX107; a fee is required to be paid. In most cases only the judgment itself will be required, not a full transcript of the hearing.

30.29 An application for permission to obtain a copy of the transcript of the judgment of the lower court or any part of the evidence or the proceedings at public expense must be made in the N161, accompanied by a completed Form EX105. Before directing that the transcript be provided at public expense the court must be satisfied that the applicant qualifies for fee remission or is otherwise in such poor financial circumstances that the cost of obtaining a transcript would be an excessive burden, and that it is necessary in the interests of justice for a transcript to be provided at public expense (CPR 52.14).

30.30 If there is a delay in obtaining a transcript of the decision, an application for an extension of time to lodge the appeal bundle must be made to a judge as soon as possible and in any event before the time for lodging the bundle has expired. The application should be made using an application notice in form N244, a letter is not sufficient. A first application made promptly will generally lead to an extension being granted, if the transcript is still awaited. If a further extension is needed, it must be applied for before the extension of time has expired, and be supported by evidence explaining what attempts have been made to obtain the transcript and why it has not been possible to do so. If the delay is adequately explained and is not the fault of the appellant, a further extension will usually be granted. If the explanation or evidence is lacking, or it is clear that the delay is the fault of the appellant, an extension may be refused. If a transcript has proved difficult to obtain, the appellant should try to obtain a note of the decision to be appealed that has been approved by the judge or lawyers representing any party at the hearing below.

30.31 If a PD 52B compliant appeal bundle has not been lodged by the expiry of any permitted extension of time, the application for permission to appeal may be struck out without further warning, or the court may make an order that unless it is lodged by a specified time and date the application will be automatically struck out.

Permission to appeal to the High Court

30.32 An application for permission to appeal will usually be determined by a HCJ on the papers without an oral hearing. A Section 9 judge and a Deputy HCJ have no jurisdiction to decide the permission to appeal application, but if permission is granted some appeals may be heard by Section 9 judges and Deputy HCJs: see CPR PD 52A paras 4.3 to 4.4.

30.33 A HCJ determining an application for permission to appeal will read and take into account a respondent's short statement of reasons provided it is filed in accordance with and complies with the requirements of PD52C paragraph 19 (1).

30.34 If permission is refused on paper, the appellant is normally entitled to request that it be reconsidered at an oral hearing. The request may be made by letter and must be filed within 7 days after service of the notice that permission has been refused; see CPR 52.4(6). No further fee is payable.

30.35 However, a judge who refuses permission to appeal, and considers that the application is totally without merit, they may refuse permission for the application to be reconsidered at an oral hearing; see CPR 52.4(3).

30.36 Sometimes, the application for permission to appeal, or for permission to appeal out of time, is adjourned to be heard in court, on notice to the respondent. It may also be listed to be heard immediately before the appeal hearing which will follow on if permission is granted.

High Court Appeals Mediation Scheme

30.37 Where permission to appeal against an order of the County Court is granted or the application is adjourned to be heard in court, the matter will be referred to mediation

unless the judge considers that the appeal is unsuitable for mediation. Mediation is not compulsory and the parties have up to 14 days in which to agree to mediate. Details of the mediation scheme can be found on the CEDR website. No stay of the appeal is granted: it will be listed for a date that allows time for a mediation. The parties must inform the court if the appeal has been settled. The parties are expected to agree sensible extensions of time for steps that need to be taken before the appeal hearing, including for service of a respondent's notice.

Respondent's notice

30.38 A respondent to an appeal may seek permission to appeal the whole or part of the decision of the lower court, or they may ask the appeal court to uphold the order of the lower court for reasons different from or additional to those given by the lower court. In either case, the respondent must file a respondent's notice using an N162. The N162 must be filed in accordance with CPR 52.13 (4) and (5) (generally, within 14 days after the respondent is notified that the appeal will be heard) or within any extended time agreed or permitted.

Appeals to the Court of Appeal: permission to appeal

30.39 An appeal from a decision of a HCJ (and of a Section 9 Judge or a Deputy HCJ) is to the Court of Appeal (unless an enactment or order makes it final and unappealable). Permission is required in all cases except where the order is for committal. Permission may be sought at the conclusion of the hearing or when judgment is handed down, or from the Court of Appeal in the N161. This is a first appeal. See CPR PD 52C for the specific requirements for first appeals to the Court of Appeal.

30.40 If the decision which is sought to be appealed was itself made in relation to an appeal (other than an appeal from the Comptroller of Patents), permission for a second appeal may only be granted by the Court of Appeal: CPR 52.7. See CPR 63.16 in relation to appeals from the Comptroller of Patents and registrars of trade marks and registered designs.

30.41 An appeal from the decision of an ICC Judge (where the ICC Judge's decision was itself made on an appeal from the County Court) is a second appeal and also lies to the Court of Appeal, and permission to appeal may only be granted by the Court of Appeal.

Dismissal before determination of an application or an appeal

30.42 PD 52A, paragraphs 6.1 to 6.3 set out the procedure for all appeals where an appellant no longer wishes to pursue an application for permission to appeal or an appeal.

30.43 An application for permission to appeal may be struck out if the appellant fails to file an appeal bundle including a transcript of the decision of the lower court within the time specified by the court. An appeal may be struck out if an appellant fails to pay any security ordered for the costs of the appeal or to comply with any condition subject to which permission to appeal was granted.

Exhaustion of remedies

30.44 Where a party has exhausted their remedies available through the domestic courts and they want to pursue their rights in the European Court of Human Rights (ECtHR) they will first need to obtain a certificate of the exhaustion of their domestic remedies.

Chapter 31 Enforcement

General

31.1 It is not the purpose of this Guide to provide Judgment Creditors or Judgment Debtors with legal or procedural advice on post judgment methods of enforcement nor is it the purpose of this Guide to provide a comprehensive list of enforcement options. This Guide is intended to provide guidance on the practice of the court in relation to post judgment methods of enforcement.

Enforcement of judgments in other jurisdictions

31.2 Whether a judgment of the courts of England and Wales can be enforced in a foreign state depends on the law of that foreign state.

31.3 Many foreign states require a certified copy of a judgment. An application for a certified copy of the judgment should be made to the Master within the existing proceedings in which the judgment was obtained, in accordance with CPR 74.12, 74.13 and PD 74A. If the relevant enforcement regime requires a wet signature from a judge on the certificate or other enforcement form or document, the Judgment Creditor must complete the relevant forms and upload them to CE-File as a separate document and not as part of a general exhibit, to enable them to be printed for signature by the judge.

Enforcement of foreign judgments in England and Wales (CPR 74)

31.4 Whether a foreign judgment is enforceable in England and Wales will depend on where the judgment originates from and what the relevant enforcement regime is for that foreign state.

31.5 In the case of foreign judgments from EU member states it will also depend on whether the judgment was obtained in proceedings instituted before or after 31 December 2020.

31.6 Some foreign judgments need to be registered before they can be enforced.

31.7 Applications for registration of a judgment pursuant to CPR 74.3 should be made to the Central Office of the Senior Courts, Royal Courts of Justice, Strand, London WC2A 2LL and not to the B&PCs.

31.8 Enforcement between United Kingdom jurisdictions is governed by CPR 74.14 to 74.18.

Enforcement of judgments

31.9 This chapter considers the most common forms of enforcement in the Chancery Division.

31.10 Examination of a Judgment Debtor, Charging Orders and Third Party Debt Orders each have their own procedural regime and forms. In each case the court will consider the initial application on paper and without notice to the Judgment Debtor and if satisfied that the papers are in order will make an order on paper as the first stage in the enforcement process. This will be drawn up by the court and sent to the Judgment Creditor for service. Parties should ensure that they comply with the requirements of each procedural regime.

Examination of a Judgment Debtor (Debtor Questioning) (CPR 71)

31.11 A Judgment Creditor may apply for an order requiring a Judgment Debtor or, if the Judgment Debtor is a company, an officer of that company, to attend court to provide information about the Judgment Debtor's means or other information needed to enforce the Judgment Debt (CPR 71.2).

31.12 An application for Debtor Questioning should be issued in the court in which the judgment or order giving rise to the Judgment Debt was made. The application is made on paper and without notice in Form N316 which should include the information required by CPR 71.2 and PD 73 1 and any additional questions or requests for documents that the Judgment Creditor seeks.

31.13 If the court is satisfied that the papers are in order it will make an order specifying the amount of the debt and directing that the Judgment Debtor attend court at the time and place specified in the order to answer such questions as the court may require on oath and to provide the documents described in the application. Unless the court orders otherwise the questions will be those in EX140 or EX141 as appropriate.

31.14 The Order for Debtor Questioning once made is provided to the Judgment Creditor for them to effect personal service (CPR 71.3).

31.15 The court will usually direct that the Debtor Questioning take place in the County Court local to the Judgment Debtor. The court officer or District Judge in the Judgment Debtor's local County Court will undertake the Debtor Questioning on behalf of the ChD B&PCs London.

31.16 The underlying claim to which the Judgment Debt relates is not transferred to the County Court and any further enforcement action or other steps in the underlying claim will continue to be undertaken in the B&PCs where the claim remains. This may include enforcement action for non-compliance with the Debtor Questioning order (see paragraphs 31.21 to 31.23), which will be remitted back to the B&PCs.

31.17 The Judgment Creditor may request that the Debtor Questioning take place before a judge in the B&PCs but will have to provide compelling reasons why such an order

should be made. This should be provided by letter filed on CE-File as the same time as the application.

31.18 If the Debtor Questioning takes place before a judge the questioning will be conducted by the Judgment Creditor or his legal representative rather than a court officer.

31.19 In either case any documents produced at court pursuant to the Debtor Questioning order will be retained by the court. The Judgment Creditor can inspect them and take copies unless the court orders otherwise.

31.20 The Judgment Creditor must comply with CPR 71.5.

31.21 If the Judgment Debtor fails to attend for questioning at the time and place indicated in the order, refuses to answer any questions, or fails to comply with the order in some other way such as failing to provide the documents identified by the order, the Judgment Debtor may be considered to be in contempt of court.

31.22 If the Debtor Questioning was being undertaken by a court officer or District Judge in the County Court or a Master or District Judge in the B&PCs they will certify the non-compliance in accordance with CPR 71.8 and PD 71.6 and the non-compliance will be referred to a HCJ or Section 9 Judge in the B&PC (not the County Court in which the Debtor Questioning was undertaken).

31.23 The HCJ or Section 9 Judge will then consider whether to make a final order to comply, a suspended committal order or a committal order (see CPR 71.8, PD 71.7 and PD 71.8).

Charging Orders (CPR 73)

31.24 A Charging Order can be sought to secure a judgment debt and may be made in relation to an interest in land or securities.

31.25 An application for an Interim Charging Order ('ICO') in the ChD B&PCs London should be made within the same proceedings in which the relevant judgment was obtained. It should identify the nature of the Judgment Debtor's interest in the asset to be charged and any other creditors or those who may have a beneficial interest.

31.26 The ICO application may be made using form N379 for an interest in land or N380 for an interest in securities. The ICO application may include more than one asset (PD 71.1.3). The ICO application is made without notice to the Judgment Debtor and is considered on paper. If the papers are in order an ICO will be made substantially in form CH45 and returned to the Judgment Creditor for service. The court will list a hearing to determine if an ICO should be made Final (an 'FCO').

31.27 CPR 73.7(7) identifies all those including creditors or other parties to whom notice of the Final hearing should be given, and CPR 73.7.5 sets out what must be served and by when.

31.28 CPR 73.7(8) provides that the application, ICO and any other documents in support of the application can be served on a person outside the jurisdiction without permission.

31.29 If the application for an ICO relates to land and the Judge considers it appropriate (for example where the ICO is over the Judgment Debtor's main residential home) the judge may transfer the Final hearing to consider whether the ICO should be made final to the Judgment Debtor's home court, including their local county court.

31.30 The claim itself is not transferred and any subsequent applications within the claim should still be made to court in which the claim is based.

31.31 A separate FCO will be needed for each property or security over which a Charging Order is sought, except where an application for a Charging Order seeks an ICO against all legal owners of the same property. An FCO if made should be substantially in Form CH46.

31.32 If the court adjourns the FCO hearing, the Judgment Creditor should ensure that any draft order extends the ICO to the adjourned FCO hearing.

31.33 An FCO in respect of securities may, at the Judgment Creditor's request and if considered appropriate, include a Stop Notice. For Stop Notices generally see CPR 73.17 to 73.21.

31.34 Unless the court orders otherwise, the Judgment Creditor is only entitled to Fixed Costs in accordance with the Table in CPR 45.8 together with reasonable disbursements, which are usually limited to: the court fee, fees for obtaining official copy entries of title and Land Registry fees as appropriate.

Third Party Debt Order (CPR 72)

31.35 Third Party Debt Orders follow the same procedure as Charging Orders.

31.36 An application for an Interim Third Party Debtor Order (ITPDO) is made on paper and without notice, using form N349.

31.37 If the papers are in order the court will issue an ITPDO which will include a hearing date. It will also include an amount for the Fixed Costs to which the Judgment Creditor would be entitled under CPR 45.8 (together with any relevant court fee) if the whole balance of the judgment debt were recovered.

31.38 The Judgment Creditor must serve the ITPDO on the Third Party, not less than 21 days before the date fixed for the hearing and on the Judgment Debtor not less than 7 days after service on the third party and 7 days before the date fixed for the hearing (CPR 72.5).

31.39 A Third Party bank or building society must provide the information set out in CPR 72.6 (1) to (3) to the court and the Judgment Creditor within 7 days of being served with the ITPDO. A Third Party other than a bank or building society must provide the

information set out in CPR 72.6 (4) to the court and the Judgment Creditor within 7 days of being served with the ITPDO.

31.40 In either case the Third Party must not make any payment which reduces the amount they owe/hold for the Judgment Debtor to less than the amount specified in the ITPDO. They should not pay the money to the Judgment Creditor or the court.

31.41 An ITPDO cannot be made against money held in court for the credit of the Judgment Debtor, instead the procedure set out in CPR 72.10 must be followed.

31.42 A Judgment Debtor who is an individual who suffers hardship in meeting their ordinary living expenses as a result of the ITPDO may apply using N244 under CPR 23 for a hardship payment under CPR 72.7. The application must be supported by evidence.

31.43 If the Third Party or the Judgment Debtor object to the ITPDO being made final, for example because the Third Party does not accept that they owe the Judgment Debtor any money or they say that another person has a claim to the money, they must file and serve written evidence as soon as possible and, in any event, not less than 3 days before the hearing. The Judgment Creditor must also file and serve any evidence disputing the Third Party's case as soon as possible and, in any event, not less than 3 days before the hearing where possible.

31.44 In either case if the court is notified that some other person may have an interest in the money specified in the ITPDO it will direct that the Judgment Creditor give them notice. At the hearing the court will consider whether to make the ITPDO final. If the ITPDO is made final the Final Third Party Debt Order is enforceable as an order for the payment of money as against the Third Party and the Third Party can pay the money held to the Judgment Creditor. The court may discharge the ITPDO and dismiss the application and is likely to do so if the ITPDO has not secured any money belonging to the Judgment Debtor, for example if a bank cannot identify any accounts in the name of the Judgment Debtor or any such accounts as are identified held no money at the time of the ITPDO.

31.45 In the event of a dispute the court will determine the issues at the hearing, where possible, adjourn the hearing, or direct a trial of the issues and give directions. In such circumstances the court will consider whether any substantive hearing should be transferred to the county court where the Judgment Debtor resides. In such cases any order should include continuation of the ITPDO pending resolution of the dispute unless the court orders otherwise. Fixed Costs apply to any application for a Third Party Debtor Order (CPR 45.8) together with any relevant court fee, unless the court orders otherwise. An HMCTS leaflet EX325 provides advice on Third Party Debt Orders and Charging Orders.

Order for Sale (CPR 73.10C)

31.46 Proceedings to enforce a FCO over land by way of an Order for Sale are new proceedings and should be commenced in the court in which the FCO was made, in the Property Trusts and Probate List using Part 8. For guidance on Part 8 see Chapter 13.

31.47 The Judgment Creditor should consider carefully the evidential requirements set out in CPR 73.10C and PD 73 4.3. The court is unlikely to make an order for sale if there is little or no equity in the property and/or no actual benefit to the claimant.

31.48 If the Judgment Debtor does not respond to the claim, the Judgment Creditor should follow the procedure set out in paragraphs 13.15 to 13.18. Form CH44 should be adapted as appropriate. The final hearing/disposal hearing will be on written evidence.

31.49 The Judgment Creditor has no statutory power of sale nor a legal title that they can convey. The order for sale must therefore either include a vesting order or an order giving power to convey. This will depend on whether the Judgment Debtor is the sole owner of the land or a joint owner.

31.50 PD 73 has specimen orders annexed to it. Forms CH36 and CH37 may also be used, adapted as necessary for the particular circumstances.

Permission to enforce a Writ of Possession

31.51 In certain circumstances a party with the benefit of a possession order may not enforce it without permission of the court (see CPR 83).

31.52 An application for permission to issue and/or enforce a writ of possession may be made without notice and on paper (unless the court directs otherwise). It must be supported by evidence including a copy of the underlying order in respect of which permission is sought. In most cases Fixed Costs apply see CPR 45.8.

Writs

31.53 Requests to issue writs of execution and writs of control relating to enforcement of B&PC judgments should generally be made in the High Court or District Registry where the underlying claim took place. Further guidance can be found in CPR 83 and PD 83.

Chapter 32 Court funds (payments into and out of court)

32.1 Reference should be made to Part 37 of the Civil Procedure Rules ('CPR') and CPR Practice Direction ('PD') 37, as well as the Court Funds Rules 2011, in relation to making an application for payment out of court funds.

Payments into court

32.2 Any trustee (including personal representatives) who wishes to make a payment into court should follow the procedure set out in CPR 37. The evidence in support should comply with PD37, paragraph 6.1. If the trustee is a mortgagee the evidence in support should include additional information as set out in paragraph 32.3 below.

Mortgagees

32.3 Mortgagees wishing to lodge surplus proceeds of sale in court under section 63 of the Trustee Act 1925 must in their witness statement, in addition to the matters set out in PD 37, paragraph 6.1:

(a) set out the steps they have taken to fulfil their obligation under section 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; and

(b) exhibit official copies of the title of the mortgaged property.

32.4 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.

Payments out of court funds

Application

32.5 Applications under PD 37 for payment out of money held in court must be made by CPR 23 application notice (Form N244). The application notice and the court fee should be sent to the Miscellaneous Payments Team in the ChD B&PCs London; the application notice can also be CE-filed.

32.6 The following details must be included in Part 10 of the application notice:

(a) the reasons why the payment should be made;

(b) 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);

(c) 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; and

(d) the Statement of Truth must be completed and signed.

32.7 Copies of documents which show an entitlement to the money in court and proof of identity (see paragraphs 32.23 to 32.28 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, and legibly 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.

32.8 Approval is shown not by a formally drawn order, but by the court signing the payment schedule in Form CFO 200.

Application brought on behalf of a dissentient shareholder

32.9 In the case of an application for payment out of funds by or on behalf of a dissentient shareholder (a shareholder who did not consent to the acquisition of their company), the best evidence to be provided is the relevant share certificate(s). If the share certificate is unavailable, then the court will consider other documents showing communications with the shareholder such as a dividend notice, emails or other correspondence.

32.10 In cases where the application for payment out is brought by a personal representative long after the date the funds were paid into court, such direct evidence may be lacking. In such cases the court may consider the following documents to establish a link between the dissentient shareholder and the funds in court:

(a) evidence of the address of the shareholder as shown on the share register of the company;

(b) evidence of the address of the shareholder as shown on the schedule lodged in court when the dissentient shareholder's funds were paid in;

(c) the address shown in a will or grant of probate/administration; and/or

(d) evidence from a tracing agency or similar establishing the link between the dissentient shareholder and their address as set down in the share register of the company/lodgement schedule.

32.11 The above list is not intended to be prescriptive, other evidence establishing the requisite evidential link between the applicant and the funds in court will be considered. Please see paragraph 32.23 below for more details.

Application brought in respect of surplus funds in court following a sale of Property

32.12 In the case of an application made by a proprietor or co-proprietor for surplus funds following the sale of a property, evidence must be provided to show a link between the applicant and the property. The court may consider the following documents to establish a link between the applicant and the surplus property funds in court:

(a) conveyancing documents or official copies of the title. However the court is unlikely to accept historical official copies of the title alone as evidence of connection to the property;

(b) court documents or correspondence relating to the repossession of the property;

(c) other documents directed to the applicant at the property before repossession; and/or

(d) evidence from a tracing agency establishing the applicant at his or her current address was connected to the subject property.

32.13 In the case where an applicant makes an application for surplus funds as a chargee, the burden is on the applicant to establish entitlement to the funds as against all others who may have a claim on the funds in court. The applicant must establish that any prior charges have been released or discharged or that there is sufficient money in court so that they can establish entitlement to an identified balance; the court will not conduct any enquiries and applications that do not address prior charges or establish an entitlement notwithstanding the existence of prior charges will be dismissed.

32.14 Where the applicant claims surplus funds as a chargee, the court may consider the following documents to establish a link between the applicant and the surplus property funds in court:

(a) official copies of the title showing the charge; and/or

(b) any legal documents establishing the charge such as orders creating a charge over a proprietor's interest in the property.

32.15 Where an applicant seeking surplus funds as a proprietor or a chargee is unable to contact a prior chargee or is unable to identify the extent of prior liability, they should demonstrate in the application that reasonable steps have been taken to do so. This includes the steps taken to effect service/alternative service of the application on the prior chargee. The court will then consider what next steps should be taken.

32.16 Where the application for surplus funds is made by one of a number of joint proprietors of the subject property, then in addition to establishing their own entitlement to the funds, it will be for the joint proprietor to establish their entitlement as against co-owners. The applicant co-owner should produce evidence that the other co-owner(s) consent to the application and to the share of the surplus funds in court sought by the applicant.

32.17 Where consent has not been obtained from the other co-owner(s) for the division of surplus funds, the applicant should support the application with a witness statement setting out the circumstances of joint purchase, any agreements or assurances as to shares or other evidence that might bear on the parties' shares. All relevant documents should be exhibited to the application.

32.18 In the case where a co-owner has failed to respond to a proposed consent order for the division of funds or where, after diligent enquiries they cannot be traced, the applicant should include in the application evidence of the steps that have been taken to trace the co-owner with evidence regarding the co-owner's lack of response. The court will then give directions in respect of the application.

32.19 Where consent by a co-owner has been refused, the applicant should include that information and any supporting documents in their application. The court will then consider any directions for further disposal of the application, including whether the matter ought to be transferred to the County Court.

32.20 If a bankruptcy order has been made against the applicant, even if it has been discharged, the name of Trustee in Bankruptcy should be included in the application. The applicant will also need to explain why the funds being claimed belong to them and not the Trustee in Bankruptcy.

32.21 If an application is being made on behalf of a person who has died, the information regarding the deceased person must be provided to the best of the applicant's knowledge and belief.

Determination of the application by the court

32.22 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 (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 13) and may list it for disposal or directions.

Evidence of entitlement

32.23 The person claiming to be entitled to funds held in court must produce evidence of their entitlement to the fund; failure to provide evidence may result in the application being dismissed.

32.24 This may be one or more of the following documents:

(a) Sealed copy of court order;

(b) Where the person entitled to the funds has died, a sealed copy of the grant of representation (grant of probate or letters of administration);

(c) 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);

(d) 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;

(e) 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; and/or

(f) Where the applicant is the former landowner 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

32.25 The person claiming entitlement must normally produce evidence of their identity.

32.26 This may be one or more of the following documents:

(a) passport;

(b) driving licence;

(c) UK identity card for foreign nationals, residence permit or travel documents issued by the Home Office;

(d) European Community or European Economic Area identity card;

(e) a birth or adoption certificate may be provided, but this is not absolute proof of identity and must be accompanied by one other supporting document;

(f) National insurance card or a letter from the Department of Work and Pensions showing NI number;

(g) The front page of a benefits book or a letter concerning state pension and showing NI number;

(h) P45, P60 or payslip;

(i) Student union card;

(j) Marriage certificate;

(k) Decree nisi or decree absolute; and/or

(l) Bank or building statement issued in the last 3 months.

Evidence of name or address change

32.27 Where the person claiming entitlement has changed their name, they must also produce one of the following (as appropriate):

(a) a marriage or civil partnership certificate;

(b) a decree nisi or decree absolute;

(c) a deed poll declaration; and/or

(d) An adoption certificate.

32.28 Where the person claiming entitlement has changed their address, they must produce:

(a) 2 of the following documents evidencing their previous address: utilities or council tax bill, or bank/building society statement from the relevant time; and

(b) A utilities bill or bank/building society statement issued within the last 3 months for their current address.

Glossary

Term	Definition
ADR	Alternative Dispute Resolution including (but not limited to) mediation, negotiation, early neutral evaluation (ENE), arbitration, adjudication and Chancery financial dispute resolution. See further Chapter 10.
B&PCs	The Business and Property Courts of England and Wales comprising the Commercial Court, the Admiralty Court, the Circuit Commercial Court (formerly the Mercantile Court), the Technology and Construction Court, and the Chancery Division. The various B&PC lists and sub-lists are set out in Appendix F.
B&PC District Registry/ Registries	The district registries of the Business and Property Courts in Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester and Newcastle. Further details about, and contact details for, the B&PC District Registries may be found in Appendix C.
Chancery District Registry/ Registries	The regional Chancery District Registries in Preston, Mold and Caernarfon. Further details about, and contact details for, the Chancery District Registries may be found in Appendix C.
ChD B&PCs London	The Chancery lists of the Business and Property Courts in London (as further set out in Appendix F).
Ch FDR	Chancery financial dispute resolution, a form of alternative dispute resolution further described in Chapter 10.
CMC / CCMC	Case management conference at which directions will be given for the conduct of proceedings. Where costs management pursuant to Section II of CPR 3 and PD 3D is to be considered at the same conference, this is referred to as a costs and case management conference or CCMC. See further the guidance in Chapter 6.
Chancellor	The Chancellor of the High Court.
CLIPS	The Chancery Bar Litigants in Person Support Scheme providing assistance to litigants in person in the Judges' Application List as further described at Appendix H.
CO.IN	The Company Insolvency Pro Bono Scheme providing assistance to litigants in person (including unrepresented companies or corporations) in the winding up court as further described at Appendix H.
County Court	Pursuant to s.A1 of the County Court Act 1984 (as amended) there is now a single county court for England and Wales sitting in locations designated by the Lord Chancellor including the former locations of discrete county courts.
CPR	The Civil Procedure Rules (including CPR practice directions (PDs)).
Deputy HCJ	Fee paid deputy High Court Judges appointed pursuant to Section 9(4) of the Senior Courts Act 1981, as described at paragraph 1.13.

Term	Definition
DQ	Directions Questionnaire to be filed before the first case management conference (CMC) in accordance with the guidance in Chapter 6.
DRD	Disclosure review document required to be prepared in connection with extended disclosure pursuant to CPR PD 57AD and the guidance in Chapter 7.
ENE	Early neutral evaluation, a form of alternative dispute resolution further described in Chapter 10.
CE-File	The electronic case file kept in respect of proceedings in the Business and Property Courts, as described further at paragraphs 1.28.
GLO	A group litigation order in relation to which guidance is given at paragraphs 2.13 to 2.20.
Guide	The Chancery Guide
HCJ	High Court Judge.
Hot Tubbing	A term sometimes used to describe the practice of concurrent expert evidence addressed in paragraphs 9.42 to 9.44.
ICL	The Insolvency and Companies List described further in Chapter 21.
ICC Judge	A judge of the Insolvency and Companies Court.
IT	Information technology. For guidance on the use of IT at trial, see paragraphs 12.32 to 12.34.
IP	Intellectual property. For guidance in relation to claims within the intellectual property list, see Chapter 22.
Judge's Application List	The daily list of interim applications heard by Chancery High Court Judges and other authorised judges as further described in Chapter 15.
Judges' Listing	The Chancery Judges' Listing Office, contact details for which may be found in Appendix A.
LCCDRD	The disclosure review document for to be prepared in connection with extended disclosure pursuant to CPR PD 57AD and the guidance in Chapter 7 for less complex claims.
Masters' Appointments	Chancery Masters Appointments which deals with the listing of hearings before, and other logistical matters concerning, Chancery Masters. Contact details are provided in Appendix A.
McKenzie Friend	A person permitted to assist a litigant in person at a hearing in accordance with the guidance in paragraphs 2.55 to 2.62.
PD	Practice Directions within the Civil Procedure Rules (CPR).
PTR	The pre-trial review to be conducted in accordance with the guidance in Chapter 11.
Section 9 Judges	Specialist civil judges authorised to sit as judges in the High Court pursuant to s.9(1) of the Senior Courts Act 1981.

Appendix A Contact details

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

In the Rolls Building

Issue Section
Issue of all Chancery process including High Court Patents and IPEC claims.
Issue Clerks (7783)
Email: chancery.issue@justice.gov.uk.

Chancery Masters' Appointments
Issue of all Masters' applications.
Clerks to Chancery Masters (7391)
Email: chancery.mastersappointments@justice.gov.uk.

Chancery Masters' Clerks
Clerks to Chancery Masters (7391).

Chancery High Court Judges' Listing
Chancery Judges' Listing, general enquiries & High Court Appeals (6690/7717)
Email: ChanceryJudgesListing@justice.gov.uk
Please see Appendix B for details of all judges and their clerks.

Chancery Associates
Team Leader, In Court Support/Usher (6322)
Associates (6733)

Insolvency and Companies Court
For general queries relating to the issue of Creditors' Bankruptcy Petitions, Applications to set aside Statutory Demands and other matters in the Insolvency and Companies List (6294/6102) Insolvency and Companies Court Delivery Manager (7472)
Companies Schemes and Reductions of Capital (6727)
Email: Rcjcompanies.orders@justice.gov.uk
For general queries relating to case management and hearings (6731)
Email: Rolls.ICL.Hearings1@justice.gov.uk

Intellectual Property Enterprise Court
The IPEC is supervised by His Honour Judge Hacon. His clerk can be reached on IPEC@justice.gov.uk

Miscellaneous Payments out of Court Funds
Applications for payment out of money held in the Court Funds Office Clerks (7929)
Email: chancery.miscellaneouspayments@justice.gov.uk

Court Recording and Transcription Unit

Clerks (6148)
Email: TranscriptRequest.Rolls@justice.gov.uk

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

RCJG Switchboard (6000)
Rolls Security Office (7000)
Rolls First Aid (7000)
Consultation Room requests (6585)

At the Royal Courts of Justice Main Building, Strand

(Prefaced by 020 7947 unless otherwise specified)
RCJG switchboard (6000)
RCJ Advice Bureau (0203 475 4373) Email: admin@rcjadvice.org.uk
RCJ Support through Court (7701) Email: London@supportthroughcourt.org
RCJ Security Office (6260)
Emergency Out of Hours contact (6260)

Outside of London Offices

See Appendix C for the court addresses, telephone and email addresses of the courts sitting outside London

Appendix B ChD Chancellor, HCJs, Masters, ICCJs contact information

The information and contact details in Appendix B are correct as 1 December 2024
(Prefaced by 020 7947 unless otherwise specified)

High Court Judges' Clerks

Judge	Clerk	Telephone	Email
Chancellor of the High Court, the Rt Hon Sir Julian Flaux	David Grier	6171	David.Grier@justice.gov.uk
	Imara Howe Senior Personal Secretary		ChancellorsPO@judiciary.uk
	Smita Shah, Legal Adviser		ChancellorsPO@judiciary.uk
	Amy Jabbal, Private Secretary		ChancellorsPO@judiciary.uk
	James Edwards, Assistant Private Secretary		ChancellorsPO@judiciary.uk
Mr Justice Roth	Ava Tranter	6396	Ava.Tranter1@justice.gov.uk
Mr Justice Hildyard	Iain Wakil		Iain.Wakil@justice.gov.uk
Mr Justice Marcus Smith	Wendy Simpson	7767	Wendy.Simpson@justice.gov.uk
Mr Justice Fancourt	Ahlia Rateb	07720 157850	Ahlia.Rateb@justice.gov.uk
Mr Justice Trower	Jas Kahlon	6339	Jas.Kahlon@justice.gov.uk
Mr Justice Miles	Hannah Wood	7624	Hannah.Wood@justice.gov.uk
Mr Justice Meade	Pauline Drewett	0314 / 079710622 00	Pauline.Drewett@justice.gov.uk
Mr Justice Adam Johnson	Casey Ford	6401	Casey.Ford@justice.gov.uk
Mrs Justice Bacon	Sophia Marine	07745 744736	Sophia.Marine@justice.gov.uk
Mr Justice Michael Green	Gwilym Morris	6775	Gwilym.Morris2@justice.gov.uk
Mr Justice Mellor	Susan Woolley	7964	Susan.Woolley@justice.gov.uk

Judge	Clerk	Telephone	Email
Mrs Justice Joanna Smith	Caroline Reid	6419	Caroline.Reid@justice.gov.uk
Mr Justice Edwin Johnson	Lewis Hill	0304	Lewis.Hill@justice.gov.uk
Mr Justice Leech	Paul Byrne	6485	Paul.Byrne1@justice.gov.uk
Mr Justice Richards	Razia Miah	6312	Razia.miah@justice.gov.uk
Mr Justice Richard Smith	Supriya Saleem	6397	Supriya.Saleem@justice.gov.uk
Mr Justice Rajah	Sara Galdem		Sara.Galdem@justice.gov.uk
Mr Justice Thompsell			

For a list of judges in the Chancery Division of the High Court and judges sitting in the Patents Court, including details of their clerks and contact details please also visit: https://www.gov.uk/guidance/chancery-judges

Judges' Listing

Chancery Judges' Listing, general enquiries & High Court Appeals Office 6690/7717
Email: chanceryjudgeslisting@justice.gov.uk

Intellectual Property Enterprise Court ('IPEC')

Judge	Clerk	Telephone	Email
His Honour Judge Hacon	Sandra Drummond	6265	sandra.drummond@justice.gov.uk

Chancery Masters

Judge	Hearing Room	Clerk	Email
Chief Master Shuman	Hearing Room 3	Elisa Dharmaseelan	Elisa.Dharmaseelan@justice.gov.uk
Master Clark	Hearing Room 6	Mohammed Choudhury	Mohammed.Choudhury5@justice.gov.uk
Master Kaye	Hearing Room 4	Jeremy Jules	Jeremy.Jules@justice.gov.uk
Master Pester	Hearing Room 1	Alison Gaby	Alison.Gaby@justice.gov.uk
Master McQuail	Hearing Room 5	Adebola Adisa	Adebola.Adisa1@justice.gov.uk
Master Brightwell	Hearing Room 2	Jack Gunby	Jack.Gunby@justice.gov.uk

Masters' Clerks' Telephone: (7391)
Email: chancery.mastersappointments@justice.gov.uk

Chancery Lawyer

Insolvency and Companies Court Judges:

Judge	Hearing Room
Chief ICC Judge Briggs	7
ICC Judge Barber	any
ICC Judge Prentis	any
ICC Judge Mullen	any
ICC Judge Burton	any
ICC Judge Greenwood	any

Insolvency and Companies Court Judges' Clerks telephone (6731)
Email: Rolls.ICL.Hearings1@justice.gov.uk

Appendix C Chancery Business outside the Rolls Building

1. Outside the Rolls Building there are seven Business and Property Courts District Registries. The B&PC District Registries are located at Court centres in Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester and, Newcastle-upon-Tyne. The additional three Chancery District Registries were Preston, Mold and Caernarfon. Chancery business outside London is divided into two broad geographical areas each with a supervising High Court Judge, one comprising the Midlands, Western and Wales Circuits and the other the Northern and North Eastern Circuits.

2. Disputes in Chancery cases in the B&PC District Registries are determined by a High Court Judge, a specialist civil Section 9 Circuit Judge or a specialist Business and Property Court District Judge, depending upon the complexity, value and length of the proceedings. The names of the current specialist B&PC judges in each District Registry are provided below.

3. The Chancery Guide applies in general to the Chancery lists in the B&PC District Registries. However, as explained in Chapter 1, some sections or guidance are specific to the working of the lists in the ChD B&PCs London, such as the differences that arise from having Masters and ICC Judges in the ChD B&PCs London. The work done by Masters and ICC Judges is allocated between District Judges and Section 9 Judges in the B&PC District Registries. The allocation of that work is determined locally. The Guide should nonetheless be applied by analogy and in substantially the same way as it applies to the ChD B&PC London. However, there are some local practices particularly in relation to case management procedures, listing and hearings. Please follow the links below for further information about local practices.

4. Specialist Chancery work is also carried on in lists in the County Court sitting at Birmingham, Bristol, Cardiff, Central London, Liverpool, Leeds, Manchester, Newcastle and Preston: see CPR PD57AA paragraphs 4.1 to 4.4. This work will be conducted by local Section 9 Judges, specialist Recorders or specialist District Judges.

5. The court addresses, telephone and email addresses for the Business and Property Courts and other courts that deal with Chancery work outside the Rolls Building (which are correct as at 1 December 2024) are listed below.

6. For any local guidance, consult the B&PC pages of the Judiciary website follow the links for each of the B&PCs District Registries. Each B&PC District Registry has its own page on the Judiciary Website links to which are set out below. The information and links on the Judiciary Website will be updated from time to time with any local guidance and Practice Notes issued by the Supervising Judge.

Business & Property Courts District Registries:

Birmingham Business & Property Court	The Priory Courts, 33 Bull Street, Birmingham B4 6DS *Judge in Charge*: HHJ Richard Williams The specialist B&PC Circuit Judges (including Senior Circuit Judges) and specialist B&PC District Judges based in Birmingham are set out below: HHJ Richard Williams HHJ David Worster HHJ Brian Rawlings HHJ Sarah Watson HHJ Emma Kelly (DCJ) HHJ James Tindall HHJ Delia Truman HHJ Jane Ingram HHJ Shakil Najib HHJ Andrew Charman DJ Ashwin Mody DJ Chloë Phillips DJ Anthony Rich DJ Augustine Rouine DJ Daryl Shorthose DJ Philip Mantle DJ Fiona Dunn Switchboard: 0121 681 3033 Email: bpc.birmingham@justice.gov.uk Contact for request for consent to transfer cases: Mark Farley mark.farley@justice.gov.uk Urgent court business officer number for out of hours applications: Birmingham (Midland Region): West Side - 07748 542966 East Side - 07748 613886 More information about the B&PC District Registry in Birmingham including any local guidance can be found on the judiciary.uk website. The County Court at Birmingham has both a Business and Property list and undertakes non-local insolvency business: The contact details for Business and Property List work in the County Court at Birmingham are the same as set out above.
Bristol Business & Property Court	2 Redcliff Street, Bristol BS1 6GR *Judge in Charge of the Business & Property List*: His Honour Judge Paul Matthews

	There are a total of 4 specialist B&PC Circuit Judges and 6 specialist B&PC District Judges based in Bristol: HHJ Paul Matthews HHJ Jonathan Russen KC HHJ Leslie Blohm KC (DCJ) HHJ Michael Berkley DJ Chris Taylor DJ Jan Markland DJ Matthew Wales DJ Wendy Brown DJ Jennifer Gibson DJ Jon Napier Switchboard: 0117 366 4800 Specialist Team: 0117 366 4860 Email: bristolspecialist@justice.gov.uk Email: bristolchancerylisting@justice.gov.uk Contact for request for consent to transfer cases: Eddie Hunt (Specialist Team leader) edward.hunt@Justice.gov.uk Chancery Listing: Anne Steel (Chancery Clerk) More information about the B&PC District Registry in Bristol including any local guidance can be found on the judiciary.uk website. The County Court at Bristol has both a Business and Property list and undertakes non-local insolvency business: The contact details for Business and Property List work in the County Court at Bristol are: 0117 366 4850 and e-filing.bristol.countycourt@justice.gov.uk
Leeds Business & Property Court	The Court House, 1 Oxford Row, Leeds LS1 3BG *Judge in Charge of the Business & Property List:* His Honour Judge Klein There are a total of 3 specialist B&PC Circuit Judges and 5 specialist B&PC District Judges based in Leeds: HHJ Jonathan Klein HHJ Claire Jackson HHJ Siobhan Kelly DJ Kelly Bond DJ Joanna Geddes DJ Alison Shepherd DJ Christopher Royle DJ Nicholas Hill Switchboard: 0113 306 2460 Email: bpc.leeds@justice.gov.uk

	Contact for request for consent to transfer cases: Please call the BPC team on 0113 306 2460 Urgent court business officer number for out of hours applications: 07810 181828 More information about the B&PC District Registry in Leeds including any local guidance can be found on the judiciary.uk website. The County Court at Leeds has both a Business and Property list and undertakes non-local insolvency business: The contact details for Business and Property List work in the County Court at Leeds are: 0113 306 2401 and enquiries.leeds.countycourt@Justice.gov.uk
Liverpool Business & Property Court	35 Vernon Street, Liverpool, Merseyside L2 2BX *Judge in Charge of the Business & Property List:* His Honour Judge Cadwallader There are 3 specialist B&PC District Judges based in Liverpool: DJ Deane DJ Samantha Johnson DJ Mark Lampkin Switchboard: 0151 296 2200 Direct Line: 0151 296 2483 Email: LiverpoolBPC@justice.gov.uk Contact for request for consent to transfer cases: Kevin Fitzmaurice kevin.fitzmaurice@justice.gov.uk Urgent court business officer pager number for out of hours applications: Cheshire & Merseyside – 07876 034775 Liverpool – 0151 296 2483 More information about the B&PC District Registry in Liverpool including any local guidance can be found on the judiciary.uk website. The County Court at Liverpool has both a Business and Property list and undertakes non-local insolvency business: The contact details for Business and Property List work in the County Court at Liverpool are: 0151 296 2200 and LiverpoolBPC@justice.gov.uk
Manchester Business & Property Court	1 Bridge Street West, Manchester M60 9DJ *Judge in Charge of the Business & Property List:* His Honour Judge Hodge KC There are currently 6 specialist B&PC Circuit Judges and 4 specialist B&PC District Judges based in Manchester:

	HHJ David Hodge KC HHJ Stephen Davies HHJ Richard Pearce HHJ Mark Halliwell HHJ Mark Cawson KC HHJ Adrian Bever DJ Araba Obodai DJ Paul Richmond DJ Ranj Matharu DJ Nathan Banks In addition, HHJ Nigel Bird (DCJ) sits occasionally on B&PC cases and HHJ Charles Khan who sits in Manchester is a specialist Chancery judge. Switchboard: 0161 240 5307 Email: bpc.manchester@justice.gov.uk Contact for request for consent to transfer cases: bpc.manchester@justice.gov.uk Urgent court business officer number for out of hours applications: 07554 459 626 More information about the B&PC District Registry in Manchester including any local guidance can be found on the judiciary.uk website. The County Court at Manchester has both a Business and Property list and undertakes non-local insolvency business: The contact details for the Business and Property List work in the County Court at Manchester are: 0161 240 5027 and manchestercivil@Justice.gov.uk

Newcastle Business & Property Court	Barras Bridge, Newcastle-upon-Tyne, NE1 8QF *Judge in Charge of the Business & Property List:* His Honour Judge Davis-White KC There are in addition 3 specialist B&PC District Judges based in Newcastle: DJ Michelle Temple DJ Terry Phillips DJ David Hambler Switchboard: 0191 205 8750 Email: NewcastleBPC@justice.gov.uk Contact for request for consent to transfer cases: NewcastleBPC@justice.gov.uk Urgent court business officer number for out of hours applications: 07562 431 182 More information about the B&PC District Registry in Newcastle including any local guidance can be found on the judiciary.uk website. The County Court at Newcastle has both a Business and Property list and undertakes non-local insolvency business: The contact details for the Business and Property List work in the County Court at Newcastle are: 0191 2058750 and NewcastleBPC@justice.gov.uk

Wales/Cymru

Business & Property Courts in Wales **Llysoedd Busnes ac Eiddo yng Nghymru**	Under the Welsh Language (Wales) Measure 2011 the Welsh language has official status in Wales and under the Welsh Language Act 1993 in any legal proceedings in Wales the Welsh language may be used by anyone wishing to use it. By CPR 1.5(2) parties are required to assist the court to put into effect those principles. The practice direction on the use of the Welsh language can be found at https://www.justice.gov.uk/courts/procedure-rules/civil/rules/welshpd O dan Fesur yr Iaith Gymraeg (Cymru) 2011 mae gan yr iaith Gymraeg statws swyddogol yng Nghymru ac o dan Ddeddf yr Iaith Gymraeg 1993, mewn unrhyw achos cyfreithiol yng Nghymru, gellir defnyddio'r iaith Gymraeg gan unrhyw un sy'n dymuno ei defnyddio. Yn ôl CPR 1.5(2) mae'n ofynnol i'r partïon gynorthwyo'r llys i weithredu'r egwyddorion hynny. Gellir dod o hyd i'r cyfarwyddyd ymarfer ar ddefnyddio'r iaith Gymraeg yn https://www.justice.gov.uk/courts/procedure-rules/civil/rules/welshpd Cardiff Civil and Family Justice Centre 2 Park Street, Cardiff CF10 1ET

	Canolfan Cyfiawnder Sifil a Theuluol Caerdydd 2 Stryd y Parc Caerdydd CF10 1ET Caernarfon Justice Centre Llanberis Road Caernarfon LL55 2DF Canolfan Cyfiawnder Caernarfon Ffordd Llanberis Caernarfon LL55 2DF Mold Justice Centre Wrexham Law Courts Bodhyfryd Wrexham, LL12 7BP Canolfan Cyfiawnder Yr Wyddgrug Y Llysoedd Barn Wrecsam Bodhyfryd Wrecsam. LL12 7BP *Judge in Charge of the Business & Property List*: His Honour Judge Jarman KC *Barnwr â Chyfrifoldeb am y Rhestr Busnes ac Eiddo*: Ei Anrhydedd y Barnwr Jarman CB The judges of the Business and Property Court in Wales, some of whom are Welsh speakers are: Barnwyr Llysoedd Busnes ac Eiddo Yng Nghymru, gan cynnwys siaradwr Cymraeg, yw: **Specialist B&PC Circuit Judges:** His Honour Judge Milwyn Jarman KC/Ei Anrhydedd y Barnwr Milwyn Jarman CB His Honour Judge Andrew Keyser KC/ Ei Anrhydedd y Barnwr Andrew Keyser CB His Honour Judge Robert Harrison/Ei Anrhydedd y Barnwr Robert Harrison **Cardiff/ Caerdydd:** District Judge Robert Vernon/Y Barnwr Rhanbarth Robert Vernon District Judge Mona Bayoumi/Y Barnwr Rhanbarth Mona Bayoumi **Swansea, Haverfordwest and Aberystwyth/Abertawe, Hwlffordd and Aberystwyth:** District Judge Jake Pratt/Y Barnwr Rhanbarth Jake Pratt **Caernarfon:** District Judge Merfyn Jones-Evans/Y Barnwr Rhanbarth Merfyn Jones-Evans **Newport/Casnewydd:** District Judge Adrian Jackson/Y Barnwr Rhanbarth Adrian Jackson **Prestatyn:** District Judge Rachel Watkins/Y Barnwr Rhanbarth Rachel Watkins

	Wrexham, Mold and Welshpool: District Judge Huw Roberts/Y Barnwr Rhanbarth Huw Roberts **Switchboard/Switsfwrdd:** 02920 376 430 (Cardiff/Caerdydd) 01286 669 700 (Caernarfon) 029 2037 6412(Mold/Yr Wyddgrug) Email/contact and for consent to transfer cases: E-bost/Cyswllt ar gyfer ceisiadau am ganiatâd i drosglwyddo achosion: bpc.cardiff@justice.gov.uk (Cardiff/Caerdydd) enquiries.cardiff.countycourt@justice.gov.uk (Cardiff/Caerdydd) enquiries.caernarfon.countycourt@justice.gov.uk (Caernarfon) northwalescivillisting@justice.gov.uk (Mold/Yr Wyddgrug) Out of hours: Allan o oriau: North/Gogledd: 07760 285792 South/De: 07500 779433 Mid & West/Canol: 07970 363991 For more information visit: Am ragor o wybodaeth, ewch i: More information about the B&PC District Registry in Wales including any local guidance in both English and Welsh can be found on the judiciary.uk website. Mae rhagor o wybodaeth am Gofrestrfa Ddosbarthol B&PC yng Nghymru gan gynnwys canllawiau lleol yn y Gymraeg a'r Saesneg ar wefan judiciary.uk. The County Court at Cardiff has both a Business and Property list and undertakes non-local insolvency business. Mae Llys Siriol Caerdydd yn delio gyda rhestr Busnes ac Eiddo a hefyd gyda busnes ansolfedd ddim lleol. The contact details for the Business and Property List work in the County Court in Wales are set out above.

Other County Court hearing centres with a Business and Property List

County Court at Central London

County Court at Central London	County Court at Central London, Royal Courts of Justice, Thomas More Building, Strand, London WC2A 2LL Central London is a County Court hearing centre with a Business and Property List, a centre for non-local insolvency business for the South-Eastern Circuit. *Judge in Charge of the Business & Property List*: His Honour Judge Dight CBE There are 7 specialist Circuit Judges (including 3 Senior Circuit Judges) who undertake work in the Business and Property List. His Honour Judge Marc Dight CBE (Senior CJ) His Honour Judge Nigel Gerald His Honour Judge Alan Johns KC (Senior CJ) His Honour Judge Simon Monty KC His Honour Judge Parfitt His Honour Judge Mark Raeside KC (Senior CJ) Her Honour Judge Evans-Gordon There are 4 specialist District Judges District Judge Charlotte Hart District Judge Shanti Mauger District Judge Carla Revere District Judge Wilkinson Call Centre: 0300 123 5577 Email: enquiries.centrallondon.countycourt@justice.gov.uk Users can contact either HHJ Dight CBE or HHJ Johns KC in connection with transfers to the Business & Property List by email to: Charley Emmett, clerk to HHJ Dight CBE, at charley.emmett@justice.gov.uk Diane Morris, clerk to HHJ Johns KC, at diane.morris@justice.gov.uk For more information including further contact details please see the Guide to Business & Property Work at Central London: https://www.judiciary.uk/courts-and-tribunals/business-and-property-courts/chancery-division/chancery-division-regional-centres/

Preston Combined Court Centre

Preston Combined Court Centre	The Law Courts, Openshaw Place, Ring Way, Preston PR1 2LL Preston is a Chancery District Registry (but not a B&PC District Registry), a County Court hearing centre with a Business and Property List and a specialist County Court hearing centre for the purposes of non-local insolvency work. *Judge in Charge of the Business & Property List*: HHJ Jacqueline Beech There are additionally one specialist Circuit Judge and two specialist District Judges undertaking Chancery work who sit in Preston: HHJ Charles Khan DJ Michael Anson DJ Bradley Burrow Switchboard: 01772 844 700 Email: centralisedcivilli@Justice.gov.uk Contact for request for consent to transfer cases: Stephen Craig/Angela Moizer on preston.cmb.dm@justice.gov.uk More information about Preston Combined Court Centre can be found on the gov.uk website.

Appendix D Chancery Users' Committees

Chancery Court Users' Committee

1. The Chancery Court Users' Committee's function is to review the practice and procedure of all courts forming part of the Chancery Division, and 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 the Chief Master, barristers and solicitors, and other representatives of court staff and users. Suggestions for discussion should be sent to the Chief Master's clerk Elisa Dharmaseelan at elisa.dharmaseelan@justice.gov.uk or to Amy Jabbal at ChancellorsPO@judiciary.uk.

Insolvency and Companies Court Users' Committee

2. The Insolvency and Companies Court Users' Committee's function is to review the practice and procedure of the Insolvency and Companies Court. The Chief ICC Judge is the Chairman. Its membership includes the Chancellor, specialist judges, insolvency practitioners, the Official Receiver, the insolvency service (policy), HMRC, and barristers and solicitors who practise in the field. Suggestions for discussion should be sent to the Chief ICC Judge.

Financial List Users' Committee

3. The Financial List Users' Committee's function is to review the practice and procedure of the Chancery and the Commercial Court in the Financial List as a joint enterprise. The Chancellor is the chair. Its membership includes barristers and solicitors and representatives from legal or financial professional associations and financial institutions. Suggestions for discussion should be sent to the Secretary to the Committee, Amy Jabbal at ChancellorsPO@judiciary.uk.

Insolvency Rules Committee

4. The Insolvency Rules Committee's function is to review any changes to the Insolvency (England and Wales) Rules 2016 and to consult on those changes. The chair of the Insolvency Rules Committee is Mr Justice Trower. Proposals for changes in the Rules should be sent to the Insolvency Service at insolvency.enquiryline@insolvency.gov.uk with a copy to the clerk to Mr Justice Trower, Jas.Kahlon@justice.gov.uk and to the Chief ICC Judge.

Intellectual Property Court Users' Committee

5. The Intellectual Property Users' Committee's function is to consider any issues regarding intellectual property litigation generally. Mr Justice Meade is the chair. Membership of the committee includes members 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. Suggestions for discussion should be sent to the Secretary to the committee, Michael Burdon at Michael.burdon@simmons- simmons.com.

Intellectual Property Enterprise Court Users' Committee

6. The IPEC Users' Committee's function is to consider concerns raised by intellectual property litigators in the IPEC. His Honour Judge Hacon is the chairman. Its membership includes those in the Intellectual Property Users' Committee. Suggestions for discussion should be sent the Secretary to the committee, Luke Maunder, at luke.maunder@bristows.com.

Pension Litigation Court Users' Committee

7. The Pensions Litigation Court Users' Committee's function is to consider issues concerning pensions litigation. Mr Justice Trower is the chairman. Its membership consists of a Master (currently Chief Master Shuman), barristers and solicitors who are current members of the Association of Pension Lawyers. Any suggestions for discussion should be sent to the Secretary to the committee, David Grant KC at David.GrantKC@outertemple.com.

Court Users' Groups/Committees outside London:

8. There are several Court Users' Committees relating to chancery work based outside the Rolls Building. Each of these Committees meets twice a year (unless otherwise stated), and its membership includes judges, court staff, barristers and solicitors:

(a) **Northern and North-Eastern Circuit:** Each of the 4 principal BPC centres (Liverpool, Manchester, Leeds and Newcastle) has a Users' Group that meets at least twice a year. Each has a membership including local judges, court staff, barristers and solicitors. The Vice-Chancellor of the County Palatine of Lancaster chairs the Committees, and the Vice-Chancellor's clerk acts as secretary to each Committee. All communications should be sent to the clerk to Mr Justice Fancourt, Ahlia Rateb, at Ahlia.Rateb@justice.gov.uk.

(b) **South-Western Region:** HHJ Paul Matthews chairs the committee in Bristol (or Mr Justice Michael Green when there). All communications should be addressed to the secretary, Anne Steel at anne.steel@Justice.gov.uk.

(c) **Wales:** HHJ Jarman KC chairs the committee in Cardiff (or Mr Justice Michael Green when there). Meetings are held annually and Vanessa Kam acts as secretary. All communications should be addressed to her at vanessa.kam2@Justice.gov.uk.

(d) **Midland Region:** HHJ Richard Williams chairs the committee in Birmingham (or Mr Justice Michael Green when there). All communications should be addressed to the Clerk to HHJ Williams at clerktohhjwilliams@justice.gov.uk.

Appendix E CE-File

1. The electronic file ('CE-File') contains those documents which the court is required to hold pursuant to the Civil Procedure Rules 'CPR', whether they are documents created by the court or filed by the parties. It also contains notes, emails and letters added by the court staff and the judiciary, as did the previous paper file. All claims are now managed from the CE-File.

2. CE-File is used to start, or continue, Part 7, Part 8 and counterclaim and other additional claims and pre-action applications and also for petitions and applications commenced in the Insolvency and Companies Court List.

3. Further guidance can be found in Chapter 1 paragraphs 1.28 – 1.32 and CPR Practice Direction 51O and on the .gov.uk website.

4. All documents lodged with the court are held on CE-File, 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.

5. Other parties to proceedings are able to inspect electronically all documents on the CE-File which are available to them under CPR 5.4B once they have been granted access to the system.

6. The court file is not and is not intended to be a complete record of all documents created by the parties during the life of the claim. It is not usually necessary to CE-file disclosure or disclosure lists, or trial witness statements when exchanged and served unless the court orders otherwise.

7. The court file is not a repository for correspondence between the parties. Before corresponding with the court, other than in relation to purely administrative matters, parties should consider carefully whether an application is more appropriate. Any correspondence with the court should be copied to the other parties in any event.

8. No paper file is maintained for claims. Any 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 during this period only if scanning errors need to be corrected. They are destroyed at the end of the period.

9. The only exception is original documents that 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'

Appendix F Court Lists of the Business and Property Courts

1. The categories listed alphabetically include all of those within the Business and Property Courts ('B&PCs'). Those marked KBD are not within the Chancery Division.

2. When a case is issued in a list or sub-list its case number will first identify the list it has been issued in and then the year it has been issued before giving a 6-digit number (For example BL- 2022-000000). If a claim has been issued in one of the Business and Property Courts District Registries it will include a 3-letter abbreviation for the relevant court centre (for example MAN for Manchester and so on). This will appear immediately before the 6-digit number.

3. Each case number is unique and enables the court to identify the case quickly. You should always have it available when contacting the court by any means.

4. For each of the Chancery Division lists set out below the initials for the relevant list are in ( ) after its name.

5. The various examples of cases dealt with in each category are not exhaustive:

Admiralty Court (KBD) (AD)

6. The Admiralty Court deals with shipping and maritime disputes and with claims brought against the owner of a ship ('in personam' claims) and claims brought against the ship itself ('in rem' claims). This list also deals with cases such as collisions between ships, disputes over the transport of cargo and claims by ship-owners to limit liability for loss or damage.

Business List (BL (Ch))

7. The scope of the Chancery Business List is broad. It includes a wide range of national and international business disputes concerning a business structure (company, LLP, LP, partnership etc), sale and purchase of businesses, claims for professional negligence, claims for breach of contract and rectification as well as other equitable remedies. If a claim does not fall within any other list or sub-list it should be issued in the Business List.

8. The Business List has two sub-lists:

    (a) **Financial Services and Regulatory (FS)**
    Financial claims where the Financial Conduct Authority (FCA) is a party, claims under the Financial Services and Markets Act 2000 and claims involving regulators (other than the Pensions Regulator).

(b) **Pensions (PE)**
This List covers all claims where pensions are the subject matter of the dispute and includes claims relating to pensions trusts and claims unrelated to trusts law, such as claims for professional negligence against former advisers. Claims arising from actions taken under statutory powers, such as those of the Pensions Regulator, also come within this List, as do Pensions Ombudsman appeals.

Chancery Appeals (CH)

9. This list comprises appeals against decisions of the County Court if the decision being appealed is one where any appeal lies to the High Court, appeals against decisions of Masters, Insolvency and Companies Court Judges, B&PC District Judges and certain statutory appeals.

10. An appeal or application for permission to appeal must always be a commenced as a new file in this list, even if the underlying proceedings are in a different B&PCs list.

Commercial Court (KBD) (CL)

11. The Commercial Court deals with complex cases arising out of business disputes, both national and international, encompassing all aspects of commercial disputes, in the fields of banking and finance, shipping, insurance and reinsurance and commodities. The Court is also the principal supervisory court for London arbitration.

Circuit Commercial Court (KBD) (formerly the Mercantile Court) (LM or CC)

12. Formerly known as the Mercantile Court, it deals with commercial business disputes of all kinds apart from those which, because of their size, value or complexity, will be heard by the Commercial Court. In London it is known as the London Circuit Commercial Court (LM). Outside London it is the Circuit Commercial Court (CC) whichever B&PC District Registry a claim is issued in.

Competition List (CP)

13. This list deals with claims previously brought under Article 101 and Article 102 of the Treaty on the Functioning of the European Union ('TFEU') and claims brought under the corresponding provisions of UK domestic law contained in Chapters I and II of Part 1 of the Competition Act 1998. This includes cases that prevent, restrict or distort competition and includes cases dealing with abuse of dominant position, the imposition of unfair prices, unfair trading arrangements and breaches of competition rules.

Financial List (ChD/Commercial Court - KBD) (FL)

14. The Financial List is a specialist cross-jurisdictional list set up to address the particular business needs of parties litigating on financial matters. Disputes that are eligible for inclusion are those that principally relate to financial disputes of over £50m or equivalent, or which require particular market expertise, or raise issues of general market importance.

Insolvency and Companies List (ICL)

15. The Insolvency and Companies List comprises two sub-lists:

(a) **Insolvency (BR)**
Insolvency work includes bankruptcy petitions where a creditor is owed £50,000 or more, insolvency administration orders, winding up petitions, and applications and claims relating to individual and corporate insolvency under the Insolvency Act 1986, the Insolvency (England and Wales) Rules 2016 and related legislation.

(b) **Companies (CR)**
Companies work includes claims and applications made under the Companies Act 2006 and related legislation, including unfair prejudice petitions and other forms of shareholder dispute. Claims and applications made under the Company Directors Disqualification Act 1986 are also included in this list.

Intellectual Property List (IL)

16. Claims in the Intellectual Property List include those brought under the Trade Marks Act 1994, copyright issues, passing off, and other intellectual property claims. Large or complex intellectual property claims or patents claims valued over £500,000 are heard in Intellectual Property List or **Patents Court (HP**). Lower value simpler intellectual property claims (including patents) are issued and heard in the **Intellectual Property Enterprise Court (IPEC) (IP)**.

Interim Applications List

17. This list is a daily list of applications to be heard in the Applications Court. It is not a substantive list of the B&PCs and cases in which applications are to be heard retain their reference in a different B&PCs list.

Property, Trusts and Probate List (PT)

18. This list covers a large amount of the work of the Chancery Division. It is separate from the Business List. The property work includes all disputes about land ownership or development, commercial mortgages and leases, receivership, orders for sale to enforce charging orders and resulting and constructive trusts. The trusts work includes removal of trustees, claims against trustees, issues of construction/rectification, disputes concerning trust property and applications for approval or administration orders. The probate work includes contentious probate claims, rectification of wills, substitution or removal of Personal Representatives and cases involving the Presumption of Death Act 2013 and the Guardianship (Missing Persons) Act 2017.

Revenue List (RL)

19. This List covers claims involving major points of principle where HMRC is a party. This List does not include claims for the recovery of taxes or duties or where a taxpayer disputes liability to pay tax; such claims generally fall within the jurisdiction of the Upper Tribunal (Tax and Chancery Chamber), or otherwise within the Business List.

Technology & Construction Court (KBD) (HT)

20. The general work of the Technology and Construction Court List includes complex building and engineering disputes, environmental claims and claims by and against local authorities regarding land/building, construction and procurement disputes. The List also deals with claims brought under the Arbitration Act 1996, engineering disputes and/or application for permission to appeal and appeals in such cases.

Appendix G Titles and forms of address

1. There are a various different types of judges in the High Court and County Court with different names and different titles.

2. Some judges are addressed in different ways depending on the type of hearing they are conducting.

3. This appendix provides some helpful information about how to address judges in court and some of the more common titles.

4. If you are in any doubt about how to address the judge at a hearing you should ask the court staff, the usher or the judge's clerk or the judge at the commencement of the hearing.

High Court

5. A High Court Judge is generally known and Mr or Mrs Justice [Surname]. They should be addressed in court as My Lord or My Lady (or as your Lordship or Ladyship) as appropriate.

6. Any judge conducting a hearing in the High Court sitting as a High Court Judge or Deputy High Court Judge (whatever their title) should be addressed in court as My Lord or My Lady (or as your Lordship or Ladyship) as appropriate.

7. Insolvency and Companies Court Judges should be addressed in court as Judge.

8. Masters should be addressed in court as Judge.

Business and Property Court District Registries

9. In the Business and Property Courts District Registries a Senior Circuit Judge and Circuit Judge is known as His or Her Honour [Surname]. Recorders are known as Recorder [Surname].

10. A Senior Circuit Judge, Circuit Judge or Recorder when sitting as a judge of the High Court in one of the BPC District Registries should be addressed in court as My Lord or My Lady (or as your Lordship or Ladyship). They should be addressed as His or Her Honour or Your Honour when they sit as a judge of the County Court.

11. In the BPC District Registries hearings are also conducted by District Judges. They are known as District Judge [Surname]. District Judges should be addressed as Judge.

Appendix H Practical assistance for Litigants in Person

It is important to note that 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.

All claims issued in the Business and Property Courts are stored on an electronic file on CE-File. Advice about how to use CE-File can be found at HMCTS E-Filing service for Citizens and Professionals and in Chapter 1 and Appendix E. You are encouraged to use CE-File wherever possible.

Advice about How to apply for Help With Fees can be found on the gov.uk website.

Urgent Applications:

There are two schemes providing help with urgent applications in either the Judges' Applications List or the winding up list. For information about local schemes that may be available in the B&PC District Registries or other courts follow the links in Appendix C.

The CLIPS scheme: help with applications in the Judges' Applications List

'CLIPS' is the acronym of the Chancery Bar Litigants In Person Support scheme. Under the scheme, barristers provide free legal assistance on the day to litigants in person appearing in the Judges' Applications List, where HCJs typically hear applications for an urgent interim remedy such as an injunction or other order made in or before a claim is issued. The scheme is run by the Chancery Bar Association in conjunction with the RCJ Advice Bureau and Advocate and is available to any litigant in person party to an application within the Judges' Applications List without any means testing.

Under the scheme one or two barrister volunteers are available each applications day during the legal term (and in the long vacation on applications days) from 10am. Initially they will be outside Court 10 in the Rolls Building to meet a litigant in person; at 10.30 they will go into court and the HCJ 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. If the barrister is not needed in court they will return to their place of work at about 11am but will be contactable by telephone up to 4.30pm.

If hearings in the Judges' Applications List are being heard remotely, there will generally be one barrister volunteer available remotely between 10am and 4.30pm on the day of

volunteering. In such cases, the litigant in person will contact the barrister volunteer in private, by email or telephone as advised by the court.

Company Insolvency Pro Bono Scheme

The City Law School's Company Insolvency Pro Bono Scheme (CO.IN) was set up in 2015 to provide free legal advice and representation to assist litigants in person (including a company or corporation that is not represented by a lawyer) facing corporate insolvency in the winding up court.

CO.IN can assist with the following:

- Advice on the law and procedure in the winding up court
- How to respond to a winding up petition
- Representation before the winding up court
- How to apply for a validation order, rescission of or an appeal against a winding up order

The CO.IN scheme runs on Wednesday during term time from 10am in consultation room 17 on the 2nd floor of the Rolls Building, where a litigant in person will be able to speak to the scheme's volunteers. Litigants in person can also contact CO.IN at companyinsolvency@city.ac.uk.

Other Assistance

Further help and advice is available to unrepresented parties from a number of sources both online and in person. The list below is non-exhaustive:

1. *Citizen's Advice Service.* There is no Citizen's Advice Service ('CAS') in the Rolls Building, but there is an RCJ Advice Service located off the main hall in the Royal Courts of Justice, London. CAS is run by lawyers to deliver free legal advice to people who cannot afford a solicitor and need assistance with preparing or dealing with a court case. Currently appointments are being conducted over the telephone on 0203-475-4373; please see https://www.rcjadvice.org.uk/ for further information. You can also find a local CAS on https://www.citizensadvice.org.uk/.

2. *Advicenow.* Advicenow is a not-for-profit, independent website providing accurate and practical information on rights and the law of England and Wales. Advicenow also has links to organisations who can offer information, advice and support to help everyday legal problems; Advicenow also provides links to a wide range of materials on law and procedure that can be found here: www.advicenow.org.uk.

3. Litigants in person who may be eligible for legal aid can find information about the Civil Legal Advice (CLA) on https://www.gov.uk/civil-legal-advice. The CLA can be contacted on 0345 345 4345.

4. *Support Through Court* (formerly the Personal Support Unit) provides emotional and practical support to litigants throughout the court process, ensuring those facing court alone can represent themselves and fully take part in court. It is based in the several courts around the country and appointments can be made for face-to-face appointments or appointments over the telephone on 03000 810 006. For further information, see https://www.supportthroughcourt.org/

5. *Advocate* (formerly the Bar Pro Bono Unit) provides free legal assistance from volunteer members of the bar for those who are unable to obtain legal aid and cannot afford to pay for legal advice and support. For more information go to Advocate: Finding free legal help from barristers (weareadvocate.org.uk).

6. The *Direct Access Portal* provides direct contact with barristers who are qualified to work under the direct access scheme. This is **not** a free legal advice scheme but enables litigants to instruct a barrister directly to assist them for example with a court hearing. Further details can be found through the Bar Council.

7. Further sources of advice for litigants in person can be found on the judiciary.uk website.

Appendix I [Deliberately blank]

Appendix J McKenzie Friend Notice

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

MCKENZIE FRIEND

To be completed by the Claimant/Applicant or the Defendant/Respondent and their proposed McKenzie Friend

Please fill in the form and hand it to the court usher before the hearing starts

By completing this form you are letting the Judge know that you wish to have a McKenzie Friend provide you with reasonable assistance. The Judge will consider this at the start of the hearing.

Claim Number: _____

Parties:_____

Claimant:_____

Defendant:_____

Applicant:_____

Respondent:_____

Other:_____

I am the (please tick any which apply)

Claimant:

Defendant:

Applicant:

Respondent:

Other:

(if you have ticked Other please say who you are)

I wish to have a McKenzie Friend with me at the hearing. I understand that my McKenzie Friend:

1. may provide moral support, take notes, help with case papers and quietly give advice on any aspect of the conduct of the case;

2. may not address the court, make oral submissions or examine witnesses unless the Judge gives permission to do so.

The McKenzie Friend is (please tick):

3. A relative (please give relationship) _____

4. A friend/neighbour/colleague/other (please specify) _____

5. A free advice agency worker (name of agency) _____

6. A person I am paying to help in this case (name of agency, organisation or association the person belongs to) _____

Name and Address of McKenzie Friend (use business address if 5) or 6) above has been ticked)

_____

_____

_____

The McKenzie Friend must complete below:

7. Have you read the Practice Guidance issued on the 12 July 2010 by the Head of Civil Justice? It is available online at **McKenzie Friends - Courts and Tribunals Judiciary** Yes/No

8. Do you agree to comply with it? Yes/No

9. Do you have a legal qualification? Yes/No

   If yes, please specify _____

10. Do you have any interest in the outcome of this case? Yes/No

11. Have you previously acted as a McKenzie Friend for anyone else? Yes/No

12. Do you confirm that you understand the role of a McKenzie Friend and the duty of confidentiality? Yes/No

The Judge may ask you questions about your answers to satisfy themself that your answers are accurate and when considering whether to give permission for you to assist the Claimant/Applicant or Defendant/Respondent at this hearing.

_____

A new form must be completed for each hearing. The form will be retained electronically by the court.

Signature of Claimant/Applicant or
Defendant /Respondent _____

Signature of McKenzie Friend _____

Date: _____

Appendix K Draft ENE order

Upon the parties requesting at a CMC the Hon Mr(s) Justice / Master/ Insolvency and Companies Court Judge ("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/Master which shall be lodged by 4pm on [date].
3. The parties shall attend before the Judge/Master [in private] at 10.30 on [date].
4. The parties estimate the judicial pre-reading to be [x] hours.
5. The Judge/Master 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/Master. No non-party shall be entitled to obtain a transcript of the hearing.
8. The Judge/Master 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.

Appendix L Draft Ch FDR Order

Upon the parties requesting that the Master / Insolvency and Companies Court Judge ("the Judge") should conduct an FDR hearing

IT IS ORDERED THAT:

1. The claim shall be listed before the Master/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 estimated 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.

Appendix M Form of freezing order[1]

Adapted for use in the Chancery Division

Claim No: [ ]

Name of Court[2]

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS [OF ENGLAND AND WALES *or* IN [*insert name of regional Business and Property Courts District Registry, e.g. Birmingham / Manchester*]]

[*insert name of list, e.g. Business List / Competition List / Financial List / Insolvency and Companies List / Intellectual Property List / Property, Trusts and Probate List / Revenue List*] (ChD)

or

IN THE HIGH COURT OF JUSTICE

IN THE [*insert name of Chancery District Registry*] DISTRICT REGISTRY

CHANCERY DIVISION]

or

IN THE COUNTY COURT AT [*insert*]

CHANCERY BUSINESS/BUSINESS AND PROPERTY LIST

*** Name of Judge and date of order***

Before [*insert the level and name of the Judge who made the order, e.g. The Honourable Mr/Mrs Justice xxxxxx His / Her Honour Judge xxxxxx*][3] [(sitting in private)]

---

1 This form of order assumes that the freezing order is made on an application which has been made without notice to the Respondent(s) (for guidance on making without notice applications in the Chancery Division see: CPR rule 25.3; CPR PD 25A and Chapter 15 paragraphs 15.42-15.61 of the Chancery Guide). Where a freezing order is continued by the Judge at a return date or is made at a hearing at which the Respondent(s) is/are present and on notice the order will need to be suitably adapted.

2 Freezing orders may be granted in both the High Court and the County Court, although see note [3] below in relation to the types of Judge in each court who may make a freezing order.

3 There are restrictions on the judges who may grant a freezing order. In the High Court a freezing order may only be made by a Judge (not including Insolvency and Companies Court Judges): Practice Direction 2B, paragraph 2 and Practice Direction – Insolvency Proceedings, paragraph 3.2(2). In the County Court a freezing order may only be made by a Circuit Judge authorised for the purpose by the Master of the Rolls or the Deputy Head of Civil Justice: Practice Direction 2B, paragraph 8.4.

[*insert date of order*]

BETWEEN:

[*insert name of Applicant(s)*]

- and -

[*insert name(s) of Respondent(s)*][4]

Applicant(s)

Respondent(s)

PENAL NOTICE[5]

IF YOU [ ][6] DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

THIS ORDER

1. This is a Freezing Injunction made against [ ][7] (**"the Respondent"**) on [ ] by Mrs/Mr Justice[8] [ ] on the application of [ ] (**"the Applicant"**). The Judge read the Affidavits listed in Schedule A and accepted the undertakings set out in Schedule B at the end of this Order.

2. This order was made at a hearing without notice to the Respondent [at which the Court was satisfied that it was in the interests of justice to sit in private].[Pursuant to CPR rule 39.2(5), in the interests of justice this order is not to be published on the judiciary website.][9] The Respondent has a right to apply to the Court to vary or discharge the order— see paragraph 13 below.

---

4 It is possible to make a single freezing order against more than one respondent, and the wording of the standard order caters for this. In general, however, the better practice is for a separate order to be made in relation to each respondent, particularly if any of the wording in the order is intended to cater specifically for, or apply specifically to, a particular respondent.

5 This wording may need to be suitably adapted where the Respondent is a corporate entity, e.g. to remove the reference to imprisonment of the entity and to include reference to any director to whom notice of the freezing order is to be given and the potential consequences to that director if the corporate entity disobeys the order.

6 Insert name of Respondent(s).

7 Insert name of Respondent(s).

8 If made by a suitably authorised Circuit Judge, the correct title is "His/Her Honour Judge".

9 The Court will sit in private where satisfied under CPR rule 39.2 that it is necessary to do so. In such circumstances, it may also be necessary to dispense with publication of the order on the Judiciary website.

3. There will be a further hearing in respect of this order on [] (**"the Return Date"**).[10]

4. If there is more than one Respondent: -

(1) unless otherwise stated, references in this order to "the Respondent" mean both or all of them; and

(2) this order is effective against any Respondent on whom it is served or who is given notice of it.

FREEZING INJUNCTION

[For an injunction limited to assets in England and Wales]

5. Until after the Return Date or further order of the Court, the Respondent must not remove from England and Wales or in any way dispose of, deal with or diminish the value of any of its, her or his assets which are in England and Wales up to the value of £ [ ].

[For a worldwide injunction]

6. Until the Return Date or further order of the Court, the Respondent must not:-

(1) remove from England and Wales any of its, her or his assets which are in England and Wales up to the value of £[ ]; or

(2) in any way dispose of, deal with or diminish the value of any of its, her or his assets whether they are in or outside England and Wales up to the same value.

[For either form of injunction]

7. Paragraph 5 applies to all the Respondent's assets whether or not they are in its, her or his own name, whether they are solely or jointly owned [and whether the Respondent is interested in them legally, beneficially or otherwise[11]]. For the purpose of this order the Respondent's assets include any asset which it, she or he has the power, directly or indirectly, to dispose of or deal with as if it were its, her or his own. The Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with its, her or his direct or indirect instructions.

8. [This prohibition includes the following assets in particular –

(1) the property known as [title/address] or the net sale money after payment of any mortgages if it has been sold;

(2) the property and assets of the Respondent's business [known as [name]] [carried on

[10] The timing of the return date is in the discretion of the Judge granting the Order but will usually be either 7 or 14 days after the freezing order was first granted.

[11] Whether this wider wording (which could capture assets held by a respondent on trust for someone else) should be included in relation to the Order and/or the provision of information will be considered on a case by case basis and, if sought, must be justified. Vested beneficial interests under a trust may appropriately be frozen but should, if possible, be identified specifically under para 7 below.

at [address]] or the sale money if any of them have been sold; and

(3) any money standing to the credit of any bank account including the amount of any cheque drawn on such account which has not been cleared; and

(4) the Respondent's beneficial interest in [property] held under a trust [give details].][12]

[For an injunction limited to assets in England and Wales]

9. If the total value free of charges or other securities (**"unencumbered value"**) of the Respondent's assets in England and Wales exceeds £[ ], the Respondent may remove any of those assets from England and Wales or may dispose of or deal with them so long as the total unencumbered value of its, her or his assets still in England and Wales remains above £[ ].

[For a worldwide injunction]

10.

(1) If the total value free of charges or other securities (**"unencumbered value"**) of the Respondent's assets in England and Wales exceeds £[ ], the Respondent may remove any of those assets from England and Wales or may dispose of or deal with them so long as the total unencumbered value of the Respondent's assets still in England and Wales remains above £[ ].

(2) If the total unencumbered value of the Respondent's assets in England and Wales does not exceed £[ ], the Respondent must not remove any of those assets from England and Wales and must not dispose of or deal with any of them. If the Respondent has other assets outside England and Wales, she, he or it may dispose of or deal with those assets outside England and Wales so long as the total unencumbered value of all its, her or his assets whether in or outside England and Wales remains above £[ ].

PROVISION OF INFORMATION

11.

(1) Unless paragraph (2) applies, the Respondent must [within [ ] hours/days] of service of this order][13] and to the best of his ability inform the Applicant's solicitors of all its, her or his assets [in England and Wales / worldwide][14] [exceeding £

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12 The standard form of injunction at paragraph 5 will apply to the Respondent's assets whether or not they are individually identified in the order. It may be desirable, however, to list for the avoidance of doubt specific assets of which the Applicant is aware at the time the order is made. Some example wording for different types of assets has been included here. Note that the reference to the "Respondent's business" in paragraph 7.2 is intended to refer to a business which is that of the Respondent personally but carried on under a trading or business name. It is neither designed nor intended to cover the business of a company with separate personality which is owned by the Respondent (where the Respondent's property and assets comprise its/her/his shareholding or debt in the company rather than the property and assets of the company.)

13 The time period in which a Respondent is required to provide this information should be a realistic one having regard to the nature and volume of information which may be involved.

14 Delete as appropriate.

in value][15] whether in its, her or his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.

(2) If the provision of any of this information is likely to incriminate the Respondent, she or he may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information is contempt of Court and may render the Respondent liable to be imprisoned, fined or have its, her or his assets seized.

12. Within [ ] working days after being served with this order, the Respondent must swear and serve on the Applicant's solicitors an affidavit setting out the above information.[16]

EXCEPTIONS TO THS ORDER

13.

(1) This order does not prohibit the Respondent from spending £[ ] a week towards its, her or his ordinary living expenses and also £[ ] [or a reasonable sum] on legal advice and representation. [But before spending any money the Respondent must tell the Applicant's legal representatives where the money is to come from.[17]]

(2) This order does not prohibit the Respondent from dealing with or disposing of any of its, her or his assets in the ordinary and proper course of business, [but before doing so the Respondent must tell the Applicant's legal representatives[18]].

(3) The Respondent may agree with the Applicant's legal representatives that the above spending limits should be increased or that this order should be varied in any other respect, but any agreement must be in writing.

(4) The order will cease to have effect if the Respondent—

(a) provides security by paying the sum of £[ ] into Court, to be held to the order of the Court; or

(b) makes provision for security in that sum by another method agreed with the Applicant's legal representatives.

COSTS

14. The costs of this application are reserved to the Judge hearing the application on the Return Date.

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15 Careful consideration must be given to inserting a realistic lower limit below which value assets need not be disclosed.

16 In an appropriate case paragraphs 9 and 10 may be amalgamated so as to require only one disclosure exercise, verified by Affidavit.

17 The proviso requiring advance notice should only be included in a without notice order where really necessary. It should not be included otherwise.

18 The proviso requiring advance notice should only be included in a without notice order where really necessary. It should not be included otherwise.

VARIATION OR DISCHARGE OF THIS ORDER

15. Anyone served with or notified of this order may apply to the Court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the Applicant's solicitors. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Applicant's solicitors in advance.

INTERPRETATION OF THIS ORDER

16. A Respondent who is an individual who is ordered not to do something must not do it herself or himself or in any other way. She or he must not do it through others acting on her or his behalf or on her or his instructions or with her or his encouragement.

17. A Respondent which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

PARTIES OTHER THAN THE APPLICANT AND RESPONDENT

18. Effect of this order
It is a contempt of Court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized

19. Set off by banks
This injunction does not prevent any bank from exercising any right of set of it may have in respect of any facility which it gave to the respondent before it was notified of this order

20. Withdrawals by the Respondent
No bank need enquire as to the application or proposed application of any money withdrawn by the Respondent if the withdrawal appears to be permitted by this order.

[For a worldwide injunction]

21. Persons outside England and Wales

(1) Except as provided in paragraph (2) below, the terms of this order do not affect or concern anyone outside the jurisdiction of this Court.

(2) The terms of this order will affect the following persons in a country or state outside the jurisdiction of this Court—

(a) the Respondent or its officer or its, her or his agent appointed by power of attorney;

(b) any person who –

(i) is subject to the jurisdiction of this Court;

(ii) has been given written notice of this order at its, her or his residence or place of business within the jurisdiction of this Court; and

(iii) is able to prevent acts or omissions outside the jurisdiction of this Court which constitute or assist in a breach of the terms of this order; and

(c) any other person, only to the extent that this order is declared enforceable by or is enforced by a Court in that country or state.

[For a worldwide injunction]

22. Assets located outside England and Wales

Nothing in this order shall, in respect of assets located outside England and Wales, prevent any third party from complying with:-

(1) what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and the Respondent; and

(2) any orders of the Courts of that country or state, provided that reasonable notice of any application for such an order is given to the Applicant's solicitors.

COMMUNICATIONS WITH THE COURT

All communications to the court about this order should be sent to –

[Chancery Judges' Listing, Ground Floor, The Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL quoting the case number. The telephone number is 020 7947 6690.]

Or

[*Insert address and telephone number of appropriate Business and Property Courts District Registry, Chancery District Registry or County Court*]

The offices are generally open between 10 a.m. and 4.30 p.m. Monday to Friday.

SCHEDULE A – AFFIDAVITS

The Applicant relied on the following affidavit(s)[19]:

(1) [ ]

(2) [ ]

[19] For each affidavit state the name of person who swore it, the number of the affidavit (e.g. First, Second, Third etc), the date on which it was sworn and the name of the applicant on whose behalf it was filed.

SCHEDULE B – UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

(1) If the Court later finds that this order has caused loss to the Respondent, and decides that the Respondent should be compensated for that loss, the Applicant will comply with any order the Court may make.

(2) [The Applicant will-

(a) on or before [date] cause a written guarantee in a form satisfactory to the Court in the sum of £ to be issued from a bank with a place of business within England or Wales, in respect of any order the Court may make pursuant to paragraph (1) above [and (7) below]; and

(b) immediately upon issue of the guarantee, cause a copy of it to be served on the Respondent.][20]

(3) [As soon as practicable the Applicant will issue and serve a claim form [and/or application notice] [in the form of the draft produced to the Court] [claiming the appropriate relief] and pay the appropriate fee.][21]

(4) The Applicant will [swear and file an affidavit] [cause an affidavit to be sworn and filed] [substantially in the terms of the draft affidavit produced to the Court] [confirming the substance of what was said to the Court by the Applicant's advocate].[22]

(5) The Applicant will serve upon the Respondent [together with this order] [as soon as practicable]-

(a) copies of the affidavits and exhibits containing the evidence relied upon by the Applicant, and any other documents provided to the Court on the making of the application;

(b) the claim form;

(c) an application notice for continuation of the order; and

(d) a transcript of the hearing on [ ] (if available) or otherwise a full note of the hearing.

(6) [Anyone notified of this order will be given a copy of it by the Applicant's legal representatives.]

(7) The Applicant will pay the reasonable costs of anyone other than the Respondent which have been incurred as a result of this order including the costs of finding out whether that

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20 This paragraph need only be included where fortification of the undertaking given in paragraph (1) is to be provided.

21 This paragraph is only required where, at the time the order is made, the Applicant has not yet issued and/or served a claim form.

22 This paragraph is only required where, owing to reasons of urgency, an Applicant was unable to produce affidavit evidence to the Court at the hearing of the application and relied instead upon either a draft affidavit or upon submissions made by the Applicant's advocate at the hearing.

person holds any of the Respondent's assets and if the Court later finds that this order has caused such person loss, and decides that such person should be compensated for that loss, the Applicant will comply with any order the Court may make.

(8) If this order ceases to have effect (for example, if the Respondent provides security or the Applicant does not provide a bank guarantee as provided for above) the Applicant will immediately take all reasonable steps to inform in writing anyone to whom he has given notice of this order, or who she, he or it has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.

(9) [The Applicant will not without the permission of the Court use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in England and Wales or in any other jurisdiction, other than this claim.]

(10) [The Applicant will not without the permission of the Court seek to enforce this order in any country outside England and Wales [or seek an order of a similar nature including orders conferring a charge or other security against the Respondent or the Respondent's assets].]

NAME AND ADDRESS OF THE APPLICANT'S LEGAL REPRESENTATIVES:

The Applicant's legal representatives are: -

[*Name, address, reference, fax and telephone numbers both in and out of office hours and e-mail*]

Appendix N Form of delivery up order[23]

Adapted for use in the Chancery Division

Claim No: [ ]

Name of Court

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS [OF ENGLAND AND WALES *or* IN [*insert name of Business and Property Courts District Registry, e.g. Birmingham / Manchester*]]

[*insert name of list, e.g. Business List / Competition List / Financial List / Insolvency and Companies List / Intellectual Property List / Property, Trusts and Probate List / Revenue List*] (ChD)

or

IN THE HIGH COURT OF JUSTICE

IN THE [*insert name of Chancery District Registry*] DISTRICT REGISTRY

CHANCERY DIVISION]

or

IN THE COUNTY COURT AT [*insert*]

CHANCERY BUSINESS/BUSINESS AND PROPERTY LIST

*** Name of Judge and date of order***

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[23] General Notes:

(i) 'Delivery up' covers a wide range of relief which the Court can grant to an applicant on an interim basis, in relation to specific property or information (see e.g. the types of orders referred to in CPR rules 25.1(c), (d), (i) and (j)). Each order will therefore need to be tailored to the particular relief being sought by the applicant. The example provided here may be suitable for the delivery up of specific materials to be held pending trial or further order.

(ii) Although the forms of relief set out under CPR rules 25.1(c), (d), (i) and (j) are not termed as an injunctions, insofar as they require a Respondent to carry out mandatory action or actions it will often be appropriate to include within any order made the provisions and safeguards that are commonly found within injunctions (as to which see CPR PD 25A). In particular, paragraph 8 of practice direction 25A provides that where it is likely that an order for delivery up or preservation of property will be executed at the premises of the respondent or a third party, the court shall consider whether to include in the order for the benefit or protection of the parties similar provisions to those specified in Practice Direction 25A relation to injunctions and search orders.

Before [*insert the level and name of the Judge who made the order, e.g. The Honourable Mr/Mrs Justice xxxxxx His or Her Honour Judge xxxxxx*]

[*insert date of order*]

BETWEEN:

[*insert name of Applicant(s)*]

Applicant(s)

- and –

[*insert name(s) of Respondent(s)*]

Respondent(s)

PENAL NOTICE[24]

IF YOU [ ][25] DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

ABOUT THIS ORDER

1. This is an order for delivery up made against [ ] (**"the Respondent"**) which was made by [ ][26] on the application of [ ] (**"the Applicant"**). The Judge read the evidence listed in Schedule A and accepted the undertakings from the Applicant set out in Schedule B.

[*If the order was made on notice*]

2. [The Application was attended by [ ] for the Applicant and

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24 This wording may need to be suitably adapted where the Respondent is a corporate entity, e.g. to remove the reference to imprisonment of the entity and/or to include reference to any director to whom notice of the order is to be given and the potential consequences to that director if the corporate entity disobeys the order.

25 Insert name of Respondent(s).

26 Insert the name and appropriate title of the Judge who made the order.

[ ] for the Respondent.]

[*If the order was made without notice*]

3. This order was made at a hearing without notice to the Respondent. As a result:

   (1) The Respondent has a right to apply to the Court to vary or discharge the order—see paragraph [6] below.

   (2) There will be a further hearing in respect of this order on [ ] (**"the Return Date"**).[27]

4. If there is more than one Respondent: -

   (1) unless otherwise stated, references in this order to "the Respondent" mean both or all of them; and

   (2) this order is effective against any Respondent on whom it is served or who is given notice of it.

THE DELIVERY UP ORDER

5. The Respondent must [by no later than [ ][28] *or* within [24 hours] of service of this Order] deliver up the materials identified in Schedule C (**"the Materials"**) to [ ][29] pending the trial of this action or until further order.

VARIATION OR DISCHARGE OF THIS ORDER

6. The Respondent may agree with the Applicant's solicitors that this Order should be varied, but any agreement must be in writing and filed at the court.

7. The Respondent [or any third party affected by this Order] may apply to the Court at any time to vary or discharge this Order, but anyone wishing to do so must first inform the Applicant's solicitors in writing.

COSTS OF THE APPLICATION AND COMPLIANCE WITH THE ORDER

8. [ ].[30]

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27 The timing of the return date is in the discretion of the Judge granting the Order but will usually be either 7 or 14 days after the freezing order was first granted.

28 Insert the time and date by which the delivery up must take place.

29 Insert the person to whom the Materials must be delivered up, e.g. the Applicant's solicitors, the Applicant (if not legally represented), or a suitable third party (where that third party – for example a bank or warehousing agent – has so agreed to act).

30 This paragraph of the draft should set out the order the Applicant is asking the Court to make in respect of the costs of the application and, if different, the costs of the Respondent and/any third parties in complying with the order.

SERVICE OF THIS ORDER

9. This Order shall be served by the [Applicant(s)] on the [Respondent(s)].[31]

The Court has provided a sealed copy of this order to the serving party:

[*insert name, postal address and email address of the serving party or, if they are legally represented, the name, postal address and email address of their solicitors*].

SCHEDULE A – AFFIDAVITS

The Court [read / considered] on the following evidence(s)[32]:

(1) [ ]

(2) [ ]

SCHEDULE B – UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

(1) If the Court later finds that this order has caused loss to the Respondent, and decides that the Respondent should be compensated for that loss, the Applicant will comply with any order the Court may make.

(2) [The Applicant will-

(a) on or before [date] cause a written guarantee in a form satisfactory to the Court in the sum of £ to be issued from a bank with a place of business within England or Wales, in respect of any order the Court may make pursuant to paragraph (1) above; and

(b) immediately upon issue of the guarantee, cause a copy of it to be served on the Respondent.][33]

(3) [Upon their delivery up, the Applicant will preserve [the Materials / a copy of the Materials] in a form capable of being returned to the Respondent if the Court should later decide they should be returned to the Respondent.]

(4) [As soon as practicable the Applicant will issue and serve a claim form [and/or

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31 This provision, and the provision under the heading "Service of this order", should be included unless – exceptionally in the High Court – the Court itself is to serve the order.

32 For each piece of evidence (e.g. witness statement or affidavit) state the name of person who made it, the number of the statement / affidavit (e.g. First, Second, Third etc), the date on which it was made/sworn and the name of the party on whose behalf it was prepared.

33 This paragraph need only be included where fortification of the undertaking given in paragraph (1) is to be provided.

application notice] [in the form of the draft produced to the Court] [claiming the appropriate relief] and pay the appropriate fee.][34]

(5) [The Applicant will [make and file a witness statement] [cause a witness statement to be made and filed] [substantially in the terms of the draft witness statement produced to the Court] [confirming the substance of what was said to the Court by the Applicant's advocate].[35]]

(6) [The Applicant will serve upon the Respondent together with this order as soon as practicable-

(a) copies of the evidence and exhibits containing the evidence relied upon by the Applicant, and any other documents provided to the Court on the making of the application;

(b) the claim form;

(c) an application notice for continuation of the order; and

(d) a transcript of the hearing on [ ] (if available) or otherwise a full note of the hearing.]

SCHEDULE C – THE MATERIALS

For the purposes of paragraph [4] of this Order, "the Materials" to be delivered up are the following:[36]

(1) [ ]

NAME AND ADDRESS OF THE APPLICANT'S LEGAL REPRESENTATIVES:

The Applicant's legal representatives are: -

[*Name, address, reference, fax and telephone numbers both in and out of office hours and e-mail*]

34 This paragraph is only required where, at the time the order is made, the Applicant has not yet issued and/or served a claim form.

35 This paragraph is only required where, owing to reasons of urgency, an Applicant was unable to produce written evidence to the Court at the hearing of the application and relied instead upon either a draft written evidence or upon submissions made by the Applicant's advocate at the hearing.

36 This schedule should identify the Materials which the Respondent is obliged to deliver up, and should do so with sufficient detail and precision so that the Respondent is not left in any doubt as to what it, she or him is obliged to deliver up.

Appendix O [Deliberately blank]

Appendix P Form of non-disclosure order[37]

Adapted for use in the Chancery Division

Claim No: [ ]

Name of Court

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS [OF ENGLAND AND WALES *or* IN [*insert name of regional Business and Property Courts District Registry, e.g. Birmingham Manchester*]]

[*insert name of list, e.g. Business List / Competition List / Financial List / Insolvency and Companies List / Intellectual Property List / Property, Trusts and Probate List / Revenue List*] (ChD)

or

IN THE HIGH COURT OF JUSTICE

IN THE [*insert name of Chancery District Registry*] DISTRICT REGISTRY

CHANCERY DIVISION]

or

IN THE COUNTY COURT AT [*insert*]

CHANCERY BUSINESS/BUSINESS AND PROPERTY LIST

*** Name of Judge and date of order***

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37 This form of order is adapted from the model order supplied in Practice Direction (Interim Non-disclosure Orders) [2012] 1 WLR 1003, to which attention is drawn. See also Practice Guidance: Interim Non-Disclosure Orders. It contains detailed commentary on the model order. Further adaptation is likely to be necessary for any given case.

Before [*insert the level and name of the Judge who made the order, e.g. His/Her Honour Judge xxxxxx or Master xxxxxx] sitting in private*

[*insert date of order*]

BETWEEN:

[*insert anonymised name of Claimant(s)*][38]

Intended Claimant/Applicant(s)

- and -

(1) [*insert anonymised name(s) of Defendant(s)*]
(2) [ ] NEWSPAPERS LIMITED
(3) THE PERSON OR PERSONS UNKNOWN
who has or have appropriated, obtained and/or offered or intend to offer for sale and/or publication the material referred to in Confidential Schedule 2 to this Order

Intended Defendant/Respondent(s)

PENAL NOTICE

IF YOU THE RESPONDENT DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED (IN THE CASE OF [THE FIRST AND THIRD DEFENDANTS]) OR FINED OR HAVE YOUR ASSETS SEIZED.

ANY PERSON WHO KNOWS OF THIS ORDER AND DISOBEYS THIS ORDER OR DOES ANYTHING WHICH HELPS OR PERMITS ANY PERSON TO WHOM THIS ORDER APPLIES TO BREACH THE TERMS OF THIS ORDER MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

[38] Anonymized names, typically in letter form (e.g., “DEF” or “XYZ”). “A” or “X” etc. should be avoided.

NOTICE TO ANYONE WHO KNOWS OF THIS ORDER

You should read the terms of the Order and the Practice Guidance (Interim Non-disclosure Orders [2012] 1 WLR 1003 very carefully. You are advised to consult a solicitor as soon as possible. This Order prohibits you from doing the acts set out in Paragraphs 6 [, 7] and 10 of the Order and obliges you to do the acts set out in Paragraphs 8, 9, and 11 of the Order. You have the right to ask the Court to vary or discharge the Order. If you disobey this Order you may be found guilty of contempt of court and you may be sent to prison or fined or your assets may be seized.

ORDER

1. This is an Injunction [granted at a hearing at which the Court was satisfied that it was in the interests of justice to sit in private]. The injunction, with other orders as set out below, was made against the Defendant[s] on [insert date] by the Judge identified above ("the Judge") on the application ("the Application") of the Claimant[s]. The Judge:

   (a) read the witness statements referred to in Schedule A at the end of this Order, as well as the witness statements referred to in Confidential Schedule 1 [or "was given information orally by Counsel on behalf of the Claimant[s]"];

   (b) accepted the undertakings set out in Schedule B at the end of this Order; and

   (c) considered the provisions of the Human Rights Act 1998 ("HRA"), section 12. 2.

2. This Order was made at a hearing without notice to those affected by it, the Court having considered section 12(2) HRA and being satisfied:

   (a) that the Claimant[s] has taken all practicable steps to notify persons affected; and/or

   (b) that there are compelling reasons for notice not being given, namely: [set out in full the Court's reasons for making the order without notice]. The Defendant[s] (and anyone served with or notified of this Order) have a right to apply to the Court to vary or discharge the Order (or so much of it as affects them): see clause 17 below.]

[*ONLY TO BE GRANTED IN AN EXCEPTIONAL CASE WHERE ANONYMITY IS STRICTLY NECESSARY*]

ANONYMITY

3. Pursuant to section 6 HRA, and/or CPR 39.2(4) the Judge, being satisfied that it is strictly necessary, ordered that:

   (a) the Claimant[s] be permitted to issue these proceedings naming the Claimant[s] as ["DEF"] and giving an address c/o the Claimant[s]'s solicitors;

   (b) the Claimant[s] be permitted to issue these proceedings naming the [First] Defendant as ["XYZ"] [and the Third Defendant as "Person or Persons Unknown" and, once it is

known to the Claimant, notifying the Defendant's home address by filing the same in a sealed letter which must remain sealed and held with the Court office subject only to the further order of a Judge or the Chief Chancery Master];

(c) there be substituted for all purposes in these proceedings in place of references to the Claimant[s] by name, and whether orally or in writing, references to the letters ["DEF"]; and

(d) if necessary, there be substituted for all purposes in these proceedings in place of references to the Defendant[s] by name once identified and whether orally or in writing, references to the letters ["XYZ"].

[*ONLY TO BE GRANTED IN AN EXCEPTIONAL CASE WHERE A RESTRICTION ON ACCESS TO DOCUMENTS IS STRICTLY NECESSARY*]

ACCESS TO DOCUMENTS

4. Upon the Judge being satisfied that it is strictly necessary:

(a) (i) no copies of the statements of case; and (ii) no copies of the witness statements and the applications, will be provided to a non-party without further order of the Court.

(b) Any non-party other than a person notified or served with this Order seeking access to, or copies of the abovementioned documents, must make an application to the Court, proper notice of which must be given to the other parties.

SERVICE OF CLAIM FORM WHERE DEFENDANT NOT KNOWN OR WHEREABOUTS NOT KNOWN

5.

(a) The Claim Form should be served as soon as reasonably practicable and in any event by [ ] at the latest, save that there shall be liberty for the Claimant[s] to apply to the Court in the event that an extension is necessary; and

(b) Any such application referred to in paragraph 5(a) must be supported by a witness statement. Such application may be made by letter, the Court having dispensed with the need for an application notice.

INJUNCTION

6. Until [ ] (the return date) / the trial of this claim or further Order of the Court, the Defendant[s] must not:

(a) use, publish or communicate or disclose to any other person (other than (i) by way of disclosure to legal advisers instructed in relation to these proceedings ("the Defendant[s]'s legal advisers") for the purpose of obtaining legal advice in relation to these proceedings or (ii) for the purpose of carrying this Order into effect) all or any part of the information referred to in Confidential Schedule 2 to this Order (the Information);

(b) publish any information which is liable to or might identify the Claimant[s] as a party to the proceedings and/or as the subject of the Information or which otherwise

contains material (including but not limited to the profession [or age or nationality of the Claimant[s]]) which is liable to, or might lead to, the Claimant[s]'s identification in any such respect, provided that nothing in this Order shall prevent the publication, disclosure or communication of any information which is contained in [this Order other than in the Confidential Schedules] or in the public judgments of the Court in this action given on [insert date] .

[*ONLY TO BE GRANTED IN AN EXCEPTIONAL CASE WHERE A REPORTING RESTRICTION IS STRICTLY NECESSARY*]

REPORTING RESTRICTION

7. Until service of the Order/ the return date/ [*date*] the Defendant[s] must not use, publish or communicate or disclose to any other person the fact or existence of this Order or these proceedings and the Claimant's interest in them, other than:

(a) by way of disclosure to the Defendant[s]'s legal advisers for the purpose of obtaining legal advice in relation to these proceedings; or

(b) for the purpose of carrying this Order into effect.

INFORMATION TO BE DISCLOSED

8. The Defendant[s] shall within [24] hours of service of this Order disclose to the Claimant[s]'s solicitors the following:

(a) the identity of each and every journalist, press or media organisation, press agent or publicist or any other third party with a view to publication in the press or media, to whom the Defendants have disclosed all or any part of the Information [since [insert date]]; and

(b) the date upon which such disclosure took place and the nature of the information disclosed.

9. The Defendant[s] shall confirm the information supplied in paragraph 8 above in a witness statement containing a statement of truth within 7 days of complying with paragraph 8 and serve the same on the Claimant[s]'s solicitors and the other parties and file it at court.

PROTECTION OF HEARING PAPERS

10. The Defendant[s] [, and any third party given advance notice of the Application,] must not publish or communicate or disclose or copy or cause to be published or communicated or disclosed or copied any witness statements and any exhibits thereto and information contained therein that are made, or may subsequently be made, in support of the Application or the Claimant[s]'s solicitors' notes of the hearing of the Application (the Hearing Papers), provided that the Defendant[s] [, and any third party,] shall be permitted to copy, disclose and deliver the Hearing Papers to the Defendants' [and third party's/parties'] legal advisers for the purpose of these proceedings.

11. The Hearing Papers must be preserved in a secure place by the Defendant[s]'s [and third party's/parties'] legal advisers on the Defendant[s]'s [and third party's/parties'] behalf.

12. The Defendant[s] [, and any third party given advance notice of the Application,] shall be permitted to use the Hearing Papers for the purpose of these proceedings provided that the Defendant[s]'s [third party's/parties'] legal advisers shall first inform anyone, to whom the said documents are disclosed, of the terms of this Order and, so far as is practicable, obtain their written confirmation that they understand and accept that they are bound by the same.

PROVISION OF DOCUMENTS AND INFORMATION TO THIRD PARTIES

13. The Claimant[s] shall be required to provide the legal advisers of any third party [where unrepresented, the third party] served with advance notice of the application, or a copy of this Order promptly upon request, and receipt of their written irrevocable undertaking to the Court to use those documents and the information contained in those documents only for the purpose of these proceedings:

(a) a copy of any material read by the Judge, including material read after the hearing at the direction of the Judge or in compliance with this Order [save for the witness statements referred to in Confidential Schedule 1 at the end of this Order] [the witness statements]; and/or

(b) a copy of the Hearing Papers.

[*ONLY TO BE GRANTED IN AN EXCEPTIONAL CASE WHERE HEARING THE APPLICATION IN PRIVATE IS STRICTLY NECESSARY*]

HEARING IN PRIVATE

14. The Judge considered that it was strictly necessary, pursuant to CPR 39.2(3)(a),(c) and (g), to order that the hearing of the Application be in private and there shall be no reporting of the same. [Pursuant to CPR rule 39.2(5), in the interests of justice this order is not to be published on the judiciary website.][39]

PUBLIC DOMAIN

15. For the avoidance of doubt, nothing in this Order shall prevent the Defendants from publishing, communicating or disclosing such of the Information, or any part thereof, as was already in, or that thereafter comes into, the public domain in England and Wales [as a result of publication in the national media] (other than as a result of breach of this Order [or a breach of confidence or privacy]).

COSTS

16. The costs of and occasioned by the Application are reserved.

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[39] The Court will sit in private where satisfied under CPR rule 39.2 that it is necessary to do so. In such circumstances, it may also be necessary to dispense with publication of the order on the Judiciary website.

VARIATION OR DISCHARGE OF THIS ORDER

17. The Defendants or anyone affected by any of the restrictions in this Order may apply to the Court at any time to vary or discharge this Order (or so much of it as affects that person), but they must first give written notice to the Claimant's solicitors. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Claimant's solicitors in advance. The Defendants may agree with the Claimant's solicitors and any other person who is, or may be bound by this Order, that this Order should be varied or discharged, but any agreement must be in writing and be filed at court.

INTERPRETATION OF THIS ORDER

18. A Defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

19. A Defendant which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

[*In the case of an Order the effect of which may extend outside the jurisdiction*]

PERSONS OUTSIDE ENGLAND AND WALES

20.

(a) Except as provided in paragraph (2) below, the terms of this Order do not affect or concern anyone outside the jurisdiction of this Court.

(b) The terms of this Order will affect the following persons in a country or state outside the jurisdiction of this Court – (a) the Defendant or his officer or agent appointed by power of attorney; (b) any person who – (i) is subject to the jurisdiction of this Court; (ii) has been given written notice of this Order at his residence or place of business within the jurisdiction of this Court; and (iii) is able to prevent acts or omissions outside the jurisdiction of this Court which constitute or assist in a breach of the terms of this Order; and

(c) any other person, only to the extent that this Order is declared enforceable by or is enforced by a court in that country or state.

PARTIES OTHER THAN THE CLAIMANT AND THE DEFENDANT

21. Effect of this Order It is a contempt of court for any person notified of this Order knowingly to assist in or permit a breach of this Order. Any person doing so may be imprisoned, fined or have their assets seized.

NAME AND ADDRESS OF THE CLAIMANT[S]'S LEGAL REPRESENTATIVES

22. The Claimant[s]'s solicitors are - [Name, address, reference, fax and telephone numbers both in and out of office hours and e-mail]

COMMUNICATIONS WITH THE COURT

23. All communications to the Court about this Order should be sent to: [insert details of appropriate court, e.g. Chancery Judges' Listing Ground Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London, EC4A 1NL, quoting the case number. The telephone number is 02079476297. The email address is ChanncеryJudgesListing@justice.gov.uk. The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday.

SERVICE OF THE ORDER

24. The Claimant[s] shall serve a sealed copy of the Order on the Defendant[s].

25. The court has sent a sealed copy of the order to the serving party at: [ ]

SCHEDULE A

The Claimant[s] relied on the following witness statements:

1. ..... [*insert names of witness, number of statement and date on which statement was signed*]

2. .....

SCHEDULE B

UNDERTAKINGS GIVEN TO THE COURT BY THE CLAIMANT[S]

(1) If the Court later finds that this Order has caused loss to the Defendant[s], and decides that the Defendant[s] should be compensated for that loss, the Claimant[s] will comply with any order the Court may make.

(2) If the Court later finds that this Order has caused loss to any person or company (other than the Defendant[s]) to whom the Claimant[s] has given notice of this Order, and decides that such person should be compensated for that loss, the Claimant[s] will comply with any Order the Court may make.

(3) [By 4.30pm on [ ] the Claimant[s] will (a) issue a Claim Form and an Application Notice claiming the appropriate relief and

(a) As soon as practicable provide the identified Defendants with a transcript of the hearing on [……] if available or otherwise a full note of the hearing

(b) Forthwith serve on the identified Defendants a copy of the hearing papers and the Claim Form and Application Notice

(4) [The Claimant[s] will use all reasonable endeavours to identify and serve the unidentified Defendant[s] within four months of the date of this Order and in any event will do so by [ ] at the latest. Once identified the Claimant[s] will serve upon the Defendant[s] together with this Order copies of the documents provided to the Court on the making of the Application and as soon as practicable the documents referred to in (3) above.]

(5) On the return date the Claimant[s] will inform the Court of the identity of all third parties that have been notified of this Order. The Claimant[s] will use all reasonable endeavours

to keep such third parties informed of the progress of the action [insofar as it may affect them], including, but not limited to, advance notice of any applications, the outcome of which may affect the status of the Order.

(6) If this Order ceases to have effect or is varied, the Claimant[s] will immediately take all reasonable steps to inform in writing anyone to whom they have given notice of this Order, or who they have reasonable grounds for supposing may act upon this Order, that it has ceased to have effect in this form.

CONFIDENTIAL SCHEDULE 1

The Claimant[s] also relied on the following confidential witness statements:

1. .....

2. .....

CONFIDENTIAL SCHEDULE 2

Information referred to in the Order

Any information or purported information concerning:

(1) [Set out the material sought to be protected]

(2) [Any information liable to or which might lead to the identification of the Claimant[s] (whether directly or indirectly) as the subject of the proceedings or the material referred to above, [the fact that he has commenced these proceedings or made the application herein].]

Appendix X Preparation of bundles

Introduction

1. Subject to paragraph 6 below, no hard copy bundles, only electronic bundles, should be filed with the court unless requested by the judge. The parties should seek to minimise their own and other participants' use of hard copy bundles and documents.

2. If it is not possible for a litigant in person to comply with the requirements on electronic bundles, a brief explanation of the reasons for this should be provided to the Chancery Judges' Listing Office, ICC Judges' Hearings or the Master (as appropriate) via CE-File, as far in advance of the hearing as possible.

3. The preparation of bundles requires a high level of co-operation. It is the duty of all parties and/or their legal representatives to co-operate to the necessary level. Any failure to comply with the provisions of this Appendix may lead to the court imposing sanctions on the party or parties in default.

Core bundle for trial

4. 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, disposal hearing or any other type of final hearing, containing those documents likely to be referred to most frequently. In an appropriate case the court may have directed the preparation of a bundle of key documents and a narrative chronology. If it has done so these documents are likely to form part of any core bundle.

5. The core bundle should be separately paginated, but each page should also bear its main bundle and page number reference.

6. Unless the court directs otherwise, the core bundle should be filed as an electronic bundle and in hard copy. The hard copy and electronic versions must be identical.

General guidance on bundles

7. So far as possible, bundles for all hearings should be prepared in accordance with the principles set out in this section. These principles apply to all bundles, electronic and hard copy, except where it is apparent from the context that the reference is only to electronic bundles. Further guidance relating specifically to hard copy bundles is provided at paragraph 21 below.

8. Bundles should contain only documents and authorities that are necessary for the hearing. Large electronic files can be slow to transmit and unwieldy to use and therefore should be avoided. The sensible selection (limitation) of the material reproduced in hearing bundles is as important as the quality of bundle preparation.

9. Each bundle should be given a concise title (see paragraph 12 (c) and 21 (f)) identifying its contents by type, which should be prominent and before identifying the case and any bundle number/letter as appropriate.

10. After a hearing is completed (and judgment has been handed down), an electronic bundle provided to the court and the parties through, for example, a data room, should be disabled (switched off) promptly and at a time agreed by the parties, noting that the bundle may need to be preserved in some format pending determination of any appeal. Any hard copy bundles should be removed from the court promptly.

11. Bundle Contents:

(a) statements of case should be assembled in 'chapter' form, i.e. claim form followed by particulars of claim, followed by further information (if any), followed by defence, etc. Redundant documents, e.g. particulars of claim overtaken by amendments, requests for further information recited in the responses to those requests and backsheets, should generally be excluded;

(b) 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; any exhibits of contemporaneous documents should be excluded from these bundles and their contents instead included with other contemporaneous documents; any official translation should be placed adjacent to a witness statement, affidavit or expert report in its original language;

(c) documents should normally be placed in chronological order with clear cross referencing to statements of case, witness evidence, affidavits or expert evidence as provided for at paragraph 14 below. In some cases it may be appropriate to group some types of documents together in a separate bundle and consideration should always be given to whether to group landscape documents together rather than in a general documents bundle.

(d) inter-solicitor correspondence should normally be placed in a separate bundle. Only those letters which are likely to be referred to should be included (it will rarely be necessary to include all inter-solicitor correspondence in the bundle);

(e) documents in manuscript, or not fully legible, should be transcribed. The transcription should be marked and placed adjacent to the document transcribed; and

(f) documents in a foreign language should be translated; the translation should be marked and placed adjacent to the document transcribed; the translation should be agreed, or, if it cannot be agreed, each party's proposed translation should be included.

12. Bundle Format:

(a) where possible, the hearing bundles other than the core bundle and the authorities bundle(s) should be combined into one .pdf file, but in larger cases it may be sensible to combine separate categories of bundle into separate .pdf files. Where the hearing bundles have been separated into more than one .pdf file, the parties must have particular regard to the rules on pagination set out below;

(b) any authorities bundle(s) should always be provided separately, where possible combined as a single .pdf file;

(c) the file name for each .pdf file containing or constituting a bundle or bundles should contain a short version of the name of the case and an indication of the content (for example statements of case) and the number/letter of the bundle(s), and end with the hearing date.

(d) all significant documents and all sections in electronic bundles should be bookmarked for ease of navigation, with an appropriate description as the bookmark. The bookmark should contain the page number of the document;

(e) all individual bundles should be indexed (and, where the bundle is electronic, the index should if possible be searchable), except that chronological bundles of contemporaneous correspondence need not be indexed if an index is unlikely to be useful;

(f) a separate index or table of contents for the hearing bundles should also be provided, if possible hyperlinked to the indexed documents;

(g) no more than one copy of any one document should be included, unless there is good reason for doing otherwise;

(h) contemporaneous documents, and correspondence, should be included in chronological order, starting with the earliest document; however, where a contract or similar document is central to the case it may be included in a separate place but a page should be inserted in the chronological run of documents to indicate:

i. the place the contract or similar document would have appeared had it appeared chronologically; and

ii. where it may be found instead;

(i) all bundles should be paginated in the bottom right hand corner in a form that can be distinguished easily from any other pagination on the document and does not mask relevant document content;

(j) the pagination of electronic bundles **must** correspond to the pages of the .pdf file. This means that:

i. every page in the electronic bundle, including any title page, index or contents page, must be paginated (for the avoidance of doubt to ensure that the .pdf numbering matches the pagination the first page of the electronic bundle whether the title page or the first page of the index should be page 1);

ii. where the hearing bundle has been split into more than one .pdf file (which should be avoided to the extent possible, as set out at paragraph 15 and paragraph 16 below), the pagination must begin afresh in each file;

iii. where possible, and in order to aid searching, pagination should include a preceding letter or number which clearly identifies the relevant volume of the bundle;

iv. care should be taken to ensure that any additions to or deletions from a bundle do not cause the pagination to cease to match the page number of the .pdf file (see further paragraph 19 below).

13. Document Format:

(a) electronic documents, where possible, should be the subject of OCR (optical character recognition) to ensure that the text in the documents can be read as text and the document is word-searchable;

(b) documents should generally appear in portrait mode. Where there are only occasional documents that in the original were in landscape they should be oriented in the bundle in portrait but so as to be capable of being read with a 90-degree rotation clockwise. Where there are more numerous landscape documents it may be appropriate to order the documents so that all or the majority or the landscape documents can be collected together in a bundle that is in landscape mode. This may be useful for example where there are numerous spreadsheets, presentations or plans.

(c) For a CMC / CCMC the parties should prepare a separate bundle for landscape-format documents which should include the DRDs and/or costs budgeting documents;

(d) the default view for all pages in electronic bundles should be 100 per cent;

(e) meta data in electronic documents should be removed;

(f) if practicable scanned document resolution should not be greater than 300 dpi to avoid slow scrolling or rendering;

(g) in electronic bundles of authorities: (a) a .pdf copy of the original report, with headnote, should be included for reported decisions (and see Chapter 12 paragraph 12.60 to 12.62 and Practice Direction (Citation of Authorities) [2012] 1 WLR 780 on the correct sources to use); and (b) a .pdf copy of the official transcript should be used, where available, for unreported decisions.

14. Cross-referencing:

(a) where copy documents are taken from the disclosure of more than one party, then unless clearly unnecessary, the documents should be marked in a convenient way to show from which party's disclosure the copy document has been taken;

(b) where there is a reference in a statement of case, affidavit or witness statement to a document which is contained in the bundles, any copy of the statement of case,

affidavit or witness statement in a bundle should be marked in a convenient way to identify where the document is to be found. Unless otherwise agreed it is the responsibility of the party that served the statement of case or witness statement to provide a cross-referenced copy for this purpose as part of its co-operation in the preparation of the hearing bundles; and

(c) where the method of cross-referencing used in (b) above has the effect of altering the format or length of the statement of case, affidavit or witness statement as compared to the signed originals to which a statement of truth was applied, then a solicitor responsible for the production of the bundles should add to the cross-referenced copy a short, signed certification that the content is unaltered from the signed originals except for the addition of the cross-referencing.

Delivery of bundles to court

15. All electronic bundles should be delivered to the court:

(a) by upload to CE-File, if possible (which may depend on file sizes);

(b) by letter to the judge on CE-File giving access to a secure download site;

(c) by email to the judge's clerk (where applicable) either

(i) attaching the bundle(s) or

(ii) giving access to a secure download site; or

(d) by providing the judge with personal secure and confidential access to a shared digital workspace hosting the case materials, if such a workspace is being used by the parties.

16. Where file sizes are large, parties should avoid breaking down sensibly bundled documents into smaller bundles just for the purpose of ease of transmission and parties should consider (b), (c)(ii) or (d) above as preferred methods.

17. Where an original document is required to be filed, by order of the court or by provision of the Civil Procedure Rules ('CPR') or the Insolvency Rules 1986 or 2016, such original document cannot be filed electronically and must instead be physically filed with the court (See Appendix E for further guidance).

18. If bundles are transmitted by email the email subject line should provide the following detail:

(a) case number;

(b) case name (shortest comprehensible version);

(c) hearing date;

(d) judge name (if known); and

(e) the words in capitals ‘REMOTE HEARING’ where applicable.

19. If pages are to be added to or removed from a bundle after it has been transmitted to the judge it should not be assumed that a substitute bundle will be accepted, because the judge may have started to mark up the original. Absent a particular direction, a substitute bundle should be made available, but any pages to be added should also be provided separately, in a separate file, with pages appropriately sub-numbered, or a separate list should be provided of the pages to be removed (as the case may be).

20. This does not apply if a shared digital workspace is being used to host the bundles on which they may be amended without disturbing the judge’s markings or notes. However, the judge should still be notified of any additions, substitutions or removals within the workspace so that they are aware of any new documents whether by letter filed on CE-File and emailed to the judge’s clerk or by some electronic notification within the digital workspace.

Additional guidance for hard copy bundles

21. As indicated above, and subject to the rule on core bundles, only electronic bundles should be filed with the court unless one or more hard copy bundles are specifically requested. The parties are encouraged to minimise their own use of hard copy bundles. Where a hard copy bundle has been requested it should be delivered in accordance with the guidance set out in Chapter 12 paragraph 12.41. Where hard copy bundles are used, the following requirements also apply:

(a) where possible, documents should be in A4;

(b) bundles should be printed/copied double-sided;

(c) bundles should not be overfilled, and should allow sufficient room for later insertions. Subject to this and to (d) below, the size of file used should not be a size that is larger than necessary for the present and anticipated contents;

(d) in any event, each bundle should not contain more than 300 sheets of paper (i.e. 600 double-sided pages) and binders and files must be strong enough to withstand heavy use;

(e) dividers or tabs within bundles may assist in the organisation and use of a bundle, but they should not be overused (for example to divide each individual page or piece of correspondence);

(f) bundles should be paginated electronically and not by hand, and should be named on the spine, the outside of the front cover and on the inside front cover, the label to include the short title of the case and a short description of the content (for example statements of case) and the number/letter of the bundle, where relevant and the date of the hearing;

(g) documents should generally appear in portrait mode but if there are occasional documents which have to be read across rather than down the page (for example a single spreadsheet or plan), it should be orientated in the bundle to ensure that the

top of the text is nearest the spine. Where there are more numerous landscape documents it may be appropriate to order the documents so that all or the majority or the landscape documents can be collected together in a bundle that is in landscape mode. This may be useful for example where there are numerous spreadsheets, presentations or plans.

(h) for a CMC / CCMC the parties should prepare a separate bundle for landscape-format documents, including any DRD and/or costs budgeting documents which should be orientated in the bundle to ensure that the top of the text is nearest the spine;

(i) 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;

(j) large documents, such as plans, should be placed in an easily accessible file; and

(k) all staples, metal clips etc should be removed.

Appendix Y Skeleton arguments

General

1. Where this Appendix is not complied with the costs of preparation of the skeleton argument may be disallowed in whole or in part.

2. The general rule is that the parties should prepare skeleton arguments for all hearings. The exceptions to this general rule are where the hearing is of an application and a skeleton argument is not warranted, for example because the hearing is likely to be short, (e.g. less than an hour) and uncontroversial, or where the application is so urgent that preparation of a skeleton argument is impracticable.

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

Content of skeleton arguments

4. A skeleton argument is intended to identify both for the parties and the court those points which are, and are not, in issue and the nature of the argument in relation to those points that are in issue.

5. A skeleton argument is not a speaking note or a substitute for oral argument.

6. Skeleton arguments must therefore:

   (a) make clear what is sought;

   (b) identify concisely:

      i. the nature of the case generally and the background facts only insofar as they are relevant to the particular matter before the court;

      ii. the propositions of law relied on with references only to the necessary relevant authorities. More than one authority should not be cited for any proposition; and

      iii. the submissions of fact to be made with references to the evidence.

7. The following should be avoided in all skeleton arguments:

   (a) arguing the case at length;

   (b) lengthy quotation from, or other duplication of, the evidence; and

(c) lengthy quotation from authorities, citations from which should be: (i) as brief as possible; and (ii) confined to passages to which it is intended to take the court in oral argument to establish the proposition(s) for which the authority in question has been cited.

8. As regards format and presentation, a skeleton argument must:

(a) be in numbered paragraphs;

(b) state the name of the advocate(s) who prepared it, their professional address and their email address or telephone number;

(c) be prepared in a format which is easily legible - no skeleton argument should be served in a font smaller than 12 point and with line spacing of less than 1.5;

(d) comply with the limits on length to be found in this Guide or as ordered;

(e) be provided to the court as a Word document (whether or not also provided in any other format, for example as a .pdf file); and

(f) not use footnotes except for page, bundle or authority references and the like.

Delivery to court

9. All skeleton arguments for hearings in the Rolls Building should be filed by CE-File and where appropriate by email as follows:

(a) if the name of the High Court Judge ('HCJ'), is known, the Judge's clerk. A list of judges in the Chancery Division and the names and email addresses of their clerks is at https://www.gov.uk/guidance/chancery-judges and Appendix B;

(b) for hearings before a HCJ where the HCJ's name is not yet known, a Section 9 Judge or a Deputy HCJ, the Chancery Judges' Listing Office at ChanceryJudgesListing@justice.gov.uk;

(c) for hearings before Insolvency and Companies Court Judges rolls.icl.hearings1@justice.gov.uk; and

(d) for hearings before Masters, Chancery.MastersAppointments@justice.gov.uk.

10. All emails should have the following in their subject line, 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.

11. In the Judges' Applications List (see Chapter 15) a fresh skeleton argument should be CE-Filed and 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.

12. If a supplemental or amended skeleton argument is lodged, it should be filed on CE-File and, where appropriate, the attention of the relevant judge's clerk should be drawn to that filing (preferably by direct email) so that it is not overlooked.

13. Unless the court directs otherwise, no hard copy of any skeleton argument should be lodged at court.

14. The above email boxes will be cleared of all skeleton arguments over 14 days old at any given time.

Appendix Z Remote and Hybrid Hearings Protocol

Introduction to this Protocol

1. This Protocol contains guidance on preparing for and conducting Remote and Hybrid Hearings in the Business and Property Courts. It is relevant to hearings of all kinds, including but not limited to trials, applications and those in which litigants in person are involved. It does not set out the circumstances in which the Court may consider it appropriate to order a Remote or Hybrid Hearing.

2. The Protocol is intended to assist judges and court users but it should be applied flexibly. It remains the case that the manner in which all hearings are conducted is a matter for individual judges, acting in accordance with applicable law, the Civil Procedure Rules (the '**CPR**') and Practice Directions. Nothing in this Protocol derogates from the judge's duty to determine all issues that arise in the case judicially and in accordance with normal principles. A hearing conducted in accordance with this Protocol should, however, be treated for all other purposes as a hearing in accordance with the CPR.

3. The following defined terms are used in this Protocol:

   (a) A 'Hybrid Hearing' is a hearing in which some Participants, together with the judge(s), are physically present in a courtroom, while other Participants attend the hearing by telephone or video link.

   (b) A 'Remote Hearing' is a hearing in which all Participants, and the judge(s), attend the hearing from separate locations by telephone or video link, instead of gathering physically in a courtroom.

   (c) A 'Participant' means a party to the proceedings (meaning, in the case of corporate entities, a representative of the entity), a legal representative of a party, any person or entity instructed for the purposes of the hearing by a party, a witness, or an expert.

   (d) A 'Speaker' means a legal representative of a party, a witness, an expert and any other attendee who is required to present, respond, and/or give oral evidence at a Remote or Hybrid Hearing.

   (e) An 'Observer' means an individual who is not a Participant but who has been given access to a transmission of the proceedings to watch or listen to them pursuant to the Remote Observation and Recording (Courts and Tribunals) Regulations 2022.

   (f) A 'Working Day' means every day except weekends and public holidays in England and Wales.

4. The general rule is that all court hearings, including Remote and Hybrid Hearings, are in public. This can be achieved in a number of ways. These include, without limitation, the court directing that: (a) the audio and (if available) video of the hearing be relayed to an

open courtroom, and/or (b) a media representative be allowed to access the Remote or Hybrid Hearing.

5. Where this is not practicable, the court may direct that a Remote Hearing must take place in private where this is necessary to secure the proper administration of justice. This is in addition to the requirement that a hearing (howsoever conducted) be held in private where the court is satisfied that it is necessary in order to secure the proper administration of justice (CPR 39.2(3)(g)).

6. The unauthorised recording or transmission of a hearing is an offence. The taking of photographs (including screen shots) or the recording or transmission of someone taking part in a Remote Hearing is also prohibited. However, Remote and Hybrid Hearings will be recorded by the court, unless a recording has been dispensed with under CPR 39.9(1).

Preparing for a Remote or Hybrid Hearing

General points

7. In order to function effectively, Remote Hearings and, in particular, Hybrid Hearings require a high degree of preparation and co-operation between the parties and the court.

8. Whether a hearing will take place as a Remote Hearing or a Hybrid Hearing is a decision for the court. The court will provide guidance from time to time on which types of hearing will be remote hearings and which will be in person hearings by default. Where a party believes that a Remote or Hybrid Hearing would be appropriate, whether for an application, CMC / CCMC, directions hearing, PTR, and/ or part or all of a final hearing or trial, they should discuss and if possible agree the question with the other parties and then raise it with the court:

   (a) at or in advance of a CMC / CCMC or directions hearing being listed

   (b) when an application is issued and/or in advance of it being listed

   (c) at or in advance of the PTR, if there is one; or

   (d) where no PTR has been fixed, in correspondence in good time before the final hearing or trial.

9. At the time a Remote or Hybrid Hearing is requested, the parties should co-operate with each other in order to inform the court of any matters which they wish the court to reflect in any directions it may give, including (without limitation):

   (a) any support or adjustments which any Participant would require in order to participate in and/or attend a Remote or Hybrid Hearing; and

   (b) any proposal to instruct a third party provider to facilitate the Remote or Hybrid Hearing (see the section on ‘Third party providers’ below for more guidance).

10. The court may order a Remote or Hybrid Hearing and give directions for its conduct in whatever manner appears to it appropriate including at any PTR, at a short case

management conference convened for the purpose, or on paper. In any event, Judges' Listing, Masters' Appointments, ICC Judges' Hearings, the relevant court's listing office and/or the judge's clerk will seek to contact the parties and/or their legal representatives in advance of a Remote or Hybrid Hearing to inform them of the time and date for the hearing as well as the format and the platform for the hearing.

11. Where a Hybrid Hearing is ordered, parties and/or their legal representatives should liaise with the Judges' Listing, Masters' Appointments, ICC Judges' Hearings, the relevant Court's listing office and/or the judge's clerk in advance of the hearing as to: (i) the number of courtrooms that will be available for the hearing and their capacity; and (ii) what extra equipment and preparation will be required to facilitate the Hybrid Hearing.

12. Judges' Listing, Masters' Appointments, ICC Judges' Hearings, the relevant Court's listing office and/or the judge's clerk will seek to ensure that the parties are informed, as far in advance as possible, of the identity of the judge(s) hearing the case.

Attendance

13. Subject to applicable law, it is for the court to determine who may attend a Remote or Hybrid Hearing as a Participant or an Observer and to set such conditions for their attendance as it may consider appropriate. No person may access a Remote or Hybrid Hearing remotely without the court's permission. For additional guidance see the Practice Guidance on Remote Observation of Hearings. Unauthorised access may constitute an offence under section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981.

14. In all cases, parties must inform the court in advance of whom they wish to attend the hearing as Participants, following the procedure set out in the following paragraphs.

15. Where the court permits a person outside England and Wales to attend a Remote Hearing either as a Participant or as an Observer, the onus is on the relevant person to ensure that such attendance is not in breach of any local laws or regulations and that, if permission is required from the local court or other authority in the foreign jurisdiction, such permission has been obtained (and see paragraph 33 below in relation to witnesses attending a hearing from abroad).

16. The parties or their legal representatives should, before the Remote or Hybrid Hearing, provide the Judges' Listing, Masters' Appointments, ICC Judges' Hearings, the relevant Court's listing office and/or the judge's clerk with the following details for each Participant who wishes to attend:

(a) name;

(b) organisation;

(c) email address;

(d) the location, including country, from which they would be joining the hearing (if not England and Wales) (in this regard, parties should note paragraph 15 above); and

(e) whether it is proposed that the person in question be a Speaker.

In the ordinary course, the parties should provide the information sought in this paragraph no later than 10.30am two working days before the hearing.

17. In addition, each party should nominate one of its proposed Participants as its 'Primary Contact', being the person who should be contacted in accordance with the lost connections procedure set out at paragraph 30 below.

18. A member of the public or media representative who wishes to attend a Remote or Hybrid Hearing as an Observer must notify the court by email of the details set out in subsections (a) to (d) of paragraph 16 above using the contact details set out in the Daily Cause List, Appendix B and Appendix C or the Hearing Notice. Observers must note the strict prohibitions against any unauthorised dissemination of the hearing and the making of any sound or video recording of it – see paragraph 6 above.

19. If the court is satisfied that the requirements of paragraph 16 have been met in relation to any person, it will seek to facilitate attendance by that person at the Remote or Hybrid Hearing. However: (a) there is no absolute right to attend a Remote or Hybrid Hearing; (b) failure to give timely notice of a wish to attend may mean that attendance cannot be facilitated; and (c) access cannot in any event be guaranteed; the needs of other litigants, the limits on resources and the need to monitor the identities of those who view the proceedings may mean that the court is not able to provide access.

20. For hearings conducted by audio link:

(a) the court (or a third party provider authorised by the court) will call the parties at the time of the hearing or the parties should dial in to the hearing using the information provided in the invitation to join the remote hearing. In order to attend and/or participate in a telephone hearing, Participants will require access to a telephone with any relevant call barring services switched off; or

(b) the court will notify the parties that they are to dial in to the hearing on a video or audio conferencing platform, in which case the court will, wherever possible, no later than one working day before the hearing, provide the relevant telephone number and access code.

21. For hearings conducted by video link, the Judges' Listing, Masters' Appointments, ICC Judges' Hearings, the relevant Court's listing office and/or the judge's clerk will wherever possible send the parties information about the video hearing, including a link to access the hearing and any sign in details, no later than one working day before the hearing. In order to attend and/or participate in a hearing conducted by video link, Participants will require access to a device with internet access, which enables audio and video transmission.

22. A link provided to a Participant or an Observer is for their own use. No-one who is provided with a link may forward it to any other person without the court's permission.

23. Available platforms for Remote and Hybrid Hearings conducted via telephone conference include (non-exhaustively): BT conference call, BT MeetMe, Microsoft Teams and ordinary telephone call. Available methods for videoconferences include (non-exhaustively): Microsoft Teams, Cloud Video Platform (CVP), Video Hearing Service (VHS), court video link, and Zoom. But any communication method available to the Participants can be considered if appropriate.

24. For video conferences, it is usually possible for the parties and/or their representatives to contact the Judges' Listing, Masters' Appointments, ICC Judges' Hearings, the relevant Court's listing office and/or the judge's clerk to arrange a test call. The test call should be conducted with a maximum of 10 users. In any event, Participants are advised to test their own devices and ensure they are able to access the relevant platform in advance of the hearing. Any technological issues should be made known to the Judges' Listing, Masters' Appointments, ICC Judges' Hearings, the relevant Court's listing office and/or the judge's clerk in advance of the hearing.

25. Parties and/or their legal representatives should notify Judges' Listing, Masters' Appointments, ICC Judges' Hearings, the relevant Court's listing office and/or the judge's clerk no later than two working days before the video hearing if telephone dial-in facilities are required for Participants without internet access.

Conduct of the hearing

26. Participants (and Observers) should join the hearing no later than 15 minutes before the set start time.

27. Remote and Hybrid Hearings should resemble courtroom hearings as closely as practicable. This means maintaining the same level of formality as is expected in the courtroom.

28. Subject to any contrary or more detailed direction of the court, Participants and Observers should observe the following etiquette:

(a) All persons who are not Speakers should keep their microphones muted and cameras switched off throughout the hearing.

(b) Speakers should keep their cameras turned on and mute their microphones when they are not speaking.

(c) Any person, who is not a Speaker, may not address the court without the court's prior permission.

(d) Where possible, Speakers should ensure their cameras are at eye level and should maintain a reasonable distance from the camera (with a plain background behind them) in order to ensure their head and upper body are clearly visible. Speakers may wear headsets if they wish.

(e) Speakers should try to attend the hearing from a quiet place from which privacy and minimal noise disruptions can be ensured.

(f) Reasonable and proportionate and noise-free use of devices to enable communication between team members or legal representatives and their clients is permitted during the hearing, provided that this does not interfere with the hearing; in particular, Participants must ensure that all notifications are set to silent for the duration of the hearing. However, Participants are reminded that witnesses must not communicate with anyone else about their evidence until their testimony is

concluded. See the section below titled ‘Witnesses, experts and other third parties’ for further guidance.

29. It is the responsibility of each party and/or their legal representatives to inform those attending the Remote or Hybrid Hearing as Participants (including any person or entity engaged to provide technical support or assistance) of the strict prohibitions against any unauthorised dissemination of the hearing and the making of any sound or video recording of it (and of any other restrictions outlined in the relevant court order), in addition to the other obligations set out in this section.

30. In the event of an internet or phone line disconnecting or degrading to an unusable degree during the Remote or Hybrid Hearing, the Judges’ Listing, Masters’ Appointments, ICC Judges’ Hearings, the relevant Court’s listing office and/or the judge’s clerk will contact the Primary Contact for each party to discuss whether a continuation is possible or whether an adjournment of the hearing is required.

Witnesses, experts and other third parties

31. Where a witness gives evidence by video or audio link in a Remote or Hybrid Hearing, the objective should be to make the process as close as possible to the usual practice in an in- person hearing where evidence is taken in open court.

32. In such cases, guidance should be taken from Annex 3 to Practice Direction 32 which addresses videoconferencing.

33. In particular, parties should be aware that where evidence is to be taken from a witness located outside the jurisdiction, permission may be required from the local court or other authority in the foreign jurisdiction. It is for the party calling the witness to ensure that such permission, if required, is obtained in good time for the hearing at which the witness is to give evidence and to inform the court that such permission has been obtained. For some jurisdictions it may be necessary to apply for the issue of a letter of request and comply with the provisions of CPR 34.13. For further guidance on the required timing for such permission in cases assigned to the fast track or the multi-track, please see this High Court Practice Note.

34. If a party wishes one or more of its witnesses to give their evidence from the offices of a legal representative, video conference centre or similar venue, that party should notify the other parties at the earliest opportunity, with a view to permitting a representative of the other parties to attend or making arrangements to ensure that the court can ascertain that the witness is not communicating with any other person or otherwise receiving assistance or impermissibly making reference to notes during the course of their evidence.

35. In cases where one or more of the witnesses is to give their evidence from a more informal venue than the type described in paragraph 34, it may be appropriate to arrange to have more than one camera available in the location from which the witness is giving their evidence. This is to ensure that the court can ascertain that the witness is not communicating with any other person or otherwise receiving assistance during the course of their evidence or impermissibly making reference to notes during the course of their evidence.

36. Witnesses must only have access to a device on which they access and participate in the hearing, the hearing bundle and their statement(s) and exhibit (either in electronic or hard copy, or both). The court will expect the parties to have made efforts to ensure that each witness has access to these materials in a format which is convenient and accessible to the witness. In some cases it may be more appropriate for a witness to have access to a hard copy bundle whether they are participating remotely or in person.

37. Where a witness has access to the hearing bundle only in electronic form, and the witness is asked a question about a document appearing in the bundle, the court and the advocates should ensure that the witness is given a proper opportunity to orientate or familiarise themselves with the document (for instance by being shown the front page, or the pages before/after the section they are being asked about) before answering.

38. Parties and/or their legal representatives should ensure that witnesses decide in good time before the hearing whether they prefer to swear an oath on a holy book/scripture or to make an affirmation. The relevant holy book/scripture and/or text of the oath or affirmation should be made available to the witness in advance of the hearing.

39. Parties are reminded that it will be for the parties to provide the necessary facilities to enable the witness to access the hearing bundle in electronic format even if the hearing takes place in a court room.

Bundles / documents for the hearing

40. The claimant should, if necessary, prepare an electronic bundle of documents and an electronic bundle of authorities for each Remote or Hybrid Hearing. Each electronic bundle should be compiled, formatted and delivered in accordance with the relevant court's guide. See Appendix X as necessary for further guidance.

41. To the greatest extent practicable, all bundles should be electronic, not hard copy (subject to paragraph 36). However, parties or their legal representatives should liaise with the court in advance of the hearing to determine the judge's preferences in the matter.

Third party providers

Transcribers

42. Hearings in the B&PCs are tape-recorded or digitally-recorded by the court unless the judge directs otherwise (CPR 39.9(1)). A party may, after a hearing, require a transcript to be produced by a court-approved transcriber. Form EX107 should be completed and submitted to the court. The Guidance Notes to Form EX107 set out the procedure to be followed, a list of approved transcribers and the relevant charges.

43. Parties may, with the prior permission of the court, engage court-approved transcribers to prepare a real-time transcript of a hearing. The court's permission will be recorded in an Order which may also, without limitation, regulate the dissemination of the real-time transcript. The requesting party and the transcriber they wish to instruct must also submit

to the court a completed Form EX107 OFC. A copy of the court's Order must be provided to the transcribers.

Hearing support services

44. The scale or logistical complexity of some Remote or Hybrid Hearings may lead the parties to consider engaging a specialist third party to provide technical support services. These services can include the selection and operation of hardware and/or software necessary to support the hearing itself and/or electronic document management.

45. Permission to engage such third-party providers must be sought from the court in advance of the hearing. The parties and/or their legal representatives bear the responsibility of informing the relevant representatives from the third-party provider of any requirements and/or prohibitions set out in the relevant court order, in addition to the strict prohibition against making any unauthorised dissemination or recording of the hearing by any electronic means and that failure to comply could result in them being found in contempt of court and liable to criminal penalties.

Interpreters

46. Where a Participant or Participants require an interpreter, a request should be made to the court in advance of the hearing. Parties or their legal representatives should provide the court with the details in paragraph 16 for the interpreter as relevant. If possible, parties or their legal representatives should try to arrange a test call with the interpreter and relevant witness in advance of the hearing. All Participants are reminded that using remote interpretation services may cause delays and/or technical difficulties and are encouraged to be mindful of this.

47. Where a witness is to give evidence remotely by an interpreter, consideration should be given as to where the interpreter should be located.