Courts and Tribunals Judiciary

The King's Bench Guide

A guide to the working practices of the King's Bench Division within the Royal Courts of Justice

April 2026

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Tribunals Judiciary

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Foreword

by The Rt Hon. Dame Victoria Sharp, President of the King's Bench Division

It is my pleasure to introduce the twelfth edition of the King's Bench Guide. As this will be the final edition published during my tenure as President of the King's Bench Division, I wish to record my thanks to all who have contributed to the work of the Division over recent years.

During my tenure, the Division has navigated significant change. The introduction of CE File to the King's Bench Division in 2019 marked a major transition from a paper based to a digital system. The resilience of the Division was also demonstrated during the pandemic, when new methods of working ensured that the administration of justice continued without interruption. These achievements are the result of the commitment of judges, Masters, staff and the wider professional community.

I have been fortunate to work closely with Judges in Charge of the King's Bench List, including Sir Stephen Stewart, Mr Justice Soole, and Mrs Justice Lambert, whose leadership has been invaluable. I also extend my thanks to Senior Masters, Master Barbara Fontaine and Master David Cook, and to the Vice Presidents of the Division, Lord Justice Dingemans and Lord Justice Jeremy Baker, for their support and collaboration.

This edition includes a number of important updates that ensure the Guide remains a reliable and practical resource. I remain grateful to all who have contributed to its preparation, and I hope that it will continue to assist all who practise in the Division.

Editorial note by Senior Master Cook

With the support and encouragement of Dame Victoria Sharp, President of the King's Bench Division, this Guide has been prepared for the assistance of all who practise or litigate in the King's Bench Division.

This twelfth edition of the Guide makes some further changes since the full revision of the Guide in the 2022 edition. Those changes relate to:

- Corrected and updated links that were not functioning or leading to the correct landing page.
- Reference to PD5C which now governs the use of CE file replacing the pilot scheme (PD51O) which had been in place since July 2019.
- Changes to the e-mail address for KB Issues & revised and updated contact details for the KB Masters.
- Inclusion of the details for the Pro Bono Trial Advocacy scheme in the MAC List.
- Removal of the annex for Guidance for enrolling deeds which has changed and is available online.

I remain extremely grateful to Master Armstrong for his hard work and diligence in drafting the amendments, and the not inconsiderable effort involved in liaising with judges and court staff to ensure that all parts of the new edition are correct and up to date and to Agness Elsayed, our hard working Delivery Manager for Masters Listing and Children's Funds for ensuring that we all stay on track.

I would also like to take the opportunity of thanking Mrs Justice Lambert as judge in charge of the KB Lists for her invaluable input.

However, all errors and omissions are mine and I welcome any comments and suggestions from the Profession and all using this Guide for its improvement.

David Cook
Senior Master
2026

1. Introduction

The Guide

1.1 This Guide has been prepared under the direction of the Senior Master, acting under the authority of the President of the King's Bench Division, and provides a general explanation of the work and practice of the King's Bench Division with particular regard to proceedings started in the Central Office, and is designed to make it easier for parties to use and proceed in the King's Bench Division ("KBD").

1.2 The aim of this guide is to provide practical information and it must be read with the Civil Procedure Rules ("CPR") and the supporting Practice Directions ("PD"). Litigants and their advisers are responsible for acquainting themselves with the CPR; it is not the task of this Guide to summarise the CPR, nor should anyone regard it as a substitute for the CPR. The Rules, PDs and pre action protocols and forms are on the gov.co.uk website at https://www.justice.gov.uk/courts/procedure-rules/civil/rules and forms are at form - Services - GOV.UK (www.gov.uk)

1.3 In addition a number of standard forms of order used in the KBD may be found at King's Bench forms - GOV.UK (www.gov.uk). Please note the forms can be modified as individual cases require, but it is essential that a modified form contains at least as full information or guidance as would have been given if the original form had been used. Where the Royal Arms appear on any listed form they must appear on any modification of that form. The same format for the Royal Arms as is used on the listed forms need not be used. All that is necessary is that there is a complete Royal Arms.

1.4 It is intended to bring the Guide up to date at regular intervals.

1.5 The Guide does not have the status of a Practice Direction nor the force of law, but parties using the KBD will be expected to act in accordance with this to assist with achieving the CPR overriding objective.

1.6 It is assumed throughout the Guide that the litigant intends to proceed in the Royal Courts of Justice. For all essential purposes, though, the Guide is equally applicable to the work of the District Registries, which deal with the work of the King's Bench Division outside London, but it should be borne in mind that there are some differences, particularly with practical matters such as listing practices.

1.7 The telephone numbers and room numbers quoted in the Guide are correct at the time of going to press.

The King's Bench Division

1.8 The KBD is one of the three divisions of the High Court, together with the Chancery Division and Family Division. It is the largest of the three divisions and has the most varied work. Dame Victoria Sharp, an ex officio judge of the Court of Appeal, is the current President of the King's Bench Division ("the President"). A High Court Judge is appointed as Judge in charge of the KB Civil List and is currently Mrs Justice Lambert.

1.9 Outside London, the work of the KBD is administered in provincial offices known as District Registries. In London, the work is administered in the Central Office at the Royal Courts of Justice. The work in the Central Office of the KBD is the responsibility of the Senior Master, acting under the authority of the President.

1.10 There are currently 71 High Court Judges attached to the KBD. There are also 10 judges who are referred to as Masters, (one of whom is the Senior Master). Throughout this Guide the term " judge" includes High Court Judges (and Deputy High Court Judges and Judges sitting as High Court Judges under section 9 of the Senior Courts Act 1981) and Masters (and Deputy Masters).

1.11 The work of the KBD is (with certain exceptions) governed by the CPR. The Administrative Court, the Admiralty Court, the Commercial Court, the Circuit Commercial Courts and the Technology and Construction Court are all part of the KBD. However, each does specialised work requiring a distinct procedure that to some extent modifies the CPR. For that reason each has an individual Part of the CPR, its own Practice Direction and its own Guide, to which reference should be made by parties wishing to proceed in these specialist courts.

1.12 Further, the Admiralty Court, the Commercial Court, the Circuit Commercial Courts and the Technology and Construction Court all form part of the Business and Property Courts ("BPC") whose general procedure is governed by CPR Part 57A and its PDs, and the majority of their work is undertaken in the Rolls Building.

1.13 There are also specialised lists which operate within KBD and not as specialist courts, namely the Asbestos List and the Media & Communications List. Where the procedure relating to claims in those lists differs from the procedure in this Guide that is specified in this Guide.

1.14 The work of the KBD (not including the work of the Administrative Court) consists mainly of claims for:

1) damages and/or an injunction in respect of:

   (a) personal injury,

   (b) negligence (including professional negligence),

   (c) breach of statutory duty,

   (d) media and communications claims including defamation,

   (e) other tortious conduct,

   (f) breach of contract,

   (g) breaches of the Human Rights Act 1998,

2) non-payment of a debt.

1.15 Proceedings dealt with in the Central Office will almost invariably be multi-track claims.

1.16 In many types of claim, for example claims in respect of negligence by solicitors, accountants, etc. and claims for possession of land, the claimant has a choice whether to bring the claim in the KBD or in the Chancery Division. However, there are certain matters that may be brought only in the KBD, namely:

1) applications by High Court Enforcement Officers in enforcement proceedings,

2) applications for the enrolment of deeds,

3) applications under Part 74 for the registration of foreign judgments for enforcement in England and Wales under the Administration of Justice Act 1920, the Foreign Judgments (Reciprocal Enforcement) Act 1933, the Civil Jurisdiction Act 1982, or the 2005 Hague Convention on Choice of Court Agreements,

4) applications for bail in criminal proceedings,

5) registration and satisfaction of Bills of Sale,

6) Election Petitions,

7) applications for orders to obtain evidence for foreign courts.

1.17 See also paragraphs 1 and 2 of Schedule 1 to the Senior Courts Act 1981 under which certain matters are assigned respectively to the Chancery Division and the KBD.

The Specialist Courts

1.18 The Administrative Court is part of the King's Bench Division of the High Court. It hears applications for judicial review and some statutory appeals and applications. Judicial reviews which challenge planning decisions are heard in the specialist Planning Court, a part of the Administrative Court. Extensive guidance on judicial review proceedings (which are governed by CPR Part 54) can be found in the Administrative court Judicial review Guide 2024, which is available on-line at:

The Administrative Court Judicial Review Guide 2024

1.19 The Commercial Court (being a constituent part of the KBD) deals with commercial claims in the commercial list and is part of the BPC. Its proceedings are subject to CPR Part 58 and its PDs, as well as to CPR Part 57A and its PDs. The types of claim which may be brought in the Commercial Court are expanded upon in rule 58.1 (2). The commercial list is a specialist list for all claims proceeding in the Commercial Court and one of the judges of that Court is in charge of the commercial list. By PD58 paras 1.4 and 2.1, the Admiralty and Commercial Registry is the administrative office of the court for all proceedings in the commercial list; and all claims in the Commercial Court must be issued in the Admiralty and Commercial Registry. The address of the Registry is 7 Rolls Building, Fetter Lane, London EC4A 1NL. Extensive guidance on proceedings in the Commercial Court is found in The Commercial Court Guide which incorporates the Admiralty Court Guide, and is available on-line at:

Commercial Court Guide - Courts and Tribunals Judiciary

1.20 The Circuit Commercial Courts are established, again as constituent parts of the KBD, to deal with claims relating to "a commercial or business-matter in a broad sense": see rule 59.1, and are part of the BPC. There are Circuit Commercial Courts in the following district registries of the High Court: Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, and Newcastle- upon-Tyne; and in the Commercial Court at the Royal Courts of Justice (called "The London Circuit Commercial Court"). Their proceedings are governed by CPR Part 59 and its PDs, as well as by CPR Part 57A and its PDs. They decide business disputes of all kinds apart from those which, because of their size, value or complexity, will be dealt with in the Commercial Court. Extensive guidance on the conduct of proceedings there is found in the Circuit Commercial Court Guide. It is available on-line at:

The Circuit Commercial Court Guide (judiciary.uk)

1.21 The Technology and Construction Court deals with claims which involve issues or questions which are technically complex or for which a trial by a Judge of that court is desirable: see rule 60.1 (3), and the PD to CPR Part 60, in particular PD60 para 2.1 which lists examples of claims which it may be appropriate to bring in that Court. It is part of the BPC. Its proceedings are governed by CPR Part 60 and its PDs, as well as by CPR Part 57A and its PDs. Extensive guidance on proceedings in the TCC is found in the Technology and Construction Court Guide which is available on-line at:

Technology and Construction Court (TCC) guide - October 2022 - Courts and Tribunals Judiciary

1.22 The Admiralty Court is defined as the Admiralty Court of the King's Bench Division of the High Court of Justice, is part of the BPC, and deals with claims within the Admiralty jurisdiction of the High Court as set out in Section 20 of the Senior Courts Act 1981: see rules 61.1 and 61.2 which themselves make reference to the particular types of claim which may, or must, be brought in the Admiralty Court. Such claims are subject to CPR Part 61 and its PDs, as well as CPR Part 57A and its PDs. The Registrar of the Admiralty Court is the King's Bench Master with responsibility for Admiralty claims, who has all the powers of the Admiralty judge except where a rule or practice direction provides otherwise. Extensive guidance on proceedings in the Admiralty Court is found in the Commercial Court Guide at section N. It can be found online at:

Commercial Court Guide - Courts and Tribunals Judiciary

Arbitration claims and proceedings are the subject of CPR Part 62 and its PDs. These provide for the allocation of those courts in which arbitration claims and proceedings may, or must, be issued: see in particular PD62, paras 2, 14 and 16. Extensive guidance on arbitration claims is found at section O of the Admiralty and Commercial Courts Guide. It can be found online at:

Commercial Court Guide - Courts and Tribunals Judiciary

The Central Office

1.23 As set out in PD2A.2, the Central Office is open for business from 10 a.m. to 4.30 p.m. on every day of the year except;

(a) Saturdays and Sundays,

(b) Good Friday,

(c) Christmas Day,

(d) A further day over the Christmas period determined in accordance with the table specifically annexed to the Practice Direction. This will depend on which day of the week Christmas Day falls.

(e) Bank holidays in England and Wales,

(f) Such other days as the Lord Chancellor, with the concurrence of the Lord Chief Justice, the Master of the Rolls, the President of the King's Bench Division, the President of the Family Division, and the Chancellor of the High Court ("the Heads of Division") may direct.

1.24 The Central Office consists of the Action Department, the King's Bench Associates' Department, the High Court Judges' Listing Office, the Registry of the Technology and Construction Court, and the Admiralty and Commercial Registry.

1.25 The Action Department deals with the issue of claims, responses to claims, admissions, undefended and summary judgments, the issue of application notices, drawing up orders, enforcement of judgments and orders, public searches, provision of copies of court documents, enrolment of deeds, the registration of foreign judgments, and the provision of certificates for enforcement abroad of judgments of the KBD.

1.26 For these purposes, the Action Department is divided into sections as follows:

1) King's Bench Issue and Enforcement Section, which deals with the issue of all claims, applications and writs of enforcement. This Section also provides support (a) to the Masters, including assistance on all aspects of case management, and (b) to the Senior Master.

2) King's Bench Masters' Listing Section, which deals with listing hearings and trials before the King's Bench Masters and sending out Notices of hearings.

3) the Foreign Process Section, which deals with all aspects of service abroad of proceedings brought here, of service here of proceedings brought abroad, and letters of request from, or to, foreign courts for the taking of evidence, and registration of foreign judgments.

4) the Children's Funds Section which deals in particular with investment of children's funds made pursuant to an order of a Judge or a Master: see paragraphs 13.25-13.33 below.

5) The Fees Office which deals with administration of court fees and fee remission.

In addition one of the staff acts as the Chief Clerk to the Prescribed Officer for Election Petitions, namely the Senior Master: see Section 27 below.

1.27 The High Court Judges' Listing Office lists all trials and applications before the Judges (see Section 9 below).

The Judiciary

1.28 The judiciary in the King's Bench Division consists of the High Court Judges (The Honourable Mr/Mrs Justice ..... and addressed in court as my Lord/ my Lady) and, in the Royal Courts of Justice, the Masters and Senior Master Cook (addressed in court as Judge). In the District Registries the work is conducted by District Judges (addressed in court as Judge). There are also Deputy High Court Judges and persons appointed to sit as High Court Judges under section 9 of the Senior Courts Act 1981 (who both have a similar status to and are addressed in court in the same way as High Court Judges), and Deputy Masters (who have a similar status to and are addressed in court in the same way as Masters).

1.29 Cases are assigned on issue to individual Masters on a rota basis, and that Master is then known as the assigned Master in relation to that case. (See paragraphs 5.10 to 5.17 below for more information about assignment to Masters).

1.30 The Masters generally deal with interim and pre-action applications and manage the claims so that they proceed in accordance with the overriding objective of the CPR rule 1.1. The Masters also hear trials and applications for injunctions, with the exception of search and freezing injunctions: (see Section II of PD2B). Applications for interim injunctions should be made to the Interim Applications Judge (see paragraphs 4.3 - 4.4). The Masters' rooms are situated in the Masters' corridor and in the Bear Garden on the first floor of the East Block of the Royal Courts of Justice: see Plan B in Annex 1 at the end of this Guide. Hearings take place either in these rooms,

or in a court room. Specific Masters deal with certain specialist lists or specialist cases.

1.31 Trials normally take place before a High Court Judge, a Deputy High Court Judge or a Circuit Judge sitting as a Judge of the High Court who may also hear pre-trial reviews and other interim applications. A Master or Deputy Master may hear trials, generally of up to three days in length. If necessary a pre-trial review may be requested. A High Court Judge will also hear applications to commit for contempt of court, applications for injunctions and most appeals from Masters' orders. (See PD2B: Allocation of cases to levels of Judiciary; and see Sections 9 to 11 below for more information on hearings and applications).

Contact details

1.32 Contact details are set out in Annex 2.

1.33 Masters' email addresses should only be used for sending documents such as skeleton arguments, draft directions, agreed applications to vacate hearings or as otherwise ordered by the court. The Masters' listing clerks should be contacted for listing issues.

1.34 Parties are reminded that any correspondence with the court must be copied to their other parties or their representatives (see CPR39.8(1). All emails to the Master should be copied to the other parties unless there is compelling reason not to do so (CPR39.8(3)). The reason must be stated in the communication.

1.35 Emailing the Master is not valid filing.

1.36 If the Master is emailed inappropriately, the email will be ignored and the sender may be blocked.

2. Litigants in person

General

2.1 A person who brings or defends legal proceedings without legal representation is known as a 'litigant in person', sometimes shortened to LiP. The rules of practice and procedure apply to litigants in person in the same way as represented parties. The provisions of this guide also apply to litigants in person. The Court will have regard to the fact a party is unrepresented (see CPR3.1A) but it will not usually apply a lower standard of compliance with rules, PDs or orders of the court (see *Barton v Wright Hassall LLP* [2018] UKSC 12:)

2.2 Basic practical information about bringing a case to court can be found on the government website: King's Bench Division: bring a case to the court - GOV.UK (www.gov.uk).

2.3 Represented parties must treat litigants in person with consideration and respect at all times during the conduct of the litigation. Similarly, litigants in person must show consideration and respect to their opponents, whether legally represented or not, and to the court.

2.4 A litigant in person must give an address for service in England or Wales. If they are a claimant, the address will be required in the claim form or other document by which the proceedings are started. If they are a defendant, it will be in the acknowledgment of service form which must be sent to the court. It is essential that any change of address is notified in writing to the Central Office and to all other parties to the case, otherwise important communications such as notices of hearing dates may not reach the relevant person (although they are likely to be treated as having done so).

2.5 The public is entitled to obtain copies of some of the documents that parties file at court unless the court has ordered otherwise. Please see further sections within this guide on online public search, open justice, anonymity, confidential documents, non disclosure orders and Tomlin orders and see CPR5.4B and 5.4C and PD5A.

2.6 It is the duty of all parties to litigation, whether represented or not, to bring relevant matters to the attention of the court and not to mislead the court. This means for example that they must not misrepresent the law and must therefore inform the court of any relevant legislation or previous court decisions which are applicable to their case and of which they are aware (whether favourable or not to their case); and must draw the court's attention to any relevant irregularity.

2.7 In addition, there is a particular duty when an application is made to the court without the other party being present (for example in the case of urgency or when seeing a judge at an 'Application without Notice'). Here the litigant is under a duty to disclose any facts or other matters (including arguments of fact or of law) which might be relevant to the court's decision, even if adverse to their case, and specifically draw the court's attention to such matters.

Practical assistance for litigants in person

2.8 In many cases the parties will need legal assistance, whether by way of advice, drafting, representation at hearings or otherwise. It is not the function of court staff to give legal advice; however, subject to that, they will do their best to assist any litigant. Judges are not in a position to give advice about the conduct of a claim

2.9 There is general information available to litigants in person on the judiciary website here: Advice for Litigants in Person - Courts and Tribunals Judiciary

2.10 The following is a non-exhaustive list of sources of assistance to litigants in person.

Legal Aid

2.11 Litigants in person who are enquiring as to the possibility of obtaining legal assistance or representation through legal aid may contact Civil Legal Advice at 0345 345 4345 (9.00am to 8.00pm Monday to Friday and 9.00am to 12.30pm on Saturdays) or on the website at https://www.gov.uk/civil-legal-advice. In general, while the availability of legal aid has become very restricted under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, applicants will probably be directed to pursue their enquiries via firms of solicitors practising in areas of legal aid.

Advice now

2.12 An online service which provides practical information on rights and the law in England and Wales. https://www.advicenow.org.uk/

RCJ Advice Bureau

2.13 There is an RCJ Advice Bureau off the Main Hall at the RCJ. The Bureau runs an appointment-based service. To request an appointment, applicants should complete the civil triage form available on their website (www.rcjadvice.org.uk) and email it to them at civiltriage@rcjadvice.org or call into the office to complete the form between 9.30am and 1pm and 2pm and 4.30pm weekdays. Their website has details on all their services and how to access them (www.rcjadvice.org.uk)

Support Through Court

2.14 Support Through Court (previously known as The Personal Support Unit (PSU)) is an independent charity which supports litigants in person, witnesses, victims, their family members and other supporters attending the Royal Courts of Justice and other courts across the country. Requests vary from the very simple to the complex. Some people just require directions or advice about procedures. Others need to unburden themselves, while others request the moral and emotional support of being accompanied in court. STC can be particularly helpful for clients with special needs.

2.15 The volunteers are not lawyers and cannot provide legal advice or representation. They can provide procedural information, help to organise and complete paperwork, look up relevant information and discuss settling issues without going to court. They can help before hearings by helping litigants put their thoughts in order, provide emotional support in court and make sure the litigant understands what was discussed in the hearing and the next steps.

2.16 The office in the RCJ is open Tuesdays, Wednesdays and Fridays from 10.30am to 4pm (closed for lunch between 1 and 1.45pm). Walk-ins are accepted subject to availability. Face-to-face and remote appointments can be booked in advance: Book an appointment - Support Through Court.

2.17 Support for general enquiries is available on 0204 520 5959 on Tuesdays, Wednesdays and Fridays from 10.30am to 12.30pm.

2.18 Its address is: Thomas Moore Building (ground floor), Royal Courts of Justice, Strand WC2A 2LL. Tel: 0204 520 5959.

email: Londoncivil@supportthroughcourt.org or: https://www.supportthroughcourt.org

Pro Bono lawyers

2.19 There are charities through which qualified Lawyers provide advice without charge (known as "pro bono") for some cases. See https://www.lawworks.org.uk/ and https://weareadvocate.org.uk/.

2.20 Advocate is the national pro bono charity of the Bar. They find barristers for people in England and Wales who are not eligible for legal aid and cannot afford to pay for legal assistance. They help with: Specialist legal advice, drafting and representation and help at mediation. Advocate works exclusively with barristers and, as such, can only consider cases that are appropriate for barrister assistance. In essence this means that it would need to be representation in a court or Tribunal in England or Wales or advice or drafting suitable for a barrister to provide. In practice this means different things for different areas of law. Applicants should visit www.weareadvocate.org.uk for information about how to apply.

Direct access barristers

2.21 Barristers who are qualified to work under the direct access scheme can be contacted directly by litigants. 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 direct access portal: Homepage (directaccessportal.co.uk)

Hearings

2.22 Hearings are dealt with more fully in Section 9 below, to which reference should be made. See in particular 9.88-9.89 about contacting the court in advance of any hearings if assistance is required to access the court due to disability or other vulnerability of a party or witness.

Before the Hearing

2.23 Ordinarily, the claimant or applicant is asked to put together an indexed and paginated file of the relevant documents for the court for the purposes of the hearing (called hearing bundles). Where a claimant or applicant is unrepresented, a represented defendant or respondent may be directed to provide the hearing bundles. Parties often file at court, and serve on the other parties, skeleton arguments (written summaries of their arguments and submissions) before a hearing.

2.24 Litigants in person should identify in advance of any hearing those points which they consider to be their strongest points, and they should put those points first in their oral and any written submissions to the court.

2.25 Before a hearing starts a litigant in person should be given by any other party, and should provide to other parties, photocopies of any legal authorities (past judicial decisions and/or statutes and/or textbooks) which are to be cited to the court in addition to any skeleton argument(s). These should be provided well before the hearing rather than at the door of the court.

2.26 In drafting proposed or actual case management directions the parties and the court should make use of any relevant standard directions (which can be found online at http://www.justice.gov.uk//courts/procedure-rules/civil) and adapt them to the circumstances of the case.

2.27 Any legal representative in the case should ask the litigant in person to give their name (and to give details of any special arrangements that they may wish to request e.g. in consequence of any disability) to the usher or in-court support staff if they have not already done so.

At the Hearing

2.28 Proper allowances in relation to hearings will be made in recognition of the difficulties facing litigants in person. The court will aim to enable the unrepresented party's case to be put forward in a way which ensures that the proceedings are conducted fairly.

2.29 Where a litigant in person is the applicant, the court may ask one of the represented parties to speak first in court and explain the case briefly and impartially, and to summarise the issues.

2.30 The Judge may ask a litigant in person the matters about which their witness may be able to give evidence or on which a witness called by another party ought to be cross-examined, and if necessary put to the witness such questions as the court considers proper.

2.31 If a litigant in person wishes to give oral evidence he or she will generally be required to do so from the witness box in the same manner as any other witness of fact.

2.32 At the end of the hearing, the judge will explain the Order they make. Representatives for other parties should also explain the court's order after the hearing if the litigant in person does not appear to understand it.

McKenzie Friends

2.33 A litigant in person may be assisted at any hearing by an unqualified person (often referred to as a McKenzie friend) subject to the discretion of the court. The Court will generally consider a request by the litigant in person to have a McKenzie friend in accordance with the Guidance in Practice Note (McKenzie friends: Civil and Family Courts) [2010] 1 WLR 1881.

Practice Guidance: McKenzie Friends (Civil and Family Courts) - Courts and Tribunals Judiciary

2.34 There is a presumption that a McKenzie friend should be permitted but the Guidance gives various examples of reasons as to why they might not. Different considerations may apply where the person seeking the right of audience is being paid or remunerated to do so and litigants in person applying to have a McKenzie friend should be prepared to disclose whether the McKenzie friend is being paid or remunerated and if so how the pay or remuneration is calculated.

2.35 The following is a summary of the requirements for the assistance of a McKenzie Friend:

1) The litigant in person must be present in court.

2) A litigant who wishes to attend a hearing with the assistance of a McKenzie Friend should inform the court as soon as possible indicating who the McKenzie Friend will be.

3) The proposed McKenzie Friend should produce a short curriculum vitae or other statement setting out relevant experience, confirming that he or she has no interest in the case and understands the McKenzie Friend's role and the duty of confidentiality.

4) A McKenzie friend is allowed to help by taking notes, quietly prompting the litigant in person and offering advice and suggestions. The litigant in person however must conduct their own case; the McKenzie friend may not represent them and may only in very exceptional circumstances be allowed to address the court on behalf of the litigant.

5) Applications to allow the McKenzie friend to address the court (by making an order under Schedule 3 paragraph 2 of the Legal Services Act 2007) are considered on a case by case basis but the Guidance makes clear that there is a burden on the litigant in person to justify this unusual step.

2.36 The court may stop a McKenzie Friend from assisting if the court believes there is good reason to do so in any individual case. If the court considers that a person is abusing the right to be a McKenzie Friend (for example, by attending in numerous claims to the detriment of the litigant(s) and/or the court) and this abuse amounts to an interference with the proper processes of the administration of justice, the court may make an order restricting or preventing a person from acting as a McKenzie Friend.

2.37 If a person has been declared a vexatious litigant or has a civil restraint order against them, they are unlikely to be given permission to act as a McKenzie Friend. See section 16 below on civil restraint orders and vexatious litigants.

3. The Court File

3.1 PD5C became effective from 1st October 2025, regularising and standardising the use of electronic filing and case mangement (CE-File) which had previously been operated under a pilot PD. It is mandatory for legally represented parties and applies to all cases in the KBD save for the Administrative Court.

3.2 The court file is stored electronically rather than as a paper file for most cases. However, it is important to note that the use of Ce-file does not extend to applications relating to enforcement in claims which are not already proceeding in the KBD or to the work of the Foreign Process Department.

3.3 Legal representatives must file all documents which are required by the rules or any practice direction to be filed on the court file (apart from original documents) using Electronic Working. This applies to commencing proceedings, pre-issue applications and to filing documents in existing cases.

3.4 For legally represented partiers, all filing must be done through CE File (E-Filing - Login (cefile-app.com)); sending a document by email (unless requested or permitted by a judge) will not be accepted and does not amount to filing for the purposes of the CPR.

3.5 Litigants in person are encouraged to use e-filing wherever possible but they still have the option of filing (providing to the court) documents in hard copy or by email to KBIssues@justice.gov.uk. Any hard copy documents will be scanned to CE file by the court. Requests by email to access documents by link to a shared file will be refused.

3.6 This means the court does not hold a paper file for claims issued using CE file. Any documents which are filed in hard copy, except original documents required to be lodged with the court pursuant to an order or provision of the CPR (see paragraphs 3.33-3.36 below) are retained in court for the life of the case plus 3 years. They will be available should scanning errors need to be corrected. They are destroyed at the end of the period.

3.7 The electronic file contains those documents which the court is required to hold pursuant to the CPR, whether they are documents created by the court or lodged by the parties. It also contains notes, emails and letters added by the court staff and the judiciary, as did the previous paper file. All parties to proceedings are able to inspect electronically all documents on the file which are available to them under CPR5.4B once they have been granted

access to the system. The electronic file is essentially the old paper court file in electronic format and documents that could not be viewed by a party on the old paper court files cannot be viewed on the online file. CE file is not currently an online shared litigation file.

3.8 Claims issued prior to 1st January 2019 ("Old Claims") have been migrated to the new system and given a new style claim number in place of the existing number. The old claim number will not be recognised by CE-File. Once a new style number has been allocated, that number should be used rather than the old claim number.

3.9 It is only necessary to provide the court with the old number where a payment out is to be made of funds paid into court prior to 1st January 2019.

Using CE-FILE

3.10 CE file can be accessed at: E-Filing - Login (cefile-app.com). The system can be used 24 hours a day, every day, including out of normal court office hours and at weekends and bank holidays. Parties must register with the system prior to first use.

3.11 PD5C sets out the rules of the electronic working PRACTICE DIRECTION 5C - COMMUNICATIONS WITH THE COURT.

3.12 There is more information on the Government website: HMCTS E-Filing service for citizens and professionals - GOV.UK.

3.13 To file a document using Electronic Working, a party should access the Electronic Working website, register for an account or log on to an existing account, enter details of the case, upload the appropriate document, and pay any required fee.

3.14 The filing party will know at once, from an electronic confirmation, that the court has received the document and will subsequently receive further confirmation, after it has been reviewed by the court, that it has been accepted.

3.15 A document will not fail acceptance simply because of a procedural error, unless the court orders otherwise. If there is such an error the court may remedy it by making an order under CPR rule 3.10(b). However the court may refuse to process the document to acceptance if there are procedural errors in filing. For example if the filing is incomplete in that the appropriate document label has not been applied, if it is missing pages, is illegible or the pages are the wrong way up. If a filing is not accepted, the court staff

will send a message on CE file giving an explanation of the reason it has not been accepted and the steps required for successful filing. The name of the relevant staff member will be on the message but no contact details will be provided. Any questions should be directed as follows:

Statements of case, Acknowledgments of Service, Certificates of Service and general enquiries	KBIssues@justice.gov.uk
Applications, Summary Judgments, Hearings, Bundles, Transcripts:	To the clerk to the assigned Master (see Annex 2)
Applications for Stays of executions, Enforcement of a Judgment, Request for Judgment in Default, Writs and hearings relating to those listed here	KBEnforcement@justice.gov.uk

3.16 The date and time of filing/issue is as follows for the purposes of the CPR:

(i) If a fee is required, the date and time is when the fee is paid. If the PBA system is used, the date of filing/issue is the date the PBA details were provided on the system.

(ii) If no fee is required, the date and time is the date and time of submission of the document onto the system. BUT if the document subsequently fails acceptance on the system, it will not have been filed/issued until it is accepted.

Issuing on CE file

3.17 When a case is issued on CE file, an electronic seal is applied. The seal is black and court seals used on paper documents in the Central Office have all been changed to black to ensure consistency. When the court issues a claim form it will put a notice of issue on CE file asking the claimant to download a copy for service. The claimant is responsible for service of the claim form and any particulars of claim.

3.18 Where a defendant is outside the jurisdiction, the Foreign Process Department will accept claim forms and other documents for service abroad with an electronically generated court seal. The FCO, who deal with service requests from non-convention countries, have also indicated that they will accept electronic seals. There is no requirement in the Hague Conventions for documents to be served to have an original court seal.

3.19 All parties must be added to the case file including their addresses. Where a claimant has legal representation, the claimant's address does not need to be added to the CE file party details as long as the legal representative's details are added in full. Of course the claimant must separately provide their address in accordance with PD16.2.2 on the claim form.

3.20 The address for a defendant must always be added to the case file, regardless of whether their legal representative has said they will accept service of documents for that party. This means when adding the defendant as a party to CE file, in the drop down menu for "what is your legal representation", the option "litigant in person" should always be selected as otherwise the option to add the defendant's address is removed.

3.21 Once a document is CE filed it will be considered by KBD staff before being accepted and referred to a Judge. There will inevitably be a delay between acceptance the referral to a judge given KBD staff workloads. Parties should also bear in mind that KBD staff are not legally qualified and so cannot be expected to determine the urgency of any given matter. If a matter is truly urgent or concerns an imminent hearing (within a week) parties should decide whether direct email contact with the Assigned Master's clerk is appropriate.

Filing documents on CE file

3.22 Documents must be filed as PDFs except draft orders, which must be filed as Word documents. Where any draft order refers to an "attached" or "annexed" document, that document must be provided as part of the Word document unless it is a confidential schedule (see further para 15.18 and 15.19 below for Tomlin orders).

3.23 Where more than one document is to be filed, they may either be filed as separate filings, which means a separate case event is created in CE file for each document, or as multiple documents under a single filing, which means a single case event is created with multiple documents attached.

3.24 Each document must be given a descriptive label within the system and it is important the correct label is applied to the correct document. Some of those labels have automatic permissions added; so for example "medical report" automatically applies the confidentiality permission to the document so members of the public cannot access it. If there are any documents which do not fit in to the automatic labels, they should be filed as "miscellaneous" with a filing comment stating what the document or filing is. This should only occur in exceptional circumstances. "Miscellaneous" should not be used where there is an appropriate label available. The court may require parties to re-file documents where the correct label has not been used before it will accept the filing.

3.25 For filings where multiple documents are to be filed, there are 2 methods of filing. The first is the "add another" option and the second "add associated filing". Care needs to be taken to use the appropriate procedure depending on the type of filing.

3.26 The "add another" option is only appropriate for Part 23 applications and Part 8 claim forms. Once the application or Part 8 claim form is added, the "add another" option only gives the following labelling options for the additional documents: "witness statement, exhibit, correspondence, draft order, order, statement of costs". There is additionally a label "multiple parts". This means "miscellaneous" and should almost never be used. There is no option to pay a fee for additional documents added using this method. That means if you have an additional document which requires a fee in order to be filed, it must also be added using the "add associated filing" option. If it is filed without the appropriate fee it will not be accepted as having been filed until the appropriate fee is paid.

3.27 The "add associated filing" is appropriate for other linked filings, for example a statement of case and documents attached to it. Once the initial document is uploaded, "save and next" should be added followed by "add associated filing". This allows the full range of document labels to be available. This also allows parties filing a Claim Form with schedules to consider filing the schedules as separate documents, because under CPR rule 5.4C non-parties may obtain a copy of a statement of case but not any attached documents.

Applications

3.28 If an application is filed which requires a document which has already been filed to be read, that document should be re-filed as an additional document to the application using "add another".

3.29 Once an application is accepted, a notification will be sent to the applicant to say that the application has been accepted and that a sealed copy is saved on their case file which they can view, download and serve as required.

3.30 If a request is made for an application to be dealt with without a hearing, this is not the same as a hearing without notice. For all applications other than those which are properly made without notice (see CPR23.4 and PD23A paragraph 3), the court expects that the respondent to the application will have been notified in advance, if possible, and their position as to the application set out. If that has not been done, the court may require their response or list for a hearing.

3.31 A hearing bundle is required for the hearing of every application. If it has not been provided, the hearing may be adjourned to the next available date. Unless otherwise ordered, the hearing bundle should be hardcopy.

Consent orders

3.32 When a consent order is filed for sealing, two versions must be provided as additional documents to the application. The first, in PDF format, is the signed order which should not contain the words "draft" or "minute". The second is a Word version which does not have the signatures or solicitor address details. See further paragraphs 15.10 to 15.23 below on the format and content of consent orders. See also paragraphs 5.36 to 5.40 for the layout and title of proceedings.

Original documents

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

3.34 Where an original document, for example a will, is to be lodged it cannot be filed using electronic working but must be filed physically with the court. They must be clearly marked as original documents with a front sheet marked in a font of not less than 14 point, as follows:

CLAIM NO. KB-20XX-XXXXXX

ORIGINAL DOCUMENT – NOT TO BE DESTROYED

3.35 The original hardcopy documents will be retained in a separate secure storage area. In appropriate cases the court may direct that the filing party should provide an electronic version of longer documents.

3.36 If an original document is required to be filed at the same time as issue of the claim form, the court will accept an electronic copy of the document, but the original will or other document must then be lodged with the court within 48 hours.

Anonymity/confidential documents

3.37 In cases where anonymity orders are made (or sought) documents are required to be filed both with the parties' details and in the appropriate anonymised form. If the documents are being filed other than as part of an application, or they are being filed as part of an application but do not fall within the categories of documents listed under "add another", they should be field using the "add associated filing" process. The "confidential" checkbox should be ticked for the unredacted version. The reason for the confidentiality request must be specified in the "documents comments" section. If an order has been made, the date of the order should be given and a copy of the order attached using "add another" document.

3.38 The publicly searchable part of the CE file will then show the anonymised filings but not the original non-anonymised filings. Anonymity Orders for cases on CE file should no longer provide for the non-anonymised version to be placed on the court file in a sealed envelope marked "not to be opened without the permission of a Master or High Court Judge" but instead that "The Court file shall be clearly marked with the words "An anonymity order was made in this case on [date of this Order] and any application by a non-party to inspect or obtain a copy document from this file must be dealt with in accordance with the terms of that Order".

3.39 If a confidential document or schedule is to be filed, the "confidential" checkbox should be ticked and the reason for the confidentiality request must be specified in the "documents comments" section. If an order has been made, the date of the order should be given and a copy of the order attached using "add another" document.

3.40 Documents marked "confidential" cannot be seen by non-parties or by other parties to the case.

Hearing/trial bundles

3.41 PD5C states that for hearings (e.g. applications or case management hearings), the parties may file applications or hearing bundles in electronic format using electronic working. They must provide paper copies of application or hearing bundles (that is provide a copy of the relevant documents in indexed and paginated files) unless otherwise ordered. Hearing notices and accompanying directions will often make a different order and should be read carefully. In addition see para 9.55 for interim applications before High Court Judges and Annex 5 for directions before the Masters.

3.42 If an electronic bundle is filed, it must be formatted as a PDF document with bookmarks as appropriate for section headings and the paper copy should correspond exactly to the electronic bundle (i.e. have the same index and pagination). Please see PD5C for precise details. And see 10.21 and 14.11 below.

3.43 Trial bundles must be provided to the court in paper format unless otherwise ordered. An electronic version must also be filed if the court so orders; any electronic bundle must correspond exactly with the paper copy (i.e. have the same index and pagination). See further PD5C and 14.3 to 14.11 below.

3.44 Skeleton arguments must also be provided in paper format and best practice is also to provide them by email, preferably direct to the Master and copy in the judge's clerk.

3.45 Following the hearing the parties should email an agreed minute of order in Word format as directed by the judge and the court will upload the order and seal it. If other arrangements are to apply, the judge will make that order at the hearing. The parties will then be notified that the sealed order is available to download from CE file.

Provisional Damages

3.46 The case file directed in PD41A for a provisional damages claim should be filed on CE file in an electronic bundle filed in accordance with PD5C paragraph 10.3. The party should inform the court staff via CE file that the case is a Provisional Damages claim and it will be stored electronically for the relevant period in accordance with PD41A paragraph 3.3.

Other communications with the court

3.47 Not all communications with the court need to be formally "filed" with the court. Day-to-day communications dealing with listing queries or case management issues, where the documents are not required by a rule or practice direction to be "filed", do not have to be electronically filed with CE file.

3.48 Represented parties must send any such correspondence electronically rather than in paper format. Litigants in person may send them electronically or in paper format.

3.49 Emails sent to the court must:

(i) include the name and telephone number of the sender and an address for contact, which can be an email address; and

(ii) be in plain text or rich text format rather than HTML

(iii) Attachments must be sent in a format supported by Microsoft office 365.

3.50 Skeletons, chronologies and draft orders for hearings (unless ordered otherwise) may be sent by email but should also be provided in hard copy.

3.51 Where proceedings have started, the subject line of the email or heading of a letter must contain the following information

(i) the case number;

(ii) the parties' names (abbreviated if necessary); and

(iii) the date and time of any hearing to which the email relates.

3.52 Any email or letter in which any representation is made to the court on a matter of substance or procedure must be copied to any other party to proceedings or their representatives unless there is a compelling reason not to do so and that reason is clearly stated in the communication. Any communication to the court which is copied to other parties or their representatives must state on its face that it is being copied to them and state their identity and capacity (See CPR39.8).

3.53 Any communication which does not comply with CPR39.8 will be returned to the sender without it being considered by the court unless the court otherwise directs.

3.54 If the court considers that an email or document contains information that should be placed on the electronic file then the clerk will either file the email or document or will request the party to do so. The document filed will then be treated as a document which has been filed.

3.55 If late documents which ordinarily need to be filed need to reach the court urgently (for example last minute filing for a hearing) they may be emailed, as long as this is acceptable to the judge or their clerk. But it is essential that they are also filed using electronic working.

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

Fees

3.57 Care should be taken ensure the correct fee is paid. Common errors include paying the fee for an application without notice when it is properly an application which should be made on notice, failing to pay the additional fee for an injunction or other non monetary aspect of a claim or paying a fee which does not match the value of the claim on the claim form.

3.58 The fee for an application on notice is the same whether or not a hearing is requested, currently £313. The same applies for applications by consent or without notice applications, the same fee of £123 is required whether a hearing is requested or not. Applications without notice should only be made in the circumstances set out in CPR23.4 and 23APD.3.

3.59 The current court fees are set out here:

Fees in the civil and family courts - main fees (EX50) - GOV.UK

3.60 Fees relating to any filing may be paid using

(i) the PBA system (details may be obtained from the PBA Support Team, telephone 01633 652125) MiddleOffice.DDServices@liberata.com or online https://www.gov.uk/government/publications/form-fee-account-application-form-fee-account-customer-application-form; or

(ii) by credit or debit card.

3.61 Users wishing to apply for a fee remission should contact the court prior to using electronic working to obtain a Help with Fees payment by account number. See https://www.gov.uk/get-help-with-court-fees for online application or paper form.

Online public search

3.62 A court user registered as an "E-Filer" will automatically have access to the public search function. A court user who is not an E-Filer, but wishes to use this function, should register for an account on the Electronic Working website E-Filing - E-File Registration. Once approved, parties will be able to carry out a search of the Central Office Register of Claims and/or request copies of documents. A party to the case may make a request for copies of documents to which they are entitled under CPR5.4B. A non-party may make a request for copies of documents to which they are entitled as set out in PD5.4C. The rules should be consulted for the detail but in summary the following can be seen by non-parties:

(i) a statement of case, but not of any documents filed with it or attached to it: see CPR5.4C;

(ii) any judgment or order made in public (whether made at a hearing or without a hearing);

(iii) witness statements which have been used at trial or in open court are open to inspection, unless the court directs otherwise;

(iv) other documents, including communications between the court and a party or another person, may be obtained with the permission of the court, upon making an application in accordance with Part 23.

CE file problems

3.63 If you are having technical problems with CE file, please contact the CE file support at efilesupport@justice.gov.uk.

4. Applications made pre-issue or at the point of issue

4.1 Applications which are made pre-issue must be made on CE file (save for applications made by a litigant in person who is not using CE file). They will be allocated a case number on the system. A different case number will be given if a claim is issued, although the cases can be linked on the system. If necessary, a party may ask for a direction that they re-file documents from a pre-action application in the main proceedings.

Interim Remedies

4.2 Under CPR25.1 the court has power to grant various interim remedies, and applications for these are dealt with in Section 12 below. Under CPR25.2 the court can grant interim remedies before proceedings are started, and without notice having been given to the other party, but this is subject to various conditions.

4.3 A High Court Judge is available on every day that the court is sitting both in normal hours and out of hours to deal with applications for interim remedies. Applications should be made to the Interim Applications Judge (who normally sits in Court 37). The practice and procedure is set out in paragraphs 9.55 to 9.61 and section 11.

4.4 Masters have jurisdiction to grant various interim remedies, other than freezing and search orders (see PD2B paragraph 2). However, all applications for interim injunctions should be made to a High Court Judge.

4.5 Applications are required to approve interim payments in claims involving children and protected parties. Those interim payments may be made at a time when a claim would not normally be issued. In those cases, a Part 8 claim should be issued, and any further applications for interim payments made in the Part 8 claim. See section 13 below for the procedure for approval of interim payments and of settlements.

Disclosure before proceedings are started

4.6 A person intending to make a claim may need documents within the control of a likely party to a claim to which they do not yet have access. If the documents are not disclosed voluntarily, in accordance with the Pre-Action Protocols, then CPR31.16 sets out the provisions for making an application for disclosure of documents before proceedings have started. If such an application is made and a claim is later issued, the claim will have a different case number, but the court should be told about the pre-action application and the two cases will be linked on CE file.

4.7 It may also be possible, where proceedings have not yet been started, to make an application for an order for disclosure of documents and information from other sources, who are not likely to be a party to the claim. Pursuant to *Norwich Pharmacal v Customs and Excise Commissioners* [1974] AC 133 HL, the court may order documents and information to be provided by persons alleged to have been caught up in the wrongs of others. These applications should be made by Part 8 claim form (unless there is a dispute of fact in which case a Part 7 claim form is likely to be appropriate). The application will be placed in the first instance before a Master and will be referred to a High Court judge if the capacity and/or importance of the application warrants it; if the applicant wishes for the application to be dealt with by a High Court Judge, consent from the Master should be sought.

Defamation proceedings: Offer of Amends

4.8 An application may be made to the court before a claim is brought for the court's assistance in accepting an offer of amends under section 3 of the Defamation Act 1996. The application is made by a Part 8 Claim Form. For more information see section 8 (Part 8 procedure) and section 17 (Media and Communications List) below.

Permission to serve out of the jurisdiction

4.9 Permission may be required to serve proceedings or documents out of the jurisdiction. Such applications are made by way of application notice and will usually be dealt with by a Master. The application is usually dealt with on paper. See CPR6.36 to 6.38 and paragraph 6.10 below.

4.10 The applicant must be candid and should draw to the attention of the court in the evidence in support of the application all relevant matters including those which are adverse to the application. A failure to do so may lead to the order giving permission to be struck out.

Applications for anonymity

4.11 Open justice is a fundamental principle of our court system. The general rule is that the names of the parties to a claim are included in all court documents, orders and judgments and hearings are publicly listed with the names of the parties.

4.12 However, the Court does have powers: (a) to permit a Claim Form to be issued without a party's name or address (b) to prevent disclosure of the identity of a claimant or other person; and (c) to prevent or restrict public access to documents on the court file, including statements of case (CPR 5.4C). Such orders will not be made simply because the parties consent. Any departure from the principle of open justice should be the minimum strictly necessary in the interests of justice and for the proper administration of justice. Where the court has permitted a name or other matter to be withheld from the public, the court can impose reporting restrictions under s.11 Contempt of Court Act 1981 prohibiting the publication of that name in connection with the proceedings.

4.13 Applications for such orders can be made on issue. Applications should usually be made to a Master. The application should be made at the same time as issuing the claim form and not before. The file will be made private until the application is dealt with. The application should usually be supported by appropriate evidence and a short skeleton argument.

4.14 If an interim remedy is also being sought which is made to a High Court Judge, the application for anonymity should also be made to the judge.

4.15 Practice Form 10 provides a draft order intended for cases in which an anonymity order is being requested in accordance with JX MX v Dartford & Gravesham NHS Trust & Ors - Find case law - The National Archives at the stage of an approval of damages application on behalf of a child or patient. It can be found here and should be amended as appropriate. Anonymity and prohibition of publication order: Form PF10. See further section 13 below.

4.16 For orders in other cases, the precise form of order will vary from case to case. However, the following are examples of orders which may be considered appropriate permitting issue of the claim form without a party's name or address:

> "The claimant's [or other party's] name is to be withheld from the public and must not to be disclosed in any proceedings in open court."

"The claimant is permitted to issue these proceedings naming the claimant [or other party] as [three letter cipher, e.g. "APZ"] and giving an address c/o the claimant's solicitors."

"There is to be substituted for all purposes in these proceedings in place of references to the claimant [or other party] by name, and whether orally or in writing, references to the letters (eg) "APZ" ".

4.17 The following is an example for a reporting restriction order prohibiting publication of the name of the claimant:

"Pursuant to s.11 Contempt of Court Act 1981, there must be no publication of the identity of the claimant or of any matter likely to lead to the identification of the claimant in any report of, or otherwise in connection with, these proceedings."

4.18 The following is an example of order restricting access by a non party to documents on the court file:

"Pursuant to CPR 5.4C(4):

(a) The parties must, when filing any statement of case, also file a redacted copy of that statement of case omitting the name, address and any other information which could lead to the identification of the claimant.

(b) Unless the Court grants permission under CPR 5.4(C)(6), no non-party may obtain an unredacted copy of any statement of case."

4.19 In all cases the following should be included in the order:

"The Court file shall be clearly marked with the words "An anonymity order was made in this case on [date of this Order] and any application by a non- party to inspect or obtain a copy document from this file must be dealt with in accordance with the terms of that Order."

4.20 The order should also include a general permission for any person to apply to vary or set aside the order. There should be no time limit on the permission to apply.

4.21 Additionally any such order must be published on the website of the judiciary of England and Wales and the order should make provision for it to do so. Published orders can be found here Anonymity Order Archives - Courts and Tribunals Judiciary.

4.22 See further paragraphs 15.24 to 15.27 below.

Possession claims against trespassers

4.23 Possession proceedings may only be started in the High Court if the conditions in PD55A are met, namely:

(i) There are complicated issues of fact

(ii) There are points of law of general importance

(iii) The claim is against trespassers and there is a substantial risk of public disturbance or of serious harm to persons or property which properly require immediate attention.

4.24 Cases against trespassers in the High Court are by their nature urgent and an application will often be made for short service and a hearing very soon after issue. The practice is set out in the practice note issued on 30 September 2016 by the Chief Chancery Master and the Senior Master of the King's Bench Division 55APN which is attached at Annex 3.

5. Starting Proceedings in the King's Bench Division Central Office

Issuing and Serving the Claim Form

5.1 All claims must be started by issuing a claim form. The great majority of claims involve a dispute of fact, and the claim form should be issued in accordance with Part 7 of the CPR. The Part 8 procedure may be followed in the types of claim described in paragraphs 5.47 to 5.51 below.

5.2 Parties who are legally represented MUST issue claims using CE file (see section 3 above). For the date of issue of a claim form issued on CE file see paragraph 3.17 above. Litigants in person may use CE file or may start proceedings by providing hard copy documents to the court. Those claim forms are issued on the date sealed on the claim form by the court.

5.3 Litigants in person who wish to start proceedings not using CE file, should send the claim form (Form N1) to Action Department, Central Office, Royal Courts of Justice, Strand, London WC2A 2LL, or by email to KBIssues@justice.gov.uk or leave it in the drop box labelled KBD which is found next to the reception desk in the main hall of the Royal Courts of Justice Form N1 can be found here:

N1 - Claim form (publishing.service.gov.uk)

5.4 The documents will also be scanned onto CE file by the court and an electronic file maintained. Hardcopy documents are not kept. Defendants who are represented are required to use CE file. See section 3 above for guidance on use of CE file.

5.5 Proceedings for damages or for a specified sum may not be started in the High Court unless the value of the claim is more than £100,000 except for claims which include a claim for damages in respect of personal injuries which must have a value of £50,000 or more (PD7A paragraphs 2.1-2.2).

5.6 Other exceptions are proceedings for damages or other remedies for libel or slander (defamation claims), and certain markets and tolls claims, which must be started in the High Court unless the parties have agreed otherwise in writing, and claims which relate to media and communications work (PD7A paragraphs 2.9-2.10). Various other statutes or rules may also require a claim to be issued in the High Court.

5.7 If a claim is started following a pre-action application, a new claim number will be given and the claims can be linked on CE file.

Part 7 claims

5.8 The requirements for issuing a claim form under the Part 7 Procedure are set out in Part 7 and in Practice Direction 7A.

5.9 Parties should note that rule 16.2 and PD16 para 2 also set out specific matters that must be included in the claim form. In defamation and certain other media and communication cases, which will be dealt with in the Media and Communications List, PD53B (Media and Communication Claims) sets out matters that must be included in the claim form and particulars of claim. See further section 17 for cases in the Media and Communications List.

Assignment to Master

5.10 A claim issued in the Central Office will normally be assigned upon issue to a particular Master as the procedural judge responsible for managing the claim. However, assignment may be triggered at an earlier stage, for example:

1) an application for pre-action disclosure under rule 31.16,

2) an application for an interim remedy before the commencement of a claim or where there is no relevant claim (Part 25).

5.11 The assigned Master can be identified on CE file in the "case information" box. The named judge is the assigned Master.

5.12 It occasionally happens that a claim is assigned to a Master who may have an "interest" in the claim. In such cases the Senior Master will re-assign the claim to another Master.

5.13 Where either an application notice or a Part 8 Claim Form is issued which requires a hearing date to be given immediately, KB Issues will assign a Master and the KB Masters' Listing Section will give a hearing date.

5.14 The Senior Master may assign a particular Master to a class/group of claims or may re-assign work generally. Clinical negligence claims and asbestos claims are assigned to specialist Masters.

5.15 At present clinical negligence claims are assigned to:

Senior Master Cook, Master Armstrong, Master Brown, Master Eastman, Master Lê-Thornett, Master Stevens and Master Sullivan.

5.16 Claims for mesothelioma are assigned to:

Master Eastman, Master Davison, Master Lê-Thornett, Master Gidden and Master Byass.

5.17 In the event of an assigned Master being on leave or for any other reason temporarily absent from the Royal Courts of Justice then the Masters' Listing Section may endorse on the appropriate document the name of another Master. The fact that there is an assigned Master does not prevent another Master dealing with the case if circumstances require (paragraph 6.2 of PD2B).

The Claim Form

5.18 Once a claim form is issued via CE file, the court will electronically issue and seal the claim form. See section 3 above for CE file. The court will send a notification via CE file to the party that it is ready for service. The claimant must then serve it and the relevant supporting documents on the defendant. See further section 6 below.

5.19 If a litigant in person issues a paper claim form, the court will scan it onto CE file and the court will then send copies to the litigant in person for them to serve the claim form and any particulars of claim on the defendant or defendants. A litigant in person who is not using CE file may request that the court serve the claim form. If particulars of claim were not submitted with the claim form it will be the litigant in person's responsibility to serve the particulars of claim in accordance with the rules (see further section 6 below).

5.20 For claims to be served out of the jurisdiction, the claimant must serve the claim form, whether or not the claimant is represented. For service out of the jurisdiction see further paragraphs 6.10 to 6.12 below.

5.21 For more detailed information about service, including methods of and time limits for service see CPR Part 6, CPR Part 7.5 and 7.6 and Section 6 below.

Statements of Case (Part 7 Procedure)

5.22 Statements of Case are the documents in which parties set out their cases. They set out the facts relied on or disputed to justify their claims that the court should, or should, not grant particular remedies (such as damages or injunctions). They include the Claim Form itself as well as Particulars of Claim, Defences, Replies, Part 20 Claim and, Part 18 Information. They used to be called pleadings and many of the decided judicial authorities use the terminology of "plead" and "pleading". They are governed by various rules but especially as to their content by CPR16 and its PD16.

5.23 If a statement of case exceeds 25 pages, excluding schedules, a situation the CPR considers to be exceptional, then a short summary must also be filed (PD16 para 1.3).

5.24 The function of Statements of Case is to state (or dispute) "facts" as opposed to evidence (which is the means by which facts are proved or disproved). They inform both the other parties and the court as to the case which they must meet. They should be concise and allow the reader to understand the case being put forward. They should state the case, and therefore should set out the legal claim (or any legal defence) which is being advanced; but they should not seek to argue the case.

5.25 Statements of Case must be verified by a Statement of Truth under CPR22 and its PD22 which set out not only its form but who is able to make it. The statement of truth has to be dated and involves not only a statement that the maker of it believes that the facts stated in the statement of case are true, but also that the maker understands that they may be liable to proceedings for contempt of court if the statement of truth is made without an honest belief in its truth.

5.26 It is essential that the person signing the statement of truth does hold such a belief. Before signing, they should ask themselves carefully whether the evidence which they have justifies them in holding such a belief (even if they only regard the various facts as being more likely than not to be the case). In some circumstances (where, for example, the maker does not know which of alternative cases is true but honestly believes that it must be one of the other) the statement of truth may require modification, but this should be carefully set out and explained.

Particulars of claim (Part 7 Procedure)

5.27 A Part 7 claim form has only to set out a very brief summary of the nature of the claim and the remedies sought. However the details of the claim need to be set out in what are called "particulars of claim". The particulars of claim should set out a concise summary of the relevant facts which give rise to the claim, the legal basis for the claim and the remedy sought. In simple claims where the matters normally found in the particulars of claim can be set out succinctly on the claim form, a separate document is not necessary.

5.28 Whether the particulars of claim are contained within the claim form or a separate document, they must comply with the requirements in CPR16.4 and PD16 paragraphs 3 to 9. Media and Communications claims must comply with the requirements in PD53B, and other specific or specialised claims (e.g. for possession) may have their own requirements in their individual Rules and PDs.

5.29 Often allegations (for example, of negligence, or of knowledge, or notice, or of fraud) require to be "particularised". That usually involves the relevant allegation being set out in general terms and then "Particulars of [the allegation]" being set out as a set of numbered sub-paragraphs (and which may include listing the facts from which the court is asked to infer that someone had a particular state of mind).

5.30 The parties should therefore and in addition to complying with the specific provisions of the CPR and the PDs, comply with the following guidelines on preparing a statement of case;

1) a statement of case must be as brief and concise as possible,

2) a statement of case should be set out in separate, consecutively numbered paragraphs and sub-paragraphs,

3) so far as possible each paragraph or sub-paragraph should contain no more than one allegation,

4) the facts and other matters alleged should be set out as far as reasonably possible in chronological order,

5) the statement of case should deal with the claim on a point-by-point basis, to allow a point-by-point response,

6) details of the main allegations should be stated as particulars and not as primary allegations,

7) where a party is required to give particulars of an allegation or reasons for a denial, the allegation or denial should be stated first and then the particulars or reasons should be listed one by one in separate numbered sub-paragraphs,

8) a party wishing to advance a positive claim must identify that claim in the statement of case,

9) any matter which, if not stated, might take another party by surprise should be stated,

10) where they will assist, headings, abbreviations and definitions should be used and a glossary annexed; such headings should be in a form likely to be acceptable to the other parties so that they may also use them. Contentious headings, abbreviations, paraphrasing and definitions should not be used,

11) schedules or appendices should be used if this would be helpful, for example where lengthy particulars are necessary, and any response should also be stated in a schedule or appendix,

12) evidence should not be included in statements of case. Lengthy extracts from documents should not be set out. If an extract has to be included, it should be placed in a schedule or appendix.

5.31 Where the particulars of claim are not included in the claim form itself, they are to be separately verified by a statement of truth; see paragraph 3.2 of PD16.

5.32 The requirements as to filing and service of particulars of claim do not apply where the claimant uses the Part 8 procedure: see CPR16.1.

Titles of claims

5.33 Claims issued in the Royal Courts of Justice should be titled as follows:

IN THE HIGH COURT OF JUSTICE Claim No. KB-

KING'S BENCH DIVISION

5.34 If the claim falls within a specialist list or area, that list should be identified immediately underneath the words KING'S BENCH DIVISION and may be (as appropriate):

ASBESTOS LIST

LIVING MESOTHELIOMA CLAIM

FATAL MESOTHELIOMA CLAIM

CLINICAL NEGLIGENCE

MEDIA AND COMMUNICATIONS LIST

5.35 For claims issued in a district registry, the name of the district registry should appear immediately below the words KING'S BENCH DIVISION.

5.36 Where there are a number of claimants or defendants, they should be described as set out in PD7A paragraph 4.2 as follows:

1. AB
2. CD

Claimants

And

1. EF
2. GH

Defendants

They should not be listed separately as "AB, First Claimant; CD, Second Claimant" etc.

5.37 The same title format should be used on all pleadings and orders.

Striking out of a claim

5.38 The court has wide powers, both under its inherent jurisdiction and under the CPR, to strike out proceedings or part of them. A claim form, particulars of claim or defence may be struck out of the court's own motion or on application by another party.

5.39 Statements of case may be struck out if they are incoherent or abusive, disclose no reasonable ground for bringing the claim or where there has been a failure to comply with a rule, practice direction or order (see CPR3.4(2) for rule). For examples where a claim may be struck out, parties should consult Practice Direction 3A.

5.40 On issue, if the court officer believes that a case may fall within 3.4(2) (a) or (b), they may, and often do, refer the matter to a Master (see PD3A para 2.1). Referrals are usually made where the claim makes no sense or has no details of the facts or is obviously a claim that cannot be brought in law. An example is when, even assuming the facts stated are true, the claim form or particulars of claim does not disclose a claim known to the law. An example is any attempt to bring a claim against a judge for actions taken whilst a judge.

5.41 If the Master considers it appropriate, they may make an immediate order striking out the claim, or if it appears there may be a proper claim but it is not properly set out, may make an order staying the claim and requiring the claimant to provide a draft amended claim form or particulars of claim by a particular date which does comply with the requirements set out above. See further PD3A paragraph 2.

5.42 If an order is made of the court's own motion (as opposed to on the application of party), the claimant has a right to apply to set aside or vary the order. They must apply within 7 days of the order being served on them (or such other time as the court directs (CPR3.3 paragraphs 5 and 6). The order must set out the right to apply and the time within which is must be done. The application must be made in accordance with CPR23 (see section 11 below).

5.43 The fact that a claim is allowed to proceed in such circumstances does not prejudice the right of any party to apply for an order against the claimant: PD3A para 2.5.

5.44 Applications to strike out a claim form or particulars of claim can be made at any time but should be made as early as possible (PD23A para 2.7) and should be made before a costs and case management conference is listed in order to avoid unnecessary costs of budgeting and case management where possible. If an application to strike out is made before a defence is filed, an application for judgment in default of a defence cannot be made (CPR12.3 (3)(a)).

5.45 An applicant must show that there is no valid answer to their application. If there are material facts which are truly in issue and which should be determined at trial (for example by cross-examination of witnesses) the court will not strike out.

Totally Without Merit Order

5.46 If a statement of case is struck out, the judge must consider whether to record in the order that the case was "totally without merit" CPR3.3 (7) and 3.4(6). A claim is totally without merit if it is bound to fail. As well as making a totally without merit order, the judge must consider making a civil restraint order. See further section 16 below.

Part 8 Procedure

5.47 A claimant may use the Part 8 procedure where (see CPR8.1):

1) they seek the court's decision on a question that is unlikely to involve a substantial dispute of fact, or

2) a rule or practice direction requires or permits the use of the Part 8 procedure.

5.48 The court may at any stage order the claim to continue as if the claimant had not used the Part 8 procedure: rule 8.1(4).

5.49 Certain matters that must be included on the claim form when the Part 8 procedure is being used are set out in CPR8.2. CPR8.5 provides that the claimant must file (and serve) their written evidence upon which they propose to rely with the claim form.

5.50 Common types of claim in the KBD which must be issued under Part 8 include:

1) a claim by or against a child or protected party that has been settled before the commencement of proceedings, the sole purpose of the claim being to obtain the approval of the court to the settlement;

2) a claim for provisional damages that has been settled before the commencement of proceedings, the sole purpose of the claim being to obtain a judgment by consent;

3) a claim under s.3 of the Defamation Act 1996 made other than in existing proceedings (see para 5.2 of PD53B);

4) a claim under rule 46.14 where the parties have agreed all issues before the commencement of proceedings except the amount of costs and an order for costs is required;

5) a "Norwich Pharmacal" application (see Section 4 above and see rules 25.1 and 25.2) where there are no existing proceedings (note that such an application should be made under CPR23 in existing proceedings).

5.51 The Part 8 procedure is also the appropriate procedure for approval of the settlement of issues or of interim payments in cases involving a child or protected party but before the claim is ready to be issued.

5.52 The Part 8 Procedure is dealt with further in Section 8 below.

6. Service of Documents

Introduction

6.1 Service means giving or sending a relevant document to another party. There are specific rules about how and by when that must be done. The rules are different depending on whether the defendant lives or has a place of business in England and Wales (in the jurisdiction) or not (outside the jurisdiction).

6.2 Service of documents is dealt with in Part 6 of the CPR. This is split into 5 sections. Section I (rules 6.1 and 6.2) deals with scope and interpretation. Section II (rules 6.3 to 6.19) deals with service of the claim form within the jurisdiction (that is within England and Wales). Section III (rules 6.20 to 6.29) deals with service of documents other than the claim form in the United Kingdom. Section IV (rules 6.30 to 6.47, amplified by PD6B) deals with service of the claim form and other documents out of the jurisdiction. Section V (rules 6.48 to 6.52) deals with service from foreign courts or tribunals. PD6A deals with various specific methods of service within the United Kingdom.

Service of the Claim Form within the jurisdiction

6.3 The methods by which a claim form may be served within the jurisdiction (England and Wales) are found in CPR6.3. The requirements for the chosen method should be followed very carefully. CPR6.7 to 6.13 set out rules on where the claim form should be served within the jurisdiction in different circumstances. CPR6.30 to 6.47 deal with service outside the jurisdiction.

6.4 As set out above in section 5, the court will not serve the claim form within the jurisdiction if a party is represented and the court will not serve the claim form out of the jurisdiction. If an appropriate rule is not followed precisely, then the service may well be invalid and ineffective even if the defendant has received the claim form.

6.5 If the court is to serve the claim form (which will only be in the case of unrepresented litigants not using CE file and who have requested that the court serve) then the claimant must provide in it an address for service upon the defendant in the UK (CPR6.7).

6.6 Where the court has undertaken service of the claim form it will send the claimant a notice including the date on which the claim form is deemed served: rule 6.17 (1). If the court has attempted service by post and the claim

form is returned, the court will send notification of that to the claimant: rule Note however that, even in that case, the claim form will be deemed served unless the address for the defendant is not the correct address to comply with rules 6.7 to 6.10. The court will not try to serve the claim form again: rule 6.4(4).

6.7 Where the claimant has served the claim form, they must file a certificate of service within 21 days of service of the particulars of claim (unless all defendants have filed acknowledgements of service). They may not obtain judgment in default unless they have done so. Rule 6.17, which must be carefully followed, sets out the contents of the certificate of service according to which method of service has been adopted; and it sets out the date of the relevant step taken by the claimant in the case of each such method.

6.8 A claimant can apply for permission to serve by an alternative method under rule 6.15 where there is good reason to do so. Any such application must be made by Part 23 application notice and supported by evidence. The court can dispense with service in exceptional circumstances under CPR6.16.

6.9 Where a claim form is to be served within the jurisdiction, the relevant service step must be completed within 4 months after issue (CPR7.5) and the court's powers to grant extensions of time are severely limited by CPR7.6, and even more so in relation to applications made after the relevant time has expired. If a claim form has not been validly served in time and the limitation period for the claim has expired, it may not be possible to bring a second claim.

Service of the Claim Form out of the jurisdiction

6.10 Permission is needed to serve some claim forms out of the jurisdiction. The rules are set out in part IV of CPR6.

6.11 It should be noted that a claimant may issue a claim form against a defendant who appears to be out of the jurisdiction, without first having obtained permission for service, but that, if the case is not one where the relevant notice (see 6.14 below) has been filed stating grounds as to why service may be effected without permission, the claim form will be endorsed by the court "Not for service out of the Jurisdiction". If an N510 is filed after the claim form is sealed, the claimant will be asked to file a clean copy of the claim form for sealing.

6.12 Where a claim form is to be served outside the jurisdiction, the service itself must be completed in accordance with Section IV of CPR6 within

6 months after issue (CPR7.5(2)) and, as with claims to be served within the jurisdiction, the court's powers to grant extensions of time are severely limited by CPR7.6, and even more so in relation to applications made after the relevant time has expired.

Service without permission

6.13 Rules 6.32 and 6.33 deal with cases where the claimant may, without permission, serve a defendant in Scotland or Northern Ireland (rule 6.32); or out of the United Kingdom (rule 6.33). The rules are detailed and should be consulted in each case. If proceedings are served without permission where they do not fall within those rules, they risk being struck out or stayed under CPR11.

6.14 In order to serve without permission, the claimant must comply with rule 6.33 and file with the claim form a notice containing a statement of the grounds on which they are entitled to serve without permission. They must serve a copy of that notice with the claim form. The form of the notice is in Form N510 (see Form N510: Service out of the jurisdiction - GOV.UK (www.gov.uk).

6.15 If the claimant fails to file such notice, the sanction contained in rule 6.34(2) is that the claim form may only be served once the claimant files the notice, or if the court gives permission.

Service with permission

6.16 If CPR6.32 and 6.33 do not apply, then CPR6.36 provides that service can take place out of the jurisdiction with the permission of the court if one or more of the grounds set out in PD6B paragraph 3.1 apply.

6.17 The requirements for the application for permission are set out in CPR6.37. An application complying with Part 23 must be made. The application must set out which ground or grounds in paragraph 3.1 of PD6B are relied upon, and various other matters, including why it is said that England & Wales is the proper place in which to bring the claim. Such applications are usually considered by a Master on paper on a without notice basis, and the claimant must comply with their obligations of full and frank disclosure (Section 11).

6.18 Under rule 6.38, if permission was given to serve the claim form out of the jurisdiction, or permission was not required to serve the claim form, no further permission is required to serve subsequent documents on an existing party out of the jurisdiction.

Methods of service out of the jurisdiction

6.19 The various methods of service available are set out in CPR6.40(2) and (3). Where service is to take place in Scotland or Northern Ireland the method must be one permitted by sections II or III of Part 6. Where service is to take place out of the UK the method may be one of those referred to in CPR6.40(3). These include particularly service through the authority designated under The Hague Convention or in accordance with any other Civil Procedure Convention or Treaty in respect of the country concerned. The procedure in that case is fully laid out in CPR6.42. The status and texts of the Civil Procedure Treaties which the United Kingdom has entered into may be found at Bilateral treaties on civil procedures - GOV.UK (www.gov.uk) Enquiries may be directed to: treatypublicenquiries@fcdo.gov.uk. Originals of the documents must be filed in the Foreign Process Section in Room E16. For more details of the operation of the Foreign Process section in relation to the service of court documents out of the jurisdiction see section 19 below.

6.20 The remaining methods of service, and the procedure to be followed if they are adopted, are set out in CPR6.42 to 6.45. These include service on a State as defined in CPR6.44.

6.21 It should be noted that service out of the UK may be achieved by any method permitted by the law of the country in which service is to take place; but that nothing in CPR6.40(3) or in any court order authorises or requires any person to do anything which is contrary to the law of the country where the document is to be served: CPR6.40(4).

6.22 The court may make an order under rule 6.15 permitting service out of the jurisdiction by an alternative method or at an alternative place but an order cannot be made if its effect would be contrary to the law of the country concerned. The jurisdiction to make such an order and the circumstances in which discretion may be exercised to make such an order are the subject of the decision of the Supreme Court in *Abela v Baadarani* [2013] UKSC 44, per Lord Clarke of Stone-cum-Ebony JSC and the Notes in the White Book Vol 1 at 6.40.4. As to alternative service of documents other than the claim form see paragraph 6.25 below.

Documents other than the Claim Form

6.23 CPR6.20 provides the rules for methods of service for documents other than the claim form within the jurisdiction.

6.24 All litigants whether represented or not, and whether or not located within the jurisdiction, must give an address for service for documents (other than the claim form). The address for service must, unless the court otherwise orders, be either in the UK or one of certain EEA addresses (CPR6.23). It is essential that any change of address is notified in CE file or in writing to the court and also to all other parties, as otherwise sending documents to the (old) address will amount to valid service.

6.25 The court has jurisdiction under CPR6.27 (applying CPR6.15) to authorise alternative service and under CPR6.28 to dispense with service of any such document.

Service of application notices and court orders

6.26 The party who makes an application must serve it on the other parties. The court will not do so. The same practice applies to litigants who are not represented as to those who are. When the court makes an order on an application, the applicant must also serve the order on the other parties.

6.27 Other orders made by the court, for example following a case management conference, will be put on CE file by the court and a notification sent out to parties via CE file that the sealed order is available. Unless ordered otherwise, the parties do not need to serve such orders on each other.

6.28 Where a litigant in person is not using CE file, the court will serve that litigant unless the court orders another party to do so.

Service of documents from Foreign Courts or Tribunals

6.29 Section V of Part 6 (containing CPR6.48 to 6.52) deals with incoming service from a foreign court or tribunal.

Service where solicitors are acting for a party

6.30 Solicitors are requested to ensure that the relevant current fee earner's reference, telephone number (including extension), e-mail and correspondence address are updated on CE Filing as soon as they change. The court staff do not note such changes of reference from correspondence and so will not update the court's record without request and notification.

6.31 If a solicitor is ceasing to act, either because the client wishes them to cease or because the solicitor does, appropriate notice must be given to the court. The relevant rules are in CPR Part 42 and PD42. If they are not complied with, the original solicitor will continue to be on the court record.

6.32 Care must be taken to recognise and observe the requirements of CPR42. Different procedures apply to the following situations:

(i) The party has appointed a new firm to act for them (either replacing a firm already on the record or where they were acting in person) or they are choosing to represent themselves. See CPR42.2 and Practice Form N434; and

(ii) The firm (or sole-practitioner) wishes be declared by the court as no longer acting, in circumstances where it is unclear whether the party now represents themselves or has a new firm acting for them. See CPR42.3.

6.33 In the situation at (i), a notice of change must be filed and served for the new solicitor to be on the record or for the litigant to be recorded as acting in person. See CPR42.2 and Practice Form N434, which can be found here:

Form N434: Tell a court about a change of legal representative - GOV.UK (www.gov.uk)

6.34 In the situation at (ii) the solicitor must apply to the court for an order from the court declaring that they have ceased to act before they can hold themselves out as no longer acting in the claim. Mere mention in correspondence, for example, that they are without instruction or have ceased to act does not achieve removal from the record. CPR42.3 sets out the procedure.

6.35 The application must be made in accordance with CPR23 and be supported by the evidence it is said justifies the declaration. Notice must be given to the party for whom the solicitor is acting unless the court orders otherwise. However, such applications are usually without notice to the other parties to the action and kept confidential from them, given the typical subject matter of the application. The court might order otherwise if, for example, the client has disappeared without any known means of contact. Even then, the court may direct that the Order is served upon the client at their last known address and provide a number of days for them to set-aside, vary or revoke the Order. The costs of the application should be sought from the former client as part of the former retainer rather than as part of the application. The order must be served upon the other parties to the litigation. The party must give a new address for service.

6.36 CPR42.4 provides for the unusual situation where another party to the action applies for a declaration that a solicitor has ceased to act. This only applies in the situations specified in CPR42.4.

6.37 Where an order is made declaring that a solicitor has ceased to act for a party, that party must provide an address for service in accordance with CPR6.23(1) and 6.23(4).

7. Part 7 – Procedure following Service of the Claim Form

Responding to a Part 7 claim

7.1 Responding to particulars of claim is dealt with in CPR9. A defendant may respond to the service of Particulars of Claim by:

1) filing or serving an admission in accordance with CPR14,

2) filing a defence in accordance with CPR15,

3) doing both (if only part of the claim is admitted), or

4) filing an acknowledgement of service in accordance with CPR10; this is appropriate if they are unable to file a defence within 14 days from the service of the Particulars of Claim (in which case they will have 28 days from service of the Particulars of Claim to file a defence, and see below) or wish to contest the jurisdiction of the court (in which case the acknowledgement of service must state that and then CPR11 and its time-limits must be complied with, and see below).

7.2 Where a defendant receives a claim form that states that particulars of claim are to follow, they need not respond to the claim until the particulars of claim have been served on them (CPR10.3).

7.3 Where a defendant fails to file an acknowledgement of service within the time specified in CPR10.3 or to file a defence within the time specified in CPR15.4 the claimant may obtain default judgment if CPR12 allows it. (See paragraphs 7.13 to 7.21 below for information about default judgments.)

7.4 Where the claim has been served out of the jurisdiction, the period for the defendant to file an acknowledgement of service, an admission, or a defence is set out in CPR6.35. The periods vary according to the country in which service took place. In each case the period will run from the date of service of the particulars of claim. In many cases, where service is in a foreign country falling under rule 6.35(5), the table contained in PD6B (and referred to specifically in PD6B paras 6.3 and 6.4) will set out the relevant period for compliance.

7.5 The procedure for challenging jurisdiction of the court under CPR11 is relevant to cases where it is said there has been a failure of service (either altogether or within the CPR7.5 time-limits) or to be some other reason that there is no valid claim over which the court either has or should exercise jurisdiction. See CPR11.4 for the time limits for making such an application. Such applications often involve foreign law, and the parties should also consider the need for (and obtaining directions for) any expert evidence in support of such an application.

Defence

7.6 The time for filing a Defence is set out in CPR15.4 and is dependent upon whether an acknowledgement of service is filed. Legally represented parties must file a defence on CE file. Non legally represented parties may choose to use CE file or may send the defence into court. The same applies to the acknowledgement of service.

7.7 The parties may, by agreement, extend the period specified in CPR15.4 for filing a Defence by up to 28 days (CPR15.5). If the parties do so, the defendant must notify the court in writing of the date by which the Defence must be filed. If the claimant will not agree to extend time for filing of the Defence, or if a defendant seeks further time beyond 28 days, the defendant must issue an application under Part 23 to obtain a court order for further time. The claimant may consent to such an application, but it is for the court to decide. See 15.10 below for guidance on consent orders. The Master has a very wide discretion when considering applications to extend time and may, if they see fit, impose terms when granting an order.

7.8 The general rules as to the contents of the Defence are set out in CPR16.5 and in PD16 paragraphs 10-11. Specialist courts and lists have their own further rules with regards to the contents of Defences, and their rules and PDs should be considered carefully; for example, in relation to media and communications claims, PD53B.

7.9 While the general rules as to statements of case (see section 5 above) apply to Defences, careful consideration needs to be given in all cases to CPR16.5. This includes a requirement for a Defence to address each allegation made in the particulars of claim, and to admit it, or if the defendant is unable to admit or deny it, to require it to be proved (in which case the defendant will generally not be permitted to adduce evidence relevant to it at the trial as the claimant will simply be in the position of seeking to prove it) or to deny it and in which case the defendant must state their reasons for doing so and/or their different version of the relevant events.

Striking out of a defence

7.10 A defence may also be struck out of the court's own motion or on application of another party. A strike out of the court's own motion is less common as there is no equivalent to PD3A para 2.1, where the court staff may refer a claim to the Master for the defence (see paragraph 5.40 above).

7.11 Examples of when a defence will be struck out are set out in PD3A and include where:

1) it consists of a bare denial or otherwise sets out no coherent statement of facts,

2) the facts it sets out, while coherent, would not even if true amount in law to a defence to the claim.

7.12 The court may strike out the defence or may instead order that the defendant provide an amended defence.

Judgment in default or on admissions

7.13 A claimant can apply for default judgment, that is judgment without trial, where a defendant has failed to file an acknowledgment of service or a defence. The conditions to be satisfied before default judgment will be given are set out in in CPR12.3. The conditions must be met at the date judgment is entered, so if a defendant has filed an acknowledgment of service late, but before judgment has been entered, it will not be entered. CPR12.3(3) sets out when it cannot be granted which includes if the whole amount has been paid or if an application for summary judgment or strike out has been made.

7.14 Depending on the type of claim, default judgment may be obtained by request or by application.

7.15 CPR12.4(1) provides for judgment by request where the claim is only for a specified amount of money, an amount to be decided by the court, or delivery of goods where the alternative of the defendant paying their value is given unless CPR12.9 or 12.10 apply. The request should be filed in either form N225 (specified amount) or N277 (unspecified amount. They can be found here:

https://www.gov.uk/government/publications/form-n225-request-for-judgment-and-reply-to-admission-specified-amount

https://www.gov.uk/government/publications/form-n227-request-for-judgment-by-default-amount-to-be-decided-by-the-court

7.16 The request is dealt with by the court administratively.

7.17 Where default judgment has been obtained for an amount to be decided by the court, the matter will be referred to a Master for directions for assessment of the amount of the judgment.

7.18 In other cases, the claimant must make an application in accordance with CPR23. This includes claims which are made against a child or protected party or against a state (CPR12.10). See CPR12.11 for provisions about applications for judgment in default.

7.19 See CPR13 for the grounds for setting aside a default judgment. These applications are to be made in accordance with CPR23 and need to be supported with witness statement evidence directed to the CPR13 conditions and points. The Master will usually direct a hearing before which the claimant should have filed and served their own evidence in response.

7.20 If in an admission a defendant admits a liability to pay money then CPR14.4 to 14 and PD14 lay down rules for how the claimant may obtain a judgment by making a request in the relevant practice form (N225, N226 or N228) the defendant may seek to obtain a determination as to the rate of payment.

7.21 If an admission is contained in an acknowledgement of service or a defence then the claimant is likely to have to make an application under CPR23 (or to wait for a case management hearing) in order to obtain a judgment.

Reply and further Statements of Case

7.22 Following service of a Defence, the claimant is permitted to serve a Reply to respond to it, but if the claimant does not do so or only deals with some of the matters raised in the Defence then CPR16.7 provides that the claimant is to be taken to have required all other matters within the Defence to be proved (but which has the consequence that in general the claimant will not be permitted either to advance a contrary case to those other matters which is not already set out in the Particulars of Claim or to lead evidence at trial to disprove those other matters).

7.23 A Reply should be served by the time the direction questionnaires are due (CPR15.8).

7.24 In certain cases the claimant must provide a Reply, for example in some defamation cases—see PD53B and section 17 below.

Part 20 Proceedings: counterclaims and other additional claims

7.25 CPR Part 20 contains the rules for a defendant making a counterclaim against a claimant and for other additional claims. Additional claims are claims by a defendant against anyone other than the claimant.

7.26 Most of the CPR apply to Part 20 Claims as if they were Part 7 claims in their own right, and including so that statements of truth are required and acknowledgments of service and defences are to be filed within set time limits. However, CPR20 and the PD contain various modifications and special provisions, and which should be considered.

Notice of allocation and Direction questionnaires

7.27 Once defences have been filed, the court will send out a notice of allocation and directions questionnaires which the parties must complete by the date stated. The court will then list the claim for a case management conference (CMC) or costs and case management conference (CCMC) as appropriate. If the parties have agreed directions, they may be dealt with on the papers and a costs management conference ordered. See further section 10 below.

8. Part 8 – Alternative procedure for claims

General

8.1 Rule 8.1(2) sets out the types of claim where the procedure may be used, mainly where no significant dispute of fact will be involved. Practice Direction 49E sets out, in para 3 and 4, cases where it must be used.

8.2 Part 8 claims are mainly disposed of on written evidence without any cross-examination. The witness statements should be sufficient in most cases to define the issues.

8.3 For claims for approval of settlements in child and protected party cases see section 13.

8.4 Claimants issuing a Part 8 claim should use form N208. CPR8.2 sets out what the claim form must include. Claimants do not need to serve particulars of claim but they do need to file the written evidence on which they wish to rely with the claim form. CPR8.5 and 8.6 contain the rules as to evidence in Part 8 claims.

8.5 The defendant must file an acknowledgement of service. A defence does not need to be filed but the defendant must file any written evidence on which they intend to rely at the same time as their acknowledgment of service. CPR8.5 and 6 set out the rules on the acknowledgement of service and evidence. A defendant is not entitled to take part in the hearing of the claim without permission of the court if they do not file an acknowledgment of service. The judgment in default rules do not apply to Part 8 claims.

8.6 If the defendant disputes that the Part 8 procedure is appropriate, they should do so in the acknowledgement of service and give reasons for the objection.

8.7 If an extension of time is sought to comply with any of the evidentiary requirements, the parties can agree extensions of up to 28 days in writing. Extensions for longer periods must be made by Part 23 application to the court and will be heard by a Master. It is recognised that the time limits for defendants to provide evidence may place a significant burden on defendants and the court will normally be willing to grant a reasonable extension and will expect the parties to co-operate and agree reasonable requests for extensions of time. Where opposition is unreasonable the court is likely to order the opposing party to pay the costs of a contested application.

8.8 No directions questionnaires are sent. All Part 8 claim forms will be referred to a Master for directions when they are issued. These may include fixing a hearing date. A party may apply for a direction to be given on issue and before any acknowledgment of service in cases such as child and protected party settlements for which see section 13 below.

8.9 Where the Master does not give directions when the claim form is issued they will give directions for the disposal of the claim as soon as practicable after the receipt of the acknowledgment of service or the expiry of the period for acknowledging service. The court may, and often does, convene a directions hearing before giving directions.

8.10 The court may at any stage order that a claim started under Part 8 should continue as if it had been started under Part 7 if it becomes clear that there are significant issues of fact which make the Part 8 procedure inappropriate.

8.11 A rule or practice direction may disapply or modify the rules set out in Part 8 so far as they relate to particular types of proceedings. For example, section C of PD49E lays down its own procedural regime for each of the particular applications referred to in section C, including for bills of sale (for which see 22.109 below). The CPR should be carefully consulted to check which regime applies.

Settlement of a provisional damages claim

8.12 A claim for provisional damages may proceed under Part 8 where the claim form is issued solely for the purposes of obtaining a consent judgment. The claimant must state in their claim form that the parties have reached agreement and request a consent judgment. The claim form must also set out the matters specified in paragraph 4.4 of the Part 16 Practice Direction. A draft order in accordance with paragraph 4.2 of the Part 41 Practice Direction must be attached to the claim form. Once the provisional damages claim has been approved the case file will be electronically stored by the court. For more information about provisional damages claims and orders, see Part 41 and the Part 41 Practice Direction, and paragraph 12.7 below.

9. Hearings

9.1 This chapter gives information on the way in which different types of hearings are organised and listed, as well as information on attendance at hearings.

Open Justice

9.2 The starting point is that the administration of justice takes place in public. The public have the right to attend court hearings and the media is able to report proceedings fully and contemporaneously. All hearings are therefore normally open to the public, even though in practice most of the hearings until the trial itself will be attended only by the parties and their representatives: see rule 39.2(1). This rule expressly also applies to remote hearings including telephone and video hearings. The court must take reasonable steps to ensure that the hearings are of an open and public character. The Practice Guidance: Open Justice- Remote Observation of Hearings - New Powers, sets out guidance on new powers from 28 June 2022 to allow reporters and other members of the public to observe hearings remotely. It covers both broadcasting of the proceedings as a live stream to dedicated premises, and allowing observers to attend remote hearings. Those wishing to access remote hearings are required to identify themselves to the court before a direction will be given for them to access the remote hearing. The guidance can be found here:

Practice Guidance on Remote Observation of Hearings - New Powers - Courts and Tribunals Judiciary

9.3 The court has "lists" of cases which are to be heard which can be found online https://www.justice.gov.uk/courts/court-lists and are printed and displayed in the court building. In the RCJ they are in the main hall and outside court rooms. There is also a list available of Masters' hearings in the Bear Garden. The time and place of a hearing is referred to as its "listing" and the court has listing officers who are responsible for arranging the court hearing.

9.4 Many hearings before the Masters are held in the Masters' own rooms which are relatively small. If it is anticipated that a large number of people will wish to attend, the Master's listing clerk should be contacted in advance in order to make any appropriate arrangements.

9.5 Rule 39.2(3) sets out the circumstances where it may be appropriate to hold a hearing, whether of interim proceedings or of the trial itself, in private. The fact that a case falls under one or more of such circumstances does not give a right to a hearing in private. An application will usually

have to be made, and be made to the judge holding the hearing, and they will reach their decision on considering the rules and the arguments put to them. In some cases it may be appropriate for the hearing to be in private, but the order reached and a reasoned judgment in support of the order made public.

9.6 For any hearing held in private, unless ordered otherwise, a copy of the court's order must be published on the website of the Judiciary of England and Wales at www.judiciary.uk Practice guidance can be found here https://www.judiciary.uk/wp-content/uploads/2019/04/PG-Pt-39-Anonymity-and-Privacy-Orders-Final-16-April-2019.pdf. See further paragraphs 15.24 to 15.27 for anonymity orders.

9.7 The court also has power under section 11 of the Contempt of Court Act 1981 to make an order forbidding publication of any details that might identify one or more of the parties.

Listing in term and vacation

9.8 In the Royal Courts of Justice, applications and trials which are not urgent are normally only listed during court term times and not in vacation. Vacation and term dates can be found here: https://www.judiciary.uk/about-the-judiciary/the-justice-system/term-dates-and-sittings/term-dates/.

9.9 During vacation there are ordinarily 2 Masters sitting to hear urgent matters and any other matters they give permission to be heard. There is also at least one High Court Judge sitting to hear urgent business or any other matters they give permission to be heard.

9.10 In August, applications before the Masters may only be heard without permission in the circumstances set out in PD2F paragraph 2.5(1). Other urgent applications may be heard with permission of a Master. High Court Judges will only hear appeals from matters set out in PD2F paragraph 2.5(1) or urgent applications for example urgent applications in respect of injunctions or for possession of land.

9.11 Subject to the discretion of the judge, any application may be heard in the month of September.

9.12 It is desirable, where this is practical, that application notices or appeal notices are submitted to the Master in the Urgent and Short Applications list or a judge prior to the hearing of the application or appeal so that they can be marked "fit for August" or "fit for vacation". If they are so marked, then normally the judge will be prepared to hear the application or appeal in August, if marked "fit for August" or in September if marked "fit for vacation".

9.13 The application to a judge to have the papers so marked should normally be made in writing with the application shortly setting out the nature of the application or appeal and the reasons why it should be dealt with in August or in September, as the case may be: see PD2F para 2.3(3).

9.14 District registries may make their own directions for vacation sittings. See PD2F paragraph 2.2.

Listing of Hearings before the Masters

9.15 The Masters' lists consist of:

(i) The Urgent and Short Applications List (USAL). This list is for urgent or short applications of not more than half an hour. There is a USAL list on each day that the court office is open, from 10.30am to 1.00pm and from 2.00pm to 4.30pm, unless otherwise notified. The days and times of the USAL can be obtained from the KB Masters Listing Section and will be included each day in the KB Masters Court List: Royal Courts of Justice Cause List - GOV.UK (www.gov.uk). For further information on the Urgent and Short Applications List ("USAL") see paragraphs 9.19 to 9.27 below.

(ii) Masters Appointments: for interim applications (both pre- and post-issue of proceedings), or assessment hearings (using the prescribed MA form to obtain the appointment see Annex 4).

(iii) Costs and Case Management Lists: the first costs and case management conference will usually be listed by the assigned Master when Directions Questionnaires are filed, but any party may request that a Case and/or Costs Management Conference be listed by letter or email without an application notice being required. A MA form should be completed for such requests if the parties wish their dates of availability to be taken into account when listing.

9.16 The Asbestos List: all claims for damages for personal injury alleged to have been caused by exposure to asbestos will be listed before the Asbestos Masters and all hearings are by telephone unless otherwise directed. The Mesothelioma Practice Direction (PD49B) is applied to all such claims.

9.17 The Masters also hear trials for which see paragraph 9.50 below.

9.18 Parties attending on all applications before the Masters are requested to complete the Court Record Sheet which will be used to record details of the parties' names and representation. Copies of this form may be found on the desks in Bear Garden or requested from the usher.

The Urgent and Short Applications List

9.19 The Urgent and Short Applications List ("USAL") will be listed before all Masters on a rota basis every day from 10.30am to 1.00pm and from 2.00pm to 4.30pm, unless otherwise indicated. Masters will sit in their own rooms unless otherwise notified by the King's Bench Masters' Listing Section.

9.20 Short applications each of no more than 30 minutes may be listed from 10.30am to 12.30pm and from 2.00pm to 4pm. If an application has a time estimate of more than 30 minutes it should be listed as a MA and not in this list.

9.21 It should be noted that:

(i) This list is for applications, but not for non-urgent case management conferences.

(ii) Where possible (i.e. where not especially urgent) the application will be listed in the next Urgent and Short Applications List of the assigned Master.

(iii) Where the matter is in a clinical negligence or Asbestos list it will, where possible, be listed before a specialist Master.

9.22 The remaining 30 minutes unlisted (i.e. from 12.30pm to 1.00pm and from 4pm to 4.30pm) will be primarily available for urgent applications and other work as follows:

(i) Urgent `walk in applications' (see paragraph 9.23 below);

(ii) Foreign Process work;

(iii) Deeds Poll;

(iv) Bills of sale;

(v) Other urgent casework.

9.23 Before any case is heard in USAL, an application must be issued and then listed by KB Masters listing. Urgent applications may be heard on the day they are issued if time permits. If there is insufficient time to hear the application on the day of issue, the Master sitting will decide whether it should be heard in priority to any other application or work.

9.24 If the Master considers that an application is unsuitable for the Urgent and Short Applications List e.g. because it is not urgent or is likely to take longer than 30 minutes, the Master may adjourn it to a Master's appointment. The applicant must then complete the Master's Appointment form giving details of the parties' availability. Failure to do so may result in the form being returned for further information thereby delaying the hearing date. The MA form is available from the Court Service Website at King's Bench Master's appointment form - GOV.UK (www.gov.uk) (and see Annex 4).

9.25 Hearing dates for the USAL are given by the King's Bench Masters' Listing section. Where possible, notice should be given by the applicant to the respondent of any application, even if the urgency of the situation means that the full notice required by the Rules is not possible (except where the application is properly a without notice application; see paragraphs 11.6 to 11.10 below). However any party may attend with an urgent application that has not been listed, either without notice or on notice, if the urgency is such that it has not been possible to arrange the listing of the application.

9.26 Applications in the Urgent and Short Applications List may, by agreement or where the application notice has not been served, be transferred to a Master's appointment on a date to be specified by the KB Masters Listing Section, or may be re-listed for another date in the Urgent and Short Applications List. In all other cases an application for a postponement of the hearing date must be made to the Master to whom the claim has been assigned. An application may be re-listed in the Urgent and Short Applications List with permission of a Master if for any reason the application has not been heard or has not been fully disposed of.

9.27 If the Master considers that an application should more properly be heard by a High Court Judge, the Master may, either during the hearing or before it takes place, refer the application to the Interim Applications Judge. See PD2B para 1.2 and paragraph 9.55 below.

Master's Appointments

9.28 Hearing dates for Masters' appointments are given by the King's Bench Masters' Listing section or by the assigned Master.

9.29 In order to list an appointment, the applicant must complete the Master's Appointment form fully, giving details of the parties' availability. Failure to do so may result in the form being returned for further information, thereby delaying the hearing date. The MA form is available from the KB Action Department public counter, and from the Court Service Website King's Bench Master's appointment form - GOV.UK (www.gov.uk) (and see Annex 4).

9.30 It is recommended that where possible, applicants notify the other party of the proposed application before issue, and provide a completed MA form on issue. The MA form must include time estimates and availability of all parties. If it is not properly completed, it will be returned and the application will not be listed until a completed MA form has been provided. If a party is not co-operating, details should be provided of the attempts to obtain cooperation.

9.31 The parties or their legal representatives must inform the King's Bench Masters' Listing section of any settlements of applications or claims as soon as possible. All time estimates must be updated as necessary. Any order made which results in a hearing not being required must be notified to the Master by email to the Master or their clerk.

9.32 Where an application for which a Master has given a Master's appointment has been settled very shortly before the hearing, it is the duty of the parties or their legal representatives, particularly those who obtained that appointment, to notify the Master immediately. This may be directly to the Master by email.

9.33 An application for the adjournment of a Master's appointment must be made to the Master who gave the appointment unless the application is by agreement of all parties and the Master approves. Any adjournment will normally be to a new hearing date. The Master will usually require details of parties' availability in order to re-list the adjourned hearing. The applicant must complete the MA form giving details of the parties' availability as fully as possible.

9.34 If the application for an adjournment is opposed by any other party, the party seeking the adjournment must issue an application for an adjournment, if time permits, and must give the court and all other parties as much notice as possible of such application. Where possible, it is preferable that such application is heard before the date for the hearing. The Master will not grant an adjournment readily where it is opposed by any

other party. Good reason will need to be shown, and if the reason is illness of a party, an original (not a photocopy) medical certificate signed and dated by a medical practitioner should be produced, setting out the reasons why attendance at court is not possible and when it is thought that attendance will possible.

9.35 If the Master hearing an application considers that the result of the application might affect the date fixed for a trial, the Master will refer the application to the Judge in Charge of the Civil List. Any application to vacate a trial before a High Court Judge, or where the result will affect a trial date or window after a listing appointment has been given, must be made to the Judge in charge of the relevant list or a judge nominated by them. Any such application should therefore be made to the Judge in charge of the List and referred to KB Judges' listing rather than be made to the Masters to avoid delay. The Judge in Charge of the List should be specified in box 8 of the N244.

9.36 If the Master considers that an application should more properly be heard by a High Court Judge, the Master may before the hearing or during the hearing itself, refer the application to the Interim Applications Judge or to the KB Judges' Listing Section for listing before a High Court Judge. See in particular PD2B para 1.2. Consideration will be given to the overriding objective. Circumstances that may make a hearing before a High Court Judge appropriate are;

1) that the time required for the hearing is longer than a Master could ordinarily make available,

2) that the application raises issues of unusual difficulty or importance etc, including the existence of conflicting decisions or dicta which increase the likelihood of an appeal,

3) that the application is urgent and could be heard more quickly if it were listed before a High Court Judge, or

4) that the outcome is likely to affect the trial date or window (in which case the referral will be to the Judge in Charge of the Civil List).

9.37 However, it is emphasised that no single factor or combination of factors is necessarily decisive, and the Master has a discretion.

Costs and Case Management List

9.38 The first costs and/or case management conference will usually be listed before the assigned Master after Directions Questionnaires are filed, but any party may request by letter or email, without an application notice being required, that a Costs and/or Case Management Conference be listed. An MA form should be completed for such requests if the parties wish their dates of availability to be taken into account when listing.

9.39 Parties should include draft directions for the first costs and/or case management conference with the Directions Questionnaire, and should include a time estimate for the hearing. If a subsequent costs and/or case management conference is requested by letter or email a time estimate should also be provided.

9.40 For all other information about costs and/or case management conferences see section 10 below.

The Asbestos List

9.41 Cases will be listed in accordance with the Mesothelioma Practice Direction (PD49B). Attention is drawn to PD49B para 4, and the additional permitted practice of marking the heading of claims if the claimant has "limited life expectancy". These are the only permitted supplemental headings for a claim.

9.42 Asbestos List cases are assigned to a specific named Master as with any other KBD claim, but may be listed before any of the Asbestos Masters. Correspondence or materials concerning listed hearings, including skeleton arguments, must be emailed to the Master concerned ahead of the hearing, as well as the dedicated KB.asbestos@justice.gov.uk email address. They should not be emailed to the Master's personal clerks or just put on CE File.

9.43 A CMC will be listed before a Master for a 30-minute telephone hearing soon after any Defence is filed. For guidance on arranging telephone and remote hearings, see 9.90 to 9.96 below. Directions Questionnaires will not be issued in these cases. Parties are not expected to take any of the usual cost budgeting steps for this CMC. Defendants should be ready to "show cause" at that hearing, but if that issue is contested and cannot reasonably be resolved at the first CMC directions will be made for a contested "show cause" hearing at a date in the near future, again on the telephone, for an hour. This procedure applies to all asbestos exposure claims, despite the title of the Practice Direction.

9.44 The collective experience of the Asbestos Masters is that the time allocations set out above are appropriate for first CMCs and "show cause" hearings where either the issues or the number of defendants are limited, and so good reason is required to depart from them. If a party considers that the CMC will require a hearing of longer than 30 minutes, or that a "show cause" hearing will take longer than one hour, the time estimate must be provided to the Master with reasons.

9.45 Parties are expected to prepare case summaries and draft directions for all hearings and to have discussed them between themselves before the hearing. These should be directly emailed or delivered to the relevant Master well ahead of the hearing. Paginated hearing bundles must be prepared and delivered in good time (in paper form if more than 25 pages) before all show cause hearings. Late service of skeleton arguments, hearing bundles, authorities or materials in addition to the hearing bundle could result in the hearing being vacated and possibly orders as to costs. In the event of agreed directions, the parties should e-mail the draft directions to the Master due to hear the matter in good time so that an unnecessary hearing may be avoided.

9.46 Proposed agreed directions should be amended to reflect the draft being a Consent Order. A commencing recital should be included to refer to the date of any hearing listed but as vacated following agreed directions. If the agreed directions require a further hearing, the mechanism for obtaining the listing of that hearing must be explicit (for example "upon email request to KB.asbestos@justice.gov.uk") unless a specific date is required in the same Order: there is no automatic listing in the KBD following a general direction such as "first available date after" or "not before" etc.

9.47 Subsequent CMCs will be listed where necessary. The court will not list a second "substantive" show cause hearing, and any subsequent application for judgment should be brought under Part 24.

9.48 Trials where liability is contested will be listed as soon as possible. Assessments of damages where liability is not in issue will usually be listed for half a day or one day, on a Thursday, in Term. A trial or assessment requiring a longer listing must instead adopt the KB Judges Listing direction as described at Paragraph 10.90 in this Guide.

9.49 Queries in relation to the management of Asbestos List matters (as distinct from listed hearings) should be directed to the dedicated KB Asbestos team at the Central Office at the RCJ: KB.asbestos@justice.gov.uk, or to the assigned Master. CE filing should not be used for such queries.

9.50 If an application is truly urgent, it should be issued as usual on CE file and then the party should email the assigned Master (or Master Eastman if the assigned Master is not known) to ask them for an urgent listing.

Trials before the Masters

9.51 The Masters hear trials of up to 3 days or longer if in their specialist field. The trial is listed by King's Bench Masters listing and will be heard in a court room rather than a Master's room.

Adjustments or special measures for applications

9.52 If a party or a witness requires adjustments to attend court, the party should contact the assigned Master's clerk for hearings in front of a Master (see contacts in annex 2) or King's Bench Judges listing office for hearings in front of a judge (KBJudgesListingOffice@Justice.gov.uk) in advance so that any reasonable adjustments can be put into place. Sufficient information should be given so that a decision can be made as to what steps are reasonably required. That will usually involve information as to the nature of the disability/vulnerability and what steps are being sought. For physical access issues, please email rcj.dco@justice.gov.uk for advice and assistance.

Listing before High Court Judges

9.53 King's Bench Judges listing (KBJudgesListingOffice@Justice.gov.uk) is responsible for listing cases before the King's Bench judges in the RCJ. This section will describe the procedure in the RCJ; for district registries the relevant listing office should be consulted.

The Lists

9.54 In the RCJ, there are two Lists, namely:

1) The KB Civil List. The Hon. Mrs Justice Lambert is the Judge in Charge of the KB Civil List.

2) The Media & Communications List. The Hon. Mrs Justice Steyn and The Hon. Mrs Justice Collins Rice are the Judges Jointly in Charge of the Media and Communications List.

9.55 These Lists are described below.

Interim Hearings

9.56 Interim hearings and appeals to a High Court Judge are assigned to either the KB Civil List or the Media and Communications list, depending on the type of case.

9.57 Urgent interim hearings likely to take an hour or less will be listed before the Interim Applications Judge. The work of the Interim Applications Judge is taken week by week by a High Court Judge assigned on a rota basis. The Interim Applications Judge sits in Court 37. For urgent out of hours interim applications see para 11.16 to 11.22 below.

9.58 All hearings that are likely to last longer than one hour are arranged by the KB Judges Listing Office. This is done by either a listing appointment or the parties submitting agreed dates (if possible). Parties should contact the Listing Office by either ringing 0203 936 8957, by email to the address KBjudgeslistingoffice@justice.gov.uk, by using CE-file, or submitting documents in the drop box located in the main hall of the RCJ.

9.59 Appeals against orders made by KB Masters, Costs Judges or Circuit Judges (from courts in the London and South East Region) must be submitted to the KB Judges Listing Office. Legal representatives must submit the appeal via CE file. Litigants in person can submit the appeal by the following methods:

- CE file
- Email to KBjudgeslistingoffice@justice.gov.uk
- The drop box located in the main hall of the RCJ

9.60 An appellant's notice (Form N161) must be filed and served in all cases, accompanied by the appropriate fee or, if appropriate a fee remission application or certificate and the documents specified in paragraph 4.2 of Practice Direction 52B.

9.61 For further information about appeals, please refer to form EX340:

Appeal a court decision: civil and family appeals (EX340) - GOV.UK (www.gov.uk)

9.62 Any bundles for court hearings must be submitted by legal representatives on CE file, or if too large for CE file by using an electronic drop box. Litigants can submit bundles on CE-file, by email or by submitting physical copies in the drop box in the main hall of the RCJ. They can also be delivered to the ushers in the Bear Garden in the East Block (see Annex 1).

The KB Civil List

9.63 This List consists of all matters not falling within the Media and Communications List. It includes trials, preliminary questions or issues ordered to be tried (for example under CPR3.1(2)(i)) and proceedings to commit for contempt of court. The majority of trials will fall within the KB Civil List. Although now very rare, if an order for a jury trial is made in a case outside the Media and Communications List, the normal Civil List procedure is followed, save a fixed date will be given for the trial.

9.64 The Royal Courts of Justice presents unique problems in terms of fixing trial dates. The number of judges involved and their geographical location has caused, for the time being at least, a different approach to the fixing of trials in the Chancery and King's Bench Divisions.

9.65 The requirement of judges in the King's Bench Division to go on Circuit, sit in the Criminal Division of the Court of Appeal, and to deal with cases in the Administrative Court and other lists makes it difficult to fix dates for trials before particular judges. Accordingly the following will only apply to the King's Bench Listing Office in the Royal Courts of Justice. Practice in District Registries will vary.

9.66 At as early an interim stage as practicable, usually the first CCMC, the court will give directions identifying the trial window. This is usually a period of around 3 months, which is the time within which the judges listing office will fix the trial. Trials are only listed in Court term.

9.67 Following the CCMC a listing appointment will be given by the Listing Officer to all parties. The appointment is usually six weeks from the date the directions order is sealed, save in the case of claims in the Mesothelioma list, where the listing appointment will generally be about three weeks from the date the order is sealed.

9.68 If parties have any queries in relation to the listing appointment they should contact King's Bench Judges Listing on KBjudgeslistingoffice@justice.gov.uk. The Listing Office will also generally agree to an agreed listing appointment date from the parties. Parties should notify any agreed date by email to KBjudgeslistingoffice@justice.gov.uk as soon as possible.

9.69 At the listing hearing the Listing Officer will take account, in so far as it is practicable to do so, of any difficulties the parties may have as to availability of counsel, experts and witnesses. They will, nevertheless, try to ensure the speedy disposal of the trial by arranging a firm trial date or "trial period" as soon as possible within the trial window. A "trial period" is a short period within which the case will start, it may for example be a 5 day case listed in a

10 day trial period. The case would start within the first 5 days of that period. A fixed date for trial is exceptional and will only be given with good reason.

9.70 If exceptionally it appears to the Listing Officer at the listing hearing that a trial date cannot be provided within a trial window, they may list the trial date outside the trial period at the first available date.

9.71 If a case summary has been prepared (see the Part 29 Practice Direction paragraphs 5.6 and 5.7) the claimant must produce a copy at the listing hearing together with a copy of particulars of claim and any orders relevant to the fixing of the trial date.

9.72 The Listing Officer will notify all the parties of any trial date or trial period given in accordance with rule 29.2(3).

9.73 A party who wishes to appeal a date or period allocated by the Listing Officer must, within 7 days of the notification, make an application to the judge nominated to hear such applications. The application notice should be filed on CE file for the attention of KB Judges' listing or in the Listing Office and served, giving one day's notice, on the other parties.

The Media and Communications List

9.74 For the cases which fall within the Media and Communications List see section 17. By Section 11 of the Defamation Act 2013, claims for libel and slander are no longer heard with a jury without a court order.

9.75 For a trial by jury, an application must be made in accordance with CPR26.11(2) which requires the application to be made at the first case management conference. Such applications are very rare.

9.76 The process for listing trials within the Media and Communications List is the same as for the KB Civil List.

Applications to vary the trial window

9.77 Once a listing appointment has been given, all listing matters are under the control and supervision of the Judge in Charge of the King's Bench Civil List or, where relevant, the Judge in charge of the Media and Communications List. Any request or a change to the trial window, whether by consent or otherwise, will not be dealt with by a Master, but will be considered by the Judge in charge of the King's Bench Civil List or, as appropriate, the Judge in charge of the Media and Communications List or by a judge nominated by them.

9.78 Any application for such an order made to a Master will be transferred by the Master to the Judge in charge of the List, for consideration by them or by a judge nominated by them. Accordingly, to avoid delay, any application, whether by consent or otherwise, to extend, or change a trial window following a listing appointment having been given must be made to the Judge in charge of the relevant list and notified to the KB Listing office with a view to being considered by the relevant judge.

9.79 Parties must also understand that merely because the diary commitments of witnesses (expert or otherwise) are such as apparently to preclude their attendance at a trial within the trial window ordered by a Master, this will not necessarily be treated as a reason for altering the trial window. When the non-availability of witnesses during the trial window is relied upon in support of an application to extend or alter the trial window, full details must be given of which witnesses are unavailable, why their evidence is important and what steps have been taken to overcome the problem, including why reception of the evidence by video-link may not be appropriate. Until this information is provided in sufficient detail the KB Listing Office will not forward the application for judicial consideration. Parties must also understand that, whilst efforts to accommodate the convenience of Counsel are made, that factor cannot be determinative of when a trial is listed. Parties should note the comments in Bates v Post Office Ltd [2017] EWHC 2844 (QB) on the issue of counsel's availability.

Applications to vary trial dates

9.80 Where a fixed date has been given it is the duty of the parties to keep the Listing Officer fully informed of any changes to the estimated length of hearing and whether any matters have settled.

9.81 Applications for adjournment will not be granted except for the most cogent reasons. If an application is made because solicitors were unaware of the state of the List they may be ordered personally to pay the costs of the application.

9.82 A party who seeks to have a hearing before a judge adjourned must inform the Listing Officer of their application as soon as possible. Applications for an adjournment immediately before a hearing begins should be avoided as they take up valuable time which could be used for dealing with effective matters and, if successful, may result in court time being wasted.

9.83 If the application is made by agreement the parties should apply to the Listing Officer on N244 who will then consult either the Judge in Charge of the relevant list or, if necessary, the Interim Applications Judge. The judge may grant the application on conditions including giving directions for a new hearing date.

9.84 If the application is opposed the application will be directed if practicable to the judge assigned to hear the trial. A hearing will then be arranged through the Listing officer. A short summary of the reasons for the adjournment should accompany the application notice. The parties must decide what if any evidence they seek to rely on.

9.85 The applicant will be expected to show that they have conducted their own case diligently. Any party should take all reasonable steps:

1) to ensure that their case is adequately prepared in sufficient time to enable the hearing to proceed, and

2) to prepare and serve any document (including any evidence) required to be served on any other party in sufficient time to enable that party also to be prepared.

9.86 If a party or their solicitor's failure to take reasonable steps necessitates an adjournment, the court will make such order as it sees fit including an order penalising the defaulting party in costs.

Listing targets

9.87 For parties' information, the following are the likely time periods for listing of interim hearings and trials:

1) Interim hearings of up to one hour can be listed on 3 days' notice, hearings over an hour are usually heard within 3-4 weeks from date of fixing

2) Trials of 1 to 3 days, within 12-14 months after trial directions unless urgent, when it is 6-7 months

3) Trials of 3 to 5 days, within 12-14 months after trial directions

4) Trials over 5 days but under 10 days, within 12-15 months after trial directions

5) Trials of 10 days or over but under 20 days, within 13-16 months after trial directions

6) Trials of 20 days or over are likely to be fixed within 14-17 months after trial directions.

Attendance at Hearings

9.88 Parties are reminded that they are expected to act with courtesy and respect for the other parties present and for the proceedings of the court. Punctuality is particularly important; being late for hearings, even by a few minutes, is unfair to the other parties and other court users, as well as being discourteous to them and to the court and being disruptive of court business. An apology and explanation for lateness ought always to be given.

9.89 When parties, or witnesses or members of the public who wish to attend hearings have a disability or are vulnerable so that adjustments are needed to enable them to attend then they or their representatives should contact the court in advance of the hearing.

Adjustments or special measures for trials

9.90 If vulnerable persons are attending or giving evidence at trial, matters should be raised at the case management conference or pre-trial review when the court can consider giving directions as to reasonable adjustments or special measures in accordance with PD1A. The court may decide to hold a "ground rules" hearing to determine issues such as what directions are necessary as to the nature and extent of evidence to be given, the questions to be asked and any other necessary modification of the court's procedure.

9.91 The equal treatment bench book provides a resource which may assist in deciding what directions are required. It can be viewed online at Equal Treatment Bench Book - Courts and Tribunals Judiciary. The advocates Gateway also provides a toolkit for use in civil cases which can be viewed online: Vulnerable witnesses and parties in the civil courts (theadvocatesgateway.org).

Remote Hearings

Video hearings

9.92 The RCJ has a number of courtrooms with CVP (the cloud video platform) available. Applications may also be made for hearings to be conducted via Microsoft Teams.

9.93 Under CPR32.3 the court may allow a witness to give evidence through a video link or by other means. The Practice Direction to Part 32 contains, at Annex 3, extensive guidance on the use of video conferencing (video

hearings). Please note there may be particular requirements for witnesses giving evidence from different jurisdictions. Paragraphs 4 and 16 of Annex 3 to PD32 should be consulted.

9.94 Where the trial judge has given permission for a witness to give evidence at trial via telephone or video link, and the witness intends to give such evidence via their own device, without using the facilities of the requested state, the state may still require permission to be obtained from its Central Authority (where the Hague Convention applies) or its competent judicial authority (where the witness is in a non-Convention country). If the request is for a country where the Hague Convention applies the Country Profiles section of the Hague Conference website at HCCH | State Responses will provide information as to whether that member state will allow direct evidence via video link to a foreign court without permission or not. The Foreign, Commonwealth and Development Office's Taking of Evidence Unit can provide information for court users as to which non Hague countries do or do not require permission to be sought by letter of request for a willing witness to give evidence in this way. For further information contact the Taking of Evidence Unit at TOE.enquiries@fcdo.gov.uk.

Telephone hearings

9.95 Many remote hearings are now by Teams or CVP. .Even if the parties are dialling in by telephone, it is the responsibility of the claimant or applicant to arrange telephone hearings using one of the approved providers. Where the claim involves a non-represented party, a telephone hearing may not be appropriate. If it is, the court will direct the legally represented party to arrange the hearing. Alternative directions will be made if there is no legal representative.

9.96 The current approved provider is:

Kidatu: https://www.kidatu.co.uk/

9.97 If the claimant/applicant wishes the court to arrange a telephone hearing before a Master they should contact the clerk to the relevant Master and the court will arrange for a hearing by Teams which can be attended by telephone. For hearings before a High Court Judge, the party should contact KB Judges Listing.

No party, or representative of a party, to an application being heard by telephone may attend the judge in person while the application is being heard unless every other party to the application has agreed that they may do so.

If an application is to be heard by telephone the following directions will apply, subject to any direction to the contrary –

1) the designated legal representative is responsible for arranging the telephone conference for precisely the time fixed by the court. The telecommunications provider used must be one of the approved panel of service providers (see His Majesty's Courts and Tribunals Service website).

2) The designated legal representative must tell the operator the telephone numbers of all those participating in the conference call and the sequence in which they are to be called.

3) It is the responsibility of the designated legal representative to ascertain from all the other parties whether they have instructed counsel and, if so, the identity of counsel, and whether the legal representative and counsel will be on the same or different telephone numbers.

4) The sequence in which they are to be called will be –

   (a) the designated legal representative and (if on a different number) his counsel

   (b) the legal representative (and counsel) for all other parties; and

   (c) the Judge.

5) Each speaker is to remain on the line after being called by the operator setting up the conference call. The call shall be connected at least 10 minutes before the time fixed for the hearing.

6) When the judge has been connected the designated legal representative (or his counsel) will introduce the parties in the usual way.

7) If the use of a "speakerphone" by any party causes a judge or any other party any difficulty in hearing what is said the judge may require that party to use a hand held telephone.

8) The telephone charges debited to the account of the party initiating the conference call will be treated as part of the costs of the application.

9.98 Bundles for remote hearings must be provided in accordance with directions given. They must be electronic (unless a hardcopy bundle is requested) and comply with the directions given in the hearing notice. See paragraph 10.20 and paragraph 14.11 for the requirements as to bundles.

Preparation for hearings including skeleton arguments

9.99 To ensure that court time is used efficiently cases must be adequately prepared prior to the hearing. This includes the preparation and exchange of skeleton arguments, the compilation of bundles of documents and giving realistic time estimates. Where estimates are inaccurate, a hearing may have to be adjourned to a later date, and the party responsible for the adjournment is likely to be ordered to pay the costs thrown away. For the obligations of the parties and of the court in relation to the trial timetable, see paragraphs 14.21 to 14.23 below.

9.100 The parties should use their best endeavours to agree the issues, or main issues between them, and must co-operate with the court and each other to enable the court to deal with claims justly and at proportionate cost; parties may expect to be penalised for failing to do so.

Hearing bundles

9.101 A paginated bundle of documents must be compiled for any hearing including trial or interim applications. The party lodging a trial or hearing bundle should supply identical bundles to all parties and for the use of any witnesses. Electronic links to shared files will not be accepted or opened. The proper preparation of bundles is very important. Where bundles have been properly prepared, the claim will be easier to understand and present, and time and costs are likely to be saved. Bundles must be restricted to the documents necessary for the hearing. For applications, the application notice must be included in the bundle.

9.102 Paragraph 27 of the Part 32 Practice Direction sets out in full the requirements for compiling bundles of documents for hearings or trial. Under paragraph 27.12 the contents of the bundle should be agreed where possible. If it is not possible to agree, a summary of the points of disagreement should be included. It is very unhelpful for both parties to prepare separate bundles duplicating material. Where documents are copied unnecessarily or bundled incompetently, the costs may be disallowed.

9.103 The parties should agree if possible

1) that the documents are authentic even if not disclosed under Part 31, and

2) that the documents may be treated as evidence of the facts stated in them even if no notice under the Civil Evidence Act 1995 has been served.

9.104 The hard copy trial bundle must be filed not more than 7 and not less than 3 days before the start of the trial. Hard copy bundles for a Master's hearing should be lodged with the usher in the Bear Garden 1-3 days in advance. Hard copy bundles for KB Judges' hearings may also be lodged with the usher in the Bear Garden. The hearing notice will specify if electronic bundles are required. For further guidance on the contents of bundles see paragraphs 14.3 to 14.11 below for trials and paragraphs 10.19 to 10.23 below for applications.

9.105 If the trial/hearing bundles are extensive and either party wishes the judge to read certain documents in advance of the hearing, a reading list should be provided.

9.106 Lists of authorities for use at trial or at substantial hearings before a judge should be provided to the usher by 9.00am on the first day of the hearing. For other applications before a judge, or applications before a Master, copies of the authorities should be included in the bundle or in a separate bundle.

9.107 For trial and most hearings before a judge, and trials and substantial hearings before a Master, a chronology, a list of the persons involved and a list of the issues should be prepared and filed with the skeleton argument. A chronology should be non-contentious and agreed with the other parties if possible. If there is a material dispute about any event stated in the chronology, that should be stated.

Skeleton arguments

9.108 Unless otherwise ordered, skeleton arguments should be prepared, filed and served;

1) for trials, not later than 10.00am 2 days before the trial in the Judges Listing Office or the Masters' Usher in the Bear Garden or directly with the Master in hard copy or by email; and

2) for substantial applications or appeals, not later than 10.00am 1 day before the hearing in the Judges Listing Office or the Masters' Usher in the Bear Garden, or directly with the Master in hard copy or by email. Where a skeleton argument is provided by email a hard copy should be brought to the hearing; and

3) parties should avoid handing skeleton arguments to the other party at the door of the court even for less substantial hearings, so that each party has time to consider the other party's case.

4) Where one party is a litigant in person and the other party is represented, the represented party should provide their skeleton argument to the litigant two days before the hearing.

9.109 If it is anticipated that a skeleton argument will be filed late, a letter of explanation should accompany it which will be shown to the judge before whom the trial or hearing is to take place.

9.110 A skeleton argument should;

1) concisely summarise:

   (i) the nature of the case and the relevant background facts;

   (ii) the issues to be determined; and

   (iii) the party's submissions in relation to each of the issues (where appropriate by reference to the relevant paragraphs in the statements of case).

2) contain a reading list of core documents or parts of documents which it would be helpful for the judge to pre-read and an estimate of the time it will take the judge to read,

3) cite the propositions of law relied on with references to the main authorities relied on,

4) be as brief as the issues allow and not normally be longer than 20 pages of double-spaced A4 paper,

5) be divided into numbered paragraphs and paged consecutively,

6) avoid formality and use understandable abbreviations, and

7) State the name and contact details of the advocate(s) who prepared it.

9.111 Advocates should try to agree and supply a single joint bundle of authorities. Excessive citation of authority should be avoided. See Practice Direction (Citation of Authorities) [2012] 1 WLR 780 (Lord Chief Justice Practice direction - citation of authorities 2012 (judiciary.uk)).

9.112 Please note that in hearings before the Masters, unless significant pre-reading time was notified in the Masters Appointment form, the Master is unlikely to be able to do significant pre-reading of more than half an hour.

9.113 If it is anticipated that a skeleton argument will be filed late, a letter of explanation should accompany it which will be shown to the judge before whom the trial or hearing is to take place.

Recording of proceedings

9.114 All hearings will be recorded by the court unless the court directs otherwise (see CPR39.9). Telephone hearings will be recorded by the telecommunications provider.

9.115 No party or member of the public may make a recording without permission of the judge. To do so in a court or judge's room is a contempt of court. The same rules apply to remote hearings (see section 85B of the Courts Act 2003).

9.116 Any party or person may request a transcript of the recording of a hearing to be supplied to them on payment of the appropriate charges (CPR39.9(3)). A person who is not a party may not obtain a transcript of a hearing which took place in private unless the court so orders (39.9(4)). Transcripts may be costly and at any hearing the judge may make direction to assist a party, in particular an unrepresented party, for the compilation and sharing of a note or informal record of the proceedings made by another party or the court (CPR39.9(5)).

9.117 Requests for transcripts should be made on form EX107. See https://www.gov.uk/government/publications/order-a-transcript-of-court-or-tribunal-proceedings-form-ex107 and for guidance on the form and the transcription companies see https://www.gov.uk/government/publications/order-a-transcript-of-court-or-tribunal-proceedings-form-ex107/guidance-for-requesting-a-transcript.

9.118 In the Royal Courts of Justice an application for a transcription of a hearing or a judgment of a King's Bench Judge should be made to:

KB&ACOTranscriptsRequests@administrativecourtoffice.justice.gov.uk

For a transcription of a hearing or a judgment of a King's Bench Master an application should be made to the clerk to the assigned Master (see Annex 2 for contact details).

There is generally no right for a party or non-party to listen to or receive copy of the recording. For the circumstances in which it may be requested and the procedure for doing so see Practice Direction (Audio Recording of Proceedings: Access) [2014] 1 WLR 632. Any such request in the Royal Courts of Justice should be sent to the Court Recording and Transcription Unit in Room WB04, Royal Courts of Justice, email: rcj.cratu@justice.gov.uk.

10. Case Management

Orders made of the court's own initiative

10.1 The court has power under CPR3.3 to make an order of its own initiative. Such order may be made after considering representations about the proposed order (rule 3.3(2)); after notice of a hearing to consider the proposed order (rule 3.3(3)); or without a hearing or opportunity to make representations (rule 3.3(4)). If an order is made under CPR3 .3(4), any party affected by the order may apply to have it set aside, varied or stayed; and the order must contain a statement of that right. The right must be exercised within such period as may be specified; or, if no period is specified, within 7 days after service of the order on the party making the application. Such application should be made by the Part 23 procedure. Whilst usually, the application will be heard in person, the court may under CPR23.8 consider that a hearing would not be appropriate. Any challenge to such an order is by way of appeal.

10.2 If a party applies to set aside or vary the order under CPR3.3(5) either on paper or at a hearing, any further application under 3.3(5) should usually be struck out as an abuse of process unless it is based on substantially different material from the earlier application (See *Collier v Williams* [2006] EWCA Civ 20).

Allocation and directions

10.3 Once a defence has been filed, the court will serve a notice of proposed allocation. The standard notice of allocation the King's Bench Division in the RCJ is at Annex 6. It allocates cases to the Multi-track with provision for the parties to explain why they object if they do. Parties are required to seek to agree proposed directions BEFORE the date for filing Direction Questionnaires and the notice requires the parties to file by the date specified in the notice:

(i) a completed Directions Questionnaire;

(ii) agreed direction OR if it has not been possible to agree direction, a single document setting out both parties' respective versions so the court can easily discern where the differences lie; and

(iii) a case summary not exceeding 250 words giving a high-level summary of the claim and informing the court if either party proposes to apply for a stay, transfer, strike out/summary judgment, interim payment or trial of a preliminary issue.

If the notice does not contain a provision requiring a costs budget to be filed and exchanged by a particular date the budget must be filed and exchanged at least 21 days before the first case management conference or as otherwise directed.

10.4 The purpose of the directions is to promote agreement and to enable the Master to easily identify the issues in dispute. Assuming compliance by the parties with the obligation to file a DQ, the court will allocate the claim to the multi-track and in appropriate cases. The Master will be able to make directions on paper or resolve some disputes on paper. Parties should not assume a CCMC/CMC will be listed in all cases.

Alternative Dispute Resolution ("ADR")

10.5 Parties to litigation are required to consider resolving their dispute through alternative forms of dispute resolution, be it negotiation, mediation or early neutral evaluation. The court may give directions requiring the parties to attend ADR.

Early Neutral Evaluation

10.6 In appropriate cases the court may provide a non-binding, early neutral evaluation (ENE) of a dispute or of particular issues (see CPR3.1(2)(m)). ENE involves an independent party, with relevant expertise, expressing an opinion about a dispute or an element of it. The person undertaking ENE provides an opinion, which may be very informal, based on the information provided by the parties.

10.7 Although ENE is usually consensual, the court can order that it take place even if parties do not agree (see *Lomax v Lomax* [2019] EWCA Civ 1467).

10.8 ENE may be offered by any judge in the KBD.

10.9 There is no one case type which is suitable for ENE. Although ENE may be unsuitable for multi-faceted complex claims, if a particular issue lies at the heart of the claim an opinion could help unlock the dispute in a way which a mediator cannot. It is particularly suitable where the claim turns on an issue of construction or an issue of law where there are conflicting authorities but can also assist with an opinion on quantification of damages.

10.10 An essential feature of ENE is that unless the parties agree otherwise, the opinion is non-binding and the process is without prejudice (it being treated as part of a negotiation between the parties). That means any documents, submissions or evidence produced for the purposes of the ENE are without

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

10.11 The KBD does not have set procedures for ENE. The judge who is to conduct the ENE will give such directions for its preparation and conduct as they consider appropriate. The parties may consider that the judge will be in a position to provide an opinion about the claim or an issue based solely upon written position papers provided by the parties and a bundle of core documents. In many cases, however, it will be preferable for there to be a hearing. The opinion of the judge may be delivered informally; it may be oral or in writing.

10.12 In any event the judge will have no further involvement with the claim, either for the purpose of the hearing of applications or as the judge at trial, unless both parties agree otherwise. Therefore, if the assigned Master conducts ENE, the case will usually be released to an alternative Master for case management. Alternatively, the parties could request a Master other than the assigned Master conduct the ENE.

10.13 A specimen draft order is set out below. The order is on the basis that the opinion is agreed to be not binding and the ENE is to be conducted without prejudice. See further the discussion of matters which might be considered in *Telecom Centre (UK) Limited v Thomas Sanderson Limited* [2020] EWHC 368 (QB).

Specimen draft order directing an ENE

Upon the parties requesting at a CMC the Hon Mr(s) Justice/Master provide an opinion about [the relevant issue]

IT IS ORDERED THAT:

1) The parties shall exchange [position papers/written submissions] by 4pm on [date].

2) The parties shall [serve upon/indicate to] each other the written evidence upon which they wish to rely for purpose of the ENE by [date].

3) The parties shall agree a core bundle of documents for the Judge/ Master which shall be lodged by [date].

4) The ENE appointment shall take place [in private] at ....on...before [Master/ the Hon Mr(s) Justice..] with a time estimate of [x].

5) The parties estimate the judicial pre-reading to be [x] hours.

6) 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] in such form as the judge decides.

7) The opinion shall be without prejudice to the claim and the opinion shall remain confidential to the parties.

8) After the ENE is concluded, the papers relating to it shall be removed by the parties and shall be confidential unless the parties agree otherwise. No non-party shall be entitled to obtain a transcript of the hearing.

9) The Judge/Master shall have no further involvement with this claim or any associated claim.

10) The costs incurred by the ENE shall be costs in the case.

Costs and Case Management Hearings

10.14 Most costs and case management hearings are heard before a Master although they may be heard by a High Court Judge. The purpose of costs and case management is to set a timetable for the litigation steps required in the claim through to trial and to set a budget for the parties to do so. Part 29 and the Practice Direction to Part 29 lay down comprehensive provisions as to the management of the claim and CPR3.12-3.16 and PD3D set out the provisions in respect of costs management. Litigants in person are not required to file costs budgets.

10.15 The court will either list a case management conference or a costs and case management conference. If a case management conference is listed, no budgeting is anticipated, rather directions will be given in relation to costs management at the conclusion of the hearing. The standard form listing either a CCMC or a CMC is attached at Annex 7.

10.16 If parties consider that a case which has been listed for a CCMC does not fall within budgeting or a case listed for a CMC does fall within budgeting they should first discuss the issue with the other party or parties to see if agreement can be reached and then contact the Master by via CE file or by email (copying in the other parties) and either set out the agreed position with reasons or set out the parties' different views, with reasons.

10.17 When undertaking costs management, the court will expect parties to attempt to agree their respective budgets and to have regard to the Senior Master's Guidance Note which is attached at Annex 8.

10.18 Any application to disapply budgeting should be made in good time for the Master to consider whether it should be dealt with in advance of the CCMC.

10.19 Prior to a case management hearing the claimant (or defendant if the claimant is unrepresented and the defendant is represented) must provide a hardcopy bundle with the relevant documents for the hearing. The bundle must include:

(i) A case summary

(ii) Draft directions

(iii) The statements of case

(iv) Any orders

(v) Any relevant evidence

(vi) Costs budget documents

10.20 The bundle must be filed with the court either by post or (if it is before a Master) handing it to the ushers in the Bear Garden two clear days before the hearing. If electronic bundles are required, the order listing the hearing will give details. The bundle should NOT be filed on CE file. Ushers are available Monday to Friday from 9.30am to 1pm and 1.45pm to 4.30pm.

10.21 If an electronic bundle is ordered or requested by the court the bundle must be prepared as follows and be suitable for use with Adobe Acrobat Reader:

1) The document must be a single PDF.

2) It must not be password protected.

3) The file name for the bundle should be the short name of the case not "hearing bundle" or similar.

4) The bundle must be paginated in ascending order. The first page of the PDF, even if it is a title page or index page of the bundle, must be numbered page 1 so that the PDF page numbers match the bundle pagination. The same pagination must be used in any hardcopy bundle.

5) The index must be hyperlinked to the first page of the relevant document.

6) Bookmarks must be inserted and must be labelled indicating the document referred to (preferably using the same name or title as the document) and display the relevant bundle page numbers.

7) All costs budgeting materials must appear in a legible format, the right way up so that they can be read from left to right without rotating the PDF or screen, and in single full pages (and on a single screen if electronic).

8) The default display view size of all pages must always be 100%.

9) Text on all pages must be selectable to facilitate comments and highlights to be imposed on the text.

10) The resolution on the electronic bundle must be reduced to about 200 to 300 dpi to prevent delays whilst scrolling form one page to another.

10.22 Electronic bundles should be emailed directly to the Master or Judge's clerk unless otherwise ordered. Requests to access documents by links to shared files will be refused. If a file is too large to be emailed to a Master or clerk then parties should contact the Master's clerk for details on how to upload files to the Court Document Centre.

10.23 Copies of the case summary and directions should be emailed to the Master or Judge's clerk in Word format also and any updated directions should be sent by email direct to the master or judge's clerk. These should NOT also be filed on CE file.

10.24 If directions and budgets are agreed, the Master or Judge may vacate the hearing if they are emailed in advance.

10.25 At the CCMC the court will normally deal with directions first and costs management afterwards. However the directions are likely to be informed by budgets and the court will wish to form an overall view about proportionality taking into account the factors in CPR44.3(5).

10.26 Where a case management conference has been fixed, parties should ensure that any other suitable applications are listed or made at that hearing. Short, non-contentious applications or applications for orders routinely made at case management stage do not require a formal application but the other parties should be on notice and the order sought listed in the draft directions. For other applications, the party applying should make an application in accordance with Part 23 on form N244. If the time estimate is likely to change as a result the parties should notify the court of the additional time required.

10.27 Draft case management directions suitable for claims in the KBD are available on the gov.uk website at: https://www.gov.uk/government/publications/form-pf52-order-in-the-queens-bench-division-for-case-and-costs-management-directions-in-the-multi-track-part-29.

10.28 For clinical negligence cases, draft directions suitable for the RCJ are available at: Clinical negligence: standard direction orders - GOV.UK (www.gov.uk).

10.29 For cases in the asbestos list, suitable draft directions are found at: https://www.gov.uk/government/publications/form-pf52a-shortened-pf52-in-the-queens-bench-division-for-multi-track-case-and-costs-management-directions-in-mesothelioma-and-asbestosis-claims.

10.30 Following the hearing, the Master or Court Associate will request a party to email an agreed minute of the order made. Such an order should be provided in Word format and the other party copied into the email. The Master or Associate will arrange for electronic sealing of the order.

10.31 If one party is unrepresented, the judge will usually ask the represented party to prepare the minute of order. Where both parties are unrepresented the judge may draft the order themselves or direct a party to do so.

Preliminary issues

10.32 Costs can sometimes be saved by identifying decisive issues, or potentially decisive issues, and by the court ordering that they be tried first. The decision of one issue, although not necessarily itself decisive of the claim as a whole, may enable the parties to settle the remainder of the dispute. In such a case, the trial of a preliminary issue may be appropriate. The power so to order arises, for example, under CPR3.1(1)(i). In the King's Bench Division, in personal injury cases, the Master may often, after hearing the parties, order separate trial of the issue of liability. This is sometimes referred to as a split trial, but it should always be borne in mind that the court is in fact ordering the trial of preliminary issues and so those issues should be properly defined and incorporated into the court order. In some cases, while a separate issue to determine a point of law may have its attractions, an order should not be made where the facts can be shortly found and these may determine the case: see *Tilling v Whiteman* [1980] A.C.1 H.L, where at p.25C Lord Scarman held "Preliminary points of law are too often treacherous short cuts".

10.33 At the directions stage, at any case management conference and again at any pre-trial review, the court will consider whether the trial of a preliminary issue may be helpful. Where such an order is made, the parties and the court should consider whether the costs of the issue should be in the issue or in the claim as a whole.

Disclosure and Inspection of Documents

10.34 CPR Part 31 sets out the rules as to disclosure. Disclosure and inspection of documents involves two stages. The first is disclosure of the existence of documents and claiming privilege from inspection for such documents as may attract privilege (e.g. those to which 'legal advice' privilege applies). Disclosure is done by list. The second stage is inspection, offering facilities to the opposing party for inspection of certain of those documents.

10.35 Upon the making of a disclosure order a party falls under a duty to disclose. Parties should give standard disclosure by completing form N265. It should be noted that parties cannot rely on documents they have failed to disclose and parties are required to give inspection of any document to which they refer in their statement of case or in any witness statement.

10.36 Disclosure should be proportionate to the value and complexity of the claim. In all multi-track cases, other than those which include a claim for personal injuries and unless the court orders otherwise, the parties must file and serve a report verified by a statement of truth describing briefly what documents exist or may exist that are or may be relevant to the matters in issue; estimating the broad range of costs that could be involved in giving standard disclosure; and stating what directions as to disclosure will be sought from the court not less than 14 days before the first CMC. Not less than 7 days before the first CMC the parties are to discuss and seek to agree a proposal as to disclosure that meets the overriding objective. The court will, at the first or any subsequent CMC, decide what appropriate orders it should make which include those set out in CPR31.5(7) and (8).

10.37 The parties should give careful thought to ways of limiting the burden of disclosure, whether by giving disclosure in stages, by dispensing with the need to produce copies of the same document, by requiring disclosure of documents sufficient merely for a limited purpose, or otherwise. They should also consider whether the need for disclosure could be reduced or eliminated by a request for further information.

10.38 Directions may be given at any point as to the form of disclosure. And, to the extent that any of the documents to be disclosed are electronic, Practice Direction 31B (Disclosure of Electronic Documents) is to apply. Parties should consult the full terms of that PD.

10.39 If specific disclosure is sought (that is disclosure of particular documents or classes of documents), a separate application for specific disclosure should be made in accordance with Part 23; it is not a matter that would be routinely dealt with at the CMC.

10.40 An order for disclosure before proceedings have started may be made under rule 31.16. And an order for disclosure by a non-party may be made under rule 31.17.

Experts and Assessors

10.41 Under Part 35, no party may call an expert or put in evidence an expert's report without the court's express permission. The court is under a duty to restrict such evidence to that which is reasonably required to resolve the proceedings. Parties must be able to explain what issue the expert evidence is required for and what added value such evidence will give to the court.

10.42 The duty of an expert called to give evidence is to assist the court. This duty overrides any obligation to the party instructing them or by whom they are being paid: see rule 35.3(2) and para 4.1 of the Protocol for the Instruction of Experts to Give Evidence in Civil Claims. In fulfilment of this duty, an expert must, for instance, make it clear if a particular question or issue falls outside their expertise or if they consider that insufficient information is available on which to express an opinion.

10.43 Before the Master gives permission, they must be told the field of expertise of the expert on whose evidence a party wishes to rely and where practicable the identity of the expert and in all cases an estimate of the cost of the evidence must be provided. The Master may, before giving permission, impose a limit on the extent to which the cost of such evidence may be recovered from the other parties in the claim.

10.44 Parties should always consider whether a single expert could be appointed jointly by the parties in a particular claim or to deal with a particular issue. Before giving permission for the parties to call separate experts, the Master will always consider whether a single joint expert ought to be used, whether in relation to the issues as a whole or to a particular issue. The factors to take into account are set out in PD35 para 7.

10.45 It will not be a sufficient ground for objecting to an order for a single joint expert that the parties have already chosen their own experts. An order for a single joint expert does not prevent a party from having their own expert to advise them, though that is likely to be at their own cost, regardless of the outcome.

10.46 When the use of a single joint expert is being considered, the Master will expect the parties to co-operate in agreeing terms of reference for and instructions to the expert. In most cases, such terms of reference/instructions will include a statement of what the expert is asked to do, will

identify any documents that they will be asked to consider and will specify any assumptions that they are asked to make.

10.47 Where the Master has given permission for separate experts to be engaged for the claimant and the defendant (or other parties) they are likely to make a structured order as to their evidence, such as

1) permission to each party to rely on (one) expert (naming the experts if practicable) in each of the following fields (naming such fields).

2) that the parties do exchange the reports of such experts by (naming the dates in respect of each field). Or, alternatively, the Master may wish to order that reports in a particular field are served sequentially (e.g. the claimant's report by (date) and the defendant's report by (date)). This latter alternative may commend itself particularly where the nature of the case requires that the claimant should disclose their position first; or in cases where it is possible that the defendant's expert, having seen the claimant's expert's report, may be able to agree all or much of it. See also PD29 para 4.11 which refers to simultaneous exchange of reports on liability and sequential exchange of reports on quantum.

3) that (reports having been served) the experts in like fields do by (date) confer with each other without prejudice as to the matters in issue between them and do by (date) file a joint statement as to the matters agreed and not agreed between them, and a summary of their reasons for any continuing disagreement.

4) that the parties have permission to call their experts to give oral evidence at trial limited to the matters remaining in disagreement between them.

10.48 The direction to 'confer' gives the experts the choice of discussing the matter by telephone or in any other convenient way, as an alternative to attending an actual meeting.

10.49 Whilst the parties' legal advisers may assist in identifying issues which the joint statement should address, those legal advisers must not be involved in either negotiating or drafting the experts' joint statement. Legal advisers should only invite the experts to consider amending any draft joint statement in exceptional circumstances where there are serious concerns that the court may misunderstand or be misled by the terms of that joint statement. Any such concern should be raised with all experts involved in the joint statement.

10.50 The standard directions used in the RCJ which include directions as to expert evidence, can be found here: https://www.justice.gov.uk/courts/procedure-rules/civil/standard-directions/general/list-of-cases-of-common-occurance.

10.51 The Master may, in their discretion, make an order as to the costs of obtaining or giving expert evidence, such as that they be reserved to the trial judge; and/or that such costs be limited to a certain amount.

10.52 Any material change of view of an expert should be communicated in writing to the other parties through their legal representatives and, where appropriate, to the court.

10.53 Permission must be sought to rely on an expert in substitution for an expert for whom permission has been earlier obtained. "Expert shopping" is to be discouraged and a good reason is required. The court may, depending on the circumstances, require disclosure of an earlier expert's report as a condition of giving permission for a subsequent expert (see further *Edwards-Tubb v JD Wetherspoon Plc* [2011] EWCA Civ 136; [2011] 1 W.L.R. 1373; *Beck v Ministry of Defence* [2003] EWCA Civ 1043; [2005] 1 W.L.R. 2206, CA, *Vasiliou v Hajigeorgiou* [2005] EWCA Civ 236; [2005] 1 W.L.R. 2195, CA, and *Bowman v Thomson* [2019] EWHC 269 (QB)).

10.54 Written questions (which must be proportionate) may be put once only to an expert within 28 days after service of their report, and must be for purposes only of clarification of the report. Questions going beyond this can be put only with the agreement of the parties or the Master's permission. The procedure of putting written questions to experts is not intended to interfere with the procedure for an exchange of professional opinion in discussions between experts or to inhibit that exchange of professional opinion. If questions that are oppressive in number or content are put, the court is likely to disallow the questions and make an appropriate order for costs against the party putting them. (See paragraph 6.2 of the Part 35 Practice Direction with respect to payment of an expert's fees for answering questions under Rule 35.6).

10.55 Experts themselves may seek the directions of the court in relation to their functions, including the answering of written questions: see CPR35.14, and PD35 para 16.4. Experts should guard against accidentally informing the court about, or about matters connected with, communications or potential communications between the parties that are without prejudice or privileged. An expert may properly be asked to be privy to the content of these communications because he has been asked to assist the party instructing them to evaluate them.

10.56 Where oral evidence is required it is more usual for experts to give their evidence separately from the witness box. However the court may direct that some or all of the experts of like discipline shall give their evidence concurrently: see PD35 paras 11.1 to 11.4. This is sometimes referred to as "hot-tubbing". The parties may be directed that an agenda for the taking of concurrent evidence be agreed; and, subject to the Judge's discretion to modify the procedure in any particular case, a practical form of procedure for taking their evidence may be directed.

10.57 Under rule 35.15 the court may appoint an assessor to assist it in relation to any matter in which they have skill and experience. The role of the assessor is a court appointed expert. They do not decide the case, that remains for the judge. Their report is made available to the parties. They do not give oral evidence and cannot be cross examined. Their remuneration is decided by the court and forms part of the costs of the proceedings. See further PD35.10.

Evidence

10.58 Evidence is dealt with in the CPR in Parts 32, 33 and 34.

10.59 The most common form of written evidence is a witness statement. The Part 32 Practice Direction at paragraphs 17, 18 and 19 contains information about the heading, body (what it must contain) and format of a witness statement. The witness must sign a statement of truth to verify the witness statement; the wording of the statement of truth is set out in paragraph 20.2 of the Practice Direction and is as follows:

"I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth"

10.60 A witness statement may be used as evidence of fact in support of an interim application: CPR32.2(1)(b).

10.61 The court may give directions identifying or limiting the issues to which factual evidence may be directed; identifying the witnesses who may be called or whose evidence may be read; and limiting the length or format of witness statements (CPR32.2(3)). Part 33 contains provisions relating to the use of hearsay evidence in a witness statement at trial.

10.62 In addition to the requirements for making a witness statement mentioned in paragraph 10.59, the following matters should be borne in mind:

1) A witness statement must contain the truth, the whole truth and nothing but the truth on the issues it covers.

2) Those issues should consist only of the issues on which the party serving the witness statement wishes that witness to give evidence in chief and should not include commentary on the trial bundle or other matters which may arise during the trial or may have arisen during the proceedings.

3) A witness statement should be as concise as the circumstances allow; inadmissible or irrelevant material should not be included. An application may be made by an opposing party to strike out inadmissible or irrelevant material. If a party does object to the contents of a witness statement, they should notify the other party of their objection within 28 days after service of the statement and the parties should seek to resolve the matter. Otherwise an application should be made to the court for direction.

4) Witness statements should, so far as possible, be expressed in the witness's own words.

5) Witness statements should be written in consecutive numbered paragraphs.

6) The cost of preparation of an over-elaborate witness statement may not be allowed.

7) CPR32.10 states that if a witness statement for use at trial is not served within the time specified by the court, then the witness may not be called to give oral evidence unless the court gives permission.

8) CPR32.14 states that proceedings for contempt of court may be brought against a person if they make, or cause to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth. Part 81 and the Practice Direction to that part govern the procedure which applies to proceedings for contempt.

9) If a party discovers that a witness statement, or any part of it, which they have served is incorrect they must inform the other parties immediately.

10.63 If a witness is not sufficiently fluent in English to give their evidence in English, the witness statement should be in the witness's own language and a translation provided.

10.64 If a witness wishes to deal with matters not dealt within the original witness statement a supplementary witness statement should be prepared and served on other parties as soon as possible. Permission of the court is required to rely on a supplementary witness statement at trial if any other party objects.

10.65 Where a party decides not to call a witness whose witness statement has been served to give oral evidence at trial, prompt notice of this decision should be given to all other parties. The party should also indicate whether they propose to put, or seek to put, the witness statement in as hearsay evidence. If they do not, any other party may do so (CPR32.5).

Affidavit

10.66 Evidence may also be given by affidavit; but unless an affidavit is specifically required either in compliance with a court order, a rule or practice direction, or an enactment, the party putting forward the affidavit may not recover from another party the cost of making it unless the court so orders (CPR32.15)

10.67 The Part 32 Practice Direction, at paragraphs 3 to 10, contains information about the heading, body, jurat (the sworn statement which authenticates the affidavit) and the format of an affidavit. The court will normally give directions as to whether a witness statement or, where appropriate, an affidavit is to be filed.

10.68 A statement of case which has been verified by a statement of truth and an application notice containing facts which have been verified by a statement of truth may also stand as evidence at hearings other than the trial (CPR32.6).

Evidence by deposition

10.69 Evidence by deposition is dealt with in Part 34. A party may apply to a Master for an order for a person to be examined before a hearing takes place. Evidence obtained on an examination under that rule is referred to as a deposition. The Master may order the person to be examined before either a judge, an examiner of the court or such other person as the court appoints. PD34A, at paragraph 4, sets out in detail how the examination should take place. A deposition taken under this rule may be given in evidence at a hearing unless the court orders otherwise.

10.70 A deposition may be taken within the jurisdiction for use in the courts of England and Wales, or outside of the jurisdiction for the same purposes, but may also be taken within the jurisdiction for use as evidence in proceedings before foreign courts.

Witness summonses

10.71 The procedure for issuing a witness summons is also dealt with in Part 34 and Practice Direction 34A. A witness summons may require a witness within the jurisdiction to

1) attend court to give evidence

2) produce documents to the court, or

3) both

10.72 A summons must be in form N20 (Form N20: Witness summons - GOV.UK (www.gov.uk)). To issue a witness summons, a copy should be filed on CE file or for litigants in person not using CE file, two copies should be filed by leaving them in the drop box in the main hall of the RCJ for sealing; one copy will be retained on the court file.

10.73 The summons may be issued without permission of the court save in those cases specified in rule 34.3(2).

10.74 A witness summons can be issued for witnesses resident out of the jurisdiction but within the United Kingdom under s 36 of the Senior Courts Act 1981 with permission of the court court using Form PF120A.

10.75 A witness summons must be served at least 7 days before the date upon which the witness is required to attend. If this is not possible for any reason, an order must be sought from a Master that the summons is binding despite short service. The Master hearing applications in the Urgent and Short Applications List may be prepared to deal with this, without notice.

10.76 The court may set aside or vary a witness summons issued under this rule. It should be borne in mind that the object of a witness summons requiring a witness to produce documents is to obtain production at trial of specified documents; accordingly it must specifically identify the documents sought, it must not be used as an instrument to obtain disclosure and it must not be of a fishing or speculative nature: *South Tyneside BC v Wickes Building Supplies Ltd* [2004] EWHC 2428 (Comm).

10.77 An alternative procedure to obtain disclosure of documents by a non-party pre-trial, rather than to obtain production of documents by witness summons, is available under CPR31.17. If a party seeks to apply under that rule, they should carefully follow the rule's requirements.

10.78 The court may also issue a witness summons in aid of a court or tribunal which does not have the power to issue a witness summons in relation to the proceedings before it: see rule 34.4 and PD34A, para 2.

10.79 A witness summons will be served by the court by post unless the party on whose behalf it is issued indicates in writing that they wish to serve it themselves. If time is a critical factor, it may be preferable for the party to serve the witness summons. And, if service is to be on a reluctant witness, it may be better to effect personal service.

10.80 At the time of service of the witness summons the witness must be offered or paid:

(a) conduct money, i.e. a reasonable sum sufficient to cover their expenses in travelling to or from the court, and

(b) compensation for loss of time. The sum referred to in this respect in PD34A paras 3.2 and 3.3 is based on the sums payable to witnesses attending the Crown Court, as to which see the Guide to Allowances under Part V of the Costs in Criminal Cases (General) Regulations 1986 (SI 1986 No.1335) a guide to which can be found at Witness Expenses and Allowances | The Crown Prosecution Service (cps.gov.uk).

Relief from sanctions

10.81 The court has power under rule 3.9 to order relief from any sanction imposed for a failure to comply with any rule, practice direction or court order.

10.82 In considering giving relief from sanctions, the court will apply the test in *Denton v T.H. White Ltd* [2014] EWCA Civ 169. First, the court will decide whether the breach was serious or significant. If it was not, relief will usually be granted. Secondly, the court will consider why the breach occurred. Thirdly it will consider all the circumstances of the case including in particular the need:

(a) for litigation to be conducted efficiently and at proportionate cost; and

(b) to enforce compliance with rules, practice directions and orders.

10.83 Parties have a duty to co-operate in furtherance of the overriding objective and should not unreasonably oppose applications for relief from sanctions or extensions of time. Contested applications for relief should be the exception not the norm. Additionally, the court will expect parties to agree reasonable extensions of time of up to 28 days under CPR rule 3.8(4). Costs sanctions are likely against parties behaving unreasonably.

Pre-trial review

10.84 Where the trial of a claim is estimated to last more than 10 days, or where the circumstances require it, the Master may direct that a pre-trial review ("PTR") should be held. A PTR will not usually be held in trials of 10 days or less unless the case is in the MAC list (see chapter 17 below). The PTR may be heard by a Master, but more usually is heard by a judge. As an alternative a Master may list a review case management conference prior to trial if it is anticipated further case management directions will be required.

10.85 The PTR date may be listed at the trial listing appointment, but if the parties request, it can be listed later. In that case, application should normally be made to the King's Bench Judges' Listing Officer for the PTR to be heard by the trial judge (if known), and the applicant should do all that they can to ensure that it is heard between 4 and 8 weeks before the trial date, and in any event long enough before the trial date to allow a realistic time in which to complete any outstanding matters.

10.86 If no PTR is ordered at the case management stage and the parties later agree that a PTR should be listed, they may request a PTR by contacting KB judges listing. If there is a dispute about whether a PTR should be listed, the party seeking one must issue an application notice.

10.87 The PTR should be attended by the advocates who are to represent the parties at the trial.

10.88 At least 7 days before the date fixed for the PTR, the claimant or applicant must serve the other parties with a list of matters to be considered at the PTR, and those other parties must serve their responses at least 2 days before the PTR. Account must be taken of the answers in any pre-trial checklists filed. Realistic proposals must be put forward and if possible agreed as to the time likely to be required for each stage of the trial and as to the order in which witnesses are to be called.

10.89 The claimant or applicant should lodge a properly indexed bundle containing the pre-trial check lists (if directed to be filed) and the lists of matters to be considered and the proposals, together with the results of discussions between the parties, and any other relevant material, on CE file or if a litigant in person not using CE file, by email to KBjudgeslistingoffice@justice.gov.uk or by placing in the drop box in the main hall of the RCJ, by no later than 10.30am on the day before the day fixed for the hearing of the PTR. If the PTR is to take place before a Master, it should be lodged with the Masters' Ushers.

10.90 At the PTR, the court will review the parties' state of preparation, deal with any outstanding matters, and give any directions or further directions that may be necessary.

Trial directions and trial timetable

10.91 The Master will at the earliest practicable opportunity give directions for trial: see CPR29.2(2). These will, typically, include:

(a) the trial window, i.e. the period of time (often coinciding with a Law Term) during which the trial date or period to be fixed will occur. The earliest trial windows available can be found online: King's Bench hearing and trial dates - GOV.UK (www.gov.uk). Parties should consult these before drafting proposed directions.

(b) the venue for trial. If in London, at the Royal Courts of Justice. If outside London, a trial centre will be specified, although if a matter is to be heard in a district registry, the case management order will usually transfer the matter for listing to the district registry.

(c) an order for trial by judge or master alone; or, in cases where trial by a judge sitting with a jury is ordered, trial by judge and jury.

(d) the listing category. As an additional aid to listing, when making an order, the Master will give a provisional estimate of the substance, difficulty or public importance of the case. This is done by giving cases a listing category according to whether they are:

A. cases of great substance or great difficulty or of public importance

B. cases of substance or difficulty

C. other cases

Cases in category A will be heard by a High Court Judge; in category B the case will be heard by a High Court Judge if available, a deputy High Court Judge or a Circuit Judge sitting as a Judge of the High Court; and in category C by a deputy High Court Judge or a Circuit Judge sitting as a High Court Judge or by a Master.

(e) a direction as to the estimated length of the trial. The parties must be prepared to assist the Master as to likely length,

(f) a direction that a copy of the order be sent to the King's Bench Judges Listing Office which will notify all parties of a listing appointment for a trial date or period within the trial window, which will usually be 6 weeks from the date the order is sealed (or 3 weeks in the case of mesothelioma liability trials). If parties have any queries in relation to the listing appointment they should contact King's Bench Judges Listing: KBjudgeslistingoffice@justice.gov.uk; unless the trial is to be listed before a Master, in which case the Master will give listing directions.

(g) that the parties file pre-trial check lists in Form N170 as may be directed by the Listing Officer: see CPR29.6 and PD29, para 8.1. Pre-trial check lists will not be dispensed with save in exceptional circumstances.

10.92 The up to date trial periods are available are available here:

King's Bench hearing and trial dates - GOV.UK (www.gov.uk)

10.93 Term dates can be found here:

https://www.judiciary.uk/about-the-judiciary/the-justice-system/term-dates-and-sittings/term-dates/

11. Applications

Procedure generally

11.1 Applications for court orders are governed by Part 23 and Practice Direction 23A. Rule 23.6 and paragraph 2 of the Practice Direction set out the matters an application notice must include. To make an application the applicant must file an application notice unless a rule or practice direction permits otherwise or the court dispenses with the requirement for an application notice. Form N244 should be used. The application should be filed on CE file unless it is made by a litigant in person who is not using CE file. In those cases the application should be sent to Action Department, Central Office, Royal Courts of Justice, Strand, London WC2A 2LL or left in the drop box in the main hall of the RCJ. A Master will not normally make an order on the basis of correspondence alone.

11.2 Most applications should be made to a Master rather than a High Court Judge. The Part 2 Practice Direction 2B (Allocation of Cases to Levels of Judiciary) contains information about the types of applications which may be dealt with by Masters and Judges. Applications which must be made to a High Court Judge include:

(i) Search orders and freezing orders under CPR25;

(ii) Orders or interim remedies relating to

(a) a person's liberty;

(b) criminal proceedings or matters except procedural applications in appeals to the high court

(c) appeals from Masters or district judges

(d) application under section 42 of the Senior Courts Act for permission to state or continue all proceedings (vexatious litigant)

(e) permission to being proceedings under section 139 of the Mental Health Act 1983

(iii) Where a declaration of incompatibility in accordance with Section 4 of the Human Rights Act 1998 is sought;

(iv) Extended or general civil restraint orders (PD3C paras 3 and 4).

In addition any application to

(i) Vacate or extend a trial window made after a listing appointment has been given;

(ii) Vacate a trial before a High Court Judge; or

(iii) Where the outcome is likely to affect the trial date or window (after a listing appointment has been made)

must be made to the judge in charge of the relevant list (see paragraph 9.52 above).

11.3 Although Masters do have power to hear other applications for interim injunctions, applications for interim injunctions which involve consideration of the American Cyanamid test will be heard by a High Court Judge. Such Applications are usually heard by the Interim Applications Judge in Court 37 (see further paragraphs 9.55 to 9.61 above).

11.4 All other applications should be made in the first instance to the Masters. The Masters will consider referring the application to a High Court Judge under PD2B para 1.2 either of their own motion or at the request of the parties. In cases where the Master has jurisdiction to hear the case, a party wishing an application to be heard by a High Court Judge should apply to the Master for the case to be released rather than asking King's Bench Judges listing. The following factors are relevant to the decision to release to a High Court Judge:

(i) that the application raises issues of unusual difficulty or importance etc, including the existence of conflicting decisions or dicta which increase the likelihood of an appeal,

(ii) that the application is urgent and could be heard more quickly if it were listed before a High Court Judge, or

(iii) that the time required for the hearing is longer than a Master could ordinarily make available.

11.5 For listing of applications before the Masters see paragraph 9.15 above and for listing before Judges see paragraph 9.52 above.

Applications without notice

11.6 Applications made without service of the application notice on the other parties to the claim should only be made in the circumstances set out in CPR23.4 and 23APD.3 or where other rules or practice directions allow. Otherwise they should be made on notice.

11.7 An application which is requested to be dealt with without a hearing must still be on notice to the other parties unless it is an application which can properly be made without notice. A Master is likely to want to know the respondent's response to the application before making an order (see 11.15 below).

11.8 The following are examples of applications where a rule or practice direction allows an application to be without notice:

1) service by an alternative method under rule 6.15,

2) service of a claim form out of the jurisdiction under section IV of Part 6,

3) default judgment under rule 12.11(4) or (5),

4) substituting a party under rule 19.2(4): see PD19A, para 1.4,

5) permission to issue a witness summons under rule 34.3(2),

6) deposition for use in a foreign court under rule 34.17,

7) interim charging order under rule 73.3(1), and

8) interim third party debt order under rule 72.3(1).

11.9 Where an application is made without notice to the other parties, it is the duty of the applicant to fully disclose all matters relevant to the application, including those matters adverse to the applicant. The application must specifically direct the court to those passages in the evidence which disclose matters adverse to the application. Failure to do so may result in the order being set aside.

11.10 Rule 23.9 requires that, where the court has made an order on an application without notice, a copy of the application notice and any evidence in support of it must, unless the court orders otherwise, be served with the order on any party or other person against whom the order was made or sought. The order must contain a statement of the right to apply to set aside or vary the order within 7 days of service of the order. The draft order provided with the application should contain this statement. Applications under rule 23.10 to set aside or vary such orders frequently arise in practice.

Applications on notice

11.11 Where notice of an application is to be given, the application notice should be served as soon as practicable after issued and, if there is to be a hearing, at least 3 clear days before the hearing date, unless the rules or a practice direction specify another time limit or permission for shorter service is obtained from a Master. Where there is insufficient time to serve an application notice before a proposed hearing date, informal notice of the application should be given.

11.12 See paragraphs 9.15 to 9.50 above for the listing of applications before a Master. It is preferable that notice of the application is given before issue and the MA form filled out and submitted with the application in order to expedite listing the hearing.

Applications without a hearing

11.13 Applications which are asked to be decided without a hearing may be applications which require notice to the respondent or applications which do not require notice. Whether a hearing is required is entirely separate to the question of whether the application is properly made with or without notice.

11.14 CPR23.8 provides for hearings which may be dealt with without a hearing. In addition to cases where the parties consent to the order or to the matter being dealt with without a hearing, it may be appropriate where the application, whilst not consented to is not contentious. Unless it is a consent order or dealt with by consent, it is treated as being made of the court's own initiative and CPR3.3(5) and (6) apply, the parties may apply to set aside or vary the order within 7 days and the order must contain a statement to that effect.

11.15 If the matter is an application which should be made on notice, the respondent's view on the application should be provided to the court with the application. If it is not, the court is likely to order a hearing.

Urgent applications to Duty Judge

11.16 Applications should not be made out of hours unless it is essential. Legal representatives must consider carefully whether an out of hours application is required. The out of hours service is not available to litigants in person.

11.17 Applications of extreme urgency may be made out of hours and will be dealt with by the duty Judge. An explanation will be required as to why it was not made or could not be made during normal court hours. This will require an explanation both of why the application was not made any earlier and why it cannot wait until the next sitting day so as to be dealt with by the duty Judge but within normal hours.

11.18 The barrister or solicitor acting should make initial contact through the Security Office on 0207 947 6000/ 0207 947 6260 who will require the applicant's phone number. The clerk to the duty Judge will then contact the practitioner and will require the following information:

1) the name of the party on whose behalf the application is to be made,

2) the name and status of the person making the application,

3) the nature of the application,

4) the reasons requiring consideration out of hours (which must explain why the matter could not be dealt with during normal court hours, specifying the time/date the solicitor and counsel were instructed), and

5) the contact telephone number(s).

11.19 The out of hours duty clerk will require the practitioner to complete the Out of Hours form which can be downloaded from the gov.uk website and emailed to DutyClerkKB@justice.gov.uk

Form KBD OHA: Out of hours application (King's Bench Division) - GOV.UK (www.gov.uk)

Practitioners should be aware that:

1) the out of hours form must be completed by the practitioner instructed to make the application;

2) all questions on the out of hours form must be answered on the form, not by cross-reference to the application materials. The application will not be considered by the duty Judge until a properly completed out of hours form has been submitted and may not be considered at

all if the Form does not on its face appear to justify the making of the application out of hours;

3) the duty of full and frank disclosure assumes added significance when a judge is asked to make an order in a short time and without any (or any substantial) opportunity for the defendant to make representations;

4) when making an application out of hours, practitioners must bear in mind *R (Hamid) v Secretary of State for the Home Department* [2012] EWHC 3070 (Admin). The Hamid jurisdiction is a facet of the court's jurisdiction to regulate its own procedures and to enforce the overriding duties owed to it by legal professionals. This jurisdiction extends to all cases, not just immigration cases (see *R (Wingfield) v Canterbury City Council* [2020] EWCA Civ 1588 at para [11], and the summary in section 18 of the Administrative Court Judicial Review Guide 2024: The Administrative Court Judicial Review Guide 2024

11.20 The duty Judge will indicate to the out of hours duty clerk the application can be dealt with on paper, or whether it needs to be heard remotely or in court. The out of hours duty clerk will inform the practitioner and make the necessary arrangements.

11.21 The duty Judge is likely to require a draft order to be sent by email. It is not normally possible to seal an order out of hours. The duty Judge is likely to order the practitioner to file the application notice and evidence in support on the same or next working day, together with a copy of the order for sealing.

11.22 If the duty judge makes a determination, whether or not the application is successful, in accordance with CPR 25APD4.5 the applicant must file the out of hours application with the court the next working day, together with the application fee of £123. The form and fee should be sent to the Royal Courts of Justice Fees Office. This fee must be paid, in addition to any fee required for any other application/claim the duty Judge directs the application.

12. Interim remedies including injunctions and interim payments

12.1 Interim remedies which the court may grant are listed in rule 25.1(1). An order for an interim remedy may be made at any time including before proceedings are started and after judgment has been given. Some of the most commonly sought remedies are injunctions, many of which are heard by the Interim Applications Judge.

12.2 Where a claim has been started, an application on notice for an urgent injunction or one requiring a freezing order or search order should be filed on CE file by a represented party or by email to KBjudgeslistingoffice@justice.gov.uk or by placing in the drop box in the main hall of the RCJ for a litigant in person who is not using CE file. Applications without notice are heard in Court 37 at 10.00am and 2.00pm, and at such other times as the urgency of the application dictates.

12.3 Where an injunction is granted without the other party being present, it will normally be for a limited period with a return date 1 to 2 weeks ahead. If the injunction order contains an undertaking to issue a claim form, this should be issued on CE file before the application notice for the return date is filed (or if a litigant in person not using CE file, by email to KBjudgeslistingoffice@justice.gov.uk). The claim form should be issued on CE file under the same case number as the pre-action injunction application with a covering letter explaining that the claim form is in respect of the same matter. The Claim form must be served and service of particulars of claim should not be deferred pending the return date.

12.4 Rules 25.2 to 25.11 deal fully with the procedure for making an application for an injunction. Rule 25.6 states what the application notice must contain. In general, the application notice must be served not less than 3 days before the court is due to hear the application. Rule 25.7 requires any application for an injunction to be supported by evidence. in the case of applications for search orders and freezing orders the application must be supported by evidence on affidavit or affirmation (see Rules 25.13 and 25.17).

12.5 Rule 25.8 deals with urgent applications and applications without notice. These fall specifically into two categories, according to whether a claim form has or has not already been issued. Reference should also be made to para 11.16 et seq. of this Guide.

12.6 Orders for injunctions must, unless the court otherwise orders, contain an undertaking by the applicant to the court to pay such damages as the court may order and, if the application is made without notice, to serve the application and evidence in support as soon as practicable: see Rule 25.9(3).

12.7 Rules 25.12 to 25.19 contain important provisions as to freezing orders and search orders respectively. Model versions of both such orders can be found here:

https://www.justice.gov.uk/courts/procedure-rules/civil/forms/model-orders

12.8 Certain applications may be heard in private if the judge thinks it appropriate to do so (rule 39.2(3)). An application to hear in private should be made at the outset of the hearing. Certain applications for search orders and freezing injunctions might be appropriate for hearing in private.

Interim payment applications

12.9 Applications for interim payments fall under rules 25.20 to 25.25 and are usually heard by a Master. The application should be made to a Master and may be referred by the Master to a Judge in their discretion. Rule 25.23 sets out the conditions which must be satisfied if an order for interim payment is to be made. The procedural and evidential requirements for obtaining an order are set out in Rules 25.21 and 25.22. If the interim payment application is made on behalf of a child or patient, the court's approval is required even if it is agreed. See section 13 of this Guide.

Provisional damages

12.10 Practice Direction 41A gives further information about provisional damages awards and, in particular, about the preservation of the case file for the time specified in the order for making a further application, and the documents to be included in the case file. Files are to be lodged on CE file and will be stored electronically unless ordered otherwise. See paragraph 3.46 above. A precedent for a provisional damages judgment is annexed to the Practice Direction.

13. Children and Protected Parties

Litigation friend

13.1 CPR21 sets out the requirements in order to bring or defend an action where a party is a child or a protected party. A child or protected party requires a litigation friend in order to conduct litigation and any steps taken on behalf of a child or protected party without a litigation friend are not valid unless the court otherwise orders.

13.2 CPR21 sets out when a litigation friend must be appointed, who may be a litigation friend and how a litigation friend is appointed. The court has the power under CPR21.7 to change a litigation friend and to prevent a person acting as a litigation friend. Where a solicitor is acting for a child or protected party and they have a concern that the litigation friend is not acting properly then they should notify the court and if necessary make an application under CPR21.7.

13.3 Where a person may be a litigation friend without court order, they must file a certificate of suitability in Practice From N235 which can be found here: Form N235: File a certificate of suitability to be a litigation friend - GOV.UK (www.gov.uk).

13.4 In cases where there is no-one who is suitable to act as a litigation friend, the Official Solicitor may be approached to act. The Official Solicitor will only act in cases where there is no other suitable person and there is confirmation that their legal costs will be paid. The court will if necessary consider ordering another party to do so.

Approval of interim payments and Settlements on behalf of children and protected parties

13.5 No settlement or compromise or payment in respect of a claim by or against a child or protected party will be valid, so far as it relates to the claim by or against the child or protected party, unless and until the court has approved it: CPR21.10 (1). This is so even if the settlement is reached under Part 36 and even if the settlement is in respect of only one aspect of the claim. The rule also applies to interim payments, and permission of the court must be sought before any voluntary interim payment is made (PD25B para 1.2).

13.6 A settlement of a claim by a child includes an agreement on a sum to be apportioned to a dependent child under the Fatal Accidents Act 1976.

13.7 Discontinuance of a claim under Part 38 does not require approval, but if the discontinuance is part of a settlement or compromise, it does require approval of the court.

13.8 In cases where the issue of capacity is not clear, the parties may seek the court's approval of a settlement without determination of the issue of capacity (see *Coles v Perfect* [2013] EWHC 1955(QB)).

13.9 Applications for the approval of settlement or compromise of claims by or against a child or protected party are heard by a Master, unless the Master releases the application so that it can be heard by a Judge or the proceedings have already been transferred to a Judge for trial.

13.10 Application for approval of a settlement of a claim before issue should be made using a Part 8 claim (CPR21.10(2)). The claim form must state it is an application to obtain approval.

13.11 It is appropriate to use the same procedure when an issue in the claim is settled rather than the whole claim, and the case is one where the parties are likely to but are not ready to issue a Part 7 claim. If necessary the Part 8 claim can be stayed following approval of the settlement of the issue, and an application can be made to convert the Part 8 claim to a Part 7 claim later if required.

13.12 Applications in existing proceedings should be applications made under CPR23. All applications for approval must set out the information required in CPR 21.10(3).

13.13 In practice, confidential counsel's advice, financial advice relating to the proposed settlement and the relevant evidence and the draft order may be provided prior to the hearing rather than with the application itself. In cases with significant amounts of expert evidence, that may also be provided before the hearing. The claim form should refer to when it is proposed that evidence will be provided but it should be 3 days before the hearing at the latest.

13.14 N292 practice, confidential counsel's advice, financial advice relating to the proposed settlement and the relevant evidence and the draft order may be provided prior to the hearing rather than with the application itself. In cases with significant amounts of expert evidence, that may also be provided before the hearing. The claim form should refer to when it is proposed that evidence will be provided but it should be 3 days before the hearing at the latest:

Form N292: Tell the court about an agreed settlement on behalf of a child or patient - GOV.UK (www.gov.uk)

13.15 In any personal injury case consideration must be given to whether some or all of the award should be given by way of periodical payments (CPR21.10(4)). If the settlement does include provision for periodical payments, the requirements of rules 41.8 and 41.9 must be satisfied.

13.16 In Fatal Accident claims, the information set out in CPR21.10(7) must be provided.

13.17 It should be remembered that approval proceedings in such cases will require the court's consideration of the appropriateness of the whole sum agreed, in order then to consider the appropriateness of the amount apportioned to each child.

13.18 For approval of costs settlements, assessments of costs under CPR46.4(2) and deductions from damages, please see the Practice Note by the Senior Costs Judge: Practice Note by the Senior Costs Judge: deductions from damages | Courts and Tribunals Judiciary

Approval Hearings

13.19 Approval hearings will normally be held in public unless the Judge or Master orders otherwise. The court will normally make an anonymity order if requested, namely that the identity of any party must not be disclosed in accordance with *JXMX v Dartford and Gravesham NHS Trust* [2015] EWCA Civ 96. If anonymity is sought, the court should be provided with a copy of the proposed order suitably redacted. Parties should be careful not to use letters which could identify the anonymised party (such as initials), but should also not use combinations such as ABC, XXX or XYZ.

13.20 The order must provide for publication of the redacted order in accordance with CPR39.2(5) unless the court orders otherwise and should be consistent with Practice Form 10:

Anonymity and prohibition of publication order: Form PF10 - GOV.UK (www.gov.uk)

13.21 The evidence in support of the application, the advice and draft order should be supplied within good time and at least 3 days before the hearing of the application.

13.22 The order should be provided by email directly to the master or judge's clerk/associate.

Interim payments

13.23 Agreed interim payments must also be approved by the court and must be approved prior to payment (CPR25.20(5)). In cases where the claim has been issued, the application should be made by Part 23 application (CPR25.3). With sufficient evidence setting out the likely value of the claim, the basis of the interim payment, how it might affect the issue of periodical payments and the purposes of the interim payment where relevant, the application is likely to be dealt with on paper.

13.24 In cases where no claim has been issued and the case would not otherwise have been issued, it is appropriate to issue a Part 8 claim for approval of the interim payment. After approval, and if necessary, an order can be made at a later date for the claim to proceed as a Part 7 claim.

Investment directions

13.25 CPR21.11 requires that money recovered by or on behalf of or for the benefit of a child or protected party will be dealt with in accordance with directions under that rule and not otherwise.

13.26 At an approval hearing in respect of a child, investment directions will usually be considered. The original of the claimant's birth certificate must be provided at the hearing and, assuming payment into court is requested, CFO320 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/782534/cfo320-0119.pdf) should be provided, completed as appropriate.

13.27 Following the hearing and making of the court order, the court will forward to the Court Funds Office a request for investment decision in Form 212 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/782537/cfo212-0119.pdf and the Court Funds Office will make the appropriate investment. The parties do not need to provide this form to the court in the RCJ.

13.28 Where an award of damages is made at trial, the order will usually make provision for any immediate payment (e.g. for expenses) to the litigation friend or their legal representative and for the balance of the award to be paid into the Court Funds Office to be held in the special investment account (or other investment account as may be directed) pending application for investment directions. In suitable cases the Judge will go on to make investment directions.

13.29 In the case of a child, the Judge may direct that the application for investment directions will be to a Master. The Judge's order will direct that the claimant must apply by email to the clerk to the assigned Master within 3 days for an investment direction hearing. Care should be taken to comply with this. If the claimant's solicitors delay in arranging the listing of the investment directions hearing they may be required to reimburse the Child's account in respect of any consequent loss of interest. The order MUST also deal with interest accrued to the date of judgment, and with any interest which accrues on the fund in the future. The order will also refer to majority directions in the case of a child (i.e. a specific direction as to what is to occur in relation to the fund when the child achieves the age of 18); and to any specific directions on investment which the Judge may see fit to give as part of their order.

13.30 In the case of a protected party which is also a protected beneficiary, where the fund is £100,000 or more and no Deputy has been appointed, the court will direct the litigation friend to apply to the court of protection of appoint a Deputy. The funds will remain in the Court Funds Office until the appointment of the Deputy.

13.31 In the case of a protected beneficiary where the fund is less than £100,000, the fund may be treated the same as a fund of a child and the procedure should apply as if it were a fund for a child save that a form CFO 320PB must be completed rather than a form CFO 320.

13.32 Requests for payments out of a fund held in the Court Funds Office may be made by the litigation friend from time to time in order to defray proper expenditure on the child's behalf. Good reason must be shown to support such applications. Applications should be made by letter or email to children's funds.

13.33 When a child reaches full age control of their fund must (provided they are not also a protected beneficiary) pass to them. If the fund is in the form of money it will, on their application be paid out to them. If in the form of investments, they will either be sold and the proceeds paid out to them, or transferred into their name: see CPR21.11(8)(b) and (c).

Trust deeds

13.34 Unless there is a professional deputy appointed, if it is proposed that the damages be held other than in court, the parties must provide financial advice in respect of the cost and benefit of the money being held in trust compared to it being held in the Court Funds Office.

13.35 The court has no power under CPR21.11 to order or impose a discretionary trust on the child's monies as the child will already have an absolute interest in the monies. As the court is giving up control of the child's funds, it will, save in exceptional circumstances, require that the bare trust have a professional trustee (or trust corporation) throughout the child's minority. Standard trust provisions are not always appropriate and the Master will expect to see the terms of trust in order to approve them. The Trust must provide that issues such as change of trustee and dissolution of the trust remain subject to the approval of the court until the claimant is 18.

13.36 Where the proposed professional trustee is a member of the litigation solicitors (or the trust corporation is operated by the litigation solicitors) the court will wish to ensure that the litigation friend or parent trustee has been properly advised and that the transaction is untainted by undue influence; see *OH v Craven* [2016] EWHC 3146 (QB); [2017] 4 W.L.R.25.

14. Trial, judgments and orders

General

14.1 The trial of a claim in the Royal Courts of Justice normally takes place before a High Court Judge (or a Deputy High Court Judge or a Circuit Judge sitting as a Judge of the High Court). A Master may try a claim and may assess the damages or sum due to a party under a judgment and, subject to any Practice Direction, they may try a claim which is proceeding under Part 8. A trial before a Master will not usually be contemplated if it will last more than three days.

14.2 See paragraphs 1.30 to 1.31 above for information on the level of judge cases are listed before.

Preparation for trial

Bundles

14.3 Directions are given at the case management stage for preparation of trial bundles. Bundles should comply with CPR39.5 and PD32 paragraph 27. Bundles should be agreed between the parties. If certain documents are not agreed they should be included but noted as not agreed. Only necessary documents should be included in the bundles. Where there is a concern that for example a medical record may be required that cannot be anticipated, a single copy of the full bundles should be available for use if necessary. Where the court considers that costs have been wasted by copying unnecessary documents, a special costs order may be made against the relevant person.

14.4 Trial bundles must be provided to the court in paper format unless otherwise ordered. An electronic version must also be filed if the court so orders; any electronic bundle must correspond exactly with the paper copy (i.e. have the same index and pagination). See further PD51O.13.

14.5 The following guidance should also be followed:

1) No more than one copy of any one document should be included, unless there is good reason for doing otherwise. One such reason may be the use of a separate core bundle.

2) Where the volume of documents needed to be included in the bundles, and the nature of the case, makes it sensible, a separate core bundle should be prepared for the trial, containing those documents likely to be referred to most frequently.

3) If the same document is included in the chronological bundles and is also an exhibit to an affidavit or witness statement, it should be included in the chronological bundle and where it would otherwise appear as an exhibit a sheet should instead be inserted. This sheet should state the page and bundle number in the chronological bundles where the document can be found. Alternatively a cross-reference should be given in the margin of the witness statement to the main bundles.

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

5) If a contract or other transactional document is central to the case it may be included in a separate place provided that a page is inserted in the chronological run of documents to indicate where it would have appeared chronologically and where it is to be found instead. Alternatively transactional documents may be placed in a separate bundle as a category.

6) Page numbers should be inserted in a form that can clearly be distinguished from any other pagination on the document. Pagination should not mask relevant detail on the original document.

7) Where possible, the documents should be in A4 format. Where a document has to be read across rather than down the page, it should so be placed in the bundle as to ensure that the top of the text starts nearest the spine.

8) Where any marking or writing in colour on a document is important, the document must be copied in colour or marked up correctly in colour.

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

10) Documents in a foreign language should be translated; the translation should be marked and placed adjacent to the document translated; the translation should be agreed or, if it cannot be agreed, each party's proposed translation should be included.

11) The size of any bundle should be tailored to its contents. There is no point having a large lever-arch file with just a few pages inside. On the other hand bundles should not be overloaded as they tend to break. No bundle should contain more than 300 pages.

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

13) Large documents, such as plans, should be placed in an easily accessible file. If they will need to be opened up often, it may be sensible for the file to be larger than A4 size.

14) Bundles should be labelled on the front as well as the spine. They should be clear and easy to read.

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

16) All staples, heavy metal clips etc. should be removed.

17) Before a new document is introduced into bundles which have already been delivered to the court – indeed before it is copied – steps should be taken to ensure that it carries an appropriate bundle/page number, so that it can be added to the court documents. It should not be stapled, and it should be prepared with punch holes for immediate inclusion in the binders in use.

18) If it is expected that a large number of miscellaneous new documents will from time to time be introduced, there should be a special tabbed empty loose-leaf file for that purpose. It is conventional to label this file "X". An index should be produced for this file, updated as necessary.

19) It is seldom that all inter-solicitor correspondence is required. Only those letters which are likely to be referred to should be copied.

14.6 The court will normally expect parties to agree that the documents, or at any rate the great majority of them, may be treated as evidence of the facts stated in them. A party not willing to agree should, when the trial bundles are lodged, write a letter to the court (with a copy to all other parties) stating that it is not willing to agree, and explaining why.

14.7 The general rule is that the claimant/applicant must ensure that one copy of a properly prepared bundle is delivered at Judges' Listing not less than 3 clear days and not more than 7 days before the trial. From 1 April 2022 bundles may be delivered to the usher in the Bear Garden.

14.8 In the case of Masters, the bundle should be delivered to the Bear Garden not less than 3 clear days (and not more than 7 days) before any hearing or trial. However, the court may direct the delivery of bundles earlier than this.

14.9 Where oral evidence is to be given an additional copy of the bundle must be available in court for the use of the witnesses.

14.10 Bundles provided for the use of the court should be removed promptly after the conclusion of the hearing unless the court directs otherwise.

Electronic bundles

14.11 If an electronic bundle is ordered and subject to any direction made in a particular case, the following guidance should be followed and can also be found here (General guidance on electronic court bundles | Courts and Tribunals Judiciary):

1) E-bundles must be provided in PDF format.

2) All pages in an e-bundle must be numbered by computer-generated numbering, not by hand. The numbering should start at page 1 for the first page of the bundle (whether or not that is part of an index) and the numbering must follow sequentially to the last page of the bundle, so that the pagination matches the PDF numbering. If a hard copy of the bundle is produced, the pagination must match the e-bundle.

3) Each entry in the index must be hyperlinked to the indexed document. All significant documents and all sections in bundles must be bookmarked for ease of navigation, with a short description as the bookmark. The bookmark should contain the page number of the document.

4) All pages in an e-bundle that contain typed text must be subject to OCR (optical character recognition) if they have not been created directly as electronic text documents. This makes it easier to search for text, to highlight parts of a page, and to copy text from the bundle.

5) Any page that has been created in landscape orientation should appear in that orientation so that it can be read from left to right. No page should appear upside down.

6) The default view for all pages should be 100%.

7) If a core bundle is required, then a PDF core bundle should be produced complying with the same requirements as a paper bundle.

8) Thought should be given to the number of bundles required. It is usually better to have a single hearing e-bundle and (where appropriate) a separate single authorities e-bundle (compiled in accordance with these requirements), rather than multiple bundles (and follow any applicable court specific guidance).

9) The resolution of the bundle should not be greater than 300 dpi, in order to avoid slow scrolling or rendering. The bundle should be electronically optimised so as to ensure that the file size is not larger than necessary.

10) If a bundle is to be added to after it has been transmitted to the judge, then new pages should be added at the end of the bundle (and paginated accordingly). An enquiry should be made of the court as to the best way of providing the additional material. Subject to any different direction, the judge should be provided with both (a) the new section and, separately, (b) the revised bundle. This is because the judge may have already marked up the original bundle.

14.12 All PDF files must contain a short version of the name of the case and an indication of the number/letter of the bundle, and end with the hearing date. For example "Carpenters v Adventurers Bundle B 1-4-20"; or "Carpenters v Adventures correspondence 1-4-20". They must not be labelled simply "Correspondence" or "Bundle B".

14.13 If the bundle is to be sent by email, please ensure the file size is not too large. For justice.gov e-mail addresses the maximum size of email and attachments is 36Mb in aggregate. Anything larger will be rejected. The subject line of the email should contain the case number, short form case name, hearing date and name of judge (if known).

14.14 Where the bundle would otherwise be sent by email (rather than being uploaded to a portal) but is too large to be sent under cover of a single email, then please contact the judge's clerk or the listing office who can give instructions on using the court's document upload centre.

14.15 Links sent by email to shared files will not be accepted.

14.16 Ordinarily the applicant is responsible for preparing the court bundles. If the applicant is unrepresented then the bundles must still, if at all possible, comply with the above requirements. If it is not possible for an unrepresented litigant to comply with the requirements, then a brief explanation of the reasons for this should be provided to the court as far in advance of the hearing as possible. Where possible the litigant in person should suggest a practical way of overcoming the problem. If the other party is represented, then that party should consider offering to prepare the bundle.

Skeleton arguments

14.17 Skeleton arguments concisely summarising each party's submissions must be prepared and filed with the Listing Office not later than 10.00am 2 clear days before the trial by email and hardcopy unless otherwise ordered.

14.18 If it is anticipated that a skeleton argument will be filed late, a letter of explanation should accompany it which will be shown to the Judge before whom the trial or hearing is to take place.

14.19 A skeleton argument should:

1) concisely summarise:
   - the nature of the case and the relevant background facts;
   - the issues to be determined; and
   - the party's submissions in relation to each of the issues (where appropriate by reference to the relevant paragraphs in the statements of case);
2) contain a reading list of core documents or parts of documents which it would be helpful for the judge to pre-read and an estimate of the time it will take the Judge to read;
3) cite the propositions of law relied on with references to the main authorities relied on;
4) be as brief as the issues allow and not normally be longer than 20 pages of double-spaced A4 paper;
5) be divided into numbered paragraphs and paged consecutively;
6) avoid formality and use understandable abbreviations; and
7) State the name and contact details of the advocate(s) who prepared it.

14.20 Advocates should try to agree and supply a single joint bundle of authorities. Excessive citation of authority should be avoided. See Practice Direction (Citation of Authorities) [2012] 1 WLR 780 (Lord Chief Justice Practice direction - citation of authorities 2012 (judiciary.uk))

Trial timetable

14.21 In order to assist the court, a draft timetable should be prepared by the claimant's advocate(s) after consulting the other party's advocate(s). If there are differing views, those differences should be clearly indicated in the timetable. The draft timetable should be filed with the trial bundle.

14.22 The trial timetable will normally include times for giving evidence (whether of fact or opinion) and for oral submissions during the trial.

14.23 The Judge may fix a timetable for evidence and submissions if it has not already been fixed. The claimant's advocate will normally begin the trial with a short opening speech, and the Judge may then allow the other party to make a short speech. Each party should provide written summaries of their opening speeches if the points are not covered in their skeleton arguments.

The trial

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

14.25 Unless the court orders otherwise, a witness statement will stand as the evidence in chief of the witness, provided he is called to give oral evidence: see rule 32.5(2). With the court's permission, a witness may amplify their witness statement or give evidence in relation to new matters which have arisen since the witness statement was served on the other parties.

14.26 Where a party decides not to call a witness whose witness statement has been served to give oral evidence at trial, prompt notice of this decision should be given to all other parties. The party should also indicate whether they propose to put, or seek to put, the witness statement in as hearsay evidence. If they do not, any other party may do so (CPR32.5).

14.27 The Court Associate will be responsible for any exhibits produced as evidence during the trial. After the trial, the exhibits are the responsibility of the party who produced them. Where a number of physical exhibits are involved, it is desirable, if possible, for the parties to agree a system of labelling and the manner of display beforehand.

14.28 Facilities are available to assist parties or witnesses who have disability or are vulnerable whether as regards access to the court, audibility in court or otherwise. The relevant listing office should be contacted in advance (see paragraphs 9.88 above).

14.29 The court may allow a witness to give evidence through video link or other means. See further paragraph 9.91 and Annex 3 to PD32.

14.30 See paragraph 9.113 above about recording of proceedings.

14.31 Rule 39.3 sets out the consequences of a party's failure to attend the trial.

Judgments

14.32 Under rule 40.7(1) a judgment or order takes effect from the day on which it is given or made, which is the date it is formally delivered in court, or such later date as the court may specify.

14.33 The judgment of the judge will be made, where delivered orally, by request for a transcript of the same: see paragraphs 9.115 to 9.116 above.

14.34 Where judgment is reserved, the Judge may deliver judgment by handing down the written text without reading it out in open court. If a judgment is to be handed down in writing, a draft may be circulated to the parties in accordance with PD40E in advance of handing down. That draft is confidential to the parties and the lawyers and any disclosure of it prior to release is embargoed. Parties are reminded that when a draft judgment is circulated pursuant to PD40E, the purpose is to enable the parties to make suggestions for correction of errors, prepare submissions on consequential matters and prepare themselves for the publication of judgment and not for any other purpose. Whilst the party may wish to prepare a press statement in advance of the judgment, to be released after hand down, the drafting of press releases to publicise the lawyers involved is not a permitted purpose (see The Counsel General for Wales, R (On the Application Of) v The Secretary of State for Business, Energy and Industrial Strategy [2022] EWCA Civ 181 (16 February 2022) (bailii.org) and *The Public Institution for Social Security v Banque Pictet & CIE SA & Ors* [2022] EWCA Civ 236). Any breach of the embargo may be a contempt of court and those who breach the embargo may be the subject of contempt proceedings.

14.35 Copies of the finalised judgment will be made available to the parties and the advocates should be ready to deal with any points which may arise when the judgment is delivered.

14.36 The Judge will usually direct that the written judgment may be used for all purposes as the text of the judgment, and that no transcript need be made. Where such a direction is made, a copy will be provided to the Courts Recording and Transcription Unit, from which further copies may be obtained. If requested and so far as practicable, copies of a written judgment will be made available on handing down to the law reporters and the press.

14.37 Judgments may be handed down by email circulation to parties and by release to the National Archives. Irrespective of the mode of hand down, judgments of the High Court will be uploaded to the National Archives and cases can be accessed here: Find case law (nationalarchives.gov.uk) .

14.38 CPR40.8 specifies the time from which interest is to run on a judgment, where interest is payable. Such interest runs from the date that the judgment is given, subject to the specific terms of rule 40.8.

14.39 CPR40.11 sets out the time for complying with a judgment or order for the payment of money, which is 14 days unless the judgment or order specifies otherwise (for example by instalments), or any of the Rules specifies a different time, or the judgment or proceedings have been stayed.

14.40 The Part 40B Practice Direction also sets out useful provisions for:

(a) expressly adjusting a final judgment figure where compensation recovery payments are concerned: see para 5;

(b) expressly adjusting a final judgment figure where interim payments have been made: see para 6;

(c) setting out in a judgment the consequences of failing to comply with an order that an act must be done by a certain time: see para 8; and

(d) including in a money judgment provisions for payment by instalments: see para 12.

15. Court Orders

Orders made by the Masters

15.1 In the majority of cases orders by Masters in the King's Bench Division are drawn up by one of the parties (see CPR40.3(4)). In a limited number of circumstances, e.g. where an order is made of the court's own initiative, the court will draw up, seal and serve an order.

15.2 Where there has been a hearing, the order will be drawn up and sealed by the following procedures:

1) The party responsible for drawing up the order will draw up an electronic version of the order in Word (PDF versions are not acceptable, nor are Word documents which are password protected or locked for editing), send it to the other parties, and when agreed by them as an accurate statement of the order made, email to the Master (copying in the other party) who will make any amendments considered necessary and then arrange for the order to be sealed by the court and uploaded to CE file. The agreed minute of order should not be filed on CE file.

2) If the parties are unable to agree the wording the Master should be informed and will finalise the electronic copy of the order.

3) Once sealed and uploaded to CE file, unless otherwise ordered, CE file will notify the parties that the order is available.

4) Where a party is not represented and not using CE file, the represented party should serve the sealed order on them unless otherwise ordered.

5) In any case of doubt the court officer will refer the matter to the Master who made the order, or to the Master taking the Urgent and Short Applications list, for them to decide whether or not the order should be permitted to be sealed in the form presented.

15.3 Orders are dated as at the date when the order was made although the date of sealing may be later.

15.4 The Master will usually direct which party should be responsible for drawing up the order. In the absence of such direction, this will be the party who issued the application to which the order relates, or the claimant where the order was made at a case management conference. The Master may also direct a date by which the order should be drawn up and emailed for sealing and served, but if no date is provided the default provision is that it must be filed for sealing 7 days from the date the order was made, see PD40B paragraph 1.2. If a party fails in their obligation to draw an order for filing, any other party may do so. An order, when sealed, should always state the name and judicial title of the person who made it save in those cases set out in rule 40.2.

15.5 That party should serve the sealed order upon each other party to the claim by the date specified. If not sealed and served by that date, a party will have to obtain the court's permission to file the order out of time, which should be sought from the Master in the Urgent and Short Applications list: see paragraph 9.19 above.

15.6 Accidental slips or omissions are dealt with under CPR40.12 and PD40B para 4. A party may apply informally (by letter or email) to correct an order even after it has been sealed. The Master may deal with such application without notice if the slip or omission is obvious. Or they may direct notice to be given to the other parties. If corrected the order will be re-sealed with a printed endorsement at the top stating that it is corrected and re-sealed under CPR40.12.

15.7 A blank form of order showing the correct title format is annexed at Annex 9 and see 5.33-5.37 above. Orders should not contain back sheets.

Orders made by a High Court Judge

15.8 The parties are expected in most instances to draw (draft) the order (CPR40.3(4)). Where a party has been directed to draw up the order, they must do so within 7 days. An agreed minute of the order should be sent by email to the associate or judge's clerk as directed and copied to the other parties or their representatives. See also PD40B para 1 for more information.

15.9 However, the court will draw, seal and serve orders on behalf of litigants in person, and also orders made in appeal proceedings.

Consent and Tomlin Orders

15.10 A Consent Order is treated as an application (even if not made by submitting an N244) with the order recording the parties' agreement upon the application. The Order should be submitted in draft using Word and should identify in the recital to the draft Order the date on which the terms were agreed. If the order seeks to vary a previous order, then the date of the previous sealed order and its relevant paragraphs should be identified in the new order. This enables the sequence of procedural events to be presented without the need for cross referencing.

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

1) the signed order, or a PDF copy, is submitted on CE file; and

2) a "clean" copy of the order in Word format with the title of proceedings as set out at para 15.7 above, excluding the signature provisions and without the word "draft" or "minute" is also submitted on CE file; and

3) the filing contains an undertaking that the court fee will be paid within 2 working days or provides details of the relevant PBA account.

15.12 An order lodged correctly will be referred to the Judge or Master for approval but will not be sealed until the court fee has been paid.

15.13 It is important to bear in mind that the substantive relief sought in a consent order must be within the scope of the relief claimed in the claim form—otherwise the court has no jurisdiction to grant it. If the parties wish the order to deal with other matters outside the scope of the claim, then the order should be in Tomlin form (see below).

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

15.15 Litigants in person may file consent orders by post addressed to KB Masters Listing or by leaving them in the drop box in the main hall of the RCJ. The documents at (1) and (2) of paragraph 15.10 will be required and the court fee paid or fee remission details provided.

15.16 Where a hearing has been listed on an application, but the parties propose agreed terms less than 14 days before the listing, the parties should notify the clerk to the relevant Master by email rather than just by use of CE File. This enables the court to use the vacated time more effectively.

Tomlin orders

15.17 A Tomlin order is a consent order in which the agreed terms are annexed as a schedule to the order and are not part of the court order as such. They should however (subject to what is said below about confidentiality) form part of the same pdf and Word document as the order. The terms in the schedule represent a binding contract between the parties and cannot be enforced directly as an order of the court, but only on an application to carry them into effect. The court's order records the fact of settlement and allows an application in the same action to carry the contractual terms into effect.

15.18 That is to be contrasted with a consent order which is directly enforceable.

15.19 A Tomlin order can be useful where the settlement contains matters outside the scope of the claim or agreements which, whilst enforceable as contractual terms, the court would otherwise have no power to order as remedies in the claim itself.

15.20 The schedule to a Tomlin order, whilst not strictly part of the order of the court, is not confidential unless the court orders otherwise. It is open to public inspection pursuant to CPR5.4C, as any other court order. This is the case even if it is headed "confidential".

15.21 If parties wish the terms of settlement to be confidential, they must either (on proper grounds) apply for an order imposing restrictions on the access to the document on the court file or identify and refer to the settlement agreement without setting out its terms, either on the face of the Tomlin order, or in the schedule to the Tomlin order.

Form of Tomlin Order

15.22 Before a Tomlin order is submitted, the parties should consider whether it is the correct form of order (see *Zenith v Coury* [2020] EWHC 774 (QB)).

15.23 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) is as follows:

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)] [and there being no order for costs]

BY CONSENT IT IS ORDERED that

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

2) Permission to apply as to carrying such terms into effect.

3) [any provision in respect of costs] (unless in preamble).

15.24 Before approving a Tomlin order, the Master or Judge will need to see the order itself and be satisfied that it is properly described and to be treated as a Tomlin order. If the schedule is attached to the order but the parties are seeking an order that it be kept confidential, then the parties will have to justify the making of that order.

15.25 If the schedule is not attached to the order then the parties may choose to put it before the Master or Judge marked "in confidence" (and so that it will be returned to the relevant solicitor once the decision is made). The court may require the provision of the schedule in particular circumstances, for example where litigants in person are involved. In a case where the court's approval of a settlement is required, the schedule must be provided. (See further the discussion in *Zenith v Coury* [2020] EWHC 774 (QB) which also considers that the practice in the Commercial Court, but not elsewhere, is to require provision of and to inspect the schedule to consider whether it is a proper contract).

Anonymity Orders

15.26 Open justice is a fundamental principle of our court system. The general rule is that the names of the parties to a claim are included in all court documents, orders and judgments and hearings are publicly listed with the names of the parties. Any departure from the principle of open justice should be the minimum strictly necessary in the interests of justice and for the proper administration of justice.

15.27 Any application for anonymity of one or more parties must be made, except at approval hearings, by Part 23 application, which should be supported by evidence and preferably accompanied by a skeleton argument, see PMC (a child by his mother and Litigation friend FLR) v A Local Health Board [2024] EWHC 2969 (KB). Such applications require judicial determination and the parties cannot simply consent to anonymity. See section 4 above on applications made at the point of issue and section 17 below for applications in the Media and Communication List. At approval hearings, the application may be made without a formal Part 23 application or prior notice to the press. At such hearings, if anonymity is requested, it should ordinarily be ordered unless it is not necessary to do so (see *JXMX v Dartford and Gravesham NHS Trust* [2015] EWCA Civ 96). See PF10 for a form of order suitable for anonymity orders made at approval hearings:

https://www.gov.uk/government/publications/form-pf10-anonymity-and-prohibition-of-publication-order

15.28 If any case or part of it is heard in private, or an anonymity order is granted, the order must be published on the judiciary website (CPR39.2(5). Practice guidance on this can be found here:

https://www.judiciary.uk/wp-content/uploads/2019/04/PG-Pt-39-Anonymity-and-Privacy-Orders-Final-16-April-2019.pdf

15.29 Parties should ensure that draft anonymity orders do not use combinations of letters such as ABC or XYZ which may be commonly used and make it difficult to distinguish one case from another.

16. Civil Restraint Orders

16.1 The power of the court to make civil restraint orders ("CROs") is governed by CPR3.11. Practice Direction 3C—Civil Restraint Orders—sets out the procedure in detail.

16.2 There are three types of CRO—limited civil restraint orders, extended civil restraint orders and general civil restraint orders. These may be made against a party who has issued claims or made applications which are totally without merit. An application for a CRO may be made by any of the other parties to the proceedings. The power to make a CRO is in addition to the power of the court to declare a litigant a "vexatious litigant" on application by the Attorney General under Section 42 of the Senior Courts Act 1981.

Totally without merit orders

16.3 When a court strikes out a claim form, and considers the claim was "totally without merit" it must record that in the order (CPR3.4(6)). The same applies if an application is dismissed and is totally without merit (CPR23.12) or where an appeal court refuses an application for permission to appeal, strikes out an appellant's notice or dismisses an appeal (CPR52.20(6)).

16.4 A claim is totally without merit if it is bound to fail (see *R. Grace v SS for the Home Department* [2014] EWCA Civ 1091 and *R. Wasif v SS for the Home Department* [2016] EWCA Civ 82).

16.5 When a court makes a totally without merit order it must also consider whether to make a CRO. A CRO can be made of the court's own initiative or on application by another party to proceedings. If made by another party, the application must be made using Part 23 procedure unless the court orders otherwise and the application must specify which type of CRO is sought (see PD3C para 5).

Limited civil restraint order

16.6 To make a limited CRO ("LCRO"), the court must have found that two or more applications made by the litigant are totally without merit. A LCRO may be made by a Judge of any court, which includes a Master or District Judge. A LCRO restrains the litigant from making any further applications in the proceedings in which the order is made without first obtaining the permission of a judge identified in the order. The order will usually remain in effect for the duration of those proceedings. If an application is made without permission, the application is automatically dismissed.

16.7 See Paragraph 2 of PD3C for how to apply for permission to make an application, including service of notice on the other parties and how to apply for amendment or discharge of the order. Applications are made in writing and will be determined on paper without a hearing.

16.8 See Form N19 for the general form of a LCRO:

https://www.justice.gov.uk/documents/n19-limited-civil-restraint-order.pdf

Extended civil restraint order

16.9 An extended CRO ("ECRO") may be made where a litigant has persistently issued claims or made applications which are totally without merit. An ECRO usually restrains the litigant from issuing claims or making applications "concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made" without first obtaining the permission of a judge identified in the order. An ECRO will be made for a specified period not exceeding 2 years with the possibility of an extension not exceeding 2 years on any given occasion. If a claim or application is made without permission, the claim or application is automatically struck out or dismissed.

16.10 An ECRO may be made (a) in relation to proceedings in any court if the order is made by a judge of the Court of Appeal; (b) in relation to proceedings in the High Court or the County Court if made by a judge of the High Court; and (c) in relation to proceedings in the County Court if made by a designated civil judge or their appointed deputy. ECROs cannot be made by a Master or District Judge.

16.11 PD3C, paragraph 3 sets out detailed provisions on how to apply for permission to issue a claim or make an application, including service of notice on the other parties, and what happens if repeated applications for permission are made which are totally without merit, and how to apply for amendment or discharge of the order. Applications are made in writing and will be determined on paper without a hearing. If a Master or District Judge in the High Court considers that it would be appropriate to make an ECRO they must transfer the proceedings to a High Court Judge.

16.12 See Form N19A for the general form of an ECRO.

https://www.justice.gov.uk/documents/n19a-extended-civil-restraint-order.pdf

General Civil Restraint Order

16.13 A general CRO ("GCRO") usually restrains the litigant from making any claim or making any application without first obtaining the permission of a judge identified in the order. A GCRO will be made for a specified period not exceeding 3 years with the possibility of an extension not exceeding 3 years on any given occasion. If a claim or application is made without permission, the claim or application is automatically struck out or dismissed.

16.14 A GCRO may be made where a litigant has persistently issued claims or made applications which are totally without merit in circumstances where an ECRO would not be sufficient or appropriate.

16.15 A GCRO may be made (a) in relation to proceedings in any court if made by a Judge of the Court of Appeal; (b) in relation to proceedings in the High Court or the County Court if made by a Judge of the High Court; and (c) in relation to proceedings in the County Court if made by a Designated Civil Judge or their appointed deputy. Paragraph 4 of the PD sets out detailed provisions on how to apply for permission, including service of notice on the other parties, what happens if repeated applications for permission are made which are totally without merit, and how to apply for amendment or discharge of the order. Applications are made in writing and will be determined on paper without a hearing. If a Master or District Judge considers that it would be appropriate to make a GCRO they must transfer the proceedings to a High Court Judge.

16.16 See Form N19B for the general form of a GCRO.

https://www.justice.gov.uk/documents/n19b-general-civil-restraint-order.pdf

Public information on CROs

16.17 Lists of current extended and general CROs can be found on the following public websites:

https://www.gov.uk/guidance/extended-civil-restraint-orders-in-force

https://www.gov.uk/guidance/general-civil-restraint-orders-in-force

16.18 A list of people who have been declared vexatious litigants pursuant to section 42 of the Senior Courts Act 1981 can be found here:

https://www.gov.uk/guidance/vexatious-litigants

17. The Media and Communications List

General

17.1 The Media and Communications List (MAC List) was created in March 2017. It was intended to give new focus to this important specialism within the King's Bench Division and to modernise the listing arrangements. Mrs Justice Steyn and Mrs Justice Collins Rice are the Judges Jointly in charge of the MAC List. Since 2019, the MAC List has been a specialist list of the High Court.

17.2 Part 53 sets out the rules relating to claims in the MAC List.

17.3 CE filing applies to claims in the MAC List as it does to all other claims issued in the KBD in the RCJ. See section 3 above in respect of CE file and issue and service of claims. Once claims are issued they will be allocated to one of the King's Bench Masters for case management.

17.4 Claims issued in the High Court MUST be issued in the MAC List if they are or include a claim for:

- Defamation (libel or slander)
- Misuse of private information
- Breach of Data Protection rights, including misuse of personal data
- Harassment by publication

17.5 Subject to Part 63, claims MAY be issued in the MAC List if the claim arises from

- The publication or threatened publication of information via the media, online or in speech; or
- Other activities of the media.

17.6 The claims which may be issued in the MAC List include claims in breach of confidence and malicious falsehood which arise from publication or threatened publication by the print or broadcast media, online, on social media, or in speech (see para 1.1 of the Pre-Action protocol for Media and Communication claims).

17.7 Claims in the MAC List will be heard in the Royal Courts of Justice. Claims may be transferred to or from the MAC List on application or of the court's own initiative (see PD53A). Any application for transfer in or out of the list should be made promptly and at the latest by the first case management conference. If an application is being made to transfer the case into the MAC List, the party applying must give notice of the application to the court or list in which the claim is proceeding and the MAC List Judge will not make an order for transfer until such notice and any applicable consent has been given. If the claim has been issued in the Chancery Division consent of the Chancellor of the High Court must be obtained for transfer (CPR30.5(4)).

17.8 Claims will be case managed by the Masters in the same way as non MAC List claims, save that a PTR will be listed before trial in every claim. The PTR will usually be listed 8 weeks before the trial before a Judge of the MAC List with a time estimate of one hour. Parties may apply to the judges jointly in charge of the list by email ClerktoJICMAC@justice.gov.uk to vacate the PTR upon confirmation that there are no outstanding issues requiring resolution and that the parties are ready for trial. A PTR will not be listed before a trial of the preliminary issue of meaning (see 17.30 below).

Pre-Issue

17.9 For claims which must be issued in the MAC List, there is a Pre-action Protocol for Media and Communications Claims. It can be seen here:

https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_def

17.10 The court will expect parties to have complied with the Protocol in good time before proceedings are issued. That includes where parties are litigants in person. If a party is aware that another party is a litigant in person, they should send them a copy of the Pre-action Protocol at the earliest opportunity.

17.11 The Pre-action Protocol provides very detailed information about what a pre- action letter of claim should include for each type of claim and what a letter of response should include.

17.12 The court expects that the parties will have considered alternative dispute resolution at an early stage. Paragraph 3.98 of the Pre-action Protocol sets out some forms of ADR which may be considered.

Defamation claims

Statements of case

17.13 PD53 paragraph 4.2 sets out the details that must be included in a claim form and in the particulars of claim in respect of libel (where the words complained of have been published by being written or broadcast) and slander (where the words complained of are spoken). In summary the particulars must include:

(i) the precise words complained of, when, how and to whom the statement was published;

(ii) the imputations which the claimant alleges the statement complained of conveyed both as to its natural and ordinary meaning and by way of any innuendo meaning;

(iii) the facts and matters relied on to prove that the publication has cause or is likely to cause serious harm to the reputation of the claimant; and

(iv) Full details of the facts and matters relied on in support of the claim for damages.

17.14 If a statement of case and particulars of claim does not comply with the practice direction it is likely that orders will be made by the court requiring the matter to be pleaded properly or striking the claim out.

17.15 PD53 paragraphs 4.3 to 4.6 set out what is required in order to plead specific defences namely:

(i) Truth,

(ii) Honest opinion,

(iii) Publication on a matter of public interest, and

(iv) Privilege.

17.16 The PD should be referred to for the detail required. Again, if the defence does not comply with the practice direction, the court is likely to be asked to order that the matter to be pleaded properly or to strike out or give summary judgment on the defence.

17.17 PD53B paragraph 4.7 requires that where the defences of truth, honest opinion or publication on a matter of public interest are raised, the claimant MUST serve a reply specifically admitting, not admitting or denying the defence and setting out the claimant's response to each fact alleged by the defendant.

17.18 Paragraph 4.8 requires that if malice is to be relied on in response to a defence of qualified privilege, that MUST be pleaded in a reply together with the facts and matters relied on from which malice is to be inferred.

Offer to make amends

17.19 Under section 2 of the Defamation Act 1996 ("DA 96") a person who has published a statement alleged to be defamatory of another may offer to make amends ("a section 2 offer"). The section 2 offer must

1) be in writing,

2) be expressed to be an offer to make amends under section 2 of the Act, and

3) state whether it is a qualified offer, (i.e. limited to a specific defamatory meaning which the offeror accepts that the statement conveys) and, if so, set out that meaning.

17.20 A section 2 offer is an offer

1) To make a suitable correction of the statement complained of and a sufficient apology,

2) To publish the correction and apology in a manner that is reasonable and practicable in the circumstances, and

3) To pay to the aggrieved party such compensation (if any), and such costs, as may be agreed or determined to be payable.

17.21 An offer of amends under section 2 cannot be made after service of a defence (section 2(5) DA 96).

17.22 Where a section 2 offer is accepted by an aggrieved person they may not bring or continue defamation proceedings, but the parties may apply to the court under PD53B paragraph 5 for its assistance as follows:

(a) If the parties are agreed on the steps to be taken in the fulfilment of the offer, the aggrieved person may apply to the court for an order that the offer may be fulfilled (s3(3) DA 96).

(b) If the parties are not agreed on the steps to be taken by way of correction, apology and publication, the offeror may take such steps as they think appropriate, including making a statement in open court in terms approved by the court. They may also give an undertaking to the court as to the manner of publication (s3(4) DA 96).

(c) If the parties are not agreed on the amount of compensation to be paid, the court will determine the amount on the same principles as damages in defamation proceedings.

17.23 The application to invoke the court's assistance under paragraph 17.22 above must, in existing proceedings, be made by application notice under Part 23; otherwise a Part 8 claim form must be issued. Such application or claim form must comply with para 5 of the Practice Direction 53B. It must, in particular, be supported by written evidence and must contain all the material set out in para 5.3 (2) and (3)). Such applications will be heard by a Judge of the MAC List.

17.24 The application notice or claim form should be filed or issued on CE file requesting hearing by a judge of the MAC List. If the litigant does not have representation and does not wish to use CE file, it should be filed by email to KBjudgeslistingoffice@justice.gov.uk or by leaving it in the drop box in the main hall of the RCJ.

17.25 If the offer to make amends is not accepted, the fact that it was made will, under the terms of section 4 of the Defamation 1996, constitute a defence to defamation proceedings in respect of the publication. Such a defence will not however avail the person making the offer if they knew or had reason to believe that the statement

(a) referred to the aggrieved party or was likely to be understood as referring to them, and

(b) was both false and defamatory of that party.

17.26 Paragraph 4.9 of PD53B sets out what is required to be set out in the Defence when an offer to make amends is relied on as a defence.

Statements read in Open Court

17.27 Paragraph 3 of the PD53B only applies where a party wishes to accept a Part 36 offer or other offer of settlement.

17.28 An application for permission to make a statement before a judge in open court may be made before or after acceptance of a Part 36 offer, or other offer to settle. The application should made by Part 23 application in existing proceedings and Part 8 proceedings where there are no existing proceedings. The application should be made to a judge in the MAC List in the same way as set out above for offers to make amends.

17.29 The statement may be bilateral in that both parties may wish to join in it, or it may be unilateral in which case it may be opposed or not opposed.

Determination of meaning and other issues as preliminary issues

17.30 At any stage of the claim, the court can determine the issue of what defamatory meaning or meanings were conveyed by a statement complained of. The determination of meaning is often suitable to be heard as a preliminary issue. Any such ruling on meaning will bind the trial judge; and following a ruling on meaning the court may, if appropriate, exercise its power to strike out a statement of case. Trials of Preliminary Issues in the MAC List are usually limited to issues that can be resolved without the need for disputed witness evidence.

17.31 PD53B sets out that a court may determine:

(i) the meaning of a statement complained of,

(ii) whether the statement is defamatory of the claimant at common law, and

(iii) whether statement is a statement of fact or opinion.

17.32 Although an application to determine meaning can be made at any time after service of the particulars of claim, any application should be made promptly (PD53B para 6.3). Consideration of whether there should be a trial of the preliminary issue as to meaning is also likely to be required at the case management conference if not considered before.

17.33 The application notice should be filed on CE file (or if a litigant is not represented and does not wish to use CE file, by email to KBjudgeslistingoffice@justice.gov.uk or by leaving it in the drop box in the main hall of the RCJ, for hearing by a judge, usually a judge of the Media and Communications List. If the parties consent, the court may order that the preliminary issues be determined without a hearing on the basis of written submissions – see *Hewson -v- Times Newspapers Limited* [2019] EWHC 650 (QB).

17.34 The court will be slow to direct a preliminary issue as to serious harm involving substantial evidence: any continuing dispute as to serious harm should ordinarily be left to trial.

Serious harm (Section 1 of the Defamation Act 2013)

17.35 In order to bring a claim under the 2013 Act it must be proved the publication of the statement complained of "has caused or is likely to cause serious harm to the reputation of the claimant" within the meaning of s 1(1) of the 2013 Act. The seriousness of the harm caused by a publication is to be determined "by reference to the actual facts about its impact and not just to the meaning of the words" (*Lachaux v Independent Print* [2019] UKSC 27).

17.36 If the defendant contends that a claim should not be allowed to proceed to trial as no serious harm can be proved, then in the ordinary course they should apply for summary judgment under CPR Part 24 or, if appropriate, to strike out the claim in accordance with the Jameel principles (see [2005] EWCA Civ 75).

17.37 Consideration of meaning will necessarily be part of any application under s.1 of Defamation Act 2013 ("serious harm") and so when the question of serious harm is in issue and not appropriate to be left to trial, issues of meaning and serious harm should ordinarily be dealt with together at an interim stage. Accordingly, applications concerning serious harm should be made to a judge of the MAC List.

Summary disposal

17.38 Section 8 of the Defamation Act 1996 gives the court power to dispose summarily of the claimant's claim. This is in addition to the court's power under CPR24 to order summary judgment. The court may:

1) Dismiss the claim if it appears that it has no realistic prospect of success and there is no reason why it should be tried, or

2) Give judgment for the claimant and grant them summary relief if it appears that there is no defence to the claim which has a realistic prospect of success and there is no reason why it should be tried.

17.39 In considering whether the claim should be tried the court must have regard to the matters set out in section 8(4).

17.40 Summary relief includes the following:

1) a declaration that the statement was false and defamatory of the claimant,

2) an order that the defendant publish or cause to be published a suitable correction and apology,

3) damages not exceeding £10,000,

4) an order restraining the defendant from publishing or further publishing the matter complained of.

17.41 Applications for summary disposal are dealt with in rule 53.5 and paragraph 7 of PD53B. Substantial claims and those involving the police authorities or the media, or those seeking an order restraining publication, will be dealt with by the Judge in charge MAC List or another designated judge. Applications for summary disposal in other defamation claims may be made at first instance to a Master.

17.42 All other applications should be made in the first instance to a Master. The Master will consider referring the application to a High Court Judge under PD2B para 1.2 either of their own motion or at the request of the parties. In cases where the Master has jurisdiction to hear the case, a party wishing an application to be heard by a High Court Judge should apply to the Master for the case to be released rather than asking King's Bench Judges Listing. The following factors are relevant to the decision to release to a High Court Judge:

(i) that the application raises issues of unusual difficulty or importance etc, including the existence of conflicting decisions or dicta which increase the likelihood of an appeal,

(ii) that the application is urgent and could be heard more quickly if it were listed before a High Court Judge, or

(iii) that the time required for the hearing is longer than a Master could ordinarily make available.

Other MAC List claims

17.43 PD53B sets out the matters which need to be pleaded for misuse of private information claims (paragraph 8) data protection (paragraph 9) and harassment (paragraph 10).

Privacy, non-disclosure and anonymity

17.44 Proceedings are ordinarily heard in public in open court. If an application for interim injunctive relief is made to restrict disclosure or publication of private information in respect of litigation parties must follow the practice guidance on interim non-disclosure orders which can be found here: https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Guidance/practice-guidance-civil-non-disclosure-orders-july2011.pdf

17.45 Any departure from the principle that hearings are carried out in public and that judgments and orders are public must be the minimum necessary to ensure justice.

17.46 The guidance contains a model order which should be used if an interim non-disclosure order is sought. PD40F sets out a scheme for the recording of, and transmission to the Ministry of Justice for analysis, certain data in relation to applications for injunctive relief in civil proceedings to restrain the publication of private or confidential information. It applies in any case in which the court considers an application for a non-disclosure order to restrain the publication of private or confidential information, the continuation of such a non-disclosure order, or an appeal against the grant or refusal of such a non-disclosure order. The parties must liaise and agree the information to be included in the privacy statistics form in accordance with the practice direction. The form can be found here:

https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/forms/privacy-injunctions-statistics-form.pdf

17.47 See paragraphs 4.16 to 4.21 above for forms of order for applications (a) to permit a Claim Form to be issued without a party's name or address (b) to prevent disclosure of the identity of a claimant or other person; and (c) to prevent or restrict public access to documents on the court file, including statements of case. If any case or part of it is heard in private, or an anonymity order is granted, the order must be published on the judiciary website (CPR39.2(5)). Practice guidance on this can be found here:

https://www.judiciary.uk/wp-content/uploads/2019/04/PG-Pt-39-Anonymity-and-Privacy-Orders-Final-16-April-2019.pdf

17.48 See paragraphs 3.37 to 3.40 above for filing of confidential and anonymised documents.

Help

17.49 Litigants acting in person in all MAC list matters should be made aware of the Pro Bono Trial Advocacy scheme in the Media and Communication List. Details can be found at Annex 12.

18. Appeals

18.1 This section is only concerned with appeals dealt with by the KBD as follows:

1) Appeals from the decision of a Master, which are to a High Court Judge and should be made on CE file or filed with the KB Appeals Office if made by a litigant in person not using CE file.

2) Appeals from a Circuit Judge (in types of cases which are heard in the KBD, see 1.9–1.13 above) which are to a High Court Judge. Any such appeal to the High Court must be lodged at an Appeal Centre on the same circuit as the County Court where the order under appeal was made—see Table B of PD52B for a full list. The RCJ is the correct centre for County Courts in London and the South East Circuit and appeals should be filed via CE file or filed with the KB Appeals Office if made by a litigant in person not using CE file.

3) Appeals from a High Court Judge, which are to the Court of Appeal (only the permission stage is dealt with).

4) Any statutory appeals to the KBD.

18.2 PD52A contains tables which set out the routes of appeal.

18.3 It should be noted that an appeal must be against the result or outcome of the case, rather than any particular findings or reasons leading to the outcome.

18.4 For litigants in person, there is a helpful guidance leaflet "I want to appeal-what can I do?" setting out what needs to be considered before appealing and how to appeal which can be found online here:

Appeal a court decision: civil and family appeals (EX340) - GOV.UK (www.gov.uk)

18.5 Any queries about High Court appeals should be sent to the email address KBjudgeslistingoffice@justice.gov.uk.

General

18.6 Appeals are governed by Part 52. There are five Practice Directions which deal with different types of appeal. They are:

PD52A—Appeals; general provisions

PD52B—Appeals in the County Court and the High Court

PD52C—Appeals to the Court of Appeal

PD52D—Statutory appeals and appeals subject to special provision

PD52E—Appeals by way of case stated

18.7 The detailed provisions of Part 52 and the relevant practice directions should be consulted.

Permission to appeal

18.8 Permission to appeal is required in all cases except (a) appeals against committal orders and (b) certain statutory appeals (See CPR52.3).

18.9 Permission to appeal will only be given where there is a real prospect of success or some other compelling reason why the appeal should be heard (CPR52.6). If the appeal is from a case management decision, the court may take into account the factors in PD52B paragraph 6.4.

18.10 An application for permission to appeal may be made to the court which made the decision which is to be appealed ("the lower court"). Any application must be made at the hearing when the decision was made unless the court orders that it can be heard at a later date.

18.11 If an application is not made to the lower court, or it is refused by the lower court, an application for permission can be made to the appeal court. The application is then made in the appellant's notice, Form N161.

18.12 Applications for permission to the appeal court are decided on paper unless the court orders otherwise. If permission is refused, the appellant may request that the decision be re-considered at an oral hearing. If the judge considers that the application is totally without merit, an order can be made that an oral hearing cannot be requested.

18.13 Any request for an oral hearing must be made within 7 days after service of the notice that permission has been refused (see CPR52.4).

18.14 See CPR52.5 for the slightly different procedure for applications for permission to appeal being made to the Court of Appeal. The Court of Appeal may order an oral hearing for permission and direct that the respondent file written submissions or attend the hearing. As this is done by the Court of Appeal, this guide does not deal any further with those rules.

18.15 Appeals to the Court of Appeal from a decision which was itself made on appeal have a slightly different test and procedure (See rule 52.7(2)). Permission is required from the Court of Appeal, and will not be given unless:

(a) the Court of Appeal considers that the appeal would

(i) have a real prospect of success; and

(ii) raise an important point of principle or practice; or

(b) there is some other compelling reason for the Court of Appeal to hear it.

18.16 The documents listed in PD52B paragraph 4.2 must be lodged with the appellant's notice.

18.17 Paragraph 6.2 requires that a transcript or other record of the reasons of the lower court must be obtained. If an application has to be made for a transcript of recorded proceedings, the application must be made as soon as possible and within 7 days. For the procedure for requesting a transcript see paragraphs 9.114 to 9.118 above.

18.18 Permission to appeal does not mean that the decision of the lower court is stayed. If a stay is required, an application for a stay must be made. Such an application can be made to the lower court or in the appellant's notice. In any case of urgency, application can be made to the interim applications judge in court 37 (see paragraph 9.56 above).

18.19 Documents relevant to the appeal as set out in PD52B paragraph 6.4 must be filed within 35 days of filing the appellants appeal notice. The period may be extended by a judge on application.

Powers on appeal

18.20 The appeal court has all the powers of the lower court. It may affirm, set aside or vary the decision of the lower court. It can refer any issue back to the lower court for determination or order a new trial or hearing and it may make a costs order.

18.21 If an appeal is considered to be totally without merit, the court may make a totally without merit order and must consider whether it is appropriate to make a civil restraint order. See section 16 above.

18.22 It should be noted that an appeal will normally be limited to a review of the decision of the lower court: rule 52.21(1). Unless otherwise ordered the appeal court will not receive oral evidence or evidence which was not before the lower court: rule 52.21(2).

18.23 Rule 52.21(3) contains the important guiding principle that the appeal court will allow an appeal where the decision of the lower court was:

(a) wrong; or

(b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.

Appellant's Notice

18.24 Appeals are started by an appellant's notice in form N161. Unless otherwise ordered, it must normally be filed within 21 days of the date of the decision which it is seeking to appeal (CPR51.12). An application to vary the time limit can be made to the appeal court (CPR52.15).

18.25 Unless the appeal court orders otherwise, an appellant's notice must be served on each respondent by the appellant as soon as practicable and in any event not later than 7 days after it is filed: rule 52.12 (3).

Respondent's Notice

18.26 A respondent to an appeal may themselves seek to appeal the whole or part of the decision of the lower court; or may wish to 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. Rule 52.13 sets out a respondent's obligations in such case, including their obligations as to filing and serving a respondent's notice. Such notice is to be in Form N162.

Form N162: Respondent's notice (For all appeals except appeals to the Family Division of the High Court) - GOV.UK (www.gov.uk)

18.27 Where, as will be required if the respondent is seeking to vary the order of the lower court, permission to appeal is required, such permission should be sought in the respondent's notice. It is premature to file a respondent's notice unless and until the appeal court has granted permission to appeal or the court has directed that the application for permission to appeal will be listed with the appeal to follow, if permission is granted. Time for filing a respondent's notice runs from service on the respondent of the order granting permission to appeal or directing that the permission application will be listed with the appeal to follow.

Disposal of applications and appeals by consent

18.28 Section 6 of Practice Direction 52A deals with the position. An appellant who does not wish to proceed with an application or appeal may request the appeal court to dismiss such application or appeal. If such request is granted it will usually be subject to an order for costs against the appellant.

18.29 A respondent may state by letter that they consent to an order without costs. Where settlement has been reached, the parties may consent to dismissal of the application or appeal (PD52A 6.1 to 6.3).

18.30 Where the parties seek to allow an appeal by consent, the draft order must be accompanied by an agreed statement of reasons setting out the relevant history of the proceedings and the matters relied upon as justifying the order (PD52A 6.4).

18.31 Where one of the parties is a child or protected party any disposal of an application or appeal requires the approval of the court, a draft order signed by the parties' solicitors should be sent to the appeal court, together with an opinion from the advocate acting for the child or protected party (PD52A 6.5).

18.32 In appeals in the High Court to be heard in the Royal Courts of Justice, the High Court Appeals Office will notify the parties of either the hearing date or the "listing window" during which the appeal is likely to be heard.

Statutory appeals and appeals subject to special provision

18.33 PD52D deals with the procedure in those many cases where appeal from a court or tribunal is prescribed by statute. There is a table set out in the PD which refers to the appropriate court for such appeals, including the many cases where the High Court is the appropriate court. In some cases the Chancery Division, rather than the King's Bench Division, will hear such appeals: see para 5.1. The table has cross-references to the relevant paragraphs in PD52D which govern the relevant procedure in the particular cases.

18.34 Where any statute prescribes a period of time within which an appeal must be filed then, unless the statute otherwise provides, the appeal court may not extend that period: see para 3.5 of the PD.

18.35 Appeals in cases of contempt of court fall under PD52D. See the table to the PD which prescribes the Court of Appeal as the appropriate court, whether the appeal is against a suspended committal order or not. Such appeals are brought under section 13 of the Administration of Justice Act 1960. Where the contemnor is bringing the appeal, permission to appeal is not required: rule 52.3(1). By para 9 of the PD the appellant's notice must be served, in addition to the persons to be served under rule 52.12(3), "on the court from whose order or decision the appeal is brought". This will require, in the case of appeals from the King's Bench Division in cases of contempt, service on the court by leaving a copy of the appellant's notice with the High Court Appeals Office, Royal Courts of Justice, Strand, London WC2A 2LL by post, or email to KBjudgeslistingoffice@justice.gov.uk or by leaving it in the drop box in the main hall of the RCJ.

Appeals by way of case stated

18.36 PD52E governs, firstly, the procedure to be followed, including filing and serving an appellant's notice, where a case has been stated by the Crown Court or a Magistrates' Court for the opinion of the High Court: see paras 2.1 to 2.4 of the PD. It governs, secondly, the procedure including the filing and serving of appellant's notices, where a minister, government department, tribunal or other person has, whether on request or otherwise, stated a case for the opinion of the court or referred a question of law to the court by way of case stated: paras 3.1 to 3.10. An application for an order for a minister or tribunal etc to state a case is made to the court which would be the appeal court if the case was stated: para 3.11. This may require consideration of the table in PD52D (see paragraph 18.33 above) in order to determine which is the appropriate appeal court. Such application is made under Part 23 of the CPR and must contain the information in para 3.13.

19. Cross-Border Service

Service of Court documents out of the Jurisdiction

19.1 CPR Part 6 Section IV applies. Parties generally arrange service of proceedings and all court documents out of the jurisdiction themselves. Service may also be arranged through the Foreign Process Section. Where service is to be in a country which is party to a Civil Procedure Convention or Treaty providing for service in that country rules 6.42 (1), 6.43 and 6.45 apply.

19.2 Where the request for service is made under Article 5 of the Hague Service Convention the FPS Checklist must be completed and submitted with Form N224. A copy of the FPS checklist can be found at Article-5-Checklist-10.02.2025.docx and Annex 11 to this Guide.

19.3 Where service is to be effected in a country that is not subject to any Convention or Treaty on service of judicial documents, service must be effected by a method permitted by the law of the country where the documents are to be served. The procedure in rules 6.42 (2), 6.43 and 6.45 apply.

19.4 Detailed guidance relating to way in which the FPS deals with service of documents out of the jurisdiction can be found at https://www.judiciary.uk/courts-and-tribunals/kings-bench-division/courts-of-the-kings-bench-division/foreign-process-section/.

19.5 For service on a state the procedure set out in Rules 6.44 and 6.45 applies.

19.6 The full list of countries that are parties to The Hague Service Convention is at https://www.hcch.net/en/instruments/conventions/status-table/?cid=17.

19.7 The texts of the Civil Procedure Treaties which the UK has entered into may be found at https://www.gov.uk/government/publications/bilateral-treaties-on-civil-procedures.

Service of incoming foreign process under Section V of Part 6 of the CPR

19.8 This section of Part 6 (rules 6.48 to 6.52) applies to service in England and Wales of any document in connection with civil or commercial proceedings in a foreign court or tribunal.

19.9 Where the provisions of Section V apply, a request for service is made to the Senior Master: see rule 6.50. The request must be in writing and will be made:

(i) where the foreign court or tribunal is in a convention country (as defined in rule 6.49), from a consular or other authority of that country; or

(ii) from the Secretary of State for Foreign Commonwealth and Development Affairs, with a recommendation that service should be effected.

19.10 The request will be accompanied by a translation of the request into English, two copies of the document to be served, and, unless the foreign court or tribunal certifies that the person to be served understands English, two copies of a translation of it into English.

19.11 The method of service is for the Senior Master to determine (CPR6.51). The usual practice is to require service by a county court bailiff and to provide a certificate for the bailiff to complete and return. The Senior Master may make an order for alternative service based on the certificate if appropriate.

19.12 Where the bailiff has served the document(s), they will send to the Senior Master a copy of the document(s) with the certificate of service; or alternatively state why service could not be effected. The Senior Master may, but rarely does, request the process server to specify their costs. The Senior Master will then send to the country requesting service a sealed certificate stating when and how the document(s) was served or the reason why it has not been served, together with a copy of the document(s). Where appropriate, the Senior Master will also state the amount of costs, certified by a costs judge (CPR6.52 (2)).

Service of incoming foreign process under The Hague Service Convention

19.13 Section V also applies where parties to proceedings in a foreign country which is a contracting party to the Convention on the Service Abroad of Judicial and Extrajudicial Documents In Civil Or Commercial Matters signed at The Hague on 15 November 1965 (The Hague Service Convention) seek to serve documents on persons in this jurisdiction. The text of The Hague Service Convention may be found at https://www.hcch.net/en/instruments/conventions/full-text/?cid=17.

19.14 A person in another contracting state (or their lawyer) may effect service in the United Kingdom "directly" or through a competent person other than a judicial officer or official, e.g. through a solicitor. The full terms of Article 10 of The Hague Service Convention, which relates to service, should be consulted. The UK has confirmed its position indicating its preference for the use of direct service through English solicitors on residents in England and Wales. However, if a request for service is made by the Central Authority of a Hague Contracting State, the Hague Model Form should be used. This can be found at https://assets.hcch.net/docs/18774c6c-2c85-41a7-8fe6-55c23acd498b.pdf.

19.15 The Senior Master is the Central Authority for England & Wales under The Hague Service Convention.

20. Cross-Border Requests for Taking of Evidence

Requests for Taking of Evidence from Witnesses Abroad

20.1 The court has no power to compel a witness in another jurisdiction to attend court to give oral evidence or provide documentary evidence in proceedings in this jurisdiction. This is subject only to one exception, provided for by Section 36 of the Senior Courts Act 1981, namely that a subpoena (now called a witness summons) issued by the High Court is to run throughout the UK. Accordingly, if a witness is unwilling to attend trial to give evidence either in person or by video link (provided the trial judge gives permission for evidence by video link) any party who wishes to rely on the testimony of such witness, or on documents in the possession of such witness must apply to the competent authorities of the country where the witness is resident in the prescribed manner for such evidence to be taken in the witness's country of residence and then forwarded to this court.

20.2 There are a number of different procedures depending on the source of the request. It may be:

(a) Where the witness is in Scotland or Northern Ireland;

(b) under the Hague Convention on the Taking of Evidence;

(c) under any other bi-lateral Treaty or Convention; or

(d) in non-Convention/Treaty countries

20.3 The text of The Hague Evidence Convention may be found at HCCH | #20 - Full text.

20.4 The full list of countries that are parties to the Taking of Evidence Convention is at https://www.hcch.net/en/instruments/conventions/status-table/?cid=82.

Where the witness is in Scotland or Northern Ireland

20.5 Section 36 of the Senior Courts Act 1981 provides that a witness summons issued in the High Court runs throughout the UK. The section also provides that such witness summons must state that it is issued by special order of the High Court, and that no summons shall issue without such special order. An application for a witness summons for a witness in Scotland or Northern Ireland should be made in form PF 120A.

Where the witness is in a Hague Convention country, other bi-lateral convention or treaty country or a non-Convention country

20.6 Rule 34.13 sets out the procedure to be adopted. An order must first be made by the High Court: see rule 34.13(1A) and rule 34.13(3). The order is to be made by a judge in the proceedings where the evidence is sought, or by application to the High Court where the proceedings are in the County Court. If evidence is required in aid of tribunal proceedings please contact the Foreign Process Section at foreignprocess.rcj@justice.gov.uk for information.

20.7 The documents which must be filed, as set out in rule 34.13(6), together with a copy of the High Court Order, must be submitted to the Foreign Process Section of the KB Action Department. For Hague Convention countries the draft Letter of Request should be in the model form specified in the Convention, which is available on The Hague Conference website at: https://www.hcch.net/en/publications-and-studies/details4/?pid=6557&dtid=65 together with guidelines for completing the form. The form of undertaking for the Secretary of State's expenses can be found at Form PF78: Solicitor's Undertaking as to Expenses (rule 34.13(6)(b)) - GOV.UK (www.gov.uk).

20.8 The status and texts of the Civil Procedure Treaties which the United Kingdom has entered into may be found at https://www.gov.uk/government/publications/bilateral-treaties-on-civil-procedures. Enquiries may be directed to: treatypublicenquiries@fcdo.gov.uk.

20.9 The Senior Master will then consider the Letter of Request, and if in order will arrange for the same to be transmitted to the competent judicial authorities in the requested state.

Proceedings under the Proceeds of Crime Act 2002

20.10 Rule 34.13A (3) provides that the procedure in Rules 34.13(4) to (7) shall apply to Letters of Request made under existing or contemplated proceedings in either the High Court or a magistrate's court under Part 5 of the Proceeds of Crime Act 2002.

Practical Considerations

20.11 Litigants should note that it can take some time for the requests to be processed by the requested state, frequently many months, and that some countries take much longer than others. It is advisable to seek a court order for a Letter of Request to be issued for witness or documentary evidence well in advance of trial.

Evidence by video link from a witness giving evidence voluntarily

20.12 Where the trial judge has given permission for a witness to give evidence at trial via telephone or video link, and the witness intends to give such evidence via their own device, without using the facilities of the requested state, the state may still require permission to be obtained from its Central Authority (where the Hague Convention applies) or its competent judicial authority (where the witness is in a non-Convention country). If your request is for a country where the Hague Convention applies the Country Profiles section of the Hague Conference website at HCCH | State Responses will provide information as to whether that member state will allow direct evidence via video link to a foreign court without permission or not. The Foreign, Commonwealth and Development Office's Taking of Evidence Unit can provide information for court users as to which non-Hague countries do or do not require permission to be sought by letter of request for a willing witness to give evidence in this way. For further information contact the Taking of Evidence Unit at TOE.enquiries@fcdo.gov.uk. If permission is required, the parties must follow the letter of request procedure.

Requests for Taking of Evidence from other Jurisdictions

20.13 Under s.1 of the Evidence (proceedings in other jurisdictions) Act 1975 the High Court has powers to render assistance to a foreign court to obtain evidence in England and Wales for civil proceedings in that court. Such applications are made either by application under the provisions of the Act, or where the requesting state is a party to the Hague Evidence Convention, by letter of request using the appropriate Hague model form.

20.14 The procedure is governed by Rule 34.17. The application must be made by application notice under Part 23 unless the Hague Model Form is being used. In either case the application notice or letter of request must be filed with the Foreign Process Section and not by CE file.

21. Group Litigation Orders "GLOs"

21.1 Parties considering applying for a GLO should consult Section III of Part 19 of the CPR and Practice Direction 19B which supplements that section. They should also consult the practitioners' textbooks as to the circumstances in which and the terms on which a GLO may be made.

21.2 CPR 19.21 defines a GLO as an order made under rule 19.22 to provide for the case management of claims which give rise to common or related issues of fact or law. The court may in its discretion under rule 19.22(1) make a GLO where there are or are likely to be a number of claims giving rise to such issues.

21.3 Applications are most commonly made in cases where the multiple parties are claimants, though an application may also be made where the multiple parties are defendants. PD19B deals only with applications in the former case.

21.4 The solicitors acting for the proposed applicant should consult the Law Society's Multi-Party Action Information Service (Multi-Party Action Information Service | The Law Society) to obtain information about cases giving rise to the proposed GLO issues. They should, importantly, consider whether any other order would be more appropriate, in particular an order to consolidate the claims or for a representative action to be brought: see PD19B, para 2.3.

21.5 Any application must be made under Part 23; and may be made at any time before or after any relevant claims have been issued.

21.6 In the King's Bench Division, a GLO may not be made without the consent of the President of the King's Bench Division: CPR 19.22(2)(d). In London the application is made to the Senior Master at the Royal Courts of Justice, save where the claims are proceeding or are likely to proceed in a specialist list, in which case the application is made to the senior judge of that list. Outside London, the application is made to the Presiding Judge of the circuit in which the District Registry which has issued the application is situated: paras 3.5 and 3.6. If the Senior Master is minded to make a GLO he will send a copy of the application notice and draft order to the President after the hearing of the application, together with a note explaining his reasons for recommending the making of a GLO. The President will then indicate whether she consents to the proposed order, and will consider who the Managing Judge should be. The first Case Management Conference will be listed before the Managing Judge at an appropriate time, in consultation with the parties.

The Form of the GLO

21.7 A GLO, if made, must:

(a) contain directions about the establishment of a register;

(b) specify the GLO issues; and

(c) specify the management court which will manage the claims. See para 21.13 below.

21.8 Such order may give directions as to the management of claims which raise one or more of the GLO issues: CPR19.22(3).

21.9 A form of order for the GLO is contained in Form PF19 which may be adapted according to the circumstances (Form PF19: Group Litigation Order (rule 19.11) - GOV.UK (www.gov.uk). Parties should submit a draft order to the Senior Master when applying so that it may be checked before the hearing of the GLO application.

The GLO Register

21.10 Once a GLO has been made a Group Register will be established on which will be entered such details as the court may direct of the cases which are the subject of the GLO: see PD19B para 6.1. Paragraph 6.1A now makes it plain that a claim must be issued before it can be entered on the Register.

21.11 Questions as to whether a case should be admitted to the Register or should remain on the Register may be dealt with on application or of the court's own motion under paragraphs 4 and 6.2 to 6.4 of the Practice Direction.

21.12 Claimants' solicitors (or lead solicitors where than one firm is instructed) are responsible for notifying the court that a GLO has been made so that the court can include the GLO on the Register. Notification of details of GLOs should be made to the following email addresses:

GLOs made in the Chancery Division — GLO-Chancery@justice.gov.uk

GLOs made in the King's Bench Division — GLO-KBD@justice.gov.uk

GLOs made in the County Court — GLO-CC@justice.gov.uk

Issue of Claims subject to a GLO

21.13 Claims are issued via CE-File in the usual way. However, in order that the court may identify and link claims that are either subject to an existing GLO or are the subject of an application for a GLO to be granted, whether issued or intended to be issued, claimants' solicitors should notify the court at the point of issue that this is the case, and provide the claim number of the lead claim (or claim first issued if no lead claim has been identified) so that all claims can be linked and case managed together. Such notification can be either by including a filing comment or by filing a letter when the claim is issued on CE-File.

Directions following a GLO

21.14 The management of cases under a GLO is the subject of directions which are given by the management court under rule 19.24 and paras 8 to 15 of the Practice Direction. A Managing Judge is appointed as soon as possible. They will assume overall responsibility for the management of the claim and will generally hear the GLO issues. A Master or District Judge is usually appointed to deal with procedural matters, and may deal with case management in some group cases. Directions that are likely to be given may include:

1) that one or more of the claims proceed as test claims

2) the appointment of lead solicitors for the claimants or defendants

3) a cut-off date after which no claim will be admitted to the Register without permission

4) that "Group Particulars of Claim" are served including general allegations relating to all the claims, and a schedule containing entries relating to each individual claim: see PD19B para 14.1

Publicising the GLO

21.15 A copy of the GLO should be sent:

1) to the Law Society, 113 Chancery Lane, London WC2A 1PL, and

2) to the Senior Master, King's Bench Division, Royal Courts of Justice, Strand, London WC2A 2LL.

21.16 Information which may affect legal representatives of parties who have claims which raise one or more of the GLO issues is thus available from those sources. Enquiries may be made of the Law Society's Multi-Party Action Information Service: Multi-Party Action Information Service | The Law Society.

21.17 The Senior Master will arrange inclusion of details of the GLO on the website at Group litigation orders - GOV.UK (www.gov.uk). A judgment given in a claim on the group register in relation to GLO issues is binding on the parties to all other claims on the register unless the court orders otherwise: rule 19.23.

Costs

21.18 Rule 46.6 contains rules as to costs where the court has made a GLO.

22. Enforcement

General

22.1 Enforcement in the High Court of judgments or orders is governed by CPR Parts 70 to 74, and Parts 83 to 86. There is also power to appoint a receiver on or after judgment: see Part 69, and in particular rule 69.2(1)(c).

Examination of judgment debtor as to their means

The Application and the Order

22.2 Part 71 of the CPR and the Practice Direction to that Part enable a judgment creditor to apply for a court order for oral examination on oath of a judgment debtor as to their means or to provide other information needed to enforce a judgment or order.

22.3 The application may be made without notice and must be issued in the court which made the judgment or order unless the proceedings have since been transferred to another court. Thus a judgment in proceedings in the KBD, or in proceedings transferred for enforcement to the KBD, may be the subject of an application to the KBD for examination. If the court which made the judgment or order was a district registry of the high court, the application should be made to that district registry and not to the central office in the Royal Courts of Justice.

22.4 The application must (a) be in the form, and (b) contain the information, required by the PD71.

22.5 The examination may be carried out by a court officer. But where the application requests that the questioning take place before a judge (see PD71 para 1.3) the Master may make such an order if they consider it appropriate. In addition the court officer may in a case of any complexity refer to a judge for directions.

22.6 A person served with an order must under rule 71.2(6):

(a) attend court at the time and place specified in the order;

(b) when they do so, produce documents in their control which are described in the order (note that any specific document sought to

be produced must be identified by the judgment creditor in their application); and

(c) answer on oath such questions as the court may require.

22.7 The order will contain a penal notice warning the person served of their position if they do not comply with the order: rule 71.2(7).

22.8 The order must, unless otherwise stated, be served personally not less than 14 days before the hearing. Thus the date specified for the hearing will need to allow sufficient time for the judgment creditor to serve the order. It is the responsibility of the judgment creditor to serve the order. If they are unable to serve the order in sufficient time, the judgment creditor must notify the court not less than 7 days before the date of the hearing (rule 71.3(2)).

22.9 The person ordered to attend may, within 7 days of being served with the order, ask the judgment creditor to pay them a sum reasonably sufficient to cover travelling expenses, which the judgment creditor must then pay.

22.10 Rule 71.6 makes provision for the judgment creditor to attend the hearing and ask questions; and to conduct the questioning if the hearing is to be before a judge rather than a court officer.

Failure to comply with the Order

22.11 Rule 71.8 contains provisions for referring the matter to a High Court Judge where the person to be questioned fails to comply; and for a committal order to be made, subject to the terms of the rule. Such committal order will be suspended provided that the person attends court at a time and place specified in that order and complies with all the terms of that order and the original order. A warrant of committal will be issued only on proof to the criminal standard of proof that the judgment debtor has failed to comply with such orders: see PD71 paras 7 and 8. The court asked to make a suspended committal order has at least three options:

(a) if satisfied that the debtor was served with the order to attend, and there is sufficient evidence to justify a finding to the criminal standard that the debtor's failure to attend, or refusal to take the oath and answer questions, was intentional, make a suspended committal order;

(b) if not satisfied of the matters necessary for the making of a suspended committal order, adjourn consideration and either give directions, supported by a penal notice, for a hearing, for the debtor to attend and/or to depose to specified matters and file and serve an affidavit affirmation by a specified date;

(c) not make a suspended committal order but make a further order under rule 71.2 for the debtor's attendance at court to provide information, which order will be supported by a penal notice.

Judgments for Money

Third Party Debt Order proceedings

22.12 Where a judgment creditor has obtained a judgment or order for payment of a sum of money against a judgment debtor in the High Court (or in proceedings which have been transferred to the High Court for enforcement), and another person ("the third party") is indebted to the judgment debtor, the judgment creditor may apply to the Master for an order that the third party pays to the judgment creditor the amount of the debt due to the judgment debtor, or sufficient of it to satisfy the judgment debt. The third party must be within the jurisdiction. Part 72 of the CPR and its practice direction contain the relevant rules.

22.13 The application should be made by filing an application notice in Practice Form N349, verified by a statement of truth, The application notice need not be served on the judgment debtor. The application will normally be dealt with without a hearing and must be supported by evidence as set out in CPR72 Practice Direction, para 1.2. If the Master is satisfied that such an order is appropriate, an interim order will be made in form N84 specifying the debt attached and appointing a time for the third party and the judgment debtor to attend court and "show cause" why the order should not be made final. The order will direct that until the hearing the third party must not make any payment which reduces the amount they owe the judgment debtor to less than the amount specified in the order.

22.14 The interim order and application must be served on the third party, and on the judgment debtor, in accordance with CPR72.5. It is the responsibility of the judgment creditor to serve the documents.

22.15 Special provisions are made for banks and building societies to disclose to the court the state of accounts held by a judgment debtor with them: see rule 72.6 and PD72 para 3; and for third parties other than banks or building societies to notify the court if they claim not to owe money to the judgment debtor.

22.16 A judgment debtor who is prevented from withdrawing money from their bank or building society may, in a case of hardship, apply to the court: see rule 72.7.

22.17 Written evidence must be filed by the parties under rule 72.8 in the event that a third party or judgment debtor objects to the making of a final order.

22.18 Where the third party or judgment debtor fails to attend the hearing or attends court but does not dispute the debt, the Master may make a final third party debt order under rule 72.8 in Form N85. The final order may be enforced in the same manner as any other order for the payment of money. Where the third party or judgment debtor disputes the debt, or takes other objection rule 72.8(6) provides for the various ways in which the Master may dispose of the matter at the hearing.

22.19 Where the judgment creditor seeks to enforce a judgment expressed in a foreign currency by third party debt order proceedings, the evidence in support of the application must contain words to the following effect:

"The rate current in London for the purchase of (state the unit of foreign currency in which the judgment is expressed) at the close of business on (state the nearest preceding date to the date of verifying the evidence) was ( ) to the £ sterling, and at this rate the sum of (state the amount of the judgment debt in the foreign currency) amounts to £..... I have obtained this information from (state source) and believe it to be true."

Charging Orders

General

22.20 A judgment creditor may apply for a charging order on the property or assets of the judgment debtor, which will have the effect of providing them with security. Part 73 of the CPR and its practice direction contain the relevant rules. The High Court has jurisdiction to impose a charging order in the following cases:

1) where the property is a fund lodged in the High Court;

2) where the order to be enforced is a maintenance order of the High Court; and

3) where the judgment or order to be enforced is a judgment or order of the High Court and exceeds £5,000: see s.1(2) of the Charging Orders Act 1979.

22.21 It should be noted that the High Court does not have jurisdiction to make a charging order under section 1(2)(c) of the Charging Orders Act 1979 unless the judgment or order to be enforced is for a sum exceeding £5,000. If an application is made to the Master which does not meet this requirement, the application will be dismissed or transferred to the County Court.

22.22 The property and assets of the judgment debtor on which a charge may be imposed by a charging order are specified by section 2 of the Charging Orders Act 1979. These include, particularly:

(a) any interest held by the judgment debtor beneficially

(i) in land or specified securities, or

(ii) under any trust, or

(b) any interest held by a person as trustee of a trust if the interest is in such land or securities or is an interest under another trust

and

(i) the judgment or order was made against them as trustee of the trust, or

(ii) the whole beneficial interest under the trust is held by the debtor unencumbered and for their own benefit, or

(iii) in a case where there are two or more debtors all of whom are liable to the creditor for the same debt, they together hold the whole beneficial interest under the trust unencumbered and for their own benefit.

22.23 Whilst a charging order when made may be expressed to be over the judgment debtors' "interests" in accordance with Forms N86 (interim charging order) and N87 (final charging order) it is then made clear that the effect of the order is to charge the land itself and not merely the interests in the proceeds of sale of the land: *Clark v Chief Land Registrar* [1994] EWCA Civ 12; [1994] ChD 370, C.A. The application for the order should make plain what interests are sought to be charged.

Charging Order over Stocks and Shares

22.24 If an interim charging order is made on stocks or shares in more than one company, a separate order must be made in respect of each company. A judgment creditor may apply in a single application notice for charging orders over more than one asset, but if the court makes charging orders over more than one asset, there will be separate orders relating to each asset. If the judgment debt is expressed in a foreign currency, the evidence in support of any application for a charging order should contain a similar provision to that set out in paragraph 22.19 above in relation to interim third party debt orders.

Procedure

22.25 The application for a charging order is made to a Master and should be made in Practice Form N379 if the application relates to land (Form N379: Apply for a charging order on land - GOV.UK (www.gov.uk)), or N380 if the application relates to securities (Form N380: Application for Charging Order on Securities (CPR Part 73) - GOV.UK (www.gov.uk)). Paragraph 1.2 of PD73 sets out the information which the application must contain. The application is made without being served and will normally be dealt with without a hearing. If the Master is satisfied that such an order is appropriate, they will make an interim order in form N86 appointing a time for the judgment debtor to attend and show cause why the order should not be made final pursuant to rule 73.6 (Form N86: Interim Charging Order (CPR Part 73) - GOV.UK (www.gov.uk)).

22.26 The interim order and the application notice and any documents in support must be served in accordance with rule 73.7(5)-(7). It should be noted particularly that they must be served not less than 21 days before the hearing and must be served on the persons specified in rule 73.7(7) who include the judgment debtor, any co-owner of land, the judgment debtor's spouse or civil partner (if known), such other creditors as are identified in the application notice or as the court directs, and in the case of an interest under a trust on such of the trustees as the court directs. It is the responsibility of the judgment creditor to serve the documents.

22.27 If any person objects to the order being made final, they must file and serve written objection not less than 7 days before the hearing pursuant to rule 73.10A(2).

22.28 After further consideration at the hearing the Master will either make the order final (with or without modifications) as in Form N87 (Form N87: Final Charging Order (CPR Part 73) - GOV.UK (www.gov.uk)), or discharge it. Alternatively, they may order any necessary issue to be tried, such as an issue as to the existence and extent of the judgment debtor's interest in the property. The interim order will continue pending determination of such issue. Any order made must be served on all persons on whom the interim order was required to be served: rule 73.10A(5).

22.29 Rule 73.9 deals with the effects of a charging order on funds in court, which includes securities held in court.

22.30 Although the court may make a charging order in a foreign currency, to facilitate enforcement it is usually preferable for it to be expressed in sterling. Thus if the judgment debt is in a foreign currency the evidence in support of the application should contain the sterling equivalent and request the charging order to be made in sterling (see paragraph 22.19 above).

Enforcement of Charging Order

22.31 Proceedings for the enforcement of a charging order by sale of the property charged must be begun by Part 8 claim form: rule 73.10C. The claim should be made to the court which made the order unless that court does not have jurisdiction. In the High Court the claim is usually made to the Chancery Division of the High Court in the Business and Property Courts or to one of the Chancery district registries (see para 4.2 of PD73.

Writs of Control and Writs of Execution

22.32 A writ of execution includes:

(a) A writ of possession;

(b) A writ of delivery;

(c) A writ of sequestration;

(d) A writ de fieri facias de bonis ecclesiasticis; and

(e) Any other writ in aid of such writs,

but does not include a writ of control (CPR83.1).

22.33 A writ of control is means of enforcement by taking goods belonging to a judgment debtor governed by the Tribunal, Courts and Enforcement Act 2007 and the Taking Control of Goods Regulations 2013 (SI 2013/1894). Part 83 of the CPR and its practice direction contain the relevant rules.

Issue of Writs of Execution or Control

22.34 The procedure for issue of such writs is governed by rule 83.9. The writ should be issued in the courts set out, namely the court in which the proceedings have taken place, or otherwise the central office at the Royal Courts of Justice. If the proceedings have taken place in, or have been transferred for enforcement to a District Registry, the writ should be issued in the District Registry, not the Central Office, Where the judgment or order to be enforced has a KB claim number professional court users and unrepresented litigants should submit requests for the issue of the writ by CE-File. If an unrepresented litigant is unable to submit the request via CE-File it may be submitted in one of the following ways:

(a) by email, accompanied by a receipt of payment by debit/credit card or a fee remission certificate to KBenforcement@justice.gov.uk or the appropriate email for the relevant District Registry;

(b) by post, accompanied with a cheque, PBA account number, receipt of payment by debit/credit card or fee remission certificate to HMCTS, King's Bench Division, Enforcement Department, Royal Courts of Justice, Strand, London, WC2A 2LL or the appropriate district registry; or

(c) for writs to be issued in the central office, deposit of the application with receipt of payment by debit/credit card or a fee remission certificate in the King's Bench Division drop box which is situated at the main entrance of the Royal Courts of Justice.

22.35 If the judgment or order to be enforced has been transferred for enforcement to the central office of the High Court and does not have a KB claim number, the judgment creditor or their representative should email KBenforcement@ justice.gov.uk. If it has been transferred to a district registry of the high court, they should email that court.

22.36 The request must be signed by the person entitled to enforcement, if acting in person, or by or on behalf of the solicitor of the person so entitled. Rule 83.9(5) lists the documents which must be produced by the person presenting the writ in order to enable the writ to be sealed. It also requires the court officer to be satisfied that any period specified in the judgment or order for the payment of any money or the doing of any other act under the judgment or order has expired. Every writ of execution or control will bear the date on which it is issued: rule 83.9(6).

Permission to issue a writ of execution or control

22.37 See rule 83.2(3) for those writs of execution and control that require permission of the court before they can be issued.

Writs of Control

22.38 The statutory framework for the whole process of such execution is found in Part 3 of the Tribunals, Courts and Enforcement Act 2007, including section 62(4), in Schedule 12 to the Act, in the Taking Control of Goods Regulations 2013 ("the TCG Regulations"), and in Parts 83 and 84 of the CPR.

22.39 A writ of control, when issued, will be in Form No.53, stating the name of the Enforcement Officer to whom it is directed, or the district in which the writ is to be enforced, whereupon it will be sent by the judgment creditor to the National Information Centre for Enforcement Department at the Registry Trust Ltd for allocation.

22.40 A writ of control confers powers on an enforcement agent to take control of goods for the purpose of sale thereof for a sum sufficient to satisfy the judgment debt and costs of the execution. The enforcement agent's

fees, including fixed fees and additional fees in certain circumstances, are laid down by the Taking Control of Goods (Fees) Regulation 2014. Both the judgment creditor and the judgment debtor may require reasonable information from the enforcement agent or enforcement officer as to the execution of a writ: the enforcement agent or enforcement officer must provide that information within 7 days of the notice and the court may make an order against them if they fail to do so: rule 83.8.

Enforcement Agents and Enforcement Officers

22.41 The power to take control of goods is vested in an individual certificated to act as an enforcement agent. Section 63(2) of the Act defines who may act as an enforcement agent. The process of certification takes place under the Certification of Enforcement Agents Regulations 2014 (SI 2014/421). A judgment creditor may choose to address the sealed writ to a particular High Court Enforcement Officer for the relevant postcode of the judgment debtor; or they may simply address the writ with the postcode of the judgment debtor's residence or place of business in which case the writ will be allocated to a particular HCEO by rotation. Allocation will be carried out by the Registry Trust Limited of 3rd Floor, 12 Carthusian Street, London, EC1M 6EB (telephone 0207 391 7299). Further information can be found on the High Court Enforcement Officers Association website at http://www.hceoa.org.uk/ and on the Registry Trust Limited website: writ-control (registry-trust.org.uk).

22.42 The process of taking control of goods by the enforcement agent is the subject of the legislation under schedule 12 to the Act, the TCG Regulations and Part 84 of the CPR. These provisions include, particularly, the steps that the enforcement agent may take, the hours of the day on which they may enter premises, and their ability to enter into a controlled goods agreement with the debtor under which terms are agreed in writing for the repayment by the debtor of the sum due under the judgment or order. Paragraphs 4 to 69 of Schedule 12 set out the general powers of the enforcement agent, including, at para 13, the four ways in which they may take control of the good.

Applications in relation to Taking Control of Goods

22.43 Part 84 of the CPR regulates specific matters that may, and often will, arise on applications in the process of taking control. Rule 84.3 provides that, in existing proceedings, any application to the court must be made to the High Court or the County Court in accordance with rule 23.2. Whilst notice must be given to the judgment debtor not less than 7 days before the enforcement agent takes control, application may be made without notice to shorten that period: rule 84.4.

22.44 An application to extend the period under which control may be taken is the subject of rule 84.5. An application to take control during prohibited hours, again without notice, may be made under rule 84.6. This will require evidence that unless the order is made it is likely that the judgment debtor will dispose of the goods in order to defeat the process. The enforcement agent will usually sell the goods at public auction. If however they seek an order for sale by private treaty in a particular case they must apply under paragraph 41(2) of Schedule 12 to the 2007 Act for that purpose. Rule 84.11 contains special provisions relating to any such application. An application by the enforcement agent to recover exceptional disbursements is the subject of rule 84.15.

22.45 Disputes about the amount of fees recoverable are governed by application under rule 84.16. And, where a co-owner of the goods may be entitled to a share of the proceeds of sale, disputes in that respect are the subject of application under rule 84.15.

Validity of the Writ of Control

22.46 The validity of a writ of control is governed by rule 83.4(3). It will be valid for the period in which an enforcement agent may take control of the goods as specified in regulation 9(1) of the TCG Regulations. This period is defined as 12 months commencing with the date of notice of enforcement. Application for extension, limited to one application only, may be made in accordance with rule 84.5 and, if granted, will be for a period of 12 months: see TCG regulation 9(3).

Goods which may be taken

22.47 Paragraph 9 of Schedule 12 to the Act provides that an enforcement agent may take control of goods only if they are:

(a) on premises that he has power to enter under the Schedule; or

(b) on a highway.

22.48 Under paragraph 10 he may take control of goods only if they are goods of the debtor.

22.49 Under paragraph 11(1) "subject to paragraphs 9 and 10 and to any other enactment under which goods are protected, an enforcement agent:

(a) may take control of goods anywhere in England and Wales;

(b) may take control of any goods that are not exempt."

Exempt goods

22.50 The definition of exempt goods for this purpose is set out in regulations 4 and 5 of the Taking Control of Goods Regulations 2013. The list in regulation 4 includes particularly, but not exhaustively:

(a) items of equipment (for example tools, books, telephones, computer equipment and vehicles) which are necessary for use personally by the debtor in the debtor's employment, business, trade, profession, study or education, except that in any case the aggregate value of the items or equipment to which this exemption is applied shall not exceed £1,350;

(b) such clothing, bedding, furniture, household equipment, items and provisions as are reasonably required to satisfy the basic domestic needs of the debtor and every member of the debtor's household....."

The list should be read for its full terms.

Applications for stay of execution of a writ of control

22.51 Under rule 83.7 at the time that a judgment or order for the payment of money is made or granted, or at any time thereafter, the debtor or other party liable to execution of a writ of control may apply to the court for a stay of execution. The power to grant a stay of any writ of control is vested in a Master or District Judge.

22.52 Rule 83.7(5) and (6) set out what information any application under the rule should include. Any application under this rule should be made to the court which issued the writ and should always set out the applicant's case as fully as possible so that the Master or judge may consider, if a stay is to be granted, what conditions should be imposed.

22.53 The grounds on which application may be made include the debtor's inability to pay, in which case the witness statement in support must disclose the debtor's means: rule 83.7(4).

22.54 It is specifically provided that if the court is satisfied that:

(a) there are special circumstances which render it inexpedient to enforce the judgment or order; or

(b) that the applicant is unable for any reason to pay the money;

then the court may by order stay the execution of the judgment or order, either absolutely or for such period and subject to such conditions as the court thinks fit.

22.55 Such applications must be made in accordance with Part 23, but may be listed in the Masters' Urgent and Short Applications List. The Master may give a time-limited stay for, say, 14 or 28 days, requiring the judgment debtor to restore the application before the expiry of the stay, on notice to the judgment creditor. The Master may also impose conditions, such as a requirement to serve further evidence, or to pay towards the outstanding judgment debt by instalments. In the latter case the amounts of and dates of payment will be specified in the Master's order.

Transfer of County Court judgments for enforcement in the High Court

22.56 County Court judgments or orders for the payment of money which are sought to be enforced wholly or partially by execution against goods must be enforced only in the High Court where the sum sought to be enforced is £5,000 or more; and may be enforced in the High Court where the sum is £600 or more: see art. 8(1) of the High Court and County Courts Jurisdiction Order 1991 (SI 1991/724) as amended. Transfers to the High Court for enforcement only in such cases are commonly made, enabling the judgment creditor to issue a writ of control in the Central Office (or in the District Registry). The procedure does not apply to judgments arising on a regulated agreement under the Consumer Credit Act 1974.

22.57 The procedure for transfer is now governed by rule 40.14A of the CPR. A request for a certificate of judgment is made in writing to the County Court. Such request must state that the certificate is required for the purpose of enforcing the judgment or order in the High Court and must also state that it is intended to enforce the judgment or order by execution against goods.

22.58 The judgment creditor should use Form N293A, which is a combined form of request for the issue of the certificate, and the certificate itself as issued by the County Court. They should file the form in the appropriate venue of the County Court where judgment has been given, inserting details of the judgment. The court officer will check the form of request and will in particular check, in accordance with rule 83.19(4), that no proceedings to set aside the judgment, or for a stay of execution of the judgment, are pending. If satisfied they will sign and date the certificate, and seal it with the seal of the County Court, retaining a copy and returning the original to the judgment creditor.

22.59 The grant of the certificate will act as an order to transfer the proceedings to the High Court: see rule 83.19(2). Interest, if payable under S.74 of the County Courts Act 1984 and under the County Courts (Interest on Judgment Debts) Order 1991, will run from the date of the judgment or order until payment.

22.60 The judgment creditor will then make a request in writing to the High Court, in Form PF86, for the issue of a writ of control to be enforced by a High Court Enforcement Officer. They will lodge the request, in London, at the Central Office or, elsewhere, at the appropriate District Registry. The request will be accompanied by the completed and sealed Form N293A. No fee is payable on the request.

22.61 It is important to remember in these cases involving transfer that, whilst an application for a stay of execution may be made to a Master in the High Court, any application to set aside or vary the judgment must be made to the County Court. A Master may, and often does, order a stay of execution on terms that the judgment debtor (a) issues and serves within a limited time an application in the County Court to set aside or vary the judgment and (b) proceeds with such application with all due expedition.

Writs of Control for Judgments in foreign currency

22.62 Where a party wishes to enforce a judgment or order expressed in a foreign currency by the issue of a writ of control the request for the writ must be endorsed by the applicant's solicitor or by the applicant if in person with the following certificate, in line with Practice Direction (QBD: Judgment: Foreign Currency) (No.1) [1976] 1 WLR 83:

"I/we certify that the rate current in London for the purchase of (state the unit of foreign currency in which the judgment is expressed) at the close of business on (state the nearest preceding date to the date of issue of the writ) was ( ) to the £ sterling and at this rate the sum of (state the amount of the judgment debt in the foreign currency) amounts to £.....".

22.63 The schedule to the writ should be amended:

1) showing the amount of the judgment or order in the foreign currency at paragraph 1

2) inserting a new paragraph 2 as follows:

   "Amount of the sterling equivalent as appears from the certificate endorsed on the request for issue of the writ £....."

3) re-numbering the remaining paragraphs accordingly.

22.64 The writ of control will then be issued for the sterling equivalent of the judgment in foreign currency as appears from the certificate.

Third Party Claims on controlled goods and executed goods

22.65 Part 85 of the CPR replaced the previous interpleader procedure for determining disputes arising on controlled goods and executed goods. It should be noted however that the stakeholder's interpleader procedure, which arose under the former RSC Ord.17, rule 1(1)(a) and which had no necessary relationship to execution, is now the subject of the separate new Part 86.

22.66 Any person making a claim to controlled goods must, under rule 85.4, as soon as practicable but in any event within 7 days of the goods being removed give notice in writing of their claim to the enforcement agent. Such notice must (inter alia) give their full name and address, a list of all goods in respect of which they claim and the grounds of claim in respect of each item. The subsequent provisions of rule 85.4 require an enforcement agent to give notice of the claim to the judgment creditor and any other claimants to the goods, and require the relevant parties to give notice as to whether the claims are admitted or disputed. Where the creditor or any other claimant to whom notice has been given fails to give the necessary notice the enforcement agent may seek directions and an order preventing the bringing of any claim against them in respect of having taken control of the goods.

22.67 Rule 85.5 regulates the procedure where a claim to controlled goods is disputed. Application is to be made by the claimant to the goods, supported by the documents set out in rule 85.5(2), which must be served on the creditor, any other claimant, and the enforcement agent. The application will be referred to a Master or District Judge who may then make a variety of directions as set out in rule 85.5(8), including listing a hearing of the application and giving directions for determination of any issue raised by the claim.

22.68 Rules 85.6 and 85.7 make similar provision in the case of claims to executed goods, i.e. goods subject to a writ of execution. The term "writ of execution" is defined in rule 85.2(5) and does not include a writ of control.

Exempt goods

22.69 A judgment debtor may make a claim to exempt goods, as defined in rule 85.2(k) both in relation to controlled goods and in relation to executed goods (see paragraph 22.50 above for what goods are exempt). In such case the procedure for determination of the claim is that laid down in rules 85.8 and 85.9, and is closely modelled on the foregoing provisions of rule 85. It should be noted that if an enforcement agent or relevant enforcement officer receives notice from the judgment creditor and any other claimant admitting the claim to exempt goods the enforcement power (in the case of controlled goods) ceases to be exercisable, and the right to execute (in the case of executed goods) ceases to have effect in respect of the exempt goods, and the enforcement agent and enforcement officer must as soon as reasonably practicable make the goods available for collection by the debtor.

22.70 Rules 85.10 and 85.11 make comprehensive provision for the final determination of any disputed claim under Part 85. Reference should be made to their terms. It should be noted that the court by which an issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the application (rule 85.11(2)) and that Practice Direction 2B applies to the trial of an issue in such an application. Thus a Master or District Judge has, subject to PD2B, jurisdiction to dispose of any issue arising in the application.

Stakeholder claims

22.71 These are the subject of Part 86.

22.72 The jurisdiction may be invoked by persons, particularly deposit holders, who hold money subject to competing claims. The full ambit of the rule, and the definition of stakeholder, are set out in rule 86.1. A stakeholder may make an application to the court for a direction as to the person to whom they should pay a debt or money, or give any goods or chattels. Their application is to be made to the court in which an existing claim against them is pending, or, if no claim is pending, to the court in which they might be sued: rule 86.2(2). The claim is to be made by Part 8 claim form (see section 8 above) unless made in an existing claim, in which case it should be made by application under Part 23. The claim must be supported by a witness statement stating that the stakeholder:

(a) claims no interest in the subject matter in dispute other than for charges or costs,

(b) does not collude with any other claimant to the subject matter, and

(c) is willing to pay or transfer the subject matter into court or dispose of it as the court may direct.

22.73 The rule provides for service of the claim form or application notice on the appropriate parties as detailed, for response by such parties, and provides that the matter will be referred to a Master or District Judge.

22.74 Under rules 86.3 and 86.4 the court has wide powers upon hearing any such application, including ordering that an issue between all parties be stated and tried. Furthermore, the court by which an issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the stakeholder application: rule 86.4(2).

Writs of Execution

Judgments for delivery of goods

22.75 Enforcement of a judgment or order for the delivery of goods, whether with or without the option for the judgment debtor to pay the assessed value of the goods, is the subject of rule 83.14.

22.76 In the case of a judgment or order that does not give the judgment debtor any such alternative the same may be enforced:

(a) by writ of delivery to recover the goods in Form N64, referred to as a "writ of specific delivery". No permission is required for the issue of such a writ in these circumstances;

(b) in a case in which rule 81.4 applies, by an order of committal; and

(c) in a case in which rule 81.20 applies, by a writ of sequestration.

22.77 In all such cases where a question of committal or sequestration arises the full terms of CPR Part 81 must be considered (see section 23 on Contempt).

22.78 Where the judgment or order gives the debtor the option of paying the assessed value, it may be enforced:

(a) by writ of delivery to recover the goods or their assessed value. No permission to issue such a writ is required;

(b) by order of the court, by writ of specific delivery. Permission is required. The judgment creditor should apply under Part 23 providing evidence to support their case why such an order should be made in the court's discretion. The application notice must be served on the judgment debtor;

(c) in a case to which rule 81.20 applies, by writ of sequestration.

22.79 In the event that a judgment creditor relies on a judgment assessing the value of the goods such judgment may be enforced by the same means as any other judgment or order for the payment of money: rule 83.14(5).

Judgments for Possession of Land

General

22.80 A judgment or order for the possession of land may be enforced in the High Court

(a) by a writ of possession (the usual course) to be executed by a High Court Enforcement Officer; or

(b) by proceedings for contempt of court under CPR81; or

(c) where no such proceedings are brought, by a writ of sequestration under CPR 83.14A).

Procedural Requirements for Writs of Possession

22.81 The court's permission is not required to issue a writ of possession except:

(a) where the writ is to enforce a notice (which has the effect of an order for possession) under section 33D of the Immigration Act 2014 or

(b) in claims against trespassers under Part 55 where the writ is to be issued after the expiry of three months from the date of the order: see rule 83.13.

However, a certificate that the land has not been vacated is required (CPR83.13(6)).

22.82 Where permission is required, the application for permission will usually be dealt with without a hearing, unless the Master considers that a hearing is appropriate, in which case it will be listed in the Urgent and Short Applications List. The evidence in support should explain in a section 33D case what knowledge the occupiers will have of the notice and the underlying matters, and in a trespasser case the delay. A draft order in the form of PF 92 should be provided (Form PF92: Order for permission to issue a writ of possession in the High Court - GOV.UK (www.gov.uk)) and a draft writ accurately completed including the appropriate court in form no 66: Combined Writ of Possession and Control: Form No.66 - GOV.UK (www.gov.uk).

22.83 In addition to the requirement under rule 83.13 to obtain permission for the issue of a writ of possession, rule 83.2 imposes further requirements to obtain permission in specified cases, e.g. where 6 years or more have elapsed since the date of the judgment or order or any change has taken place in the parties entitled, or liable, under the judgment: see rule 83.2(3) (a) and (b).

22.84 A 14-day notice of eviction in the prescribed form n54 f must be delivered to the premises before the writ is executed unless a court otherwise orders: CPR83.6. This does not apply to eviction of squatters (persons who both entered and remained as trespassers without ever having any right to do so).

Orders for Possession transferred from the County Court

22.85 If an order for possession is transferred from the County Court to the High Court for enforcement, then the transfer (and any applications e.g. for a writ of possession or for stays) will be to the District Registry in whose area the land is situated, and not to the Central Office at the Royal Courts of Justice, unless the property is not within the area of a District Registry or unless otherwise ordered: CPR30.4(3) (in Greater London there are District Registries in Romford and Croydon). An application for a writ of possession in a claim transferred for enforcement should be accompanied by copies of both the original county court order, the transfer order or certificate, and a certificate of non-vacation: CPR83.13(6) and a draft writ in form no 66. The draft should be completed accurately and the appropriate court details included. A County Court order for possession against trespassers can be transferred automatically from the county court by lodging a request for a certificate under CPR40.14A (and see CPR83.19(2)).

Duration, Extension and Priority of Writs of Possession

22.86 The duration, extension and priority of writs of possession are governed by rule 83.3. A writ will be valid for the period of 12 months beginning with the date of its issue. The court may, on application, extend the writ from time to time for a period of 12 months at any one time. If the application is made before the expiry of 12 months the extension will begin on the day after the expiry. If the application is made after the expiry any period of extension will begin on any day after the expiry that the court may allow. As to priority, irrespective of whether it has been extended, the priority of a writ of possession will be determined by reference to the time

it was originally received by the person who is under a duty to enforce it: rule 83.3(9). Application should be made in Form N244 supported by a witness statement.

Stay of Execution of Writ of Possession

22.87 The court has no power to grant a stay of execution against trespassers. The extent to which the court will exercise a power of stay in other circumstances has been considered in *McPhail v Persons Names Unknown* [1973] Ch.447, *C.A. and Bain & Co v Church Commissioners for England* [1989] 1 W.L.R. 24. While it is the High Court which deals with an application to stay the writ itself; in transferred cases parties should be aware of the provisions of section 42 of the County Court Act 1984 as to which matters fall within the jurisdiction of the County Court and which of the High Court, although the Master can always transfer a matter to the County Court if they think fit. Stays are often granted on condition that an appropriate application is made to the County Court regarding the order for possession (e.g. to set it aside) but generally only where such an application appears to have a prospect of success. The High Court is unlikely to have access to the County Court file, and parties should provide copies of relevant County Court orders (and which may state whether they were made on mandatory or discretionary grounds) and other material. If the writ has been issued out of a District Registry then any application for a stay must be made to that District Registry and not to the Central Office at the Royal Courts of Justice (see CPR23.2(5) and CPR30.4(3)) unless otherwise ordered.

Writs of Restitution

22.88 If following successful execution of a writ of possession the land is re-occupied by the same previous occupants, then a writ of restitution can be granted but permission is required under CPR83.13(5A) and so an application must be made supported by evidence as to what has happened. If possession has been taken by new unconnected persons, fresh possession proceedings are required.

Writs of Sequestration

22.89 A writ of sequestration may be issued to enforce a judgment for money or payment into court, or for the enforcement of a judgment or order granting an injunction, and for other limited forms of execution: see CPR83.14A.

Writs relating to Ecclesiastical Property

22.90 See CPR83.11.

Injunctions and undertakings

22.91 A judgment or order, or an undertaking, to do or abstain from doing an act may, upon breach, be enforced by an order of committal under the terms of CPR rule 81.4; or by an order of sequestration under rule 83.14A see 'Writs of Sequestration' above and section 23 on Contempt below). Applications for such orders in the King's Bench Division will be listed before and heard by a High Court Judge.

Receivers and equitable execution

22.92 Equitable execution is a process which enables a judgment creditor to obtain payment of a judgment debt where the interest of the judgment debtor in property cannot be seized or reached by ordinary execution. Whilst in many cases sale pursuant to a charging order (see paragraph 22.28 above) may be appropriate, in some cases (such as where the debtor has a life interest in a trust fund) appointment of a receiver may be just and convenient. Likewise, a third party debt order cannot reach future debts which may become due to the judgment debtor. Part 69 of the CPR and the Practice Direction to that Part govern the position. Para 4 of the PD sets out generally the evidence which must be filed in support of any application for a receiver. Its provisions should be followed in detail. It is particularly important, in the case of an application for appointment of a receiver by way of equitable execution, that the applicant should state why the judgment cannot be enforced by any other method: para 4.1(3)(d).

22.93 The application should be made to a Master or District Judge, who also have jurisdiction, under PD2B para 2.3(c), to make an injunction in connection with or ancillary to making an order appointing a receiver by way of equitable execution.

22.94 Whilst, under rule 69.3, the application may be made without notice (and in cases of urgency this may well be appropriate), the more usual course is to apply on notice. The application should be in Form N244. It must be supported by written evidence. An order made without notice, which will be served as in paragraph 22.98 below, will include provision for persons affected to apply to set aside or vary the order.

22.95 Where a judgment creditor applies for the appointment of a receiver, in considering whether to make the appointment the court will have regard to

1) the amount claimed;

2) the amount likely to be obtained by the receiver; and

3) the probable costs of their appointment.

See para 5 of PD69.

22.96 Rule 69.5 and para 7 of the PD deal with the giving of security by the receiver which will normally be required. The means of security are the subject of paras 7.2 and 7.3.

22.97 Rules 69.6, 69.7 and 69.8 deal respectively with the court's power to give directions (in particular on application by the receiver), the remuneration of the receiver, and the question of accounts. Under rule 69.7(5) the court may refer the determination of the receiver's remuneration to a costs judge.

22.98 An order appointing a receiver must be served by the party applying on:

(a) the person appointed as receiver;

(b) unless the court orders otherwise, on every other party to the proceedings; and

(c) such other persons as the court may direct.

22.99 The court may at any time terminate the appointment of a receiver and appoint another receiver in their place: see rule 69.2(3); and it may, on application by the receiver, discharge them on completion of their duties, on conditions including dealing with any money which they have received: see rules 69.10 and 69.11.

Execution against Property of Foreign or Commonwealth States

22.100 In cases where judgment has been obtained against a foreign or Commonwealth state and it is sought to enforce the judgment within the jurisdiction, the following provisions apply:

22.101 Before any enforcement proceedings are commenced the assigned Master must be notified in writing and their direction sought. The notification must include a statement that enforcement is sought against a foreign or Commonwealth state and identify the intended method(s) of enforcement.

22.102 The Master, having been so informed will, as soon as practicable, notify the Head or Deputy Head of the Diplomatic Missions Team in the Diplomatic Missions and International Organisations Unit (DMIOU), Protocol Directorate, Foreign, Commonwealth and Development Office (FCDO) of the intended enforcement by email at Annie.McGee@fcdo.gov.uk or the Deputy Head of Diplomatic Mission Team Jenna Teasdale at Jenna.Teasdale@fcdo.gov.uk or, in cases of urgency, by telephone on 07881 249915 (Annie McGee) or 07741 818051 (Jenna Teasdale). The Master will not permit the issue of a writ of control or a writ of execution nor grant an interim order on an application for an interim charging order or third party debt order until Protocol Directorate, FCDO has been so informed.

22.103 Having regard to all the circumstances of the case, the Master may postpone the decision whether to issue the writ or grant the interim order for so long as they consider reasonable for the purpose of enabling the FCDO to furnish further information relevant to their decision, but not for longer than 3 working days from the time of the Master contacting DMIOU. In the event that no further information is received from DMIOU within 3 working days of being informed, then the writ of control or writ of execution may be issued, or the interim order may be sealed without further delay. All such writs must be served in compliance with Section 12 of the State Immunity Act 1978 (https://www.legislation.gov.uk/ukpga/1978/33).

Recovery of enforcement costs

22.104 Section 15(3) of the Courts and Legal Services Act 1990 enables a person taking steps to enforce a money judgment in the High Court to recover by enforcement the costs of any previous attempt to enforce that judgment. Subsection (4) excludes costs that the court considers have been unreasonably incurred, whether because the earlier attempt was unreasonable in all the circumstances or for any other reason.

22.105 The application for an enforcement costs order is made to a Master and should be made in accordance with Part 23 but the application notice need not be served on the judgment debtor. The application will normally be dealt with without a hearing and must be supported by evidence substantially as set out in form PF 205. The witness should exhibit sufficient vouchers, receipts or other documents as are reasonably necessary to verify the amount of the costs of previous attempts to enforce the judgment.

22.106 If the Master is satisfied that such an order is appropriate, they will make an order for payment of the amount of such costs as they consider may be recoverable under subsection (3). If the amount of such costs is less than that claimed by the judgment creditor, the Master may either disallow the balance or give directions for a detailed assessment or other determination of the balance. If after assessment or other determination it appears that the judgment creditor is entitled to further costs beyond those originally allowed, they may issue a further writ or take other lawful steps to enforce those costs. Interest on the costs runs either from the date the Master made the enforcement costs order or from the date of the costs certificate.

Enforcement of Magistrates' Courts' orders

22.107 The Magistrates' Courts Act 1980, s.87 provides that payment of a sum ordered to be paid on a conviction of a magistrates' court may be enforced by the High Court or County Court (otherwise than by the issue of a writ or other process against goods or by imprisonment or attachment of earnings) as if the sum were due to the clerk of the magistrates' court under a judgment or order of the High Court or County Court, as the case may be.

22.108 In the Central Office, the application is made to a Master and should be made in accordance with Part 23. Where enforcement is sought by a third party debt order or charging order, the application for an interim order will normally be dealt with without a hearing. Otherwise the application notice and evidence in support should be served on the defendant.

22.109 The application must be supported by a witness statement in a form appropriate to the type of execution sought and must have exhibited to it the authority of the magistrates' court to take the proceedings which will recite the conviction, the amount outstanding and the nature of the proceedings authorised to be taken (Magistrates' Courts Forms Rules 1981, Form 63).

22.110 The application notice and evidence in support together with an additional copy of the exhibit should be filed by post to KB Enforcement where it will be assigned a reference number from the register kept for that purpose. The Master, according to the type of enforcement sought, will then deal with the matter.

22.111 This practice will also be followed in the District Registries with such variations as circumstances may render necessary.

Bills of Sale and Assignment of Book Debts

Bills of Sale

22.112 Every bill of sale to which the Bills of Sale Act 1878 or the Bills of Sale (1878) Amendment Act 1882 apply must be registered within 7 clear days of its making: see sections 8 and 10 of the 1878 Act and section 8 of the 1882 Act. Under section 11 of the 1878 Act, the registration of a bill of sale must be renewed at least once every five years.

22.113 The King's Bench Masters are the registrars for the purposes of the Acts and their duties may be performed by any one of them. The register is kept in the Action Department in the RCJ and contains the particulars required under the Acts and a list of the names of the grantors of every registered bill of sale.

22.114 An application to register a bill of sale is made under section 10(2) of the 1878 Act by sending to KB Enforcement the original bill together with every schedule or inventory annexed to it or referred to in it, and a true copy of the bill and of every such schedule or inventory and of every attestation of the execution of the bill, together with an affidavit containing the required particulars. Such affidavit must, in accordance with section 10(2), prove:

1) the time when the bill was made or given;

2) the due execution and attestation of the bill; and

3) the residence and occupation of the grantor of the bill and of every attesting witness.

22.115 The copy of the bill and the original affidavit are then filed in KB Enforcement.

22.116 The evidence required may in the case of a security bill be in Form PF179 and in the case of an absolute bill be in Form PF 180 save that in both cases:

(a) the time of day as well as the date of the granting of the bill must be stated so as to accord with section 10(2); and

(b) the evidence must be in the form of an affidavit and sworn as such: see CPR32.15(1).

22.117 An application to re-register a bill of sale under section 11 of the 1878 Act may be made as provided for in that section. Whilst Form PF 181 may be used, the evidence should again be in affidavit form so as to accord with section 11.

22.118 An application, which may be made under section 14 of the Act of 1878, to rectify an omission or misstatement in relation to registration, or renewal of registration (including particularly an application to extend time) must be made to a King's Bench Master and be accompanied by the prescribed fee. The procedure is now governed by PD49E paras 6.1 to 6.5. The evidence in support, which may be by witness statement, must set out the particulars of the omission and the grounds on which the application is made. The Master will usually deal with the application without a hearing and without requiring service on any other person.

22.119 If satisfied than an omission to register or to file an affidavit of renewal within the time prescribed was accidental or due to inadvertence the Master may in their discretion extend time for that purpose. The same applies in the case of omission or misstatement of the name, residence or occupation of any person, and the Master may order the register to be rectified by insertion of the true particulars. Terms may be imposed as to security, or notice by advertisement, or otherwise as the Master may direct. In order to protect any creditors who have acquired rights of property in the assets which are the subject of the bill between the date of the bill and its actual registration, any order to extend time will normally be made "without prejudice" to those rights. The order will be drawn up in Form PF182.

22.120 Memorandum of satisfaction: An application may be made under section 15 of the 1878 Act for an order that a memorandum of satisfaction be written on a registered copy of a bill of sale. The procedure for applying will depend on whether the person entitled to the benefit of the bill has or has not consented to the satisfaction. See PD49E paras 7.1 to 7.5 for the detail of the procedure. Form PF183 contains the necessary contents of a witness statement or affidavit to support an application. Form PF184 contains the contents of a claim form where a claim form is required. And Form PF185 contains an order for the entry of satisfaction. In practice, where consent has been obtained, the Master will usually endorse "leave to enter memorandum of satisfaction" on the witness statement or affidavit without the need to draw an order. The endorsement is then sent to KB Enforcement for the entry to be made on the copy bill in the registry.

22.121 Search of the register: Under section 16 of the 1878 Act, application may be made to search the register and obtain an office copy or extract of a registered bill of sale. The application is made to a Master. The procedure, and the necessary information to support the application, are the subject of PD49E paras 8.1 to 8.4.

Assignment of book debts

22.122 Under section 344 of the Insolvency Act 1986 an assignment of book debts is void against the trustee of a bankrupt's estate as regards book debts which were not paid before the presentation of the bankruptcy petition unless the assignment has been registered under the Bills of Sale Act 1878. The register is kept as a separate register in the action department in the Central Office. The procedure on application to register is now the subject of PD49E paras 15.1 to 15.6 which should be consulted in detail. Parties may use Form PF186 for their evidence in support. It is helpful if the original assignment is also produced.

23. Contempt of Court

23.1 The court has power to punish contempt of court by an order of committal to prison or by other means, including a fine, confiscation of assets, or a hospital or guardianship order under certain provisions of the Mental Health Act 1983. Under section 14 of the Contempt of Court Act 1981, where no other limitation applies to the period of imprisonment, it must be for a fixed term of not more than two years. Under section 16, payment of a fine for contempt of court may be enforced upon the order of the court as a judgment of the High Court for the payment of money.

23.2 The substantive law of liability for contempt rests upon both common law and statutory principles (in part, as to the latter, under the Contempt of Court Act 1981).

23.3 Imprisonment for default in payment of a sum of money has long been abolished by section 4 of the Debtors Act 1869, subject to the specific exceptions contained in that section. The further power, under s.5 of that Act, to commit to prison for non-payment of a debt due under a judgment or order of the court is now restricted, so far as relates to the jurisdiction of the High Court, to non-payment of a High Court maintenance order.

23.4 The procedure in contempt proceedings is governed by Part 81 of the CPR, which (except where other rules provide otherwise) applies to contempt proceedings in the High Court, County Courts and the Civil Division of the Court of Appeal.

23.5 Part 81 is concerned only with procedure and does not alter the scope and extent of the jurisdiction of courts determining contempt proceedings, whether inherent, statutory or at common law: rule 81.1(2). It is a procedural code for contempt proceedings.

23.6 Part 81 provides for how to make a contempt application (rule 81.3), when permission to bring the proceedings is required (rule 81.3(5)) and which court grants permission where it is needed (rule 81.3(6)-(8).

23.7 Rule 81.4 specifies what a contempt application must contain. It must be strictly complied with to ensure that procedural fairness to the defendant is observed. The application must include succinct particulars of the alleged wrongdoing and a mandatory list of procedural rights. It must be supported by written evidence unless the court directs otherwise. Form N600 is available for use to make a contempt application.

23.8 Rule 81.5 makes provision for service of the application on the defendant. It must be personally served unless the court directs otherwise. The service rules in Part 6 apply except where the defendant already has solicitors on the record. If so, service may be on the solicitors unless they object in writing, in which case a judge will decide how service is to be effected.

23.9 Rule 81.6 requires a judge to consider issuing a summons alleging contempt of the court's own initiative if the judge considers that a contempt may have been committed.

23.10 Rules 81.7 and 81.8 provide for the court to give directions for the hearing of a contempt application and for the conduct of the hearing and the giving of a reasoned judgment in public stating the court's findings and any punishment.

23.11 Directions for the hearing of a contempt application may include provision for the respondent to seek to obtain legal advice. Non-means tested legal aid may be available for defendants in contempt proceedings (CPR 81.4(2)(j)).

23.12 Rule 81.9 sets out the powers of the court to punish for contempt. The punishment may be a period of imprisonment, immediate or suspended (an order of committal), a fine, confiscation of assets or other punishment permitted under the law. See paragraph 22.11 for the options available to the court when asked to make a suspended committal order.

23.13 Rule 81.10 provides that a defendant against whom a committal order is made imposing a period of imprisonment, whether immediate or suspended, may apply to discharge the order. The application is made by an application notice under Part 23 in the contempt proceedings.

24. Bail

24.1 Under section 17 of the Criminal Justice Act 2003 the powers of the High Court to entertain applications relating to bail are restricted to specific circumstances. In those cases where such power exists the procedure is governed by RSC Order 79 rule 9(1) to (14); or, in the case of certain appeals by a prosecutor to the High Court against the grant of bail, by rule 9(15) and a Practice Direction supplementing the same (see RSC Ord 79, r 9 and Practice Direction RSC Order 79, a link to which can be found at https://www.justice.gov.uk/courts/procedure-rules/civil/rules/rsc-order-79-practice-direction).

25. Enforcement in England and Wales of Foreign Judgments and Enforcement abroad of High Court Judgments

Consequences of the United Kingdom leaving the EU

25.1 Certification, registration, recognition and enforcement of judgments, court settlements, authentic instruments or outgoing protection measures are no longer possible generally under the following Regulations, Conventions and Treaties:

Council Regulation (EU) No. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) ("the Judgments Regulation"), which applied to judgments in proceedings commenced on or after to 10 January 2015;

Council Regulation (EU) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("Brussels I"), which applied to judgments in proceedings issued prior to 10 January 2015;

The Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Kingdom of Denmark and signed by the European Community on 30th October 2007 ("the Lugano Convention");

Council Regulation (EC) No 805/2004 of 21 April 2004 creating a European Enforcement Order for uncontested claims ("the EEO Regulation");

Community judgments under articles 280 or 286 of the Treaty on the Functioning of the European Union, articles 18 or 164 of the Euratom Treaty, article 86 of Council Regulation (EC)207/2009 of 26 February 2009 on the Community Trade Mark, article 71 of Council Regulation (EC) 6/2002 of 12 December 2001 on Community Designs, articles 36a or 36b of Regulation (EC) 1060/2009 on Credit Rating Agencies

or articles 65 or 66 of Regulation (EC) 648/2012 on OTC Derivatives, Central Counterparties and Trade Repositories;

Articles 5 or 14 of the Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12th June 2013 on mutual recognition of Protection Measures in Civil Matters ("the Protection Measures Regulation").

CPR Part 74 has been amended to reflect these consequences.

25.2 Under transitional arrangements provided in reg. 26 of the Civil Procedure Rules 1998 (Amendment) (EU Exit) Regulations 2019 (SI 2019/521), the Foreign Process Section will process all incoming requests for registration, enforcement and certification under the above instruments relating to judgments that were either given,

(a) before the end of the transition period by a court of a Contracting State or Regulation State; or

(b) after the end of implementation period by such a court in proceedings commenced before that court before the end of the transition period.

The transition period ended on 31 December 2020, provided by European Union (Withdrawal) Act 2018 as amended by the European Union (Withdrawal Agreement) Act 2020. Due to the lapse since the UK departed the EU, very few judgments will be enforceable under these regulations..

25.3 On 1 January 2021 the UK acceded in its own right to the 2005 Hague Convention on Choice of Court Agreements (the 2005 Hague Convention). Section 1(2) of the Private International Law (Implementation of Agreements) Act 2020 ("the 2020 Act") introduced a new s.3D to the Civil Jurisdiction and Judgments Act 1982 which provides that the 2005 Hague Convention has the force of law in the UK. Paragraph 7 of Schedule 5 to the 2020 Act provides that, for the purposes of the 2005 Hague Convention as it has the force of law in the UK, the date of its entry into force for the UK is 1 October 2015.

25.4 On 12 January 2024 the UK signed the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. It will come into force 12 months after it is ratified.

Where to find the Procedure for Cross Jurisdictional Enforcement

25.5 CPR74 provides the procedure for enforcement of judgments in different jurisdictions.

25.6 Section I of Part 74 applies to enforcement in England and Wales of judgments of foreign courts. Section II applies to the enforcement in foreign countries of judgments of the High Court and the County Court. Section III applies to the enforcement of United Kingdom judgments in other parts of the United Kingdom. Section [VI] applies to the enforcement in England & Wales of certified protection measures from Member States of the European Union other than Denmark.

25.7 If a foreign country is not a party to an agreement with the UK on mutual recognition and enforcement of judgments, a fresh action will need to be brought here by claim form based on the judgment of the court of the foreign country.

Enforcement in England and Wales of Foreign Judgments

25.8 Enforcement in England and Wales of foreign judgments is possible when the following statutes apply:

Section 9 of the Administration of Justice Act 1920 ("the 1920 Act");

Section 2 of the Foreign Judgments (Reciprocal Enforcement) Act 1933 ("the 1933 Act"); and

Section 4B of the Civil Jurisdiction and Judgments Act 1982 ("the 1982 Act") relating to registration and enforcement of judgments under the 2005 Hague Convention.

Registration of Foreign Judgments

25.9 A list of the countries that are covered by each of the various statutes set out above is contained in His Majesty's Court Service "Notes for Guidance" on the above, which can be obtained from the Foreign Process Section of the Central Office is annexed as Annex 10. This also details the standard forms used and sets out the procedure for registration.

25.10 The application for registration must be made to the High Court. Such applications are assigned to the King's Bench Division and may be heard by a Master. They may be made without notice: see rule 74.3(2). The Master may however direct that a Part 8 claim form should be issued and served.

25.11 The criteria for registration required in each of the 1920, 1933 and 1982 Acts must be satisfied to enable a successful application to be made. Rule 74.4 states what evidence must be provided in support of an application for registration of a judgment under those statutes. Note that the evidence required differs in certain respects as between each of the statutes. The requirements should be strictly followed. Assistance is obtained from PD74A paras 5 and 6E in respect of the evidence required in support of such applications.

25.12 The order for registration, if made, will be for registration of the judgment in the foreign currency in which it is expressed. It should not be converted into sterling in the evidence in support. When it comes to enforcement of the judgment, the amount should then be converted into sterling in accordance with the instructions set out in paragraph 22.19 above.

25.13 The order for registration must be drawn up by or on behalf of the judgment creditor and served on the judgment debtor. Permission is not required to serve out of jurisdiction: rule 74.6(2). The order will be entered in the register of judgments kept in the KB Enforcement Section at the Central Office. The order will usually contain, at the Master's discretion, a direction that the costs of and caused by the application and the registration be assessed and added to the judgment debt. Alternatively, if the application includes a statement of costs, the Master may summarily assess the costs of the application and include this in the registration order.

25.14 The order must state the matters set out in rule 74.6(3). These include, in the case of registration under the 1920 Act and the 1933 Act, the right of the judgment debtor to apply to have the registration set aside; and, in the case of registration under the 1982 Act, the right of the judgment debtor to appeal against the registration order.

25.15 Rule 74.7 governs the procedure on applications to set aside under the 1920 and 1933 Acts (including the time for doing so).

25.16 Rule 74.8 governs the procedure on appeal against both the grant or refusal of registration under the 1982 Act (including matters relating to an application for an extension of time for appealing). Permission is not required to appeal or to put in evidence.

25.17 In order to enforce the judgment following registration, evidence of service on the judgment debtor of the registration order and any other relevant order must be filed: rule 74.9.

Judgments subject to the 1982 Act (the 2005 Hague Convention)

25.18 Practice Direction 74A paragraph 6E.1 to 6E.4 applies to judgments to be recognised or enforced in a Contracting State to the 2005 Hague Convention. Article 13 of the 2005 Hague Convention sets out the documents which need to be produced on an application for recognition or enforcement of a judgment. The text of the 2005 Hague Convention can be found in the Private International Law (Implementation of Agreements) Act 2020 (https://www.legislation.gov.uk/ukpga/2020/24/contents/enacted).

Enforcement of Judgments of the High Court and County Court in other countries outside the UK

25.19 Section II of CPR Part 74 covers enforcement in foreign countries of judgments of the High Court or the County Court of England and Wales. The judgment creditor must apply under rule 74.12 to the court where the judgment was given for a certified copy of the judgment. The application may be made without notice: rule 74.12(3).

25.20 The application must, under PD74A para 4.2, be made, in the case of a judgment given in the Chancery Division or King's Bench Division of the High Court, to a Master, Registrar or District Judge; and, in the case of a County Court judgment, to a District Judge.

25.21 There is some uncertainty as to whether a judgment of the County Court that is transferred to the High Court for enforcement can be regarded as a judgment which will be enforced in a foreign country under the 1920 or 1933 Acts. In cases where enforcement outside the jurisdiction is anticipated, the better course may be to commence the proceedings in the High Court, or to seek transfer of the proceedings from the County Court at the outset so that judgment is obtained in the High Court.

25.22 The written evidence required in support, including exhibits, is set out in rule 74.13. This includes the requirements (i) to show that the judgment has been served; (ii) to state whether it provides for payment of a sum of

money and, if so, the amount in respect of which it remains unsatisfied; and (iii) to state particulars of any interest on the judgment which is recoverable (other than particulars of any interest incorporated in and forming part of the judgment sum).

25.23 The certified copy of the judgment when issued will be an office copy and will be accompanied by a certificate signed by a judge: see PD74A para 7.1. If a Master has dealt with the application, they will sign the certificate. The judgment and certificate will be sealed with the seal of the Senior Courts. In applications under the 1920, 1933 and 1982 Acts the certificate will be in Form 110 and will have annexed to it a copy of the claim form by which the proceedings were begun.

Enforcement of United Kingdom Judgments in other parts of the United Kingdom

25.24 Section III of CPR74 enables registration in the High Court of judgments (both money judgments and non-money judgments the enforcement of which is governed by s.18 of the 1982 Act) given by a court in another part of the United Kingdom; and likewise for the provision of certificates of judgments of the High Court and County Court for enforcement in another part of the United Kingdom. Rules 74.14 to 74.18 govern the procedure on application and the documents which must accompany the application. A certificate of a money judgment of a court in Scotland or Northern Ireland must be filed for enforcement with the Foreign Process Section at the RCJ within 6 months of its issue and be accompanied by a certified copy. Under para 9 of Schedule 6 to the 1982 Act an application may be made to stay enforcement of the certificate. The application may be made without notice supported by a witness statement stating that the applicant is entitled and intends to apply to the judgment court to set aside or stay the judgment. As to outgoing judgments, the certificate will be in Form 111 for a money judgment. In the case of a non-money judgment, the certified copy of the judgment will be sealed and have annexed to it a certificate in Form 112: see PD74A paras 8.1 to 8.3.

25.25 The certificates will be entered in the register of certificates kept for that purpose in the Central Office under PD74A para 3.

Recognition and Enforcement of Protection Measures

25.26 Section VI of CPR Part 74 contains rules for implementation of Regulation (EU) No. 606/2013 (the Protection Measures Regulation). The Regulation provides for mutual recognition and enforcement of protection measures in civil matters, that is decisions imposing obligations on "the person causing the risk" with a view to "protecting another person, where the latter person's physical or psychological integrity may be at risk". Examples of such obligations are prohibitions or regulation of contact, non-molestation orders, injunctions against harassment, etc. As the UK is no longer an EU member state it is no longer possible to apply for recognition and enforcement of protection measures granted by the courts of England & Wales by courts of EU member states ("outgoing protection measures") save for the transitional arrangements provided in reg. 26 of SI 2019/521. However, a protected person (as defined in the Protection Measures Regulation) may apply under Article 11 to adjust the factual elements of an incoming protection measure and rule 74.47 sets out the notice that must be given in respect of any adjustment made under Article 11. By rule 74.35 applications under the Regulation, whether to the High Court or the County Court, must be made in accordance with Part 23.

26. Enrolment of deeds and other documents

Change of Name by Deed Poll

26.1 Any deed or document which by virtue of any enactment is required or authorised to be enrolled in the Senior Courts may be enrolled in the Central Office. This commonly arises in cases of change of name by deed poll, in which case the procedure is governed by the Enrolment of Deeds (Change of Name) Regulations 1994. Such regulations are reproduced as an appendix to Practice Direction 5A paragraph 6. The Practice Direction itself contains further directions in the case of change of name of a child, which should be read together with the procedure set out in the Regulations and the Practice Direction.

26.2 There is guidance and links to the relevant forms here:

Change your name by deed poll: Overview - GOV.UK (www.gov.uk)

26.3 It should be borne in mind that enrolling a deed means that both new and old names and in the case of adults, their address, are published in The Gazette, which is now online.

26.4 The forms currently do not make provision in applications for children who are aged 16 or 17 (unless the child is female and married), for the deed poll to be endorsed with the child's consent signed in both their old and new names and witnessed (regulation 8(4) of the 1994 Regulations). Such endorsement must be provided in addition to the requirements on the face of the form.

26.5 Detailed guidance issued by His Majesty's Courts and Tribunal Service in respect of the procedure for enrolling a change of name for adults and for children together with details of relevant fees can be found at Print Change your name by deed poll - GOV.UK.

26.6 Applications and queries should be sent to King's Bench Deed Poll:

Room E15
The Royal Courts of Justice
Strand
London
WC2A 2LL

Telephone: 020 3936 8957 (Option 6)

Monday to Friday, 10am to 4pm

KBdeedspoll@justice.gov.uk

26.7 In cases of doubt the Senior Master or, in his absence, the Master hearing the Urgent and Short Applications List, will refer an application to the Master of the Rolls.

27. Election Petitions

27.1 Under Part III of the Representation of the People Act 1983 ("the Act"), the result of a parliamentary or local government election may be questioned on the ground of some irregularity either before or during the election.

27.2 The procedure for challenge is governed by the Act and by Election Petition Rules (as amended) made under the Act.

27.3 The Senior Master is the prescribed officer of the High Court for the purpose of receiving election petitions, in relation to both parliamentary and local government elections.

27.4 The challenge is made by the issue of an election petition:

(a) in the case of a parliamentary election, by one or more electors or by an unsuccessful candidate or an alleged candidate;

(b) in the case of a local government election, by four or more electors or by an alleged candidate; and

(c) in the case of a parish or community council election, by four or more electors or by an alleged candidate.

27.5 The member/councillor whose conduct is complained of is a respondent to the petition, as is the returning officer. The petition is issued in the Election Petitions Office at the RCJ, normally within 21 days after the return on the election has been made to the Clerk of the Crown (in the case of parliamentary elections), or after the day of the election (in the case of local elections). There are some very limited exceptions to the 21-day time limit set out in s.129 of the Act, which extend the time limit to 28 days. The petition must include the information required by the Act and the Rules, and any petition that fails to include such information will be struck out. No amendments are permitted outside the prescribed time limit.

27.6 Security for costs must be given either at the same time or within 3 days of presenting an election petition. The petitioner must apply within that time limit by application notice without notice to fix the amount of the security for costs. That is a mandatory time limit and can cannot be extended. The Senior Master (or another Master in his absence) will make an order setting the amount of the security, which cannot exceed £5,000 for a parliamentary election petition, £2,500 for a local government election or £1,500 for a parish or community council election. The security ordered can be paid by the following methods:

(a) Deposit of money

(b) A banker's draft or postal order made payable to "The Accountant General of the Senior Courts"

(c) Surety: 4 sureties but the Petitioner cannot stand his/her own surety

(d) A combination of payment and surety

27.7 Petitioners are usually requested by the court to effect service themselves. The petitioner must serve the petition, within 5 days after giving the security ordered, on each of the respondents to the petition and on the Director of Public Prosecutions. Service is effected in the same manner as service of a claim form. The documents to be served comprise:

(a) A notice of presentation of the petition;

(b) A notice of the nature and amount of the security that the petitioner has given;

(c) A copy of the affidavit accompanying any surety (if any); and

(d) A copy of the petition.

27.8 The petition is tried by an election court consisting of two High Court judges of the King's Bench Division in respect of parliamentary elections; or by a commissioner appointed by the court, being a lawyer of not less than 7 years standing, in the case of local elections. The trial usually takes place in the relevant constituency/local government area, although a direction may be given in special circumstances for it to be held elsewhere.

27.9 The election court will determine whether the member whose election is complained of, or any and what other person, was duly elected or whether the election was void, and shall certify its determination. The procedure following such certification is laid down in sections 144 and 145 of the Act.

27.10 All interim questions and matters, except as to the sufficiency of the deposit and as to the withdrawal of the petition are heard and disposed of by a judge on the rota, or if this is not practicable, by any King's Bench judge. However, if an election petition asks for a recount, if granted this will usually be ordered to be taken before the trial by, or under the supervision and control of the Senior Master (or another Master nominated by him) in his capacity as the prescribed officer, at the Royal Courts of Justice.

27.11 Applications for remedies or relief under various sections of the Act are also issued in Election Petitions Office at the RCJ and are usually dealt with by a single judge or by the Senior Master.

27.12 An election petition may not be withdrawn without permission of the election court or an election divisional court. Upon withdrawal of the petition the petitioner is liable to pay the respondent's costs.

27.13 Outside the court offices' opening times, but while the building is still open to the public, election petitions and applications may be left in the letterbox located on the wall between Rooms E110 and E111. When the building is closed, petitions or applications may be left with Security at the main entrance (via a buzzer system available) up until midnight on the last day for lodging.

27.14 Further information can be obtained at Challenge an election result: How to make a challenge - GOV.UK (www.gov.uk) and the template for an Election petition at Election petition template - GOV.UK (www.gov.uk). Please note that templates may still refer to the Queen's Bench Division but petitions should now refer to the King's Bench Division.

Annex 1 – Plans of the Royal Courts of Justice

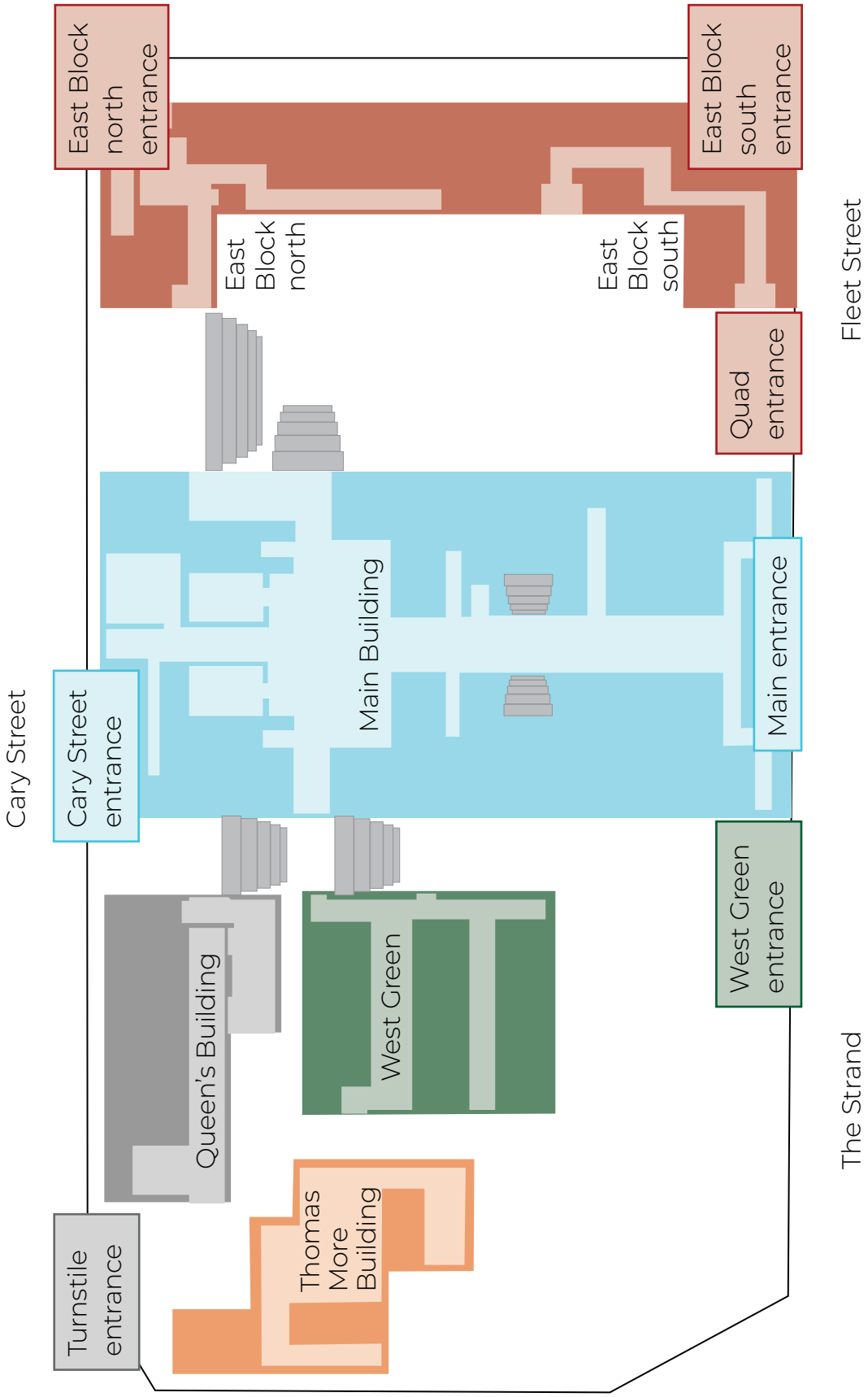
List of Maps

Plan A – Map of Building

Plan B – Map of the Masters' rooms

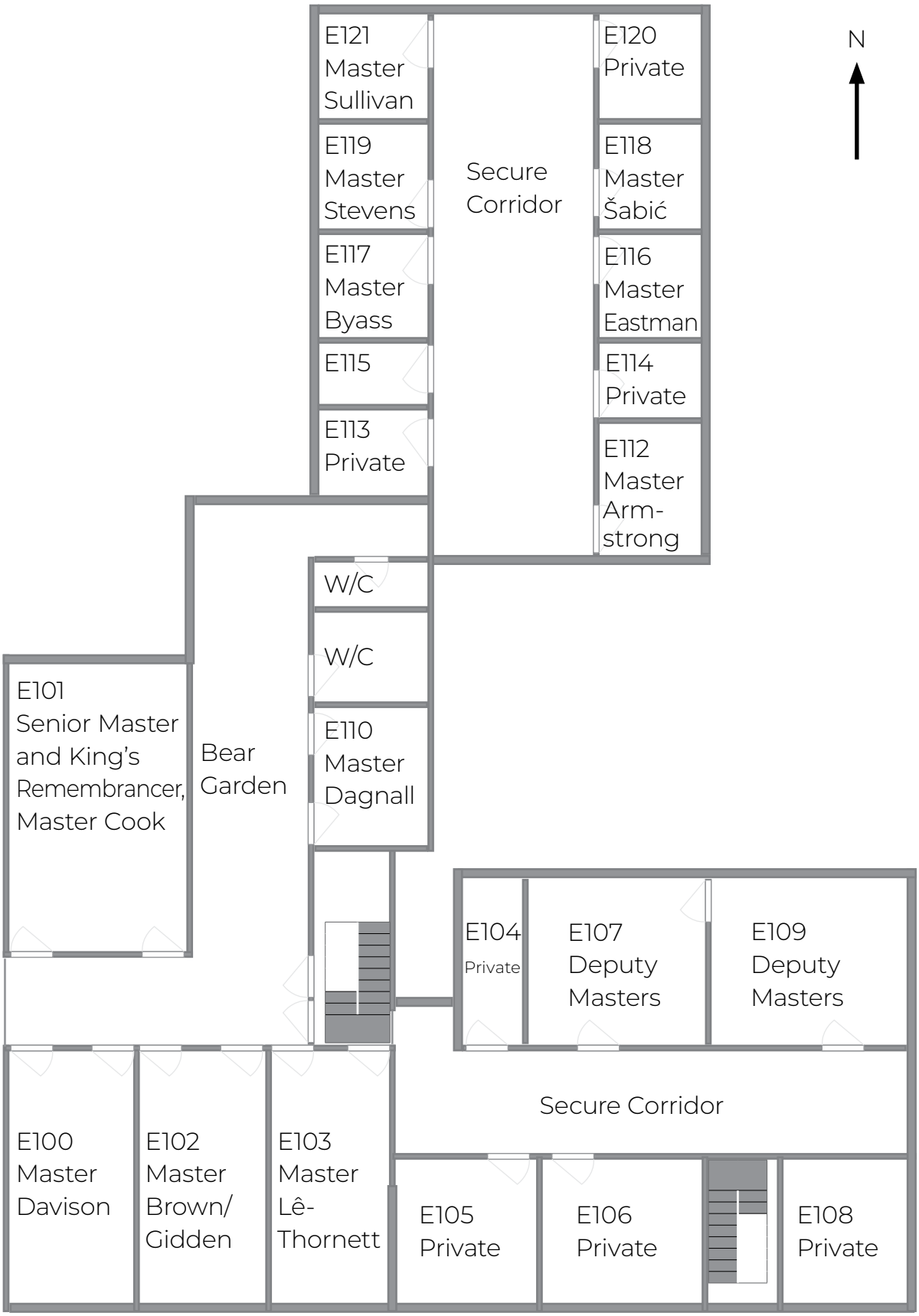
Plan C – Fees Office

Plan A – Map of Building



Plan B – Map of the Masters' Rooms

Plan B – Bear Garden and King's Bench Masters' Rooms, First Floor, East Block

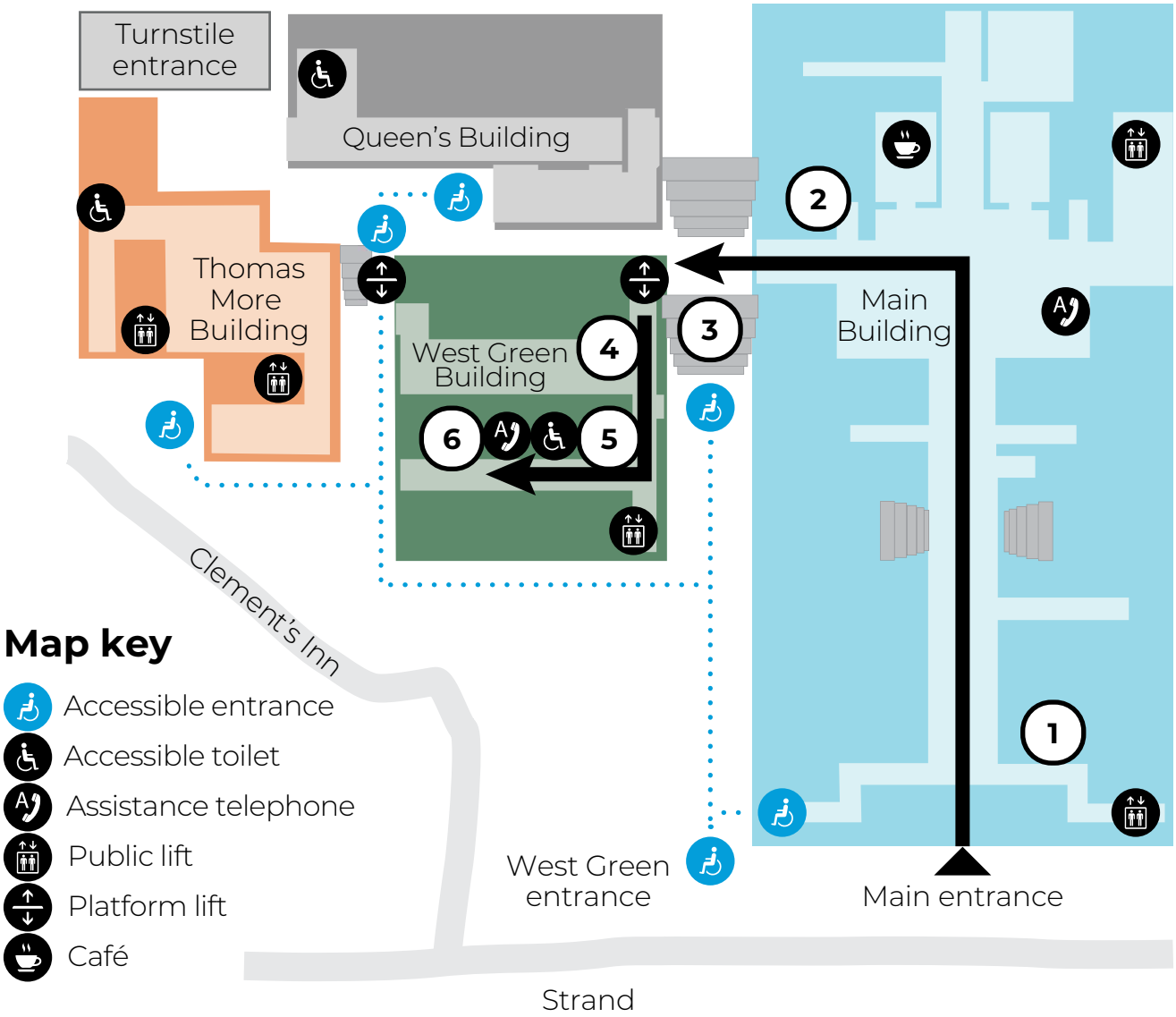


Plan C – Fees Office

Directions to Royal Courts of Justice Fees Office – West Green Building

From 26 July 2021 the Fees office has moved from Room E01 in the East Block to Room **WG08** in the **West Green Building**.

1. From the enquiry desk head straight through the Great Hall and up the steps.
2. Turn **LEFT** and walk through 3 sets of double doors (2 are automated).
3. Once outside walk through to the West Green Building (lift available at this point if needed).
4. Turn **LEFT** and walk through the double doors.
5. Turn **RIGHT** and walk through the automated double doors.
6. Walk through the concourse, the Fees Office is on the **LEFT** opposite **Courts 37** (Room WG08).


Turnstile entrance
Queen's Building
Thomas More Building
West Green Building
Main Building
Clement's Inn
Strand
West Green entrance
Main entrance
1
2
3
4
5
6
Map key
Accessible entrance
Accessible toilet
Assistance telephone
Public lift
Platform lift
Café

Annex 2 – Contacts List

KB Masters, Listing, Asbestos and Childrens Funds, KB Judges listing

Senior Master Cook SeniorMaster.Cook@ejudiciary.net	Ilaria.Capanni@justice.gov.uk
Master Eastman Master.Eastman@ejudiciary.net	Ian.Ang1@justice.gov.uk
Master Davison Master.Davison@ejudiciary.net	Sheila.Anirudhan@justice.gov.uk
Master Lê-Thornett Master.Thornett@ejudiciary.net	Samuel.Aldridge@justice.gov.uk
Master Gidden Master.Gidden@ejudiciary.net	Dasian.Cooke@justice.gov.uk
Master Brown Master.Brown@ejudiciary.net	Sheila.Anirudhan@justice.gov.uk
Master Sullivan Master.Sullivan@ejudiciary.net	Jonathan.Eves@justice.gov.uk
Master Dagnall Master.dagnall@ejudiciary.net	Beverley.Henningham@justice.gov.uk
Master Stevens Master.Stevens@ejudiciary.net	Hasna.Rahman@justice.gov.uk
Master Armstrong Master.Armstrong@ejudiciary.net	Lydia.Horn@justice.gov.uk
Master Byass Master.Byass@ejudiciary.net	Khurram.Mahmud@justice.gov.uk
Master Šabić KC Master.Šabić.KC@ejudiciary.net	Christopher.Wheeler@justice.gov.uk
Deputy Master Yoxall DeputyMaster.Yoxall@ejudiciary.net	Stephen.Keith@justice.gov.uk

Master Fontaine (sitting in retirement) Master.Fontaine@ejudiciary.net	Stephen.Keith@justice.gov.uk
Deputy Master Bard DeputyMaster.Bard@ejudiciary.net	Stephen.Keith@justice.gov.uk
Deputy Master Bagot KC Recorder.Bagot.KC@ejudiciary.net	Stephen.Keith@justice.gov.uk
Deputy Master Toogood KC DeputyMaster.Toogood@ejudiciary.net	Stephen.Keith@justice.gov.uk
Deputy Master Grimshaw DeputyMaster.Grimshaw@ejudiciary.net	Stephen.Keith@justice.gov.uk
Deputy Master Fine DeputyMaster.Fine@ejudiciary.net	Stephen.Keith@justice.gov.uk
Deputy Master Skinner KC DeputyMaster.Skinner@ejudiciary.net	Stephen.Keith@justice.gov.uk
Deputy Master Marzec DeputyMaster.Marzec@ejudiciary.net	Stephen.Keith@justice.gov.uk
Deputy Master Alleyne DeputyMaster.Alleyne@ejudiciary.net	Stephen.Keith@justice.gov.uk

KB Masters Listing	Contact the relevant Master's clerk directly	0203 936 8957 option 4
KB Asbestos	KB.asbestos@justice.gov.uk	0203 936 8957 option 4
KB Childrens Funds	KBchildrensfunds@justice.gov.uk	0203 936 8957 option 8
KB Judges Listing	KBJudgesListingOffice@Justice.gov.uk	0203 936 8957 option 5

Out of hours

RCJ Security — 020-7947-6260/020-7947-6000
The legal representative should initially contact RCJ Security. Security will take a brief description of what they require (their name, case number if applicable, reason for calling/what they are hoping to obtain, contact number). That information will be passed on to the relevant Out of Hours Clerk. Security will keep a record of the time the call came in, the details and the time they handed the information to the Clerk. At no time whatsoever would Security hand over the duty Clerk's details, no number, no name, no email. Security act as the initial go between and the duty Clerk will take over and do the rest.

KB Issue and Enforcement Sections

KB Issues	KBissues@justice.gov.uk Tel 020 3936 8957 option 2.
KB Enforcement Section	KBenforcement@justice.gov.uk Tel 020 3936 8957 option 3.
KB Deed Poll	KBdeedspoll@justice.gov.uk Tel 020 3936 8957 option 6.

Foreign Processing Section

Foreign Processing	foreignprocess.rcj@justice.gov.uk Tel 0203 936 8957 option 7.

Fees Office

General Enquiries: 020 3936 8957 (Option 1) Counter Booking: 020 3936 8957 (Option 1) Payment via Phone: 020 3936 8957 (Option 1)	General Enquiries: feesrcj@justice.gov.uk Help with Fees application submission: efilefees@justice.gov.uk Counter Appointments: feesofficecounterbooking@justice.gov.uk Payment via phone/email: rcjfeespayments@justice.gov.uk

Forums

KB Masters Court User Group	Mohamud Ahmed, PA to The Senior Master Ahmed.Mohamud@justice.gov.uk Tel: 07860 626920
Media & Communications List User Group (MACLUG)	clerktojicmac@justice.gov.uk

RCJ Counter Service

Royal Courts of Justice

King's Bench Division

Information for Court Users

The King's Bench counter service will be open to the public on an appointment-only basis

The following services will be available:

- King's Bench Issues:
  - Assistance for claims (non-represented litigants only—professional users must use CE-File)
  - Swearing Affidavits
- King's Bench Enforcement:
  - Stay of Execution only
- Deeds Poll:
  - Swearing of Declarations
  - Assistance with Deed Polls applications

Attending the Counter

The Counter is open to the public between the hours of 10:00 and 16:30, Monday to Friday (except bank holidays).

Access to counter, appointment-only basis

An appointment to attend the counter can be made by contacting the required department via telephone or via email, (see contact details) between the hours of 10:00 and 16:00, Monday to Friday (except bank holidays). Court users must wait for confirmation of their appointment before attending the counter.

Once an appointment has been booked, court users are advised to enter the Royal Courts of Justice through the main entrance and to make their way directly to Room WG07 in the West Green Building.

General Enquiries

For general enquiries please contact the relevant office by telephone between the hours of 10:00 and 16:00, Monday to Friday (except bank holidays) or email the designated email address.

Telephone

King's Bench Division: 0203 936 8957. Please listen out for the office you require and select the relevant number from the options provided.

Email addresses:

1. King's Bench Issues — KBIssues@justice.gov.uk
2. King's Bench Enforcement — KBEnforcement@justice.gov.uk
3. Deed Polls — KBDeedspoll@justice.gov.uk

Annex 3 – Possession claims against trespassers

PRACTICE NOTE

CHANCERY DIVISION AND KING'S BENCH DIVISION
OF THE HIGH COURT IN LONDON

POSSESSION CLAIMS AGAINST TRESPASSERS

1. This note is intended to provide guidance for practitioners about the circumstances in which the High Court in London may be willing to deal with claims against trespassers. In the vast majority of cases the claim must be brought in the County Court but a small number of exceptional cases justify issue in the High Court.

2. CPR 55.3(2) provides that a possession claim may be issued in the High Court if the claimant files with the claim a certificate stating the reasons for bringing the claim in the High Court and PD55A refers to circumstances which may justify starting the claim in the High Court. The certificate must be signed with a statement of truth.

3. Claims for possession against trespassers may be issued either in the King's Bench or the Chancery Division of the High Court. PD55A para.1.6 has no relevance to claims against trespassers. (The land need not be subject to a charge to enable the claim to be issued in the Chancery Division).

4. PD55A para. 1.3(3) provides that one of the circumstances which may, in an appropriate case, justify starting the claim in the High Court is where "the claim is against trespassers and there is a substantial risk of public disturbance or of serious harm to persons or property which properly require immediate attention".

5. Unless there is real urgency (a need for immediate attention), the High Court will rarely be the suitable venue.

6. Claims involving a substantial risk of public disturbance and/or serious risk of harm to persons, particularly where the disturbance may be widespread, will often be suitable for the High Court. Such cases may also involve a serious risk of harm to property.

7. The class of cases involving a serious risk to property is likely to be wide with only a few such cases warranting issue in the High Court. A substantial risk of harm to property may be linked to a substantial risk to persons.

8. Harm to property need not be long-lasting or permanent. An example of such a case is where there has been substantial tipping of waste material on commercial property. Further tipping may be likely and urgent steps may be required to prevent further harm to the property. Waste material may contain substances which are dangerous and pose a hazard to anyone gaining access to the site.

9. In a case of real urgency, where there is a need to manage the risk of public disturbance or further substantial risk of harm to persons or land, the court will consider fixing a hearing of the claim very soon after issue (occasionally on the same day as issue) and giving permission for short service of the claim. A case may be made for the period under CPR 55.5(2)(b) to be shortened where there is a real risk of further harm to property of persons if the period specified in the rule remains.

10. In the Chancery Division, in cases of urgency, an applicant should in the first instance speak to the Chief Master, if available, or otherwise to any Master. The normal allocation of cases by rota will not apply. The application should be brought to the attention of a Master before it is issued.

11. In the King's Bench Division, the issued application should in the first instance be put before the Master dealing with the Urgent Applications List.

12. In both Divisions, the Master will consider the certificate and the witness statement and decide whether the claim should be (or have been) issued in the High Court and whether short service is appropriate. An order for short service will always be subject to a provision that the Defendants may apply to set it aside. If the Master agrees to the claim being listed urgently a date will be fixed there and then.

Chief Master and Senior Master
September 2016

Annex 4 – Masters Appointment Form

KB MASTERS APPOINTMENT FORM

If this form is not fully completed it will not be shown to the Master and no hearing will be listed. The Master will expect any relevant papers to be provided for the hearing in an agreed hearing bundle. The fact of filing the application on CE file is not sufficient,

CLAIM NUMBER:	**ASSIGNED MASTER (if any):**
PARTIES:	

Applicant:	**Respondent:**
NATURE OF APPLICATION: ☐ the Applicant certifies that this is a legitimate without notice application for which no notice to the Respondent is required.	
Applicant's Solicitors: **Email:** **Phone:** **Contact name:**	**Respondent's Solicitors:** **Email:** **Phone:** **Contact name:**
Applicant's Time Estimate (i) Reading time: (ii) Hearing time: (iii) Judgment time (including costs): **TOTAL TIME:**	**Respondent's Time Estimate** (i) Reading time: (ii) Hearing time: (iii) Judgment time (including costs): **TOTAL TIME:**
Volume of Applicant's documents anticipated at hearing:	Volume of Respondent's documents anticipated at hearing:

SHARED DATES of AVAILABILITY (printouts of diaries, etc, are not accepted): (If the application is a valid without notice application, Applicants' dates only) **If SHARED dates or Respondent's time estimate are unavailable please provide details of attempts to obtain agreed dates/time estimates.**	
Date of submission of this form:	

If the time estimate for the hearing is inadequate and the hearing is adjourned as a consequence, the court may make a costs order in respect of any costs thrown away by the adjournment.

Annex 5 – Masters Listing Directions

Hearings before Master in the King's Bench Division

For Listing Clerks' contact details see below under 'Contacting the Court'

Mode of Hearing

Hearings of up to 30 minutes will be listed remotely and all other hearings will be listed in person unless otherwise stated in the hearing notice. If a party wishes to ask that the mode of a hearing is changed to remote/in person, they must as soon as practicable e-mail the Master's clerk and explain the reasons. All hearings are in public unless otherwise ordered and will be recorded.

If a hearing is listed remotely via MS Teams or Cloud Video Platform (CVP) the Claimant or Applicant (if not the Claimant) must obtain the e-mail addresses of all participants to the hearing and send them in a single e-mail them to the Master's clerk at least two clear working days in advance.

Hearing Bundles

Agreed hearing bundles are required for all hearings. The guidance in paragraph 9.101 to 9.107 of the King's Bench Guide should be followed in the preparation of bundles. A copy of this document need not be inserted into the hearing bundle.

Hardcopy bundles are required for all in person hearings and should be delivered to the ushers in the Bear Garden 3 days in advance of the hearing.

Electronic bundles are required for all remote hearings. They must be prepared in accordance with the guidance in The King's Bench Guide paragraph 14.11 to 14.16. They should be e-mailed both to the Master's listing clerk and (by copying them into the email) to the Master at least 3 working days before the hearing. Hearing bundles should not be lodged by CE file nor sent by electronic links to shared files.

If parties seek to rely upon material that has arisen following submission of the hearing bundle, they must e-mail a single supplemental bundle (which contains any and all updates) as an addendum rather than a replacement, as soon as possible before the hearing.

Skeleton arguments / Case Summaries / written submissions

These must be e-mailed to the Master directly and not CE Filed. The Master's clerk should be copied in. Skeleton arguments should be supplied at least one clear day before the hearing or there is a risk that they will not be read.

Mode of Address in Court

Masters should be addressed in court as 'judge'.

Vacation of the hearing

If the hearing is no longer required, then both the Master and their clerk must be directly notified by e-mail and not via CE File. If appropriate, the e-mail should attach (in Word) any agreed draft Order for approval.

Information for Litigants in Person

An e-bundle is an organised collection of electronic copies of documents for use at a court hearing that is to take place remotely (by video link or by telephone).

Ordinarily the applicant is responsible for preparing the e-bundle. If a litigant in person is the applicant the e-bundle must still, if at all possible, comply with the above requirements. If it is not possible for a litigant in person to comply with the requirements on e-bundles, a brief explanation of the reasons for this should be provided to the court as far in advance of the hearing as possible. Where possible the litigant in person should identify a practical way of overcoming the problem so that the court can consider this.

In a case in which a litigant in person is applicant and another party has legal representation, the legal representatives for other party should consider offering to prepare the e-bundle. The litigant in person will still be entitled to indicate which documents they consider necessary for inclusion in the e-bundle.

Litigants in person who are not eligible for legal aid or cannot access legal aid (publicly-funded legal assistance) and who do not have the financial means to engage legal assistance may wish to consider approaching an advice centre, law centre or pro bono organisation to see whether legal assistance can be made available without charge. Please see section 2 of the King's Bench Guide for more information, which can be found on the Courts and Tribunals Judiciary website.

Obtaining Transcripts of Hearings

Requests for transcripts of a Master's judgment should be sent to KB&ACOTranscriptsRequests@administrativecourtoffice.justice.gov.uk.

Contacting the Court

Enquiries about, or agreement, in respect of a hearing date less than 7 working days ahead must be e-mailed to the Master directly, accompanied by a draft order in Word in the case of agreement. Parties should not use CE File as a means of communication about imminent hearings, as it runs the risk of not receiving attention in sufficient time.

All emails to the court concerning a hearing should include in the subject heading:

- The claim number;
- The title of the case;
- The date of the hearing (if known);
- The name of the judge before whom it is listed (unless the email is sent direct to the Master.

Master	**Clerk, email and contact number**
Senior Master Cook	Ilaria Capanni Ilaria.Capanni@justice.gov.uk
Master Eastman	Ian Ang Ian.Ang1@justice.gov.uk
Master Brown	Sheila Anirudhan Sheila.Anirudhan@justice.gov.uk
Master Davison	Sheila Anirudhan Sheila.Anirudhan@justice.gov.uk
Master Lê-Thornett	Samuel Aldridge Samuel.Aldridge@justice.gov.uk
Master Gidden	Dasian Cooke Dasian.Cooke@justice.gov.uk
Master Sullivan	Jonathan Eves Jonathan.Eves@justice.gov.uk
Master Dagnall	Beverley Henningham Beverley.Henningham@Justice.gov.uk
Master Stevens	Hasna Rahman Hasna.Rahman@justice.gov.uk
Master Armstrong	Lydia Horn Lydia.Horn@justice.gov.uk
Master Byass	Khurram Mahmud Khurram.Mahmud@justice.gov.uk
Master Šabić KC	Christopher Wheeler Christopher.Wheeler@justice.gov.uk
Master Brown, Masters sitting in retirement & Deputy Masters	Stephen Keith Stephen.Keith@Justice.gov.uk

Information for people with disabilities visiting the Royal Courts of Justice (RCJ)

At HM Courts & Tribunals Service (HMCTS) we want to provide:

- an experience that works for everyone
- services that people with disabilities can use independently where possible
- services that can be used in a fair way

We know that people with disabilities sometimes need our help and support to use our services. This can mean that we need to provide something different so you can access and use our services in the same way as a person without a disability. We often call this a reasonable adjustment.

What reasonable adjustments can we provide?

We're able to do lots of things that mean that people with disabilities can use our services independently wherever possible and in a way that is fair, for example:

- providing our forms in large print
- providing our guidance in audio or easy read
- making sure hearing enhancement systems are available
- providing a separate waiting area
- making sure ramps and lifts are available.

This list doesn't include everything we can do to help, and we'll always talk to you first about what you need.

If you need help or support in the hearing room, we will also discuss this with the judge hearing your case. Judges are committed to making sure everyone can give their best evidence and everyone has a fair hearing.

How to arrange a reasonable adjustment?

Disabilities affect people differently so we won't always know what will help. If you have a disability that means you can't access our information and services please get in touch with us. You can request help and support as a reasonable adjustment by phone, in person or in writing by:

- emailing the Masters' clerk or RCJ.DCO@justice.gov.uk,
- phoning our Disability Contact Officer: James Tipp. King's Bench Judges listing Office. **020 936 8957** option 5

To help us provide the best help and support, you should try to explain how your disability affects you and give as much information as you can. This will help our staff or the judge to consider what you'll need to do during your case and any help we can provide. Our staff will always talk with you and agree any reasonable adjustments you need.

Please note:

Many areas of the RCJ are Grade 1 listed, and this means there may be restrictions to the changes we can make. Some of the areas you will need to access could be a 5 to 10-minute walk from the nearest entrance.

Getting around our building and support before the hearing

- If you need a parking space (blue badge holders only) please contact the Listing Office by letter, e-mail or phone at least 24 hours before your hearing
- Email the Masters' clerk or RCJ.DCO@justice.gov.uk
- Tel: 020 3936 8957 option 4 Please include:
- your case number
- car registration, make, model and colour
- your Blue Badge number and issuing authority.

Wheelchair access into the RCJ is available at:

- West Green (9am - 4.30pm), and
- Bell Yard North (9.30am - 4.30pm).

These entrances and the main entrance have intercoms linked to RCJ Security.

Step-free access (via ramps, stair lifts and lifts) is available to most areas of the building. A map detailing the best routes for step-free access is available at each entrance and/or upon request.

Accessible toilets are located throughout the RCJ. Maps are available but please let us know if you need details in advance.

If you have **limited mobility**, we have a limited number of manual wheelchairs available for use. You may bring a carer or helper to support you using the wheelchair.

Support Through Court are a charity supporting people who face court alone so that they can represent themselves to the best of their abilities. You can find out more information on www.supportthroughcourt.org or phoning 020 520 5959.

Assistance dogs are welcome in all HMCTS buildings.

The hearing.

For the hearing itself, we can provide:

- breaks in court proceedings. We will ask the judge to consider your request before your hearing begins.
- help with reading and writing court forms. Some court documents can be provided in large print or braille https://www.gov.uk/government/collections/court-and-tribunal-forms.
- hearing enhancement systems in some of our courts (and available at reception and at our public counters). We also have portable hearing loops available on request.

Annex 6 – Notice of Proposed Allocation to the Multi-Track

-- Important Notice --

If you do not comply with this notice the court will make such order as appears to be appropriate. This could include striking out the claim or entering judgment.

TAKE NOTICE THAT:

ALLOCATION

1. This is now a defended claim.

2. The claim appears suitable for allocation to the multi-track and is so allocated. If you believe that this track is not the appropriate track for the claim, you must complete box D2 on the Directions Questionnaire (Form N181) and explain why.

DIRECTIONS

3. Within 28 days of service of this Notice upon you, you are required to take the following steps:

   (i) seek to agree directions with all other parties;

   (ii) complete the Directions Questionnaire (Form N181), file it with the court office and serve copies on all other parties;

   (iii) file the proposed directions with the Directions Questionnaire, (**see further below as to the form in which directions are to be filed**).

4. CPR rule 29.1(2) directs the attention of the parties to relevant model directions which they are expected to take as a starting point for agreed case management directions. The model directions should be adapted to meet the circumstances of the claim.

5. If the parties have not been able to agree directions, they should set out their respective versions **in a single document** (using tracked changes, if desired) so that the court can easily discern where the differences lie.

6. The parties should, in all cases, additionally **file a Case Summary** not exceeding 250 words, which should:

   (a) give a high level summary of the claim and the main issues, and

   (b) inform the court whether either party proposes to apply for a stay, transfer, strike out / summary judgment, interim payment or trial of a preliminary issue.

7. The purpose of the directions at 5 & 6 above is to promote agreement and enable the Master to easily identify issues in dispute. In an appropriate case, areas where there remains disagreement may be resolved by the Master on paper. Parties should not assume that a CMC / CCMC will be listed in all cases.

COSTS MANAGEMENT

8. The parties should consider whether costs management under Part II of CPR Part 3 will be appropriate to the claim or whether the court should dispense with costs management pursuant to CPR rule 3.12(1)(e). The court will wish to be satisfied that the litigation can be conducted justly and at proportionate cost in accordance with the overriding objective. If the parties seek approval of an agreement to dispense with costs budgeting, then they should be prepared to justify the making of an order under rule 3.12(1)(e).

9. If the parties have agreed to dispense with costs management, then pending court approval of that agreement, the requirement to file budgets and Precedent Rs in accordance with CPR 3.13 (1) & (2) is suspended.

10. Litigants in person are not required to file or serve costs budgets.

Form N181 can be found online here https://www.gov.uk/government/publications/form-n181-directions-questionnaire-fast-track-and-multi-track.

Annex 7 – Notice of CCMC or CMC

IN THE HIGH COURT OF JUSTICE **Claim No.** Case Number

KING'S BENCH DIVISION

Before Current Judge

B E T W E E N

Claimant	**Claimant**
- and -	
Defendant	**Defendant**

ORDER

UPON considering the documents on the court file

IT IS ORDERED that

1. The claim is allocated to the Multi-Track.

2. There is to be a **Costs and Case Management Conference** on DATE at TIME with a time estimate of DURATION. The hearing will be heard in person in room E1XX / remotely via MS Teams before CURRENT JUDGE.

3. CPR 35.4(2) will apply to any application for permission to rely on expert evidence. Where costs are to be budgeted. If a party fails to engage in reasonable discussions costs sanctions may be applied.

4. Parties must file and exchange costs budgets not later than **28 days before** the Costs and Case Management Hearing, and budget discussion reports not less than **14 days before** the hearing. Parties must attempt to agree budgets.

5. Not less than 3 working days before the hearing:

   (a) Solicitors for each party must provide the Master with: (i) a draft order in Word ; and (ii) a concise case summary in Word. If the said documents are agreed, the Claimant's solicitors must provide the agreed document.

   (b) The Claimant's solicitors must provide the Master with a hard copy indexed hearing bundle.

6. The bundle must include:

   (a) a case summary on the issues to be canvassed; (case summaries if not agreed);

   (b) a further copy of the draft orders proposed by each party;

   (c) the statements of case;

   (d) orders;

   (e) any live application notice;

   (f) in personal injury cases, any medical reports on condition and prognosis which are necessary for the hearing;

   (g) directions questionnaires;

   (h) where permission is being sought to rely on expert evidence, statements in respect of the experts in compliance with CPR 35.4(2); and

   (i) any other document relevant to case management issues and to any application.

7. The hearing bundle must also include:

   (a) copy Precedent H forms; (if there is a dispute as to whether a “split trial” is appropriate, the parties must provide a Precedent H form in respect of each form of trial proposed);

   (b) budget discussion reports; and

   (c) a short narrative summary by each party of the work done in the pre-action phase and in the incurred costs part of each phase.

8. When skeleton arguments are necessary, these must be provided to the Master by solicitor or counsel in Word not less than 3 working days before the hearing.

9. If directions and costs budgets are agreed, the Claimant’s solicitors must inform the Master by email as soon as possible attaching a signed version of the agreed order in PDF format, a draft of the agreed order in Word (to allow the order to be finalised for sealing) and the case summary if not already provided. The parties may request that the hearing be vacated but must not assume that the hearing will be vacated unless so directed or ordered by the Master.

10. The parties may apply to set aside or vary this order within 7 days of service of the order under CPR 23.10.

Dated this DATE of MONTH YEAR

IN THE HIGH COURT OF JUSTICE **Claim No.** Case Number

KING'S BENCH DIVISION

Before Current Judge

B E T W E E N

Claimant	**Claimant**
- and -	
Defendant	**Defendant**

ORDER

UPON considering the documents on the court file

IT IS ORDERED that

1. The claim is allocated to the Multi-Track.

2. There is to be a **Case Management Conference** on DATE at TIME with a time estimate of DURATION. The hearing will be heard in person in room E1XX / remotely via MS Teams before CURRENT JUDGE. Further directions in respect of cost budgeting will be given at the hearing save where the provisions of CPR 3.12(1) (a – d) apply where it is assumed costs management will not apply.

3. CPR 35.4(2) will apply to any application for permission to rely on expert evidence.

4. Not less than 3 working days before the hearing:

   (a) Solicitors for each party must provide the Master with: (i) a draft order in Word ; and (ii) a concise case summary in Word. If the said documents are agreed, the Claimant's solicitors must provide the agreed document.

   (b) The Claimant's solicitors must provide the Master with a hard copy indexed hearing bundle.

5. The bundle must include:

   (a) a case summary on the issues to be canvassed at the CMC; (case summaries if not agreed);

   (b) a further copy of the draft orders proposed by each party;

   (c) the statements of case;

   (d) orders;

   (e) any live application notice;

   (f) in personal injury cases, any medical reports on condition and prognosis which are necessary for the hearing;

   (g) directions questionnaires;

   (h) where permission is being sought to rely on expert evidence, statements in respect of the experts in compliance with CPR 35.4(2); and

   (i) any other document relevant to case management issues and to any application.

6. When skeleton arguments are necessary, these must be provided to the Master by solicitor or counsel in Word not less than 3 working days before the hearing.

7. If directions are agreed, the Claimant's solicitors must inform the Master by email as soon as possible attaching a signed version of the agreed order in PDF format, a draft of the agreed order in Word (to allow the order to be finalised for sealing) and the case summary if not already provided. The parties may request that the hearing be vacated but must not assume that the hearing will be vacated unless so directed or ordered by the Master.

8. The parties may apply to set aside or vary this order within 7 days of service of the order under CPR 23.10.

Dated this DATE of MONTH YEAR

IN THE HIGH COURT OF JUSTICE **Claim No.** Case Number

KING'S BENCH DIVISION

Before Current Judge

B E T W E E N

Claimant	**Claimant**
- and -	
Defendant	**Defendant**

ORDER

UPON considering the documents on the court file

IT IS ORDERED that

1. There is to be a **Case Management Conference** on DATE at TIME with a time estimate of DURATION. The hearing will be heard in person in room E1XX / remotely via MS Teams before CURRENT JUDGE.

2. Parties must file and exchange costs budgets not later than **28 days before** the Costs Management Hearing, and budget discussion reports not less than **14 days before** the hearing. Parties must attempt to agree budgets. If a party fails to engage in reasonable discussions costs sanctions may be applied.

3. Not less than 3 working days before the hearing:

   (a) Solicitors for each party must provide the Master with: (i) a draft order in Word ; and (ii) a concise case summary in Word. If the said documents are agreed, the Claimant's solicitors must provide the agreed document.

   (b) The Claimant's solicitors must provide the Master with a hard copy indexed hearing bundle.

4. The bundle must include:

   (a) a case summary on the issues to be canvassed at the costs management hearing; (case summaries if not agreed);

   (b) a further copy of the draft orders proposed by each party;

   (c) the statements of case;

   (d) orders;

   (e) in personal injury cases, only medical reports if they are necessary for the hearing;

   (f) any other document relevant to costs management issues.

5. The hearing bundle must also include:

   (a) a copy Precedent H forms; (if there is a dispute as to whether a “split trial” is appropriate, the parties must provide a Precedent H form in respect of each form of trial proposed);

   (b) budget discussion reports; and

   (c) a short narrative summary by each party of the work done in the pre-action phase and in the incurred costs part of each phase.

6. When skeleton arguments are necessary, these must be provided to the Master by solicitor or counsel in Word not less than 3 working days before the hearing.

7. If costs budgets are agreed, the Claimant’s solicitors must inform the Master by email as soon as possible attaching a signed version of the agreed order in PDF format, a draft of the agreed order in Word (to allow the order to be finalised for sealing) and the case summary if not already provided. The parties may request that the hearing be vacated but must not assume that the hearing will be vacated unless so directed or ordered by the Master.

8. The parties may apply to set aside or vary this order within 7 days of service of the order under CPR 23.10.

Dated this DATE of MONTH YEAR

Annex 8 – Senior Master's note on Cost Budgeting

KING'S BENCH MASTERS COST MANAGEMENT HEARINGS GUIDANCE NOTE

This Note has been prepared to assist parties in advance of cost management hearings in the King's Bench Division involving high value personal injury and clinical negligence claims. Its purpose is to facilitate a neutral approach to issues which commonly arise in the budgeting process with a view to promoting timely settlement of those issues.

General approach

1. A costs budget is not reached through the same process as detailed assessment. However, in considering whether a budget is proportionate the court required to have regard to the provisions of CPR 44.3 (5). This provides:

Costs incurred are proportionate if they bear a reasonable relationship to –

(a) the sums in issue in the proceedings;

(b) the value of any non-monetary relief in issue in the proceedings;

(c) the complexity of the litigation;

(d) any additional work generated by the conduct of the paying party,

(e) any wider factors involved in the proceedings, such as reputation or public importance; and

(f) any additional work undertaken or expense incurred due to the vulnerability of a party or any witness.

2. In considering whether costs are reasonable the following factors which are set out at CPR 44.4 (2) are relevant to the amount of a costs budget:

(a) the amount or value of any money or property involved;

(b) the particular complexity of the matter or the difficulty or novelty of the questions raised;

(c) the skill, effort, specialised knowledge and responsibility involved;

(d) the place where and the circumstances in which work or any part of it is to be done.

3. General issues that commonly arise

3.1 **Hourly rates of solicitors**. When undertaking costs management, it is not the role of court to fix or approve rates (see CPR 3.15(8)). There is, accordingly, no requirement for the court to make any determination of the reasonableness of hourly rates. Nevertheless, in considering whether a proposed budget is reasonable, regard may be had to the reasonableness of the hourly rates claimed (and the availability of other solicitors to do the work competently at lesser rates). Further, in a detailed assessment it is often recognised that the GHR are a starting point in determining the reasonableness of the rates claimed; thus an allowance of a budget which is based on hourly rates that involve some uplift on the GHR may be appropriate, in particular for more senior fee earners dealing with complex high value claims.

3.2 **Reservation of hourly rates to detailed assessment**. It is clear and well established that it is not appropriate to costs budget on the basis that hourly rates will be reserved to detailed assessment, see *Yirenkyi v Ministry of Defence* [2018] EWHC 3102 (QB)

3.3 **Delegation**. When considering the hourly rates claimed, consideration may be given to the involvement of a senior fee earners in work which could reasonably be delegated to a more junior fee earner (at lower hourly rates). Typically, junior grade D fee earners are, for instance, involved in obtaining medical records from medical providers (and the substantial involvement of higher grade fee earners in this task may be unreasonable).

3.4 **Counsels' fees**. It is not the role of the court to determine how the claimant should be represented, in particular whether by leading or junior counsel or by two counsel. Plainly some cases justify the involvement of two counsel. Experienced junior counsel are however commonly instructed in claims of substantial value. If two counsel are to be instructed, then this may be reflected in the allowance to be made for the involvement of senior fee earners (of instructing solicitors). Further, where two counsel are instructed, the work anticipated may be assumed to be shared, such that the substantial involvement of junior counsel may reasonably be expected to reduce the extent of leading counsel's involvement.

Phases

4. Issue and Statements of Case

In many cases this phase will have been largely completed by the time of the first CCMC. It is however commonly the case that the schedule of loss requires extensive further work at this stage. It is not the job of the court to determine who should draft a schedule but when considering the allowance to be made in the budget for the work to be done regard may be had to the anticipated costs of counsel

(normally those of junior counsel). Indeed, in complex schedules where calculations may be required of pension loss or loss of earnings (which require consideration of contingencies such as, for instance, promotion) the relative familiarity of counsel in dealing with such issues may mean that the work is reasonably done by counsel.

5. Disclosure

5.1 The consideration of the nature of and extent of the documents that may be caught by disclosure, and the extent to which such documents require careful consideration is highly case-sensitive.

5.2 It is recognised that on-going case manager assessments may require careful consideration and the issue as to whether this work and the extent to which this work can delegated is also case sensitive. A distinction is however to be made between obtaining updated records and assessment (generally Grade D work) and reviewing them, which often justifies a higher grade of fee earner.

5.3 In most cases solicitors can be expected to keep a running electronic bundle of documents which can be bookmarked and added to as and when new documentation is made available. This is so even in document heavy cases (perhaps particularly so in such cases). This bundle can then be edited (and the index annotated) so that it forms the basis of any trial bundle.

5.4 The assembling and pagination of bundles are generally to be regarded as administrative or secretarial tasks the costs of which are taken into account within the hourly rate of the fee earners involved; it is not generally separately chargeable (cf work done on preparing an index and deciding what documents should be included in a bundle) (see 3E PD.4).

6. Witness statements

In general, there is an expectation that the first draft of a witness statement can be undertaken by lower grade fee earners including Grade C solicitors and legal executives (and those with similar experience). This is particularly so since witness statements should, in general, be drafted in the witness' own words. Whether and the extent to which a higher level senior fee earners may reasonably be involved in taking the witness statement and/or checking the contents of the statement is case sensitive and may depend on the complexity and value of the case.

7. Experts

7.1 Assumptions

The court, in general, assumes that in all cases where parties have instructed different experts there will be, and will remain up to an including trial, a dispute between the experts. If and to the extent that there is no substantial or material dispute between the experts following service of reports or joint statements this

may, in general, constitute a good reason for departing from the budget at detailed assessment (or by agreement); this is not however a matter for costs management.

7.2 Fees of experts

The court may have regard to its own experience with the regard to the rates of experts. It is the function of the court to determine a reasonable and proportionate budget and it does not follow that simply because an expert has asserted that their fees will be a certain amount the court should set a budget which reflects the amount requested. It is however recognised that in general the fees charged by experts who are instructed by the NHSLA or insurers may be less than are paid by claimants (by reason of the greater negotiating power of such organisations).

7.3 Consultations/conference with experts

In some, if not many, cases these can be conducted by videolink without the need for experts to incur travel expenses or to spend time travelling. Whether allowance should be made for attendance of an expert in person is however case sensitive. It is recognised that where, for instance, liability is in issue in a clinical negligence claim, close scrutiny may be required of scans/x-rays justifying in person attendance and that there may be other instances where in person conferences or consultations with experts may be reasonably be anticipated.

8. Costs of PTR

For the majority of cases in the KBD a PTR is not considered necessary will not be ordered. In such cases costs of 2/3 hours are generally allowed to deal with issues relating to listing and associated matters together with a listing fee where appropriate.

9. Trial preparation

9.1 Preparation of trial bundles

See comments above in section 6.

9.2 Pre-trial conference/consultation

Whether a pre-trial conference is in principle reasonable is case sensitive and may depend on the extent to which allowance is made elsewhere for conferences and consultations.

9.3 Brief fees

In determining brief fees at detailed assessment the court is generally required to envisage hypothetical counsel capable of conducting the particular case effectively but unable or unwilling to insist on the particular high fee sometimes demanded by

counsel of pre-eminent reputation, *Simpsons Motor Sales (London) Ltd v Hendon Corporation (No. 2)* [1965] 1 WLR 112 (per Pennycuick J).

In general, there are two elements to the determination of a brief fee: the work counsel will put in on the brief. This is generally regarded as the main element and is generally understood to include time spent preparing a skeleton argument, the opening speech, any examination in chief, cross examination (but also closing submissions, the first day of trial, and the checking of the judgment are also generally included); and, secondly, the fact that counsel has been booked for the trial and so will have a gap in their diary if the case settles (which may be difficult to fill at short notice). If counsel is expected to be heavily involved in the earlier phases of a case then this will inevitably have an effect upon the level of a reasonable brief fee because it will impact upon the amount of work required in preparing for trial.

See generally, *Hankin v Barrington & Ors* [2021] EWHC B1 (Costs) in relation to the rates allowed for leading counsel, and other related matters concerning brief fees.

10. Trial

10.1 Experts attendance at trial.

At a CCMC the Court may not be in a position to say whether and for how long it would be reasonable for the experts to attend trial. In some cases permission to allow experts to give oral evidence will be determined at a later date; in other cases it may be appropriate to order at the CCMC that the parties have permission to call their experts to give oral evidence to the extent that there remains a substantial and material dispute between the experts (following joint statements). In either case the budgets can be expected to provide for attendance at trial on the assumption that attendance is reasonable.

Some experts might be expected to attend only for one day of trial or indeed only for part of the day (typically neuroradiologists when providing an interpretation of an MRI for instance). In cases where it is unclear whether attendance will be reasonably required for more than one day the parties can be expected to agree a budget attendance on the basis of an assumption (typically of one day or two days' attendance) without there being any implicit finding or agreement that it would be reasonable for the expert to attend for this period. The allowance for experts can be adjusted in due course should it be the case that two days' attendance of a particular expert has been assumed was not reasonable and/or proportionate and, similarly, if the expert were reasonably required to attend for longer than budgeted. The assumption made (whatever it is) however can and generally should be recorded in the order.

10.2 Solicitors attendance at trial.

10.2.1 **Level of fee earner**. Issues might arise as to the seniority of the fee earner attending trial if a solicitor's attendance is reasonably required. But even in high value cases it may not be reasonable for a senior solicitor to attend throughout a trial.

10.2.2 **Estimating times for solicitor's attendance at trial and associated work**. Ordinarily the court sits for five hours, from 10:30 until 1:00 pm and then from 2:00 pm to 4:30pm. There may, in addition, be a reasonable allowance for the solicitors' time at meetings before and after court and for time travelling to and from court; there may also be additional work in ensuring the notes made in the course of hearing are made available to counsel in the course of the trial. It is however generally reasonable to take as a starting point 7/8 hours work for a solicitor's attendance (when the solicitor is not acting as advocate).

11. ADR/Settlement

11.1 Joint Settlement Meetings (JSM) It is not generally an objection to an allowance being made for a JSM that one or other party thinks such a meeting is unlikely to be required (unless it is clear that one will not be required or appropriate). It can be budgeted for on the **assumption** that one will take place. If a JSM is not required, then that is likely to be a good reason to depart downwards from a budget allowance. Again, the order can be expected to state whether attendance at a JSM (or mediation, exceptionally) is **assumed**.

11.2 This is an important phase which in high value claims in particular may require a significant amount of work. But in considering the budget to be made it is necessary to take into account the extent to which counsel and solicitors will be familiar with the issues arising from their earlier involvement in the case.

12. Costs of Costs Management hearings

The parties are reminded that the provisions set out in CPR 44.2 apply, see *Reid v Wye Valley NHS Trust* [2023] EWHC 2843 (KB). It can no longer be safely assumed that costs management is a costs neutral process. Parties who (1) pursue unreasonable or unrealistic claim for costs, or (2) fail to take reasonable steps to agree budgets or make reasonable offers in respect of the costs, may be the subject of adverse costs awards (whether or not Calderbank or other admissible offers have been made or beaten), see *GS Woodland Court GP 1 Ltd & Ors v RGCM Ltd & Ors* [2025] EWHC 285 (TCC) at [21-22].

13. Form of Order

The recommended form of order is as follows:

There shall be a costs management order

The Court recorded that:

(1) The incurred costs set out in the parties costs budgets are agreed/not agreed. [set out the extent of any agreement]

(2) The budgeted costs set out in the parties costs budgets are approved/agreed in the following sums [following appropriate revisions]:

(a) Claimant agreed [as to the following phases: ....] otherwise approved/ approved – [£]

(b) Defendant agreed [as to the following phases: ....] otherwise approved / approved – [£]

(3) Revised (as appropriate) Precedent H front sheets to be e-filed with this order and served within 7 days.

(4) The assumptions on which the costs budgets are agreed or approved by the court are:

(i) The following experts [ ] will attend trial for [ ] days; etc

Senior Master Cook
17 February 2025

Annex 9 – Blank Form of Order

IN THE HIGH COURT OF JUSTICE **Claim No. KB-20XX-000**

KING'S BENCH DIVISION

MASTER

BETWEEN

Claimant

- and -

Defendant

ORDER

UPON considering the

AND UPON the court noting that/hearing

IT IS ORDERED that:

1. Text of order
2. Text of order

Dated this day of 202x

Annex 10 – List of Countries that are covered by Various Statutes

2005 Hague Convention

List of countries on the Hague Convention website (HCCH | Choice of Court Section) **that have signed up to the 2005 Hague convention on choice of court agreements. Some have not ratified it into law, and some have ratified parts of it but made declarations:**

Contracting Authority	2005 Convention on Choice of Court	Entered into Force
Austria	Bound by this convention, with Declaration	1-10-2015
Belgium	Bound by this convention, with Declaration	1-10-2015
Bulgaria	Bound by this convention, with Declaration	1-10-2015
Croatia	Bound by this convention, with Declaration	1-10-2015
Cyprus	Bound by this convention, with Declaration	1-10-2015
Czech Republic	Bound by this convention, with Declaration	1-10-2015
Denmark	Accessioned, with Declaration	1-09-2018
Estonia	Bound by this convention, with Declaration	1-10-2015
European Union	Bound by this convention, with Declaration	1-10-2015
Finland	Bound by this convention, with Declaration	1-10-2015
France	Bound by this convention, with Declaration	1-10-2015
Germany	Bound by this convention, with Declaration	1-10-2015
Greece	Bound by this convention, with Declaration	1-10-2015

Contracting Authority	2005 Convention on Choice of Court	Entered into Force
Hungary	Bound by this convention, with Declaration	1-10-2015
Ireland	Bound by this convention, with Declaration	1-10-2015
Italy	Bound by this convention, with Declaration	1-10-2015
Latvia	Bound by this convention, with Declaration	1-10-2015
Lithuania	Bound by this convention, with Declaration	1-10-2015
Luxembourg	Bound by this convention, with Declaration	1-10-2015
Malta	Bound by this convention, with Declaration	1-10-2015
Mexico	Accessioned	1-10-2015
Montenegro	Ratified	1-08-2018
Netherlands	Bound by this convention, with Declaration	1-10-2015
Poland	Bound by this convention, with Declaration	1-10-2015
Portugal	Bound by this convention, with Declaration	1-10-2015
Romania	Bound by this convention, with Declaration	1-10-2015
Singapore	Ratified	1-10-2016
Slovakia	Bound by this convention, with Declaration	1-10-2015
Slovenia	Bound by this convention, with Declaration	1-10-2015
Spain	Bound by this convention, with Declaration	1-10-2015
Sweden	Bound by this convention, with Declaration	1-10-2015
United Kingdom of Great Britain and Northern Ireland	Accessioned, with Declaration, Reservations and Depository Communications	1-10-2015

Administration of Justice Act 1920

Countries covered for Reciprocal enforcement under the Administration of Justice Act 1920

- Anguilla
- Antigua and Barbuda
- Bahamas
- Barbados
- Belize
- Bermuda
- Botswana
- British Indian Ocean Territory
- British Virgin Island
- Cayman Islands
- Christmas Island
- Cocos (Keeling) Island
- Dominica
- Falkland Islands
- Fiji
- The Gambia
- Ghana
- Grenada
- Guyana
- Jamaica
- Kenya
- Kiribati
- Lesotho
- Malawi
- Malaysia
- Mauritius

- Montserrat
- New Zealand
- Nigeria
- Territory of Norfolk Island
- Papua New Guinea
- St Christopher and Nevis
- St Helena
- St Lucia
- St Vincent and the Grenadines
- Seychelles
- Sierra Leone
- Singapore
- Solomon Islands
- Sovereign Base of Akrotiri and Dhekelia in Cyprus
- Sri Lanka
- Swaziland
- Tanzania
- Tasmania
- Trinidad and Tobago
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Zambia
- Zimbabwe

The 1920 Act no longer applies to Hong Kong and there is no provision for registration of Hong Kong judgments in England or English judgments in Hong Kong. Enforcement of such judgments is by action on the judgment.

Gibraltar is now subject to SI 1997/2602 and covered by the Civil Jurisdiction and Judgments Act 1982.

Foreign Judgments (Reciprocal Enforcement) Act 1933

Countries covered for reciprocal enforcement under the Foreign Judgments (Reciprocal Enforcement) Act 1933

Country	**Extent**
Australia	
Canada	The federal Court of Canada and any court in the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, New Edward Island, Saskatchewan or the Yukon Territory, Northwest Territories, Newfoundland, Alberta
Republic of India	The territories named in Schedule to the Order in council – SI 1958/425
Guernsey	
Isle of Man	Will only recognise a High Court Judgment including a County Court Judgment transferred to the High Court for enforcement purposes.
Jersey	
Pakistan	
Surinam	
Tonga	

Annex 11 – Article 5 Checklist

FPS Checklist for Requests for Service under Article 5 of the Hague Service Convention

(Please tick or complete as applicable. Please send the completed checklist to the FPS, along with the required documents.)

Contact Information Required by the FPS in Case of Queries:

Originating Court Reference Number	
Case Name	
Contact Name	
Email, telephone number/s (ideally, direct dial and/or office mobile nos.)	

Covering Letter:

Have you provided a covering letter to the FPS, naming the parties involved, confirming the documents which are being submitted for service, indicating whether further documents will follow (e.g. PoC) and giving contact details to be used by the FPS in case of a query?	

Applicability of the Hague Convention:

What is the country where you want service to take place?	
Is this country a party to the Hague Service Convention? See the HCCH website here	

The Hague Request Form:

Has a Model Hague Request Form been completed in accordance with the guidance on the HCCH website? See here	
Was it completed in Word and sent to the FPS by email at foreignprocess.rcj@justice.gov.uk?	
Date and time of email (to make this easier to locate)	

Are the box entitled "Identity and address of the applicant" (p1) and box 3 of the Summary (p4) entitled "name, address, telephone number and e-mail address of the forwarding authority" both completed as follows? The Senior Master of the Royal Courts of Justice Strand London WC2A 2LL Tel: +44 (0)20 7947 6691 Email: foreignprocess.rcj@justice.gov.uk	
Is the box entitled "Address of receiving authority" completed using the information on the HCCH website? See here, column headed "Auth"?	
Is the box relating to advice about legal aid completed with the contact details of the Law Society? This section must be completed even where the party to be served is a commercial party and the matter is a commercial dispute. It should be completed as follows: The Law Society 113 Chancery Lane London WC2A 1PL Tel: +44 (0)20 7242 1222 https://www.lawsociety.org.uk/	
Does the receiving authority require the Hague Request Form to be in the version using its own language? See the FPS spreadsheet of special requirements. Such forms are available on the HCCH website here.	
Does the receiving authority require the information inserted into the Hague Request Form to be translated? See the FPS spreadsheet of special requirements.	
If so, has the translation and translation certificate also been included with the email?	
If so, has the certificate been signed by the translator who translated the documents? See CPR 6.45(3): *Every translation filed under this rule must be accompanied by a statement by the person making it that it is a correct translation, and the statement must include that person's name, ..(business).. address and qualifications for making the translation*.	

Form N224:

Has Form N224 been completed? (This is an administrative form used by the FPS and should **not** be included within the Bundles for service)	
Has the undertaking regarding payment of expenses been given? (The FPS will only forward the request if this has been given. It is not possible to place a limit on the expenses which might be incurred by the receiving authority).	
Does section 2 list every document being submitted for service, including (as appropriate) the index, the claim form/application and all orders, statements of case, witness statements, exhibits, response pack, translations and certificates of translations? (If necessary, please continue the list on the reverse side of the form, or in an annexure)	
In section 6, has the full postal address been given, including any post code (or equivalent)?	
In the section entitled "Service is desired", have options b, c and d been deleted, and has "Article 5" been entered to the right of "a. through the authority designated under the Hague Convention"? (This is necessary to confirm to the FPS that this is an Article 5 request. Failure to provide this confirmation will delay the processing of the request).	

Service of a Claim Form:

(Please disregard where the request is not for service of a claim form)

When will the validity of the claim form expire?	
Is it realistic to anticipate that the bundle will be served before the validity of the claim expires? (It is advisable to submit the Article 5 request as soon as the claim is issued. It will take at least 3 months to effect service in EU countries and (generally) 6-12 months for the rest of the world. The FPS maintains a spreadsheet of estimated service times for service in most jurisdictions, but this is based on recent experience and times cannot be guaranteed).	
Has an order been obtained which extends the validity of the claim?	
If so, is it in the bundle?	
Has an order been made giving permission for service out of the jurisdiction?	
If so, is it in the bundle?	
If there is no order giving permission for service out of the jurisdiction, is Form N510 in the bundle?	
Is the Response Pack included in the bundle?	
Have the dates for response been amended in manuscript in the Response Pack as required, i.e. crossing through the 28/14 day periods for filing the defence (and/or acknowledgement of service) and inserting the appropriate figures? (Please see CPR 6 PD 6.1 and the table thereunder)	

2 x Bundles:

Have you provided 2 **identical** sets of documents, each containing the entire set of English documents and any translations? (One set will be served by the receiving authority; the other set will be returned to the FPS.)	
Is each set of documents securely placed within an appropriately sized lever-arch file (i.e. a separate file for each set), with dividers and an index?	
Does the index correspond with the list of documents set out in section 2 of Form N224?	
Is this a case where translations are required under CPR 6.45?	
If so, does each set of documents include not only translations of every document (including the index), but also a certificate (or certificates) of translation and a translation of the certificate(s) of translation?	
Have the certificates been signed by the translator who translated the documents? See CPR 6.45(3): *Every translation filed under this rule must be accompanied by a statement by the person making it that it is a correct translation, and the statement must include that person's name, ..(business).. address and qualifications for making the translation.*	

Annex 12 – The MAC List Pro Bono Scheme

Dear Litigant,

The Pro Bono Trial Advocacy Scheme in the Media and Communications List

You have been given this information sheet because you are a party to a case in the Media and Communications List ("the MAC List") and you may also have expressed an interest in seeking pro bono (that is, free-of-charge) legal representation by a barrister for the trial which is scheduled to take place.

The Pro Bono Trial Advocacy Scheme in the MAC List aims to offer people representing themselves in media and communications cases a specialist barrister who will represent them at trial without being paid. This scheme is run by barristers entirely voluntarily to help with the administration of justice.

If you would like to request a barrister to represent you at your trial, please contact: bensilverstone@matrixlaw.co.uk **providing the following information:**

1. **The date of the trial in your case and estimated length of trial**
2. **Copies of the Claim Form, Particulars of Claim, the Defence, and the Reply (if there is a Reply)**
3. **Copies of any Orders of the Court that have been made so far.**

If there is a barrister available and willing to take your case, you will be sent his or her contact details and you should get in touch with him/her directly. You will generally be offered the most experienced specialist barrister taking part in the scheme and who is free to act for you. You will not be able to choose your own barrister.

After providing you with a name and contact details of a specialist barrister willing to represent you at trial (or informing you that no one is available), as the case may be, the scheme will play no further role and all your dealings will be with that barrister on a Direct Access basis.

NOTES

1. It is possible that no barrister will be available and willing to take your case.
2. If you are offered a barrister to take your case at trial, it is up to you to ensure that he or she is someone that you are happy to instruct. There are no guarantees that the barrister is someone you will find suitable.
3. If you choose not to instruct the person whose name you are given, or you withdraw instructions from them, you will not be offered another barrister (except in exceptional circumstances).
4. The barrister you instruct under the scheme has agreed to represent you at the trial you have specified in your application only. He or she has **not** agreed to act for you generally throughout your case or provide you with legal advice on an ongoing basis. If you place demands on the barrister's time that go beyond their agreement to act for you at trial, they might choose not to act for you any longer (and you will not be offered an alternative barrister).
5. The scheme will not receive any complaints about the barrister or seek to resolve any disputes arising between you and your barrister. All those matters need to be dealt with through the appropriate regulatory channels, which may include their Head of Chambers, or the Bar Standards Board, or the Legal Services Ombudsman.
6. Other sources of free legal advice and support are available, including Citizens Advice, and Advocate (formerly known as the Bar Pro Bono Unit).

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