JUDICIARY OF
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The Queen's Bench Guide

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

2018

Foreword

by The Rt Hon. Sir Brian Leveson
President of the Queen's Bench Division

A year ago, when I provided the foreword for the fifth edition of this guide, I noted the great pace of change in the justice system. Previous editions had been spaced seven years apart. The fourth edition came two years after the third. But the fourth, fifth and now this sixth edition have been published every year. There have been further changes to the operation of the Queen's Bench Division which have led to the need for another new edition; most significantly the introduction of the Media and Communications List and the amendments considered appropriate to defamation practice consequent upon the Defamation Act 2013. As a result, this new edition is certainly warranted.

A great deal of hard work and careful thought has gone into these changes and that effort has been mirrored in the production of the sixth edition of this guide: it continues to be an indispensable resource for all those who seek to litigate in the Queen's Bench Division of the High Court. Once again, I am delighted to introduce it.

Editorial note by The Senior Master

With the support and encouragement of Sir Brian Leveson, the President of the Queen's Bench Division, this Guide has been prepared for the assistance of all who practise or litigate in the Queen's Bench Division.

This sixth edition of the Guide incorporates changes to the procedure for obtaining Queen's Bench trial listing appointments, amendments reflecting the introduction of the Media & Communications List, and other changes and updating required since the publication of the 2017 edition. I am grateful for the contributions of Masters Yoxall, Eastman and Cook, and for their work and diligence in the revision of the Guide. Particular thanks also to retired Master Graham Rose for all his valuable assistance, my PA Elaine Harbert for her hard work and patience in transcribing and correcting the content and to one of our Court managers, Edward Boswell, for his technical assistance.

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.

Barbara Fontaine
Senior Master July 2018

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1. Introduction

1.1 The Guide

1.1.1 This Guide has been prepared under the direction of the Senior Master, acting under the authority of the President of the Queen's Bench Division, and provides a general explanation of the work and practice of the Queen'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 Queen's Bench Division.

1.1.2 The Guide must be read with the Civil Procedure Rules ("CPR") and the supporting Practice Directions. 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. It is intended to bring the Guide up to date at regular intervals as necessary.

1.1.3 The Guide does not have the force of law, but parties using the Queen's Bench Division will be expected to act in accordance with this Guide.

1.1.4 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 Queen's Bench Division outside London, but it should be borne in mind that there are some differences.

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

1.2 The Civil Procedure Rules

1.2.1 The Overriding Objective set out in Part 1 of CPR is central to civil proceedings and enables the court to deal with cases justly and at proportionate cost. To further this aim the work is allocated to one of three tracks - the small claims track, the fast track and the multi-track - so as to dispose of the work in the most appropriate and effective way combined with active case management by the court. Whilst the track regime is of everyday concern in the County Courts, it should be noted that, by a combination of the Rules, both as to jurisdiction and as to procedure, and of practice, all cases proceeding in the Central Office of the Queen's Bench Division at the Royal Courts of Justice, and in the District Registries of the Queen's Bench Division outside London, will necessarily be allocated to the multi-track.

1.2.2 The CPR are divided into Parts. A particular Part is referred to in the Guide as

Part 7, etc., as the case may be. Any particular rule within a Part is referred to as rule 6.4(2), and so on. Such of the former Rules of the Supreme Court and of the former County Court Rules as are still applicable are scheduled to Part 50.

1.3 The Practice Directions

1.3.1 Each Part - or almost each Part - has an accompanying Practice Direction or Directions, and other Practice Directions deal with matters such as the Pre-Action Protocols.

1.3.2 The Practice Directions are made pursuant to statute, and have the same authority as do the CPR themselves. However, in case of any conflict between a Rule and a Practice Direction, the Rule will prevail. Each Practice Direction is referred to in the Guide with the number of any Part that it supplements preceding it; for example, the Practice Direction supplementing Part 6 is referred to as the Part 6 Practice Direction. But where there is more than one Practice Direction supplementing a Part it will also be described either by topic, for example, the Part 25 Practice Direction - Interim Payments or, where appropriate, the Part 40B Practice Direction. A convenient abbreviated reference to a particular sub-paragraph of (for example) the Part 40B Practice Direction would be PD40B, para1.1.

1.4 The Forms

1.4.1 The Practice Direction supplementing Part 4 (of which the reader may wish to read paragraphs 1.1 to 1.8 in their entirety) lists the forms to be used under the CPR. As explained in paragraph 1.2 of the Practice Direction there are annexed to it (a) a list of Court Forms arranged by subject matter, and (b) an alphabetical index. The alphabetical index signposts the reader to the relevant entries in the list.

1.4.2 The forms listed in the Practice Direction are not, for reasons of space, reproduced as an Annex in this Guide. They are however available in the various practitioners' textbooks, and on the Ministry of Justice website at http://www.justice.gov.uk/ Users may access the forms at http://hmctsformfinder.justice.gov.uk/ and at www.justice.gov.uk/forms.

1.4.3 The forms may be modified as circumstances in 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.

1.4.4 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.

1.5 The Queen's Bench Division

1.5.1 The Queen's Bench Division is one of the three divisions of the High Court, together with the Chancery Division and Family Division. A Lord Justice of Appeal, currently Lord Justice Leveson, has been appointed by the Lord Chief Justice to be the President of the Queen's Bench Division. A High Court Judge is appointed as Judge in charge of the QB Civil List and is currently Mr Justice Foskett.

1.5.2 Outside London, the work of the Queen's Bench Division 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 Queen's Bench Division is the responsibility of the Senior Master, acting under the authority of the President of the Queen's Bench Division.

1.5.3 The work of the Queen's Bench Division 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 Queen's Bench Division. 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. There are also specialised lists which operate within the Queen's Bench Division 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.

1.5.4 The work of the Queen's Bench Division 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,

(e) other tortious conduct,

(f) breach of contract,

(g) breaches of the Human Rights Act 1998, and

(2) non-payment of a debt.

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

1.5.5 In many types of claim - for example claims in respect of negligence by solicitors, accountants, etc., or claims for possession of land - the claimant has a choice whether to bring the claim in the Queen's Bench Division or in the Chancery Division. However, there are certain matters that may be brought only in the Queen's Bench Division, 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, the Judgments Regulation, the Lugano Convention 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.

1.5.6 Regard should also be had to 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 Queen's Bench Division.

1.6 The Central Office

1.6.1 The information in this and the following sub-paragraph is to be found in Practice Direction 2A para 2; it is reproduced here for the convenience of litigants. 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 Queen's Bench Division, the President of the Family Division, and the Chancellor of the High Court ("the Heads of Division") may direct.

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

1.6.3 The Action Department, which is located as shown by Annex 1 at the end of this Guide, 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 Queen's Bench Division.

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

(1) Queen's Bench Issue and Enquiries Section, which includes the Case Progression team. This Section provides support (a) to the Masters, including assistance on all aspects of case management, and (b) to the Senior Master.

(2) Queen's Bench Masters' Listing Section, which deals with listing hearings and trials before the Queen's Bench Masters.

(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.

(4) the Enforcement Section which deals with enforcement of judgments obtained in the Queen's Bench Division and of foreign judgments which may be enforced here: see section 23 below.

(5) 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 7.3.12 -7.3.16 and 21.4.1 to 21.4.3 below.

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

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

1.6.5 The Queen's Bench Associates sit in court with the Judges during trials and certain interim hearings. The Associates draw up the orders made in court at trial and those interim orders that are directed to be drawn by the Court rather than (as is more usual) by the parties themselves.

1.6.6 The High Court Judges' Listing office lists all trials and matters before the Judges (see Section 20 below).

1.6.7 The Commercial Court (being a constituent part of the Queen's Bench Division) deals with commercial claims, i.e. any claim arising out of the transaction of trade and commerce. Its proceedings are subject to Part 58 of the Rules and to the Part 58 Practice Direction. 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 both in the Commercial Court and in the Admiralty Court is found in a single guide, entitled "The Admiralty and Commercial Courts Guide".

1.6.8 Circuit Commercial Courts are established, again as constituent parts of the Q.B.D., to deal with claims relating to "a commercial or business-matter in a broad sense": see rule 59.1. Such courts are established in the following district registries of the High Court, namely Birmingham, Bristol, Cardiff, Chester, Leeds, Liverpool, Manchester, Mold and Newcastle-upon-Tyne; and in the Commercial Court at the Royal Courts of Justice. Their proceedings are governed by Part 59 and the Part 59 Practice Direction. 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:- https://www.gov.uk/courts-tribunals/commercial-circuit-court.

1.6.9 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 Practice Direction to Part 60, in particular PD60 para 2.1 which lists examples of claims which it may be appropriate to bring in that Court. Extensive guidance on proceedings in the TCC is found in the Technology and Construction Court Guide.

1.6.10 The Admiralty Court is defined as the Admiralty Court of the Queen's Bench Division of the High Court of Justice, 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 Part 61 of the Rules and the Part 61 Practice Direction. The Registrar of the Admiralty Court means the Queen'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 Admiralty and Commercial Courts Guide at section N thereof.

1.6.11 Arbitration claims and proceedings are the subject of Part 62 and the Part 62 Practice Direction. 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 0 of the Admiralty and Commercial Courts Guide.

1.7 The Judiciary

1.7.1 The judiciary in the Queen'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 (addressed in court as Master). They include two female Masters (Senior Master Fontaine and Master McCloud) who are addressed as Senior Master/Master respectively. In the District Registries the work of the Masters is conducted by District Judges (addressed in court as Sir or Madam).

1.7.2 Trials normally take place before a High Court Judge (or 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. Wherever possible the judge before whom a trial has been fixed will hear any pre-trial review. A High Court Judge will hear applications to commit for contempt of court, applications for injunctions and most appeals from Masters' orders. (See the Part 2B Practice Direction: Allocation of cases to levels of Judiciary; and see Sections 12 and 13 below for more information on hearings and applications.)

1.7.3 The Masters generally deal with interim and pre-action applications, and manage the claims so that they proceed without delay. The Masters also have jurisdiction to hear trials and applications for injunctions, with the exception of search and freezing injunctions: (see the Part 2B Practice Direction). 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 at the end of this Guide. Hearings take place in these rooms, or, in certain circumstances, in a court.

1.7.4 Cases are assigned on issue by a court officer in the Action Department to Masters on a rota basis, and that Master is then known as the assigned Master

in relation to that case. (See paragraph 4.2 below for more information about assignment to Masters)

1.7.5 General enquiries about the business dealt with by the Masters should initially be made in writing to the Queen's Bench Issue and Enquiries section in Room E07.

2. General

2.1 Essential matters to consider before issuing proceedings

2.1.1 Before bringing any proceedings, the intending claimant should think carefully about the implications of so doing. (See Section 3 below about steps to be taken before issuing a claim form.)

2.1.2 A litigant who is acting in person faces a heavier burden in terms of time and effort than does a litigant who is legally represented, but all litigation calls for a high level of commitment from the parties. No intending claimant should underestimate this.

2.1.3 The Overriding Objective of the CPR is to deal with cases justly and at proportionate cost. This means dealing with the claim in a way which is proportionate (amongst other things) to the amount of money involved. However, in all proceedings there are winners and losers; the loser is generally ordered to pay the costs of the winner and the costs of litigation can still be large. The risk of large costs is particularly acute in cases involving expert witnesses, barristers and solicitors. Also, the costs of an interim hearing are almost always summarily assessed and made payable by the unsuccessful party, usually within 14 days after the order for costs is made. There may be a number of interim hearings before the trial itself is reached, so the costs must be paid as the claim progresses. (See also paragraph 2.7 below as to costs which includes reference to important new provisions of the Rules (a) dealing with the court's powers of managing the costs of a case, and (b) making specific costs capping orders).

2.1.4 The intending claimant should also keep in mind that every claim must be proved, unless of course the defendant admits the allegations. There is little point in incurring the risks and expense of litigating if the claim cannot be proved. An intending claimant should therefore be taking steps to obtain statements from their prospective witnesses before starting the claim; if they delay until later, it may turn out that they are in fact unable to obtain the evidence that they need to prove their claim. A defendant faces a similar task.

2.1.5 Any party may, if they are to succeed, need an opinion from one or more expert witnesses, such as medical practitioners, engineers, accountants, or as the case may be. However they must remember that no expert evidence may be given at trial without the permission of the court. The services of such experts are in great demand, especially as, in some fields of expertise, there are few of them. It may take many months to obtain an opinion, and the cost may be high. (See paragraph 10.8 below for information about experts' evidence.) If the claim is for compensation for personal injuries and the claimant is relying on medical evidence they must produce a medical report with their particulars of claim.

2.1.6 A claimant must remember also not to allow the time limit for starting their claim to pass (see paragraph 2.5 below for information about time limits).

2.1.7 Any intending claimant should also have in mind that they will usually be required to give disclosure of documents which are or have been in his control. In complex cases it may still be necessary to disclose relatively large quantities of documents, and this invariably involves much time, effort and expense. (See paragraph 10.7 below for information about disclosure.)

2.2 RCJ Advice Bureau

2.2.1 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. Litigants in person who are enquiring as to the possibility of obtaining legal assistance or representation may contact Civil Legal Advice at 0845 345 4345 (9.00am to 8.00pm Mondays to Fridays and 9.00am to 12.30pm on Saturdays) or on the website at https://cladvice.justice.gov.uk. 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.

2.2.2 There is an RCJ Advice Bureau off the Main Hall at the RCJ. The Bureau runs an appointment-based service. Applicants should contact 0844 856 3534 from a landline or (from a mobile) 0300 456 8341 between 10.00am and 1.00pm on Mondays to Fridays. Also, enquiries for an appointment can be made in person at the Bureau between 2.00pm and 4.00pm on Mondays to Fridays. In addition to the above, advice can be sought on the telephone at 0207 288 7678 between 10.00am and 1.00pm and 2.00pm and 4.30pm on Mondays to Fridays.

2.3 The Personal Support Unit

2.3.1 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 including Birmingham, Cardiff, Leeds, Liverpool and Manchester. There are now just over 100 fully trained and experienced volunteers in the Royal Courts of Justice. 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. The PSU can be particularly helpful for clients with special needs. Its address is:- The PSU, Room M104, Royal Courts of Justice, Strand WC2A 2LL. Tel: 0207 947 7701/3. Fax: 0207 947 7702 email: rcj@thepsu.co.uk or: www.thepsu.co.uk

2.4 Inspection and copies of documents

2.4.1 Intending claimants must not expect to be able to keep the details of a claim away from public scrutiny. In addition to the right of a party to obtain copies of certain specified documents in the proceedings to which they are a party from the court records (on payment of the prescribed fee: see CPR 5.4B and 5.4D), any person may obtain from the court records a copy of a statement of case, but not of any documents filed with it or attached to it: see CPR 5.4C. Any judgment or order made in public (whether made at a hearing or without a hearing) may also, subject to CPR 5.4C (1B), be obtained from the records of the court on payment of the appropriate fee. Additionally, under CPR 5.4B, 5.4C and 5.4D, 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.

2.4.2 Witness statements which have been used at trial or in open court are open to inspection, unless the court directs otherwise.

2.4.3 CPR 5.4C(5) sets out how the court may, on application by a party or any person identified in a statement of case, restrict inspection and obtaining of copies.

2.5 Time Limits

2.5.1 There are strict time limits that apply to every claim. These will arise, principally, under the Limitation Act 1980 or the Human Rights Act 1996, which lay down time limits within which the proceedings must be brought. There are circumstances in which the court may disapply the time limits, but such disapplication is to be regarded as exceptional and the burden is on the claimant to persuade the court that it is right to do so. In all other cases, once the relevant time limit has expired, it is rarely possible to start a claim.

2.5.2 Secondly, in order to try and bring the proceedings to an early trial date, a timetable will be set with which all parties must comply. Unless the CPR or a Practice Direction provides otherwise, or the court orders otherwise, the timetable may be varied by the written agreement of the parties. However, there are certain "milestone" events in the timetable in respect of which the parties may not vary the time limits. Examples of these are;

(1) filing a Defence more than 28 days after the period required by the Rules: see CPR 15.5

(2) return of the Directions Questionnaire, or the Reply to Defence which should be returned together with the Directions Questionnaire: see CPR 26.3 (6A)

(3) date(s) for the case management conference(s)

(4) return of the Pre-Trial Checklists

(5) date fixed for trial: see CPR 29.5(2)

Where parties have extended a time limit by agreement, the party for whom the time has been extended must notify the QB Issue & Enquiries Section in writing of the appropriate event in the proceedings for which the time has been extended and the new date by which it must take place. For example, if an extension is agreed for the filing of the defence, it is for the defendant to inform the QB Issue & Enquiries Section.

2.5.3 The court has power to impose a sanction on any party who fails to comply with a time limit. If the court considers that a prior warning should be given before a sanction is imposed, it will make an 'unless' order; in other words, the court will order that, unless that party performs their obligation by the time specified, they will be penalised in the manner set out in the order. This may involve the party in default having their claim or statement of case struck out and judgment given against them. An order striking out a claim or statement of case must be applied for after the time specified has expired, as this is not automatic unless the Unless Order so provides.

2.6 Legal Representation

2.6.1 A party may act in person or be represented by a lawyer. A party who is acting 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 McKenzie friend is allowed to help by taking notes, quietly prompting the litigant and offering advice and suggestions. The litigant 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.

2.6.2 A written statement should be provided to the court at any hearing concerning the representation of the parties in accordance with paragraph 5.1 of Practice Direction 39A (the Court Record Form, found outside the Masters' Rooms or in the Bear Garden). Note particularly the information required by paragraph 5.2 where a company or other corporation is to be represented at the hearing by an employee.

2.6.3 At a trial, a company or corporation may be represented by an employee if the company or corporation authorises them to do so and the court gives permission. Where this is to be the case, the permission of the Judge who is to hear the case may be sought informally; paragraph 5 of PD39A describes what is needed to obtain permission from the court for this purpose and mentions some of the considerations relevant to the grant or refusal of permission. As stated above, a statement concerning representation should be provided in accordance with paragraph 5.2 of the Practice Direction.

2.6.4 Experienced clerks from solicitors' firms are permitted to appear before the Masters. Barristers' clerks may attend before a Master to fix a hearing date for Counsel.

2.7 Costs

2.7.1 Costs (i.e. the right of one party to recover costs from another party) are dealt with in the admirably clear new provisions of CPR 44 to 48 and of the Practice Direction to each of those Parts. Detailed treatment of the subject of costs may be found in the Senior Courts Costs Office Guide 2006.

2.7.2 The layout of the new rules is as follows:-

Part 44 deals with general rules about costs and includes new rules on qualified one-way costs shifting and damages-based agreements.

Part 45 deals with fixed costs.

Part 46 deals with costs in special cases.

Part 47 deals with the procedure for detailed assessment of costs and default provisions.

Part 48 deals with transitional provisions.

2.7.3 Rules 3.12 to 3.18 and Practice Direction 3E deal with costs management by the court and Rules 3.19 to 3.21 deal with costs capping by the court.

2.7.4 Costs management. The purpose of costs management is that the court should manage both the steps to be taken in the proceedings and the costs to be incurred so as to further the overriding objective: see rule 13.12(2). The overriding objective has been re-defined in rule 1.1(1) so as to enable the court to deal with cases justly and at proportionate cost. That now includes enforcing compliance with rules, practice directions and orders: see the new rule 1.1(2)(f). All parties except litigants in person are to exchange costs budgets (in Form Precedent H) by a certain time: rule 3.13. And, by rule 3.14, unless the court otherwise orders, any party which fails to file a budget despite being required to do so will be treated as having filed a budget comprising only the applicable court fees. Any party in breach of such rules may find, upon application for relief from the sanction in rule 3.14, that the availability of relief has become more restricted by the new wording of rule 3.9 (relief from sanctions) and the new definition of the overriding objective in rule1.1 And see Section 17 below under the heading "Relief from sanctions".

The court may make costs management orders. This will include recording the extent to which budgets are agreed, or approving after appropriate revisions

budgets which are not agreed. The court may hold costs management conferences, for example to approve revised budgets. In any case where a costs management order has been made, when it comes to assessing costs that are actually to be recovered, the court will have regard to the receiving party's last approved or agreed budget, and not depart from that unless satisfied that there is good reason to do so.

2.7.5 Costs capping orders. The court may make a costs capping order at any stage of the proceedings if (a) it is in the interests of justice to do so, (b) there is a substantial risk that without such an order costs will be disproportionately incurred, and (c) the court is not satisfied that such risk can be adequately controlled by case management directions or orders and by detailed assessment of costs: see CPR 3.19(5). A costs capping order will limit the costs recoverable by the party in question unless a successful application is made to vary the order; and no variation will be made unless there has been a material and substantial change of circumstances since the order was made, or there is some other compelling reason why a variation should be made. An application for a costs capping order must be made on notice under Part 23. It must set out in particular why a costs capping order should be made and must contain a budget setting out the applicant's own costs to date and likely costs in the future.

2.7.6 Part 44. The court has an overall discretion as to costs. This is described in rule 44.2 (1) as a discretion as to:

(a) whether costs are payable by one party to another

(b) the amount of those costs; and

(c) when they are to be paid

2.7.7 There are certain costs orders which the court will commonly make in proceedings before trial. These, and the precise effect of such orders, are very usefully set out in the table to para 4.2 of the PD to Part 44. They include:-

- Costs in any event
- Costs in the case
- Costs in the application
- Costs reserved
- Claimant's/Defendant's costs in case/application
- Costs thrown away

- Costs of and caused by
- Costs here and below
- No order as to costs
- Each party to pay own costs

2.7.8 The general rule is that the unsuccessful party will be ordered to pay the costs of the successful party but the court may make a different order.

2.7.9 In deciding what order to make the court will have regard to all the circumstances of the case including the specific matters set out in CPR 44.2(4) and (5).

2.7.10 Orders that the court may make include payment of a proportion of costs or costs from or until a certain date only: rule 44.2(6).

2.7.11 Interest on costs. Under rule 44.3(6) the court has a discretion to order interest on costs from or until a certain date, including a date before judgment.

2.7.12 Where there is an order for costs subject to detailed assessment the court will order payment of a reasonable sum on account unless there is good reason not to do so: rule 44.2(8).

2.7.13 Where costs are to be assessed (whether by summary or detailed assessment) they will be assessed either on the standard basis or on the indemnity basis. If on the standard basis, then, in relation to cases commenced on or after 1st April 2013, the costs allowed must be proportionate to the matters in issue. Disproportionate costs may be disallowed or reduced even if reasonably or necessarily incurred. The test of proportionality is laid down in rule 44.3(5).

2.7.14 The essential distinction between the standard basis and the indemnity basis is that in the former case doubt as to reasonableness is resolved in favour of the paying party; in the latter case in favour of the receiving party.

2.7.15 The court will have regard to all the circumstances in deciding the amount of costs. It will have regard to the specific matters set out in rule 44.4(3), which include the conduct of the parties (including efforts to try to resolve the dispute), and the receiving party's last approved or agreed budget.

2.7.16 As to the procedure for assessing costs, the court may (unless prevented by rule, practice direction or other enactment) make a summary assessment (i.e an assessment at the conclusion of the hearing by the judge who heard the matter) or order detailed assessment by a costs judge or officer. PD44 sets out the factors which will guide the court's decision as to which process is adopted.

2.7.17 Summary assessment. Paragraph 9 of the PD to Part 44 deals in particular with this subject. The court shall consider in all cases where fixed costs do not arise whether to make a summary assessment. It should do so at the conclusion of a hearing which has lasted not more than one day, in which case the assessment will deal with the costs of the application. If the hearing disposes of the whole claim the court may make an assessment of the costs of the whole claim. These provisions apply unless there is good reason not to make a summary assessment e.g. where there is a substantial dispute as to costs. In order to assist the court in making a summary assessment the parties must provide, usually in schedule form in Form N260, the information, such as number of hours and rate claimed, set out in para 9.5 of the PD. And such schedule should be filed and served not less than 24 hours before the hearing. Note however that summary assessment will not take place of the costs of a receiving party who is legally aided (see para 9.8), or who is a child or protected party unless their legal representative has waived the right to further costs (see para 9.9).

2.7.18 The time for complying with an order for costs is laid down in rule 44.7.

2.7.19 A legal representative for a party has a duty within 7 days to notify the party (which includes the client, or a trade union or insurer or the LSC or the Lord Chancellor if instructions have been received from such source) of an order for costs made in the absence of the party: see rule 44.8 and PD44 paras 10.1 to 10.3.

2.7.20 No order for costs. Specific provision is made under rule 44.10 in cases where the court's order does not mention costs. Reference should be made to the rule for its precise terms, including the question of costs on an application made without notice.

2.7.21 Misconduct. The court has power to disallow the costs of a party being assessed where that party's conduct or their legal representative's conduct was unreasonable or improper; or, for like reason, to order that the costs of any other party be paid by the party at fault or by their legal representative. This rule should be read together with rule 46.8 (wasted costs orders against a legal representative) whereby a reasonable opportunity must be given to the legal representative to make written submissions or attend a hearing before making such an order.

2.7.22 Costs against a claimant. Qualified one-way costs shifting (QOCS). Protection against costs is given to claimants who have failed in personal injury and fatal accident cases by the new regime introduced by CPR 44.13 to 44.16. Orders against a claimant may be enforced without permission only to the extent that the amount of such orders does not exceed damages awarded to the claimant. But such orders may be enforced in full without permission where the proceedings have been struck out on the grounds, for example, that the claimant has shown no reasonable grounds for bringing them. And such orders may be enforced in full with the permission of the court where the claim is

found on the balance of probabilities to be fundamentally dishonest; or (to the extent that the court considers just) where the claim is brought for the financial benefit of another person (as defined). These new provisions do not apply to cases in which the funding arrangement for the claimant was entered into before 1st April 2013: see rule 44.17.

2.7.23 Costs recoverable by a claimant. Conditional fee agreements. Defendants are no longer to be liable, on arrangements made on or after 1st April 2013, for either

(i) a success fee, i.e. a percentage uplift in the fees payable by the claimant to his legal representatives, or

(ii) after-the-event insurance premiums payable by the claimant

These reforms are introduced by Part II of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, but are subject to exceptions still presently available for mesothelioma claims, insolvency proceedings, and defamation and privacy claims, and exceptions in relation to experts' fees in clinical negligence claims. See in particular the Practice Direction to CPR Part 48.

As to damages-based agreements between claimants and their lawyers, lawyers may recover from their client under the agreement subject to strict caps laid down by the Act and by the Damages-Based Agreements Regulations 2013; but recoverability against the defendant is governed by CPR 44.18 whereby, if costs are to be assessed in favour of a party who has entered into a DBA, the recoverable costs will be assessed in the normal way (i.e. on the standard or indemnity basis) under rule 44.3; and the party may not recover more than the total amount that they have to pay for legal services under their DBA. Thus in some cases a party may recover less by way of costs from his opponent than he is liable to pay under his DBA.

The statutory reforms have included, in part as compensation to claimants for loss of recoverability of success fees, a 10% uplift in the level of general damages awarded against the defendant; see *Simmons v Castle* [2012] EWCA Civ 1039;1288.

2.7.24 The reforms set out in paragraph 2.7.23 above take effect in relation to cases where the funding arrangement was made on or after 1st April 2013. The old rules as to recoverability of costs by a funded claimant continue to apply where the funding arrangement (called a "pre-commencement funding arrangement") was made before that date: see CPR 48.1 and 48.2. A valuable explanation of these transitional provisions is contained in the Practice Direction to Part 48. And see para 2.7.31 below.

2.7.25 Fixed Costs. Fixed costs are stipulated in Part 45 and are recoverable in the various situations there set out. These include, particularly in relation to

proceedings in the Queen's Bench Division, the entry of judgment in default under Part 12, or on admission under Part 14, and on summary judgment under Part 24. They also include enforcement proceedings such as charging orders under Part 73. As may be expected, the court has power to order costs otherwise than by way of the fixed amounts, e.g. by way of summary or detailed assessment: see rule 45.1(1).

2.7.26 Part 46 and the Practice Direction to that Part deal with costs in special cases. These include:-

(a) costs of pre-commencement disclosure applications

(b) costs of applications for disclosure to be made by a non-party.

(c) costs orders in favour of or against non-parties

(d) limitations on the court's power to award costs in favour of a trustee or personal representative. The general rule is that his costs, in so far as they are not recovered from or paid by any other person, are to be paid out of the trust fund or estate.

(e) costs where money is payable by or to a child or protected party. The general rule is that the court must order a detailed assessment of the costs. A particular exception, which frequently arises, is where another party has agreed to pay a specific sum in respect of costs and the legal representative of the child or protected party has waived the right to claim further costs.

(f) the costs recoverable by litigants in person: see rule 46.5. Note the definition of a litigant in person in rule 46.5(6); and the amount of costs to be allowed for any item of work claimed in rule 46.5(4).

(g) costs where the court has made a group litigation order: rule 46.6.

(h) orders in respect of pro bono representation, including orders for payment of a sum representing costs by the paying party to a specified charity.

(i) wasted costs orders against a legal representative personally: see rule 46.8, and also para 2.7.21 above.

(j) basis of detailed assessment of costs between solicitors and client: rules 46.9 and 46.10, and

(k) rules applicable in claims for the recovery of costs only i.e. where all other issues have been agreed: rule 46.14.

2.7.27 Part 47. Detailed assessment. The court may in its discretion order detailed assessment of the costs of proceedings or part of the proceedings. If it does so the provisions of Part 47 lay down the necessary procedure for assessment. An authorised costs officer may carry out the assessment in all save specified cases, subject to a right of appeal to a costs judge or a district judge of the High Court: rules 47.3 and 47.22.

2.7.28 At the outset however in relation to detailed assessment a new rule has been enacted, following pilot schemes. This relates to provisional assessment – see rule 47.15.

2.7.29 As from 1st April 2013, in cases where the costs claimed are £75,000 or less, the parties must comply with the procedure laid down for provisional assessment. The court will undertake a provisional assessment of the receiving party's costs on receipt of the required documents: rule 47.15(3). It may at any time decide that the matter is unsuitable for provisional assessment and direct an oral hearing, but subject to this the court will send a copy of the bill as provisionally assessed to all parties. If no request is then received, within 21 days, for an oral hearing the provisional assessment is binding save in exceptional circumstances. The rule then provides for the procedure for challenge at an oral hearing and states that any party who has requested an oral hearing will pay the costs of that hearing unless they achieve an adjustment in their own favour of 20% or more of the sum provisionally assessed.

2.7.30 Subject to provisional assessment, the rules as to detailed assessment generally are laid down by 47.1 to 47.14. These include particularly the following:

(a) the time when the assessment may be carried out. In general the assessment is not to be carried out until the conclusion of the proceedings, but the court may and often does order an immediate assessment at the end of a hearing.

(b) the power of an authorised court officer to make a detailed assessment

(c) the venue for the assessment

(d) the commencement of the assessment (by the receiving party serving notice of commencement and a copy of the bill of costs)

(e) the time limited for commencement

(f) the sanctions for failing to commence assessment proceedings. In particular, the court has power, on application by a paying party, to make an unless order, in default of compliance with which all or part of the costs to which the receiving party would otherwise be entitled will be disallowed: see rule 47.8. Even if no such application is made, the court may disallow interest otherwise payable to the receiving party

(g) points of dispute by the paying party. The Practice Direction to Part 47 sets out the form of points of dispute. If points of dispute are not served within the required time (21 days after commencement) the receiving party may file a request for a default costs certificate. Such certificate when issued will include an order to pay the costs

(h) if points of dispute are served, rule 47.14 lays down a clear timetable, including provisions for the filing of a request for an oral hearing, the documents which must be lodged with the request, and the fixing of the hearing

(i) as noted above, in cases where the costs claimed are £75,000 or less, the rules introduce a mandatory procedure for provisional assessment: see rule 47.15 and para 14 of the PD to Part 47

(j) the court has power at any time after a request for detailed assessment has been filed to issue an interim certificate "for such sum as it considers appropriate"

(k) at the conclusion of the assessment, upon the filing of a completed bill following the assessment, the court will issue and serve a final certificate. This will include an order to pay the costs to which it relates unless the court orders otherwise: rule 47.17(5)

(l) rule 47.20 provides for the costs of the detailed assessment proceedings themselves.

2.7.31 Part 48 and the Practice Direction to that Part contain necessary saving provisions to allow the rules as to costs as they were in force up to 1st April 2013 to continue to apply to pre-commencement funding arrangements. Accordingly, in those cases, success fees, or after-the-event insurance premiums, may still be recoverable against the defendant where the funding arrangement was made before that date. However, in mesothelioma claims, certain insolvency proceedings, and publication and privacy proceedings, the new reforms preventing recovery of such fees or premiums under arrangements made on or after that date have still yet to be implemented. Accordingly, such fees or premiums continue to be recoverable against a defendant whenever the funding arrangement was made.

2.8 Court fees

2.8.1 The court fees payable in the High Court as from 1st March 2016 are set out in detail in S.2 of The Civil Proceedings, Family Proceedings and Upper Tribunal Fees (Amendment) Order 2016 (S.I. 2016 No. 402) which amends The Civil Proceedings Fees Order 2008 (S.I 2008 No. 1053). Remissions and part remissions are dealt with in Schedule 2 of the 2008 Order, as amended by subsequent statutory instruments. Information as to fees and remissions can be

obtained from HMCTS Guide available from the Fees Office in Room E01 (see Plan A at the end of this Guide) or from the website at: wwwjustice.gov.uk/guidance/courts-and-tribunals/courts/fees. To apply for help with fees complete Form EX 160, also available from the Fees Office or the website.

2.8.2 In the Royal Courts of Justice fees are paid in the Fees Office and, by way of receipt, the fee is usually stamped on the document to which it relates.

2.9 Information Technology

2.9.1 To support the work of the Central Office in operating the provisions of the CPR, and to facilitate effective case management, there is a computerised court system which is able to provide a brief log or index of documents filed in court, for example:-

(a) the claim form (with date of issue)

(b) the acknowledgement of service (with date of receipt)

(c) affidavits filed (with date of receipt)

(d) statements of case filed

(e) letters and e-mails received

(f) application notices (with date of receipt)

(g) orders (with date of the making of the order and date of sealing of the order)

(h) an order made, for example, under CPR 5.4C(4) that a non-party may not obtain a copy of a statement of case

(i) details of the parties or their legal representatives, including their addresses for service.

2.9.2 In relation to the filing of documents by electronic means the position is governed by CPR 5.5 and Practice Direction 5B. The Central Office of the Queen's Bench Division is not a specified court or court office for the purposes of that rule and Practice Direction, so that hard copies of documents required to be filed must be lodged. Communication of specified documents may be sent by e-mail or by the on-line forms service. Such communication is particularly useful in relation to arranging for urgent application notices to be dealt with (subject to payment of the fee therefor), and providing documents for urgent hearings, such as case summaries, skeleton arguments, costs summaries (for summary assessment of costs) and draft orders. However, the

parties must also provide hard copies before the hearing as the court does not have resources to print out documents provided electronically by parties. Once an order has been made, the Master will frequently direct that the party with responsibility for drawing up the order is to send to them a draft by e-mail so that the Master may then give permission to seal the order in those terms. A draft order provided electronically must be in Word format and not pdf., so that the Master may make appropriate amendments, if required.

2.9.3 Parties should note that a transmission received after 4pm is treated as received on the next day the court office is open; and that filing of a document by e-mail where a fee is payable is not permitted: see PD 5B para 3.3. Also note that the subject line of an e-mail must contain the case number, the parties' names (abbreviated if necessary) and the date and time of any forthcoming hearing.

2.9.4 Parties should not provide documents by electronic means where the number of pages of such documents renders that inconvenient. It is likely that a limit of ten pages will be regarded as the norm.

2.9.5 As to service of documents (as opposed to filing), the position as to service of the claim form by fax or other electronic means is governed by CPR 6.3(1)(d); and the position as to service of other documents by fax or other electronic means is governed by CPR 6.20(1)(d). In either case the provisions of PD 6A apply. Parties should note the closely written terms of para 4 of that PD with which they must comply.

2.9.6 Video conferencing and telephone hearings. Under CPR 32.3 the court may allow a witness to give evidence through a video link or by other means. The Practice Direction to Part 32 contains, as Annex 3, extensive guidance on the use of video conferencing. Under PD 23A para 7, where parties wish to use video conferencing facilities for an application, they should apply to the Master for directions. Telephone hearings, which are now very frequent before the Masters, are dealt with under paragraph 6 of PD 23A.

3. Steps before the issue of a claim form

3.1 Settlement and Pre-action Protocols

3.1.1 So far as reasonably possible, a claimant should try to resolve their claim without litigation. The court is increasingly taking the view that litigation should be a last resort and parties may wish to consider the use of Alternative Dispute Resolution ("ADR"): see paragraph 8.4 below.

3.1.2 There are codes of practice for preliminary negotiations in certain types of claim. These codes of practice are called "Protocols" and are set out in Pre-Action Conduct and Protocols Practice Direction to the CPR. Even if there is no protocol that applies to the claim, the parties will nonetheless be expected to comply with principles governing their conduct. Those principles are set out in the Practice Direction. Where a protocol does apply litigants should refer to its detailed terms.

3.1.3 An offer to settle a claim may be made by either party whether before or after a claim is brought. The court will take account of any offer to settle made before proceedings are started when making any order as to costs after proceedings have started.

3.2 Disclosure before proceedings are started

3.2.1 An intending claimant may need documents to which they do not yet have access. If the documents are not disclosed voluntarily, in accordance with the Pre Action Protocols, then rule 31.16 sets out the provisions for making an application for disclosure of documents before proceedings have started. An application notice under Part 23 is required together with the appropriate fee. This may be issued in the QB Issue & Enquiries Section, Room E07, and will be assigned to a Master for hearing.

3.2.2 Essentially, the court must be satisfied that the applicant and respondent to the application are likely to be parties when proceedings are brought, that the required documents are those that the respondent would be required to disclose by way of standard disclosure under rule 31.6 when proceedings are brought, and that their early disclosure is desirable to dispose of or assist the disposal of anticipated proceedings or to save costs.

3.3 Defamation proceedings: Offer of Amends

3.3.1 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 paragraph 4.5 (Part 8 procedure) and Section 19.1 (Media and Communications List) below.

4. Starting Proceedings in the Central Office

4.1 Issuing and serving the Claim Form

4.1.1 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 4.5.1 to 4.5.3 below.

4.1.2 The requirements for issuing a claim form are set out in Part 7 and in Practice Direction 7A, the main points of which are summarised in the following paragraphs.

4.1.3 The Practice Direction, at paragraphs 2, 3 and 4 thereof, provides information as to;

1. where a claim should be started,
2. certain matters that must be included in the claim form, and
3. how the heading of the claim should be set out in the claim form.

Parties should note that rule 16.2 and PD 16 para 2 also set out specific matters that must be included in the claim form. In defamation cases, which will be dealt with in the Media and Communications List, the Part 53 Practice Direction sets out matters that must, in addition in such cases, be included in the claim form and particulars of claim.

4.1.4 Proceedings are started when the court issues a claim form. A claim form is issued on the date sealed on the claim form by the court. However, where a claim form is received in the court office on an earlier date than the date of issue, then, for the purposes of the Limitation Act 1980, the claim is brought on the earlier date (see paragraphs 5.1 to 5.4 of the Practice Direction).

4.1.5 To start proceedings in the Action Department, a claimant must use form N1 (or form N208 for a Part 8 claim) (or a form suitably modified as permitted by Part 4), and should take or send the claim form to Room E07, Action Department, Central Office, Royal Courts of Justice, Strand, London WC2A 2LL. If the court is to serve the claim form, the claimant must provide sufficient copies for each defendant. The claimant will be required to provide a court copy, a claimant's copy and one copy for each named defendant. Copies of forms relevant to the work of the Action Department (including the claim form and response pack) are available from that office.

4.1.6 The QB Issue & Enquiries Section will ask the claimant, on issue of a claim, to complete the QB Allocation of Claims form (see Annex 3) so that the claim can be allocated to a specialist list or Master. The various categories of claim will be allocated the following prefixes:

- Asbestos exposure related disease claims: - A
- Clinical negligence claims – C
- Personal Injury claims – P
- Media and Communications claims – M
- None of the above – X

In addition, claimants who issue in the Media and Communications List will be asked to identify the subcategories of claims made.

Litigants in person who have difficulty with identifying the correct category can ask the court staff to complete the form, and any reallocation required will be directed by the assigned Master.

4.2 Assignment to Masters

4.2.1 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. The QB Issue & Enquiries Section of the Action Department will endorse the name of the assigned Master on the claim form. However, assignment may be triggered at an earlier stage, for example, in one of the following:

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).

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.

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

4.2.3 The Senior Master may assign a particular Master to a class/group of claims or may re-assign work generally. At present clinical negligence claims are assigned

to Master Cook, Master Yoxall, Master Eastman and Master Thornett. Claims for mesothelioma are assigned to Senior Master Fontaine, Master Eastman, Master Davison, Master Thornett and Master Gidden. 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.

4.2.4 A court file will be opened when a claim form is issued. The name of the assigned Master will be endorsed on the court file and entered on the claim form. Any application notice in an assigned claim for hearing before a Master should have the name of the assigned Master entered on it by the solicitors/ litigant making the application.

4.3 The Claim Form

4.3.1 On issuing the claim form, the court will give or send the claimant a notice of issue endorsed with the date of issue of the claim form. If the claimant requires the court to serve the claim form, the date of posting and deemed date of service will also be endorsed on the notice of issue. Claimants, and especially their solicitors who use the Action Department, are encouraged to serve their own documents but must inform the court when service has been effected (see paragraph 4.4 below in relation to service by the claimant and the certificate of service). For certain types of claims, the notice of issue contains a request for judgment. (See paragraph 6.5 below for information about default judgments.)

4.3.2 A claim form must be served within 4 months after the date of issue. Rule 7.5 (1) sets out in precise terms, with reference to the mode of service employed, how the period of 4 months is calculated. Where the claim form is to be served out of the jurisdiction the period allowed is 6 months: see rule 7.5(2). Paragraph 4.4 below provides information about service.

4.3.3 Extension of time for service. Rule 7.6 and paragraph 8 of Practice Direction 7A set out how and on what grounds an extension of time for service of the claim form may be sought. Good reason must always be shown. In particular, the evidence should state a full explanation as to why the claim form has not been served: see para 8.2(4). It has been emphasized that the reason for the failure to serve the claim form in time is highly material. The weaker the reason, the more likely the court will be to refuse to grant the extension. Furthermore, the general rule is that an application must be made within the time limited for service (either by rule 7.5 or by any earlier order extending time). If the application is made after that time the court may grant an extension only if the conditions in rule 7.6(3) are satisfied. These include the condition that the claimant has acted promptly in making the application.

4.3.4 For more detailed information about service see CPR Part 6 and Paragraph 5 below.

4.4 Particulars of Claim

4.4.1 Under rule 7.4, and under the Part 16 Practice Direction para 3.1, the particulars of claim must be contained in or served with the claim form; or must be served within 14 days after service of the claim form provided nonetheless that they are served within the latest time for serving the claim form.

4.4.2 A claim form that does not include particulars of claim must nevertheless include a concise statement of the nature of the claim: rule 16.2. And, when the particulars of claim are served, they must comply with rule 16.4 by setting out a concise statement of the facts on which the claimant relies. This last requirement is very important in practice.

4.4.3 Any claim form or particulars of claim that

1. does not comply with rules 16.2 or 16.4, or

2. is not legible, garbled or abusive will be referred to a Master and is likely to be struck out by the court.

4.4.4 Where it is the claimant who serves the claim form, they must within 21 days after service of the particulars of claim, file a certificate of service (unless all defendants have filed an acknowledgement of service). The claimant may not obtain judgment in default unless they do so. And, where the particulars of claim are served separately from the claim form, the claimant must also within 7 days file a copy of the particulars of claim (so that they are on the court record): compare rules 6.17 and 7.4.

4.4.5 Certain forms must accompany the particulars of claim when they are served on the defendant. These are listed in rule 7.8 and are included in a response pack which is available from the Action Department.

4.4.6 A party who has entered into a funding arrangement and who wishes (subject to the new legislation as to recoverability: see paragraphs 2.7.23, 2.7.24 and 2.7.31 above) to claim an additional liability must give the court and any other party information about the claim if they are to recover the additional liability. Where the funding arrangement has been entered into before proceedings are commenced the claimant should file notice of funding in Form N251 when the claim form is issued.

4.4.7 Part 22 and the PD to Part 22 require the claim form and particulars of claim to be verified by a statement of truth. 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 para 7 of PD 7A.

4.4.8 The requirements as to filing and service of particulars of claim do not apply where the claimant uses the Part 8 procedure: see rule 16.1.

4.5 Part 8 Procedure

4.5.1 A claimant may use the Part 8 procedure where;

(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.

However, 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(3).

4.5.2 Certain matters that must be included on the claim form when the Part 8 procedure is being used are set out in rule 8.2. The types of claim, among many others, for which the Part 8 procedure may be used 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 3.2 of the Part 53 Practice Direction; and

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.

4.5.3 In addition to the provisions of rule 8.1, attention is drawn also to Practice Direction 8A which deals with proceedings brought under "the Schedule Rules".

See Section 7 below for more information regarding the Part 8 procedure.

5. Service of Proceedings

5.1 Introduction

5.1.1 Service of documents is dealt with in Part 6. This is split into 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 or, in specified circumstances, within the EEA. Section III (rules 6.20 to 6.29) deals with service of documents other than the claim form in the United Kingdom or, in specified circumstances, within the EEA. Section IV (rules 6.30 to 6.47) 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. Some of the more important provisions are described below.

5.2 Within the jurisdiction

Service of the claim form

5.2.1 The methods by which a claim form may be served are found in rule 6.3. Under rule 6.4, the court will serve the claim form except where

(a) a rule or practice direction provides that the claimant must serve it

(b) the claimant notifies the court that the claimant wishes to serve it, or

(c) the court orders otherwise

It is anticipated that practitioners familiar with Central Office procedures will wish to continue to serve their own documents.

5.2.2 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 however the court has attempted service by post and the claim form is returned, the court will send notification of that to the claimant: rule 6.18. 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).

5.2.3 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.

5.2.4 Rule 6.5 applies to personal service. It describes what personal service is, and states when personal service must (in some cases) and may (in other cases) be effected.

5.2.5 The claimant must state on the claim form an address at which the defendant may be served, including a full postcode or its equivalent in any EEA state.

5.2.6 Where the defendant has given the business address within the jurisdiction of a solicitor as an address at which the defendant may be served, or has given the business address of a European lawyer in any EEA state as an address at which the defendant may be served, or such solicitors or lawyers have notified the claimant that they are instructed to accept service of the claim form at such an address, then the claim form must be served at such address: rule 6.7.

5.2.7 Subject to the defendant not having given before proceedings an address at which he may be served, rule 6.9 sets out, in well-known terms, the places where any particular defendant must be served, e.g. in the case of an individual at their usual or last known residence. By recent amending legislation however, where the claimant has reason to believe that the address of the defendant is one at which they no longer reside, they must take reasonable steps to ascertain the defendant's current residence. Rule 6.9 goes on to provide a framework to cater for the results of such enquiries including, importantly, a provision for the claimant to apply for permission to serve by an alternative method under rule 6.15 where they cannot ascertain the defendant's current address: and see para 5.2.10 below.

5.2.8 Rule 6.13 deals with service of the claim form on children and protected parties.

5.2.9 <u>The day of deemed service.</u> In all cases of service within the jurisdiction this is the second business day after completion of the relevant step under rule 7.5 (1): see rule 6.14. "Business day" means any day except Saturday, Sunday, a bank holiday, Good Friday or Christmas Day: rule 6.2. Thus, the day of deemed service which affects, for example, the time for filing an acknowledgement of service or a defence by the defendant is always different from, and later than, the date of the relevant step which must be taken by the claimant.

5.2.10 <u>Alternative service.</u> Where there is good reason to authorise service of the claim form by a method or at a place not otherwise permitted, the court may, and quite often does, make an order: see rule 6.15. An application (which may be made without notice) must be made by application notice. It must be supported by evidence. The court will consider in its discretion whether to make an order and if so in what terms; and, if an order is made, the order must specify the method or place of service, the date of deemed service, and the period for filing an acknowledgement of service, an admission or a defence.

5.2.11 Dispensing with Service. In exceptional circumstances the court may, either prospectively or retrospectively, dispense with service of a claim form: rule 6.16.

5.3 Service of documents other than the claim form

5.3.1 This is dealt with by the specific provisions of rules 6.20 to 6.29.

5.3.2 Rule 6.20 sets out the methods by which such other documents, which may of course be many and various in nature, may be served. Note the availability of service by fax or other electronic means, in which case the strictly regulatory provisions of paragraph 4 of Practice Direction 6A must be followed.

5.3.3 Rule 6.21 provides for who is to serve such documents. In general a party will serve a document prepared by him, whereas the court will serve a document prepared by the court.

5.3.4 Rule 6.23 contains important provisions as to the duty on a party to provide an address for service of documents on them in the proceedings. This applies as much to the claimant, who will give an address in the claim form, as to the defendant. A party's address must be the business address of a solicitor or European lawyer acting for them or instructed to accept service for them; or, if none, an address in the United Kingdom or any other EEA state at which the party resides or carries on business; and, if that does not apply, an address for service in the United Kingdom. Occasions arise where the Master will be required to consider what order to make (e.g. an order to strike out) where a party fails or refuses to comply with this rule. Likewise, there is a duty on a party to give notice of change of address to the court and to every other party as soon as it occurs: rule 6.24.

5.3.5 Service of documents other than the claim form on children and protected parties is dealt with by rule 6.25. In general, a child or protected party will have a litigation friend (see the detailed provisions of CPR 21.1 to 21.9), and the document in question will be served on them or, under the provisions of 6.23, on the solicitor acting in the litigation.

5.3.6 The date of deemed service is dealt with by rule 6.26 and the provisions of paras 10.1 to 10.7 of PD 6A. The provisions are detailed in accordance with the type of service adopted, and should be consulted in each case. For example, in the case of service by e-mail, if the e-mail is sent on a business day before 4.30 pm, service is deemed on that day; otherwise on the next business day after it was sent.

5.3.7 As with the claim form, an alternative method or place of service may be ordered: rule 6.27.

5.3.8 And, as with the claim form, a certificate of service must (where so required) be filed by the party serving the document setting out the method of service and date when the relevant step in effecting service took place: rule 6.29.

5.4 Out of the jurisdiction

5.4.1 The legislation is set out in Section IV of Part 6, which contains rules 6.30 to 6.47, and Practice Direction 6B.

5.4.2 Essentially, these relate to service of the claim form and other documents out of the jurisdiction; to the question of whether permission is or is not required to serve out and, if it is, how to obtain such permission; and to the procedure for such service.

5.4.3 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, provided that, if the case is not one where service may be effected without permission, the claim form is endorsed by the court "Not for service out of the Jurisdiction".

Without permission

5.4.4 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 where they do not fall within the rules, they risk being struck out or stayed, e.g. for want of jurisdiction under CPR 11.

5.4.5 As a corollary to exercising their right to serve without permission, the claimant must comply with rule 6.34, i.e. they must file with the claim form a notice containing a statement of the grounds on which they are so entitled and serve a copy of that notice with the claim form. The form of the notice is found in Practice Form 510. And see PD 6B para 2.1. 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. Again, proceedings which fall foul of this rule will stand the risk of being struck out or stayed.

5.4.6 The period for the defendant to file an acknowledgement of service, an admission, or a defence is set out in rule 6.35. 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), resort will be had to the table contained in PD 6B (and referred to specifically in PD 6B paras 6.3 and 6.4) which sets out the country concerned and the period, in terms of days, for compliance.

With permission

5.4.7 Rule 6.36 governs the position. In any proceedings where permission is required, (i.e. where the "without permission" provisions of rules 6.32 and 6.33 do not apply) the claimant may serve the claim form out of the jurisdiction with the permission of the court if any of the grounds set out in para 3.1 of PD 6B apply. Those grounds are clearly set out and must be consulted in each case. It must be noted straight away however that the court will not give permission unless it is satisfied that England and Wales is the proper place in which to bring the claim: rule 6.37(3). And in this respect there are added qualifications for service in Scotland or Northern Ireland: 6.37(4).

5.4.8 Application for permission is made under rule 6.37. That rule requires an application notice complying with Part 23. The application must set out which ground in para 3.1 of the Practice Direction is relied on. The proper practice is to support the application with a witness statement verified by a statement of truth, or to verify the contents of the application notice itself by a statement of truth, in each case stating the facts relied on and stating specifically (by number) the sub-paragraph of para 3.1 relied on. Furthermore, the application must state that the claimant believes that the claim has a reasonable prospect of success: see 6.37 (1)(b); and must state the defendant's address or, if not known, in what place the defendant is, or is likely, to be found. Applications which do not comply with these requirements will not be granted.

5.4.9 In the event that permission is granted, the court order will specify the periods for acknowledgement of service, admission or defence. Again, resort will be had to the table set out in Practice Direction 6B for the number of days required. The court may also, and often does, give directions about the method of service.

5.4.10 Under rule 6.38, where permission is required to serve the claim form out of the jurisdiction, permission is likewise required to serve any other document in the proceedings. Separate permission for the particulars of claim is not however required where the court gives permission for the claim form to be served and the claim form itself states that particulars of claim are to follow.

Methods of service out of the jurisdiction

5.4.11 The various methods of service available are set out in rules 6.40(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 rule 6.40(3). These include particularly:

(1) service through a Receiving Agency under the Service Regulation, i.e. Council Regulation (EC) No 1393/2007. This is printed as an annex to

PD 6B. Rule 6.41 sets out the documents which the claimant must file when he proposes service under the Regulation. He files them in the Foreign Process Section in Room E10, and

(2) service through the authority designated under The Hague Convention or any other Civil Procedure Convention or Treaty in respect of the country concerned. The procedure in that case is fully laid out in rule 6.43.

5.4.12 The remaining methods of service, and the procedure to be followed if they are adopted, are set out in rules 6.42 to 6.45. These include service on a State as defined in rule 6.44.

5.4.13 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 rule 6.40(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: rule 6.40(4).

5.4.14 There is jurisdiction in an appropriate case to make an order 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. As to alternative service see paragraph 5.2.10 above.

5.4.15 Further advice on service out of the jurisdiction may be obtained from the Foreign Process Section in Room E16.

5.5 Service of documents from Foreign Courts or Tribunals

5.5.1 Section V of Part 6 (containing rules 6.48 to 6.52) deals with incoming service from a foreign court or tribunal. Such rules do not apply where the Service Regulation, which has its own in-built provisions, applies. Service is by request from the foreign court to the Senior Master, who will determine the method of service. This is usually by a process server. Once service is effected the process server must send to the Senior Master a copy of the document and proof of service (or a statement why the document could not be served); and the Senior Master will send to the person requesting service a certificate stating when and how the document was served (or the reason why it has not been served) and a copy of the document.

6. Response to a Part 7 Claim

6.1 General

6.1.1 Responding to particulars of claim is dealt with in Part 9. A defendant may respond to the service of particulars of claim by;

1. filing or serving an admission in accordance with Part 14,
2. filing a defence in accordance with Part 15,
3. 3. doing both (if part only of the claim is admitted), or
4. filing an acknowledgement of service in accordance with Part 10.

6.1.2 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.

6.1.3 Where a defendant fails to file an acknowledgement of service within the time specified in rule 10.3 or to file a defence within the time specified in rule 15.4 the claimant may obtain default judgment if Part 12 allows it. (See paragraph 6.5 below for information about default judgments.)

6.2 Acknowledgement of service

6.2.1 Acknowledgements of service are dealt with in Part 10. A defendant may file an acknowledgement of service if;

(a) they are unable to file a defence within the period specified in rule 15.4; or

(b) they wish to dispute the court's jurisdiction under Part 11. Indeed, under rule 11(2) a defendant who wishes to dispute jurisdiction must first file an acknowledgement of service. The rules concerning an application to dispute jurisdiction and the results of any such application, depending on whether an order is or is not made declaring that the court has no jurisdiction, are set out in detail in Part 11.

Filing an acknowledgement of service has, in general, the effect of extending the time for filing the defence by 14 days; see rule 15.4.

6.2.2 A defendant who wishes to acknowledge service of a claim form should do so by using form N9.

6.2.3 Rule 10.5 states that the acknowledgement of service must;

(a) be signed by the defendant or his legal representative, and

(b) include the defendant's address for service, as to which see para 5.3.4 above

The Part 10 Practice Direction contains further information relating to the acknowledgement of service and how it may be signed.

6.3 Admissions

6.3.1 The manner in which, and the time within which, a defendant may make an admission of a claim or part of a claim are set out in rules 14.1 to 14.2.

6.3.2 As to admission made after the commencement of proceedings, the position is laid down by rule 14.1. The defendant may admit the claim in writing such as by a statement of case or by letter. If the only remedy sought by the claimant is the payment of money, the defendant may also make his admission as follows:

(a) under rule 14.4 (admission of whole claim for specified amount)

(b) under rule 14.5 (admission of part of claim for specified amount)

(c) under rule 14.6 (admission of liability to pay whole of claim for unspecified amount)

(d) under rule 14.7 (admission of liability to pay claim for unspecified amount where defendant offers a sum in satisfaction.)

6.3.3 It is these forms of admission as above which will govern the procedure to be then followed, and the right of the claimant to obtain judgment.

6.3.4 If the admission is made in writing under rule 14.1(2), application may be made for judgment. Judgment shall be such "as it appears to the court that the applicant is entitled to on the admission": rule 14.3.

6.3.5 If admission is made of the whole claim for a specified amount of money, the position is governed by rule 14.4. The defendant will return the relevant practice form (in form N9A included in the response pack accompanying the claim form) to the claimant. The claimant may then file a request for judgment in form N225A. At that stage, matters will depend on whether the defendant has in his admission requested time to pay. If they have not, the claimant may request judgment payable by a certain date or at a certain rate. Judgment will be entered for the amount of the claim and costs payable at that time or rate; or, if the claimant has not specified a time or rate, immediately: rule 14.4(6).

If, as is more usual, the defendant has requested time to pay, the procedure in rules 14.9 and 14.10 will apply, namely that the claimant may accept the defendant's request. If the claimant does accept, judgment will be entered for payment at the time and rate specified in the defendant's request. If the claimant does not accept, judgment will be entered for the amount admitted at a time and rate determined by the court: rule 14.10(4). Determination may be by a court officer without a hearing where the amount outstanding is not more than £50,000: rule 14.11. This is subject to a right of re-determination by a judge: rule 14.13. The question whether such re-determination takes place at a hearing or without a hearing is governed by para 5 of the Part 14 Practice Direction.

6.3.6 Admission of part of a claim for a specified amount of money is governed by rule 14.5. On receipt of such an admission the court will serve notice on the claimant requiring them to state:

(a) that they accept the amount admitted in satisfaction,

(b) that they do not so accept and wish the proceedings to continue, or

(c) that if the defendant has requested time to pay, they accept the amount admitted but not the defendant's proposals as to payment.

The procedure then for entering judgment and determining the time and rate of payment is similar to that described under para 6.3.5 above. If the claimant wishes the proceedings to continue, the procedure in Part 26 will operate: see para 8.2 below.

6.3.7 Where the defendant admits liability to pay the whole claim for an unspecified amount the position is governed by rule 14.6. After the necessary steps judgment will be entered for an amount to be decided by the court. The amount may then be decided by a Master at a disposal hearing. For the procedure, see para 12 of the Practice Direction to Part 26. Note that directions may be given: para 12.2.

6.3.8 If the defendant admits liability to pay a claim for an unspecified amount of money and offers a sum in satisfaction the position is governed by rule 14.7. If the claimant accepts the offer they may obtain judgment; and the position as to payment by instalments if requested will be that laid down in rule 14.9. If the claimant does not accept the offer they may obtain judgment for an amount to be decided by the court and costs.

6.3.9 It should be noted that where determination of the time and rate of payment under judgment for a specified sum is to be by a judge at a hearing, the proceedings will, if the defendant is an individual, be transferred to the defendant's home court: rule 14.12.

6.3.10 The factors to be taken into account by the court in deciding time and rate of payment are set out in para 5.1 of the PD to Part 14, including the defendant's statement of means.

6.3.11 An admission may be made before the commencement of proceedings. The circumstances in which this may be done are laid down in rule 14.1A. Application may be made by the claimant for judgment on the pre-action admission. And application may be made by the person who made it for permission to withdraw it: see rule 14.1A(5).

6.3.12 Applications for permission to withdraw an admission under Part 14, whether an admission made after commencement of proceedings under rule 14.1 or a pre-action admission under rule 14.1A, are governed by the PD to Part 14. In deciding whether to give permission the court will have regard to all the circumstances, including the particular matters under para 7.2. One of those matters, but not the only one, is whether new evidence has come to light. The interests of the administration of justice are also engaged: para 7.2(g).

6.3.13 Interest. The right to enter judgment for an amount of interest claimed is governed by rule 14.14. If the closely defined conditions of that rule are not satisfied, judgment will be for interest to be decided by the court.

6.3.14 Judgment will not be entered on an admission where;

1. the defendant is a child or protected party, or

2. the claimant is a child or protected party and the admission is made in respect of

(a) part of a claim for a specified amount of money, or

(b) by way of a sum offered in satisfaction of a claim for an unspecified amount of money.

See Part 21 and the Part 21 Practice Direction, and in particular rule 21.10 which provides that, where a claim is made by or on behalf of a child or protected party or against a child or protected party, no settlement, compromise or payment shall be valid, so far as it relates to such claim, without the approval of the court.

6.4 Defence

6.4.1 A defendant who wishes to defend all or part of a claim must file a defence, and if they fail to do so the claimant may obtain default judgment if Part 12 allows it. The time for filing a defence is set out in rule 15.4. As to the contents of the defence, see para 6.7 below.

6.4.2 A form for defending the claim is included in the response pack. The form for defending the claim also contains provision for making a counterclaim. Part 22 requires a defence to be verified by a statement of truth (see the Part 15 Practice Direction, paragraph 2; and see also Part 22 and the Part 22 Practice Direction). The court may, amongst its other powers, strike out a defence which is not verified by a statement of truth.

6.4.3 The parties may, by agreement, extend the period specified in rule 15.4 for filing a defence by up to 28 days. 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. 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.

6.5 Default judgment

6.5.1 CPR Part 12 governs the position. A claimant may obtain default judgment, i.e. judgment without trial where the defendant has failed to file an acknowledgment of service or has failed to file a defence. The conditions to be satisfied in either case are clearly laid down in rules 12.3.(1) and (2). Judgment in default is not however permitted in the cases set out in rule 12.2 (among which are cases using the Part 8 procedure), and in rule 12.3(3) (among which are, importantly, cases where the defendant has applied to strike out the claim or for summary judgment on the claim and the application has not been disposed of). See also paras 1.2 and 1.3 of the Part 12 Practice Direction.

6.5.2 To obtain default judgment in the circumstances set out in rule 12.4(1) (i.e on a claim for a specified amount of money, an amount of money to be decided by the court, or for delivery of goods where the claim gives the option for the defendant to pay their value) the claimant may file a request for judgment. The limits of this rule are often overlooked in practice. If the claimant seeks default judgment where the claim consists of or includes a claim for any other remedy they must make an application for that purpose: rule 12.4(2)(a). They may however obtain a default judgment on request if they abandon the claim for any other remedy in their request: rule 12.4(3).

6.5.3 The request is made in forms N205A or N225 for specified amounts or, in the case of claims where the amount of money or the amount representing the value of goods is to be decided by the court, in forms N205B or N227. A court officer deals with the request and will require to be satisfied that the provisions of PD12 para 4.1 are complied with before entering judgment.

6.5.4 Default judgment in respect of claims specified in rule 12.4(2)(a) as described above, or rules 12.9 or 12.10, must be obtained by making an application to a Master. Rule 12.9 is concerned with claims for costs only (other than fixed costs). Rule 12.10 is concerned, importantly, with claims against a child or protected party, and (inter alia) claims in tort by a spouse or civil partner against the other, claims against a defendant served without permission out of the jurisdiction under the Civil Jurisdiction and Judgments Act 1982, claims against a defendant domiciled in Scotland or Northern Ireland and claims against a State. Procedural provisions are contained in rule 12.11 and the Part 12 Practice Direction.

6.5.5 Where application is made, judgment is to be such judgment as it appears to the court that the claimant is entitled to on his statement of case: rule 12.11 (1).

6.5.6 The Crown. Special provisions apply in proceedings against the Crown. Under rule 12.4(4), a request for default judgment must be considered by a Master or District Judge, who must in particular be satisfied that the proceedings have been properly served on the Crown in accordance with section 18 of the Crown Proceedings Act 1947 and rule 6.10.

6.5.7 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 and a date to be fixed for the disposal hearing.

6.6 Setting aside default judgment

6.6.1 It is open to the court to set aside a default judgment under rules 13.2 or 13.3. In the former case the judgment must be set aside if the judgment was wrongly entered because any of the conditions referred to in the rule have not been satisfied, or if the whole of the claim was satisfied before judgment was entered. In the latter case, the judgment may be set aside or varied if (a) the defendant has a real prospect of successfully defending the claim, or (b) there is some other good reason why the judgment should be set aside or varied or why the defendant should be allowed to defend the claim. The court must have regard to whether the applicant made the application promptly. Close attention is always paid to this rule. Further, in deciding whether to set aside or vary the court has wide discretionary powers to impose terms (such as payment into court) on the applicant.

6.7 Statements of Case

6.7.1 Statements of case are defined in rule 2.3(1). They include the claim form, the particulars of claim where not included in the claim form, the defence and any reply. They also include any further information in relation to them, whether given voluntarily or under court order. Part 16 deals specifically with statements of case. Note that Part 16 does not apply to cases proceeding under Part 8.

6.7.2 The particulars of claim, whether contained in the claim form or served separately, should set out the claim clearly and fully. The same principle applies to the defence.

6.7.3 Part 16 sets out certain matters that must be included in a statement of case. Paras 4 to 7 of the Practice Direction contain matters that must be included in specific types of claim; and para 8 contains matters that must be specifically set out in the particulars of claim if relied upon. These include, but are not limited to, any allegation of fraud, and details of any misrepresentation. As to the defence, rule 16.5 deals with the matter. At the forefront of the defendant's obligations are the requirement to state which of the claimant's allegations they deny; which they are unable to admit or deny but which they require the claimant to prove; and which they admit. If the defendant denies an allegation they must state their reasons for doing so; and if they intend to put forward a different version of events from that given by the claimant, they must state their own version. Points of law may be set out in any statement of case. For information in respect of statements of case in defamation claims see the Part 53 Practice Direction.

6.7.4 In addition to the requirements contained in Part 16 and the Part 16 Practice Direction, the following guidelines on preparing a statement of case should be followed;

(1) a statement of case must be as brief and concise as possible and confined to setting out the bald facts and not the evidence of them,

(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) where a party is required to give reasons, the allegation should be stated first and then the reasons listed one by one in separate numbered sub-paragraphs,

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

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

(9) where they will assist, headings, abbreviations and definitions should be used and a glossary annexed; contentious headings, abbreviations, paraphrasing and definitions should not be used and every effort should be made to ensure that they are in a form acceptable to the other parties,

(10) particulars of primary allegations should be stated as particulars and not as primary allegations,

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

(12) any lengthy extracts from documents should be placed in a schedule.

6.7.5 A statement of case should be verified by a statement of truth. If a party fails to verify their statement of case, it will remain effective unless struck out, but that party may not rely on the statement of case as evidence of any of the matters contained in it. A statement of case verified by a statement of truth is advisable so as to constitute evidence at hearings other than the trial: see rule 32.6(2). Any party may apply to the court for an order to strike out a statement of case which has not been verified.

6.8 Part 20 Proceedings: counterclaims and other additional claims

6.8.1 The regime for making counterclaims or other additional claims is laid down in Part 20 and the Part 20 Practice Direction.

6.8.2 Thus Part 20 deals with (a) counterclaims, i.e. counterclaims by a defendant against the claimant or against the claimant and some other person, (b) an additional claim by the defendant against any person (whether or not already a party) for contribution or indemnity, or some other remedy and (c) where an additional claim has been made against a person who is not already a party, any additional claim made by that person against any other person (whether or not already a party).

6.8.3 A defendant may make a counterclaim against a claimant by filing particulars of the counterclaim. They will do so by completing the defence and counterclaim form provided in the response pack. They must also pay the relevant fee payable on the counterclaim. They may counterclaim without the permission of the court when filing their defence. Otherwise they must apply for permission. The matters which the court will consider on an application for permission are laid down in rule 20.9. And paragraph 2 of the Practice Direction requires that the application for permission must be supported by evidence stating (inter alia) the stage which the proceedings have reached and the nature of the additional

claim to be made or details of the question or issue to be decided. Particulars of claim under the proposed counterclaim should be provided.

6.8.4 Where a counterclaim seeks to bring in a new party the defendant must apply for permission: rule 20.5. They should apply in Form PF20A adding the new party as defendant; and the provisions of para 2 of the Practice Direction will again apply.

6.8.5 A defendant claiming contribution or indemnity from another defendant may do so by filing notice in Form PF22 and serving it on the other defendant. They may do so without permission if they file and serves it with their defence. Otherwise they must apply for permission: rule 20.6.

6.8.6 Any other additional claim may be brought by the issue of a Part 20 claim form in Form N211. Again, no permission is required if the additional claim form is issued before or at the same time as the defendant files their defence: rule 20.7. Otherwise permission must be applied for by application notice in Form N244.

6.8.7 Rule 20.8 deals with service of a Part 20 claim form and rule 20.12 sets out the forms which must accompany the claim form on such service. It should be noted that where the court gives permission to make an additional claim it will give directions as to its service (rule 20.8 (3)); and where the court makes an order giving permission to add an additional party it will give directions as to the management of the case (rule 20.5 (3)). Thus, parties on an application for permission should be alert to such directions as may be required and may wish to provide the Master with a draft order.

6.8.8 As to nomenclature in relation to the parties in a case which involves additional claims, the Practice Direction gives very clear guidance. Thus, for example, under para 7.4, where a defendant makes separate additional claims against two additional parties, the additional parties are referred to in the title of the proceedings as "Third Party" and "Fourth Party". Whereas, under para 7.5, if an additional claim is made against more than one party jointly, the additional parties are referred to in the title as "First Named Third Party" and "Second Named Third Party".

6.8.9 Where a defence is filed to an additional claim the court must consider the future conduct of the proceedings and give appropriate directions. So far as practicable these will ensure that the original claim and the additional claims are managed together: rule 20.13.

7. Part 8 - Alternative procedure for claims

7.1 General

7.1.1 Paragraph 4.5 above refers to the availability of an alternative means of making a claim, namely by using the Part 8 procedure. Rule 8.1(2) lays down the types of claim where the procedure may be used, notably where no significant dispute of fact will be involved. It will be noted also that a rule or practice direction may, in relation to a specified type of proceedings, "require or permit" the use of the Part 8 procedure. Thus, Practice Direction 8A sets out, in para 3.1, examples of cases where it may be used. And, importantly, in para 3.2, certain proceedings where it must be used. Those latter proceedings include the claims, petitions and applications listed in the table in section B of the Practice Direction. That table usefully sets out the jurisdictional origin of the application in question, with a reference, where applicable, to the Rule of the former Rules of the Supreme Court under which the jurisdiction was exercised. An example is an application by a stakeholder under rule 86.2(3) (formerly known as an application for interpleader relief by a stakeholder).

7.1.2 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. Thus, section C of PD8A lays down its own procedural regime for each of the particular applications referred to in section C.

7.1.3 The main features of the Part 8 procedure are:-

(a) the claim form is issued in Form N208

(b) it must state that Part 8 applies

(c) it must state the question which the claimant wants the court to decide; or the remedy which the claimant is seeking and the legal basis for the claim to that remedy.

(d) if the claim is made under an enactment, it must state what that enactment is

(e) Part 16 (statements of case) does not apply, but the claimant may be required to file details when issuing, for example as may be required by section C of PD8A relating to the application in question.

(f) Part 15 (defence and reply) does not apply

(g) judgment in default may not be obtained: see CPR 12.2 and 8.1(5)

(h) the claimant may not obtain judgment by request on an admission and therefore rules 14.4 to 14.7 do not apply

(i) the claim shall be treated as allocated to the multi-track (see however PD8A, para 8.2 under which directions may be given specifically allocating to track).

7.1.4 All Part 8 claim forms will be referred to a Master for directions as soon as issued. These may include fixing a hearing date. Where a hearing date is fixed, notice of the hearing date must be served with the claim form. Where the Master does not fix a hearing date 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, as the case may be, the expiry of the period for acknowledging service. The court may, and often does, convene a directions hearing under PD6A para 6.4 before giving directions.

7.1.5 Where a Part 8 claim form has been issued for the purpose of approving and giving effect to a consent order for an award of damages to a child or protected party or an award of provisional damages as in paragraph 4.5.2 above, a draft of the order sought should be attached to the claim form. For more information, see paragraphs 7.3.1 to 7.3.15 and 21.3.12 to 21.3.14 about children and protected parties and paragraphs 7.4.1 and 21.3.15 to 21.3.16 about provisional damages.

7.1.6 A defendant who wishes to respond to a Part 8 claim form should acknowledge service of it and may do so either by using form N210 or otherwise in writing giving the following information:

(1) whether they contest the claim, and

(2) where they are seeking a different remedy from that set out in the claim form, what that remedy is.

If a defendant does not acknowledge service of the claim form within the specified time they may attend the hearing of the claim but may not take part in the hearing unless the court gives permission.

7.1.7 Rules 8.5 and 8.6 and paragraph 7 of the Part 8 Practice Direction deal with evidence to be relied on in Part 8 proceedings. The claimant's evidence must be filed and served with the claim form, and the defendant's evidence (if any) must be filed with their acknowledgement of service. If the defendant files written evidence they must at the same time serve it on the other parties. It is helpful to the court if, where the defendant does not intend to rely on written evidence, they notify the court in writing to that effect.

7.1.8 Where a defendant contends that the Part 8 procedure should not be used, they may state their reasons when they file an acknowledgement of service: rule 8.8(1). If they object to the use of the Part 8 procedure and (as may well be the case) their reasons include matters of evidence, their acknowledgment of service must be verified by a statement of truth: PD8A, para 5.3.

7.1.9 Furthermore, the court itself has wide powers as to the continuation of a claim under the Part 8 procedure. It may, under rule 8.1(3), at any stage order the claim to continue as if the claimant had not used the Part 8 procedure, and where it does so it may give any directions it considers appropriate.

7.2 Specific matters which may be dealt with under the Part 8 procedure

7.2.1 Paragraphs 7.3 to 7.5 below explain where certain types of matters are appropriate or are required to be brought under the Part 8 procedure.

7.3 Approval of Settlements on behalf of children and protected parties where no Part 7 Claim has been issued

7.3.1 Part 21 of the CPR and the Practice Direction to Part 21 set out the requirements for litigation by or against children and protected parties. Part 21 contains its own definitions.

Thus:-

(1) "child" means a person under 18, and

(2) "protected party" means a party, or an intended party, who lacks capacity to conduct the proceedings.

7.3.2 "Lacks capacity" means lacks capacity within the meaning of the Mental Capacity Act 2005. That Act supplies the meaning by enacting, in section 2(1), that a person lacks capacity in relation to a matter if at the material time they are unable to make a decision for themselves in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain. Reference should be made to the specific provisions of sections 1, 2 and 3 of the Act which relate to that definition; and judicial assistance is found in the decision in *V v R* [2001] EWHC 822 (QB) when considering whether or not a claimant has capacity to conduct litigation with reference to the above tests.

7.3.3 No settlement or compromise 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: CPR 21.10 (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. Furthermore, 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: see para 1.3 of the Practice Direction. It should be noted also that the approval of the court is required to sanction any interim payment, including any voluntary interim payment, under the claim. Discontinuance of a claim by a child or a protected party, if pursuant to a compromise, also requires the approval of the court.

7.3.4 A protected party must have a litigation friend to conduct proceedings on their behalf. So must a child, unless the court makes an order permitting the child to act without one. A litigation friend is, under rule 21.4(3), someone who can fairly and competently conduct proceedings on behalf of the child or protected party, has no interest adverse to that of the child or protected party, and (where the child or protected party is a claimant) undertakes to pay any costs which the child or protected party may be ordered to pay in relation to the proceedings. Such person must file a certificate of suitability stating that he satisfies those requirements. Rules 21.4 to 21.8, and paragraphs 2 and 3 of the Practice Direction, set out how a person may become a litigation friend.

7.3.5 Applications for the approval of settlements or compromises of claims by or against a child or protected party proceeding in the Central Office 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. If the purpose of starting the claim is to obtain approval, a Part 8 claim form must be issued in Form N208 and must include a request to the court for approval of the settlement or compromise. The claim form must, in addition to satisfying the requirements of rule 21.10(2), include all the information set out in paragraph 5 of the Practice Direction. Thus, the terms of the settlement or compromise must be set out or (as is usually required by the Master) a draft consent order in Form N292 should be provided. Amongst the other requirements, the information should contain the litigation friend's approval of the proposed settlement or compromise and, under para 5.2(1), an opinion on the merits of the settlement given by counsel or solicitor acting for the child or protected party. Where, in any personal injury case, a claim for future pecuniary loss is settled the court must be satisfied that the parties have considered whether the damages should take the form of periodical payments. And, if the settlement does include provision for periodical payments the draft order should comply with rules 41.8 and 41.9 setting out the details of such payments: see para 5 of the Practice Direction. The Part 8 claim form must, of course, be served on the opposing party and, in accordance with the procedure under Part 8, the Master will give a hearing, for an appropriate date and length of time, to consider the question of approval.

7.3.6 Where parties reach a settlement or compromise in proceedings already started by the issue of Part 7 claim form (where the trial has not started) an application must be made to the Master for approval. Such application is by application

notice in Form N244 and should follow the terms of form PF170(B). A draft consent order should be provided in Form N292. The application notice is lodged in Room E07.

7.3.7 As in the case of settlements before proceedings have started (paragraph 7.3.5 above), where in any personal injury case a claim for future pecuniary loss is settled the court must be satisfied, on an application for approval, that the parties have considered whether the award should take the form of periodical payments; and, if the settlement does include provision for periodical payments, the requirements of rules 41.8 and 41.9 must be satisfied: see para 6 of the Practice Direction.

7.3.8 The procedure for obtaining approval in cases involving dependent children under the Fatal Accidents Act 1976 are as described above, depending on whether proceedings have or have not already been started. (see paras 7.3.5 and 7.3.6) Since settlement of a claim under the 1976 Act may well involve the apportionment to children of part of the total sum awarded, approval will be required. Para 7.4 of the Practice Direction sets out the matters of which the court must particularly be informed. 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.

7.3.9 Approval hearings will normally be held in public unless the Judge or Master orders otherwise. The court may however make an anonymity order, namely that the identity of any party must not be disclosed if it considers non-disclosure necessary to protect the interest of that party: CPR 39.2(4).

7.3.10 Investment of the approved sum. CPR 21.11 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.

7.3.11 Protected parties. The court is required to consider whether the protected party is also a protected beneficiary. If that is the case, directions will be given in accordance with para 10 of the Part 21 Practice Direction which should be consulted for its terms. In cases of £50,000 or more the order will, unless a power of attorney is in place or a deputy has already been appointed by the Court of Protection, be that the litigation friend is to apply to the Court of Protection for the appointment of a deputy after which the fund will be dealt with as directed by that Court. A form of order transferring the fund to the Court of Protection is set out in form N292. If the fund is under £50,000 it may be retained in court and invested in the same way as the fund of a child. By an amendment to para 10 of the Practice Direction the Court of Protection now has jurisdiction to make such an order even in the case of a fund of £50,000 or more, either of its own initiative or at the request of the judge giving directions on approval of the settlement.

7.3.12 Children. Paragraph 9 of the Practice Direction applies. At the approval hearing the litigation friend or their legal representative must provide the court with the child's birth certificate and form CFO 320 (initial application for investment of damages) for completion by the Judge or Master. Also, any evidence or information which the litigation friend wishes the court to consider in relation to investment must be provided. 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 and the Court Funds Office will make the appropriate investment.

7.3.13 If the court has approved periodical payments by way of the whole or part of an award (whether in the case of a child or a protected party) it will, in accordance with CPR 41.8 and 41.9, include in its order the specific terms that are required to be embodied by those two rules. Such terms frequently require complex drafting and the court will expect to be provided in advance with a draft order considered by both parties to the litigation.

7.3.14 An approved order for investment may include liberty to apply to vary the form of investment. And, as a separate matter, the Master may hear applications by the litigation friend from time to time to direct payments out of the fund in order to defray proper expenditure on the child's behalf. Good reason must be shown to support such applications, particularly in Fatal Accident Act cases where a parent of the child has themselves been awarded damages on their own behalf which may be expected to include provision for the day to day maintenance of the child.

7.3.15 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 para 13 of the Practice Direction.

7.3.16 In appropriate circumstances, the court may direct that the fund of a child be paid to trustees to be held under a bare trust. The court has no power under CPR 21.11 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 majority. The child's advisers and the court will consider the terms of the trust with care. Standard trust provisions are not always appropriate. 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.

7.4 Settlement of a provisional damages claim

7.4.1 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, in addition to the matters set out in paragraph 4.4 of the Part 16 Practice Direction, that the parties have reached agreement and request a consent judgment. A draft order in accordance with paragraph 4.2 of the Part 41 Practice Direction should be attached to the claim form. The claimant or their legal representative must lodge the case file documents (set out in the draft order) in Room E07. Once the provisional damages claim has been approved the documents lodged will be compiled into a file and preserved by the court. For more information about provisional damages claims and orders, see Part 41 and the Part 41 Practice Direction, and paragraphs 21.5.1 and 21.5.2 below.

7.5 Costs only proceedings

7.5.1 Proceedings may be brought under Part 8 where the parties to a dispute have reached an agreement on all issues (including which party is to pay the costs) which is made or confirmed in writing but have failed to agree the amount of those costs, and no proceedings have been started. The position is governed by the new CPR 46.14 and para 9 of the Part 46 PD. A Part 8 claim form may be issued to determine the amount of such costs but should not be issued in the High Court unless the dispute to which the agreement relates was of such a value or type that proceedings would have been commenced in the High Court. A claim form which is to be issued in the High Court at the Royal Courts of Justice will be issued in the Senior Courts Costs Office at Thomas More Building, Royal Courts of Justice, Strand, London WC2A 2LL. Paragraphs 9.3 to 9.12 of the PD helpfully set out the procedure to be followed.

8. Preliminary Case Management

8.1 Automatic transfer

8.1.1 Part 26 requires certain claims to be transferred automatically. Where:

1. the claim is for a specified amount of money,
2. the claim has not been issued in a specialist list,
3. the defendant, or one of the defendants, is an individual,
4. the claim has not been issued in the individual defendant's home court, and
5. the claim has not already been transferred to another individual defendant's home court,
6. the claim will, on receipt of the defence, be transferred to the individual defendant's home court.

8.1.2 The defendant's home court will be the district registry for the district in which the defendant resides or carries on business or where (as in London) there is no such district registry, the Royal Courts of Justice. Accordingly, in such cases, where proceedings are started in the Royal Courts of Justice, they will remain there. If the claim is against more than one individual defendant, the claim will be transferred to the home court of the defendant who first files a defence.

8.1.3 In relation to court orders for transfer (as opposed to automatic transfer) see paragraph 8.3 below.

8.2 Allocation and directions

8.2.1 As previously observed (paragraph 1.2.1 above) the allocation of cases in the High Court is necessarily to the multi-track. Accordingly, the provisions of CPR 26.3 as to provisional allocation by a court officer are unlikely to be of great significance in the High Court. What is required is, once a defence has been filed, for the court to serve a notice of proposed allocation which will require the parties to file a completed Directions Questionnaire by the date specified in the notice: rule 26.3(1)(b). 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. Where a party files and exchanges a budget all other represented parties must file an agreed budget discussion

report no later than 7 days before the first case management conference. The form of the Directions Questionnaire (DQ) is in form N181. A party must serve a copy of their DQ on all other parties. The court will in the case of an unrepresented litigant provide a copy of the form for completion by that party. Where there are two or more defendants, and at least one of them files a defence, the notice from the court will be served when all defendants have filed a defence or (if sooner) when the time for filing the last defence has expired. It should be noted that the DQ procedure is not followed in Mesothelioma claims. For the procedure in such claims see Practice Direction 3D.

8.2.2 Of particular importance when completing the DQ are the obligations on a party:-

(1) to give the court further information if believed to be relevant to costs and case management, and to copy this to the other parties. In particular the cost of any proposed expert report should be given at section E and, if it is thought that the claim should not be subjected to costs budgeting, reasons should be given: PD 26, para 2.2 (1),

(2) to consult the other parties and to co-operate in completing the questionnaire: PD26, para 2.3(1),

(3) to try to agree case management directions with the other parties: PD 26, para 2.3(2). Specimen directions are available on the Justice website as now referred to in that paragraph.

8.2.3 It should be noted that in multi-track cases a costs budget need not be filed with the DQ but must be filed in accordance with rule 3.13. It should also be noted that failure by a party to file a costs budget as required may result in that party's recoverable costs being limited to the applicable court fees only: see rule 3.14.

8.2.4 In cases of automatic transfer under rule 26.2 the court will not transfer the claim until all parties have complied with the notice to file a DQ or the time for doing so has expired.

8.2.5 Stay to allow for settlement of the case. A party may when filing their completed DQ make a written request for the proceedings to be stayed while the parties try to settle the case by ADR or other means. If all parties request a stay, the proceedings will be stayed for one month and the court will notify the parties accordingly. In addition, if the court considers that such a stay would be appropriate it will direct that the proceedings, either in whole or in part, be stayed for one month or such other period as it considers appropriate: see rule 26.4.

8.2.6 Assuming compliance by the parties with the obligation to file a DQ the court will allocate the claim to the multi-track unless it proposes to order (as the

circumstances of the claim may warrant) transfer to the county court, or unless it has stayed the proceedings under rule 26.4: see rule 26.5.

8.2.7 In the event of default, however, by a party of their obligation to file a DQ the court has wide and varied powers. Rule 26.3(8) provides that the court will make such order as it considers appropriate, including:-

(a) an order for directions

(b) an order to strike out the claim

(c) an order to strike out the defence and enter judgment, or

(d) an order to list the case for a CMC

Costs consequences are likely to arise against a party in default under rule 26.3(10).

8.3 Transfer

8.3.1 The Queen's Bench Division has power, and in some cases an obligation, to order transfer of a case proceeding in such Division.

8.3.2 Thus, under section 40(1) of the County Courts Act 1984, where the High Court is satisfied that any proceedings before it are required by an enactment to be in the County Court, it shall order transfer of the proceedings to the County Court. Under the same subsection, if the court is satisfied that the person bringing the proceedings knew, or ought to have known, of that requirement, it shall order that the proceedings be struck out. The court is however not bound to strike out in such cases but may, and should normally, order transfer to the County Court.

8.3.3 Important financial limits in relation to starting proceedings in the High Court are found in the High Court and County Courts Jurisdiction Order 1991 (S.I 1991 No724) as amended, and in Practice Direction 7A to Part 7 of the CPR.

8.3.4 Thus, under para 2.1 of the Practice Direction a claim for money in which the County Court has jurisdiction may only be commenced in the High Court if the value of the claim is more than £100,000. Article 4A of the Jurisdiction Order has been amended accordingly. And, under article 5, proceedings (other than claims for clinical negligence) which include a claim for damages in respect of personal injuries may only be commenced in the High Court if the value of the claim is £50,000 or more.

8.3.5 Subject to the requirements of section 40(1), the High Court has a wide discretion as to whether or not a case should be transferred to the county court: see section 40(2). Such an order, if made, may be made of the court's own

motion or on the application of a party. Rule 30.3(2) of the CPR specifically sets out the criteria to which the court should have regard when considering whether or not to make an order under s.40(2). These include amongst other considerations the financial value of the claim, and whether the facts, legal issues, remedies or procedures involved are simple or complex.

8.3.6 Guidance is also given by the Part 29 Practice Direction, which applies to claims begun by claim form issued in the Central Office. By para 2.2 of this PD, a claim with an estimated value of less than £100,000 will generally be transferred to the County Court unless

(a) it is required by an enactment to be tried in the High Court

(b) it falls within a specialist list

(c) it falls within one of the categories set out in para 2.6, which include:-

(1) professional negligence claims

(2) Fatal Accident Act claims

(3) fraud or undue influence claims

(4) defamation claims

(5) claims for malicious prosecution or false imprisonment

(6) claims against the police

8.3.7 If proceedings are transferred under the discretionary power under section 40(2), they are to be transferred to the County Court sitting at such trial centre as the High Court considers appropriate, having regard (inter alia) to the convenience of the parties.

8.3.8 Section 41 of the County Courts Act 1984 contains provisions for the High Court to order transfer from the County Court to the High Court; and section 42(2) contains provisions for the County Court to order such transfer. The criteria already referred to in CPR 30.3(2) are again applicable when the court is considering the matter.

8.3.9 Transfers within the High Court

(A) Transfers from the Central office at the Royal Courts of Justice to a district registry; or from a district registry to the Central office at the Royal Courts of Justice or to another district registry. CPR 30.2(4) governs the position; and again the criteria in rule 30.3 are applicable. It should be noted that an application to transfer from a district registry must be made to the district

registry in which the claim is proceeding.

(B) Transfers between Divisions of the High Court and to and from a specialist list. CPR 30.5 governs the position. There is a wide discretion to order transfer from one Division to another. Recourse in practice is often had to schedule 1 to the Senior Courts Act 1981 under which certain causes and matters are specifically assigned to the Chancery Division and, respectively, the Queen's Bench Division. The Master's order for transfer may refer to such schedule. In the case of transfer to a specialist list, it should not be overlooked that application is made, not to the Master, but to the Judge dealing with claims in that list: rule 30.5(3).

8.3.10 An order for transfer takes effect from the date on which it is made. When the order is sealed the court officer will immediately send the file to the receiving court. At the same time the court officer will notify the parties of the transfer.

8.3.11 An order for transfer to the Queen's Bench Division of the High Court at the Royal Courts of Justice should state, in order to avoid any ambiguity, "transfer to the Central Office, Queen's Bench Division, Royal Courts of Justice".

8.3.12 An order for transfer may be made without notice to a party. If so made, any application to set aside the order should be made in accordance with the procedure in Part 23 (in particular rule 23.10) and the Part 23 Practice Direction; and it should be made to the court which made the order: PD30, para 6.1.

8.4 Alternative Dispute Resolution ("ADR")

8.4.1 Parties are encouraged to use ADR (such as, but not confined to, mediation, conciliation and early neutral evaluation) to try to resolve their disputes or particular issues. Legal representatives should consider with their clients and the other parties the possibility of attempting to resolve the dispute or particular issues by ADR and they should ensure that their clients are fully informed as to the most cost effective means of resolving the dispute.

8.4.2 The settlement of disputes by ADR can:

(1) significantly reduce parties' costs,

(2) save parties the delay of litigation in resolving their disputes,

(3) assist parties to preserve their existing commercial relationships while resolving their disputes, and

(4) provide a wider range of remedies than those available through litigation.

The Master will, in an appropriate case, invite the parties to consider whether their dispute, or particular issues in it, could be resolved by ADR. The Master may also either stay proceedings for a specified period of time or extend the time for compliance with an order, a rule or practice direction so as to encourage and enable the parties to use ADR. Parties may apply for directions seeking a stay for ADR at any time.

8.4.3 Valuable information concerning the availability of ADR may be obtained, among other sources, from the Advice Guide published by the Citizens Advice Bureau at www.adviceguide.org.uk.

8.5 Offers to settle and payments into and out of court

8.5.1 The new Part 36 and Practice Direction 36 were enacted to take effect in relation to offers to settle made on or after 6th April 2015. The earlier form of Part 36 remains in effect to apply to offers made before that date. It should be noted however that, by transitional provisions, certain of the new rules were enacted so as to apply to offers made before that date. The two sets of rules should thus be consulted where necessary for the time being.

8.5.2 A party may offer to settle a claim in whatever way they choose. But if the offer is not made in accordance with Part 36 it will not have the costs consequences which Part 36 specifies. Where an admissible offer to settle is made which does not accord with Part 36, rule 44.2 should be consulted. See in particular rule 44.2 (4)(c).

8.5.3 An offer to settle made in accordance with Part 36 will have the costs and other consequences specified in that Part. It must, under rule 36.5:-

(a) be in writing

(b) make clear that it is made pursuant to Part 36

(c) specify a period of not less than 21 days within which the defendant will be liable for the claimant's costs in accordance with rule 36.13 or 36.20 if the offer is accepted (not applicable if the offer is made less than 21 days before the start of the trial)

(d) state whether it relates to the whole claim or to part of it or to an issue that arises in it and if so which part or issue

(e) state whether it takes into account any counterclaim

8.5.4 The offer may be made at any time, including before the commencement of proceedings: rule 36.7. It will be treated as inclusive of all interest until (a) the date on which the period specified under rule 36.5(1)(c) expires; or (b) if rule

36.5(2) applies, a date 21 days after the date the offer was made. The basis on which a Part 36 offer can be withdrawn or changed are set out in rules 36.9 and 36.10.

8.5.5 In personal injury claims which include a claim for future pecuniary loss, attention must be paid when making a Part 36 offer to the requirements of rule 36.18. In particular, if the offer or part of the offer is for periodical payments, the amount and duration of such payments, and the way in which the continuity of such payments will be secured must (among other requirements) be spelt out. And, if such an offer is accepted, the claimant must within 7 days of the acceptance, apply to the court for an order under rule 41.8.

8.5.6 Again, where a Part 36 offeror proposes that a settlement shall include an award of provisional damages, there are special provisions in rule 36.19 as to what the offer must state. And, if such offer is accepted, the claimant must apply for an order for provisional damages under rule 41.2.

8.5.7 A Part 36 offer is made on the date when it is served on the offeree: rule 36.7.

8.5.8 Clarification of a Part 36 offer may be, and often is in practice, called for under rule 36.8. There is a time limit of 7 days to seek such clarification. If it is not given, application to the court may be made. If the court makes an order it will then specify the date on which the offer is treated as having been made.

8.5.9 A Part 36 offer may be accepted by serving notice in writing at any time unless the offer has been withdrawn: rule 36.11(1) and (2). Permission to accept is however required in specified cases, including (as set out in rule 36.15(1) those where the offer is made by one or more but not all of multiple defendants, and in rule 36.11(3)(d) where the trial has started: The notice of acceptance must be filed with the court. It has been held that a Part 36 offer no longer remains open for acceptance where the claim has been struck out or there has been failure to comply with an unless order: *Joyce v West Bus Coach Services Ltd* [2012] EWHC 404.

8.5.10 If permission is required to accept a Part 36 offer, application must be made in accordance with Part 23. Such application must be dealt with by a judge other than the judge allocated to conduct the trial, unless the parties agree otherwise: see PD 36, para 3.2.

8.5.11 Costs consequences. If the offer is accepted within the relevant period (as defined in rule 36.3) the claimant will be entitled to the costs of the proceedings up to the date of service of the notice of acceptance: see rule 36.13(1). Such costs will be assessed on the standard basis if not agreed. Special provision is made in cases where a defendant's offer relates to part only of the claim: rule 36.13(2).

8.5.12 Where however (a) a Part 36 offer that was made less than 21 days before trial

is accepted, or (b) a Part 36 offer is accepted after the expiry of the relevant period, the court will (unless the parties agree) be called on to make an order as to costs. And, in the latter case, unless the court orders otherwise,

(i) the claimant will be entitled to costs up to the date on which the relevant period expired, and

(ii) the offeree will be liable for the offeror's costs for the period from the date of expiry to the date of acceptance: see rule 36.13(4) and (5).

8.5.13 The effect of acceptance is to stay the claim upon the terms of the offer. If the offer relates to part of the claim, however, special provisions apply: rule 36.14(3). A stay does not affect the power of the court to enforce the terms of the offer under its general jurisdiction; nor does it affect the power of the court to deal with any question of costs. As to enforcement generally, see rule 36.14(6) and (7).

8.5.14 Rule 36.15 deals with offers by one or more, but not all, of multiple defendants.

8.5.15 Rule 36.16 provides that a Part 36 offer is to be treated as without prejudice save as to costs, and deals with questions that may arise as to the communication of such offer to the trial judge.

8.5.16 Rule 36.17 deals with the costs consequences where judgment is entered on a claim, namely:-

(a) If the claimant fails to beat the defendant's Part 36 offer, the court will, unless it considers it unjust to do so, order the defendant's costs from the date of expiry of the relevant period under rule 36.2, and interest on those costs.

(b) If, on the other hand, the claimant obtains judgment at least as advantageous to the claimant as contained in their own Part 36 offer, they will be entitled to interest on the sum awarded, and costs on the indemnity basis plus interest on those costs. Furthermore, by rule 36.17(4)(d), the claimant's reward for making an adequate Part 36 offer is increased by an uplift, calculated on the amount of money awarded by the judgment or (in the case of a non-monetary claim) on the sum awarded in respect of costs. Reference should be made to the terms of this rule and to the statutory instrument which introduced it, namely the Offers to Settle in Civil Proceedings Order 2013 (S.I 2013 No.93). The amendment does not apply to a claimant's offer which was made before 1st April 2013.

8.5.17 Deduction of benefits. Rule 36.22 governs the position where payment to a claimant following a Part 36 offer would be a compensation payment as defined in the Social Security (Recovery of Benefits) Act 1977. A defendant

making a Part 36 offer should state (a) whether the offer is made without regard to any liability for recoverable amounts, or (b), on the contrary, that it is intended to include any deductible amounts. If the latter, a regime is set out in rules 36.22(5) to (9) for specifying the net amount of compensation and for ascertaining whether on judgment being entered the claimant has or has not beaten the Part 36 offer. Care should be taken to ensure that the amount of benefit to be set off is set off only against the appropriate head of damage in respect of which the benefit has been paid (e.g past loss of earnings) and is not being brought generally into account.

8.5.18 Part 37 deals with payments into and out of court, which are now confined to certain limited circumstances:

1. Money paid into court under a court order – a party making such a payment must serve notice of this on every other party and file a certificate of service in respect of each such notice.

2. Where a defendant wishes to rely on a defence of tender before claim they must make a payment into court of the amount which they say was tendered.

3. Payments into court under enactments – see the Part 37 Practice Direction, paragraphs 4 to 8.

8.5.19 Money paid into court should be paid by cheque payable to the Accountant General of the Senior Courts. It must be accompanied by a sealed copy of the order providing for the payment in, or a copy of the defence, whichever is applicable, and the Court Funds Office form 100.

8.5.20 Money paid into court under a court order or in support of a defence of tender may not be paid out without the court's permission except where a Part 36 offer is accepted without needing the permission of the court and the defendant agrees that a sum paid into court by them should be used to satisfy the offer in whole or in part.

8.5.21 Where permission is required to take funds out of court an application must be made in accordance with Part 23. If the court's permission is not required, the requesting party should file a request for payment in Court Funds Office form 201 with the Court Funds Office, accompanied by a statement that the defendant agrees that the money should be used to satisfy the Part 36 offer in Court Funds Office form 202: see the Part 37 Practice Direction, para 3.5 for the details required to be provided on the form. A party is obliged to notify the court whether they are or have been in receipt of legal funding by the Legal Services Commission.

9. Listing before Masters

9.1 The Masters' Lists

9.1.1 The Masters' lists consist of:

(i) The Urgent and Short Applications List - urgent or short applications on notice or without notice of not more than half an hour. The Masters take this list by rotation. There is a 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 Urgent and Short Applications List can be obtained from the QB Masters Listing Section and will be included each day in the QB Masters Court List: htpp://www.justice.gov.uk/courts/court-lists. For further information on the Urgent and Short Applications List ("USAL") see paragraph 9.2 below.

(ii) Private Room Appointments ("PRA") for interim applications (both pre- and post-issue of proceedings), assessments or trials (using the prescribed PRA form to obtain the appointment).

(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 PRA Notice should be completed for such requests if the parties wish their dates of availability to be taken into account when listing.

(iv) The Asbestos List: all claims for damages for personal injury alleged to have been caused by exposure to asbestos will be listed before certain Masters and all hearings are by telephone unless otherwise directed. The Mesothelioma Practice Direction (3DPD) is applied to all such claims, which are identified by the prefix 'A' before the number of the claim e.g. HQ18A00001.

9.1.2 Parties attending on all applications before the Masters are requested to complete the Court Record Sheet (form PF48), which will be used to record details of the parties' names, representation and the nature of the application. Copies of this form may be found on the writing desks in the Masters' corridor and the Bear Garden. The form will be placed on the file when the hearing is concluded.

9.2 The Urgent and Short Applications List

9.2.1 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 Masters Listing Office.

9.2.2 The first 30 minutes of each list (morning and afternoon) will not be listed but will be reserved for clerks from chambers and solicitors' firms to see Masters for short diary matters, orders etc. This will be designated "Solicitors and Clerks – Unlisted".

9.2.3 Short applications each of no more than 30 minutes may be listed from 11.00am to 12.00pm and from 2.30pm to 3.30pm. If an application has a time estimate of more than 30 minutes it should be listed as a PRA and not in this list.

It should be noted that:-

(i) This hour 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 ("C") or Asbestos ("A") list, it will where possible be listed before a Master taking such list.

9.2.4 The remaining hour unlisted (i.e. from 12.00pm to 1.00pm and from 3.30pm to 4.30pm) will be primarily available for urgent applications as follows:-

(i) Urgent `walk in applications' (see paragraphs 9.2.5 to 9.2.7 below);

(ii) Foreign Process work;

(iii) Deeds Poll;

(iv) Bills of sale;

(v) Other urgent paperwork.

9.2.5 Any person who wishes an urgent application to be heard in the USAL who has not previously issued and listed an application (a `walk in application') may bring the application in the USAL on the day of attendance, as long as the application is first issued and then recorded as being listed by QB Masters' Listing. 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.

9.2.6 There will be an usher present outside the Master's room to take a note of parties' details and bring in the Court Record Forms to the Master. The Master will also be assisted by a member of the Case Progression team where required.

9.2.7 If the Master considers that an application is likely to take longer than 30 minutes or is unsuitable for the Urgent and Short Applications List, e.g. because it is not urgent, the Master may adjourn it to a private room appointment. The applicant must then complete the PRA form giving details of the parties' availability as fully as possible. Failure to do so may result in the form being returned for further information thereby delaying the hearing date. The PRA form is available in the Queen's Bench Masters' Listing Section, Room E07, and from the Court Service Website (see Annex 3).

9.2.8 Hearing dates for the Urgent and Short Applications List are given by the Queen's Bench Masters' Listing section. It is always preferable, where possible, to give notice 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. 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.

9.2.9 Applications in the Urgent and Short Applications List may, by agreement or where the application notice has not been served, be transferred to a private room appointment on a date to be specified by the QB 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.

9.2.10 When an application in the Urgent and Short Applications List is adjourned the Master will where appropriate specify the date to which it is adjourned.

9.2.11 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 PD 2B para 1.2 and paragraph 20.6 below).

9.3 Private Room Appointments

9.3.1 Hearing dates for private room appointments are given by the Queen's Bench Masters' Listing section or by the assigned Master. The applicant must complete the PRA 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 PRA form is available from the QB Action Department public counter, and from the Court Service Website (see Annex 3).

9.3.2 The parties or their legal representatives must inform the Queen's Bench Masters' Listing section of any settlements 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 using the Notice of Cancellation form available from the Queen's Bench Masters' Listing section – see also Annex 3. This should be completed by the parties, and will be sent to the assigned Master as soon as possible for them to note in their diary accordingly.

9.3.3 An application for the adjournment of a private room appointment must be made to the Master who gave the appointment unless the application is by agreement of all parties and the Master approves. The Master will usually require details of parties' availability. The applicant must complete the PRA form giving details of the parties' availability as fully as possible. Any adjournment will normally be to a new hearing date.

9.3.4 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.

9.3.5 Where an application for which a Master has given a private room appointment has been settled, it is the duty of the parties or their legal representatives, particularly those who obtained that appointment, to notify the Master immediately, and to complete the Masters' listing form provided by the QB Masters Listing Section (see Annex 3).

9.3.6 If the Master hearing an application considers that the result of the application might affect the date fixed for a trial, he may refer the application to the Judge in Charge of the Civil List. This possibility should be considered when making an application, and a request should if appropriate be included in the application notice asking the Master to refer the application to the Judge.

9.3.7 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 or to the QB Judges' Listing Section for listing before a High Court Judge. See in particular PD 2B 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).

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

9.4 Costs and Case Management List

9.4.1 The first costs and case management conference will usually be listed before the assigned Master when 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. A PRA Notice should be completed for such requests if the parties wish their dates of availability to be taken into account when listing.

9.4.2 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.

9.4.3 For all other information about costs and/or case management conferences see paragraph 10.2 below.

9.5 The Asbestos List

9.5.1 Cases will be listed in accordance with the Mesothelioma Practice Direction (CPR PD3D).

9.5.2 The first CMC will be listed before a Master for a 30-minute telephone hearing soon after any Defence is filed. 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 directions will be made for a contested "show cause" hearing at a date in the near future, again on the telephone, for an hour.

9.5.3 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 with reasons.

9.5.4 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 emailed or delivered to the relevant Master ahead of the hearing, along with any relevant paginated bundles of documents necessary for the hearing. Bundles must be prepared and delivered in paper form if more than 25 pages, and for all show cause hearings. In the event of agreed directions, the parties should e-mail the draft directions to the Master due to hear the matter so that an unnecessary hearing may be avoided.

9.5.5 Subsequent CMCs will be listed at any hearing where necessary, but there will only exceptionally be listed a second "show cause" hearing in any case.

9.5.6 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 1 day, on a Thursday, in term time.

9.5.7 Queries in relation to the management of Asbestos List matters should be directed to the dedicated QB Asbestos team at the Central Office at the RCJ qb.asbestos@justice.gov.uk or to the assigned Master.

10. Case Management

10.1 Case management – general

10.1.1 The CPR require the court to provide a high degree of case and costs management. Case management includes; identifying disputed issues at an early stage; fixing timetables; dealing with as many aspects of the claim as possible on the same occasion; controlling costs; disposing of proceedings summarily (including striking out) where appropriate; dealing with applications without a hearing where appropriate; and giving directions to ensure that the trial of a claim proceeds quickly and efficiently. The court will expect the parties to co-operate with each other and, where appropriate, will encourage the parties to use ADR or otherwise help them settle the case.

10.1.2 Costs management requires the court to manage both the steps to be taken and the costs to be incurred by a party so as to further the overriding objective: rule 3.12(2). The task of the court when reviewing budgets is not to carry out a detailed assessment but to consider whether the budgeted costs fall within the range of reasonable and proportionate costs, see Practice Direction 3E paragraph 2.3.

10.1.3 Paragraph 8.2 above deals with the parties' obligations when filing Directions Questionnaires under Part 26. Assuming that the claim is to remain in the High Court and is to be allocated to the multi-track, Part 29 and the Practice Direction to Part 29 lay down comprehensive provisions as to the management of the claim.

10.1.4 Parties and their legal representatives will be expected to do all that they can to agree proposals for the management of the claim in accordance with rule 29.4 and paragraphs 4.6 to 4.8 of the Part 29 Practice Direction. They must submit agreed directions, or their respective proposals, to the court at least 7 days before any case management conference. Attention should be paid to para 5 of the PD which spells out particular matters which the court will consider at any such CMC. There is provision in the Directions Questionnaire for proposing certain directions to be made; otherwise parties may use form PF 50 for making the application (attaching to it the draft form of order in form PF 52) and file it for the Master's approval. If the Master approves the proposals he will give directions accordingly. It should be noted that when drafting case management directions both the parties and the court should take as their starting point any relevant model directions and standard directions which can be found on the website referred to in rule 29.1(2) and adapt them as appropriate to the circumstances of the particular case.

10.1.5 Case management and costs management are interrelated. The court will usually wish to consider making a costs management order at the first case

management hearing. The parties should file their respective costs budgets at least 7 days before the hearing unless otherwise ordered. The Master will expect the parties to have discussed the budgets before they are prepared so that the parties are working on the same assumptions and the budgets are prepared so that the work included in each stage of proceedings can easily be compared.

10.2 The Costs and Case Management Conference

10.2.1 In relation to costs management, which forms an important part of the management of cases under the Civil Procedure Rules, rule 3.12 provides that Section 11 of Part 3, and PD3E, apply to all Part 7 multi-track cases except those specifically listed. The exceptions include (a) very high value claims (£10 million or more), and (b) claims made on behalf of a child. Even if the claim has a value of over £10 million the court retains a discretion to require the parties to file costs budgets, particularly in personal injury and clinical negligence claims, see PD3E para 5 (f).

10.2.2 Thus rules 3.12 and 3.13 require the filing and exchange of costs budgets by all parties except litigants in person. The sanction on a party for failing to file a budget is well-known: see rule 3.14.

10.2.3 The time for filing budgets is laid down in rule 3.13(1). Thus, where the claim is for less than £50,000, they must be filed with the directions questionnaires. In any other case the time is not later than 21 days before the first case management conference.

10.2.4 The format of the budgets is (unless otherwise ordered) as laid down in Precedent H annexed to PD3E. The parties must follow the Precedent H Guidance Notes in all respects: see para 6 of the PD.

10.2.5 Paras 6A and 7 lay down the steps which are likely to follow exchange of budgets and should be consulted in detail.

10.2.6 Where a party has filed and exchanged a budget all other parties, not being litigants in person, must file an agreed budget discussion report not later than 7 days before the first CMC: see rule 13.3(2). Para 6A of the PD sets out requirements of a budget discussion report. Parties are encouraged to use Precedent R (annexed to the PD). A version of Precedent R is available for the defendant.

10.2.7 Parties who are unable to agree proposals for the management of the case should notify the court of the matters which they are unable to agree.

10.2.8 Where:

1. the parties' proposed directions and/or budgets are not approved, or

2. parties are unable to agree proposed directions and/or budgets, or

3. the Master wishes to make further directions, the Master will generally either consult the parties or direct that a costs and/or case management conference be held.

10.2.9 In relatively straightforward claims and provided the parties have agreed their respective budgets the court may give directions without holding a case management conference.

10.2.10 Any party who considers that a case management conference should be held before any directions are given should so state in their Directions Questionnaire, (or in a Part 8 claim should notify the Master in writing), giving their reasons and supplying a realistic time estimate for the case management conference, with a list of any dates or times convenient to all parties, in form PF 49.

10.2.11 Where a case management conference has been fixed, parties should ensure that any other suitable applications are listed or made at that hearing. A party applying for directions at the case management conference should use form PF 50 for making the application and attach to it the draft order for directions (form PF 52).

10.2.12 Parties should consider whether a case summary would assist the Master at the case management conference in dealing with the issues. Paragraph 5.7 of the Part 29 Practice Direction sets out the provisions for preparation of a case summary which should be prepared by the claimant and agreed with the other parties if possible.

10.2.13 It will usually be appropriate for the advocates instructed or expected to be instructed to appear at the trial to attend any hearing at which costs and case management directions are likely to be given. In any event, the legal representatives who attend the case management conference must be familiar with the case and have sufficient authority to deal with any issues which may arise. Where necessary, the court may order the attendance of a party.

10.3 Preliminary issues

10.3.1 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 CPR 3.1(1)(i). In the Queen's Bench Division, in personal injury

cases, the Master may often, after hearing the parties, order separate trial of the issue of liability. Care should be taken however in all cases where the possibility of trial of a separate issue arises to consider precisely what that issue is and to draft the terms of the issue to be incorporated in any order accordingly. 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".

10.3.2 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.

10.3.3 Where there is an application for summary judgment, and issues of law or construction may be determined in the respondent's favour, it will usually be in the interests of the parties for such issues to be determined conclusively, rather than that the application should simply be dismissed.

10.4 Trial directions and trial timetable

10.4.1 The Master will at the earliest practicable opportunity give directions for trial: see CPR 29.2(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,

(b) the venue for trial. If in London, at the Royal Courts of Justice. If outside London, a trial centre will be specified,

(c) an order for trial by Judge or Master alone; or, in cases where trial by a Judge sitting with a jury is required under section 69 of the Senior Courts Act 1981 and application therefor is duly made, trial by Judge and jury. See para 20.3.1 below.

(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 such length,

(f) a direction that a copy of the order be sent to the Queen's Bench Judges Listing Office who 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 Queen's Bench Judges Listing: qbjudgeslistingoffice@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 CPR 29.6 and PD29, para 8.1. Pre-trial check lists will not be dispensed with save in exceptional circumstances.

10.4.2 As to the trial timetable, 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.

10.4.3 The trial timetable will normally include times for giving evidence (whether of fact or opinion) and for oral submissions during the trial.

10.4.4 Under CPR 29.8, as soon as practicable after (a) each party has filed a completed pre-trial checklist, (b) the court has held a listing hearing under rule 29.6(4), or (c) the court has held a pre-trial review under rule 29.7 the court will:-

(i) set a timetable for the trial unless a timetable has already been fixed, or the court considers that it would be inappropriate to do so;

(ii) confirm the date for the trial or the week in which the trial is to begin; and

(iii) notify the parties of the trial timetable (where one is fixed under this rule) and the date or trial period.

10.5 Pre-trial review

10.5.1 Where the trial of a claim is in the jury list or 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. The PTR may be heard by a Master, but more usually is heard by a Judge.

10.5.2 Application should normally be made to the Queen's Bench Judges' Listing Officer for the PTR to be heard by the trial Judge (if known), and the applicant should do all that he 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.

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

10.5.4 At least 7 days before the date fixed for the PTR, the 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.

10.5.5 The 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, in the Queen's Bench Judges' Listing Office, Room WG08, 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.

10.5.6 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.

10.6 Requests for further information

10.6.1 A party seeking further information or clarification under Part 18 should serve a written request on the party from whom the information is sought before making an application to the court. Paragraph 1 of the Part 18 Practice Direction deals with how the request should be made, and paragraph 2 deals with the response. A statement of truth should verify a response. Parties may use form PF 56 for a combined request and reply, if they so wish. Note that under CPR 18.1 clarification or further information may be sought in relation to any matter in dispute in the proceedings whether or not that matter is contained in a statement of case.

10.6.2 If a party who has been asked to provide further information or clarification objects or is unable to do so, they must notify the party making the request in writing.

10.6.3 Where it is necessary to apply for an order for further information or clarification the party making the application should set out in or attach to their application notice:

1. the text of the order sought specifying the matters on which further information or clarification is sought, and

2. whether a request has been made and, if so, the result of that request.

Applicants may refer to form PF 57 for the contents of their application notice.

10.7 Disclosure and Inspection of Documents

10.7.1 Disclosure and inspection of documents involves two stages. First, 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); and secondly, offering facilities to the opposing party for inspection of certain of those documents. The distinction between disclosure on the one hand and inspection on the other hand is important. The Master may make orders which require for example that a party do by a certain time give inspection of those documents which they have disclosed and to the inspection of which they do not object.

10.7.2 Part 31 provides for various orders as to disclosure that may be made. Upon the making of any such order a party falls under a duty to disclose. It should be noted in any event that a party is prevented from relying on any document that they have not disclosed, and is required to give inspection of any document to which they refer in their statement of case or in any witness statement.

10.7.3 If an order for disclosure is made, unless the contrary is stated, the order will be for standard disclosure, namely disclosure requiring a party to disclose only:-

(a) the documents on which they rely, and

(b) the documents which

(i) adversely affect their own case;

(ii) adversely affect another party's case; or

(iii) support another party's case; and

(c) the documents which they are required to disclose by a relevant practice direction.

The intention is that disclosure should be proportionate to the value of the claim.

Parties should give standard disclosure by completing form N265 and may list the documents by category.

10.7.4 Furthermore, new provisions have been enacted, in seeking to reduce costs, relating to disclosure in all multi-track cases other than those which include a claim for personal injuries. Those provisions are contained in rule 31.5(3) to (8). In short, unless the court orders otherwise, the parties are not less than 14 days before the first CMC to 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 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's position is laid down in 31.5(7) and (8). It will at the first or any subsequent CMC decide what appropriate orders it should make. These include:

(1) an order dispensing with disclosure

(2) an order that a party disclose the documents on which they rely and at the same time request any specific disclosure they require from any other party

(3) an order for disclosure on an issue by issue basis

(4) an order that each party disclose documents which may enable that party to advance its own case or damage that of any other party, or which leads to an enquiry having either of those consequences and

(5) an order that a party give standard disclosure.

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.

10.7.5 The procedure for giving standard disclosure, including

(1) the service of lists of documents

(2) the inclusion in the lists of those documents in respect of which the party claims a right or duty to withhold inspection, and

(3) the making of disclosure statements is closely laid down in rule 31.10.

10.7.6 The court may either limit or dispense with disclosure (and the parties may agree to do likewise). The court may also order disclosure of specified documents or specified classes of documents. In deciding whether to make any such order for specific disclosure, the court will want to be satisfied that the disclosure is necessary, that the cost of disclosure will not outweigh the benefits of disclosure and that a party's ability to continue the litigation would not be impaired by any such order.

10.7.7 The court will therefore seek to ensure that any specific disclosure ordered is appropriate to the particular case, taking into account the financial position of the parties, the importance of the case and the complexity of the issues.

10.7.8 If specific disclosure is sought, 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. The parties should give careful thought to ways of limiting the burdens of such 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.

10.7.9 A party who has the right to inspect a document should give written notice of their wish to inspect to the party disclosing the document. That party must permit inspection not more than 7 days after receipt of the notice. Copies must also be supplied on undertaking by the requesting party to pay reasonable copying costs.

10.7.10 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.

10.8 Experts and Assessors

10.8.1 The parties to a claim must bear in mind that 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.

10.8.2 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.

10.8.3 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.

10.8.4 Parties should always consider whether a single expert could be appointed 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.

10.8.5 In many cases it is possible for the question of expert evidence, or one or more of the areas of expert evidence, to be dealt with by a single expert. Single experts are, for example, often appropriate to deal with questions of quantum in cases where the primary issues are as to liability. Likewise, where expert evidence is required in order to acquaint the court with matters of fact, as opposed to opinion, a single expert will usually be appropriate. There remain however, a body of cases where liability will turn upon expert opinion evidence and where it will be appropriate for the parties to instruct their own experts. For example, in cases where the issue for determination is as to whether a party acted in accordance with proper professional standards, it will usually be of value to the court to hear the opinions of more than one expert as to the proper standard in order that the court becomes acquainted with a range of views existing upon the question and in order that the evidence can be tested in cross-examination.

10.8.6 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.

10.8.7 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.

10.8.8 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. Thus costs may be saved. See also PD29 para 4.11 which refers to exchange of reports on liability and sequential service 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.

10.8.9 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.

10.8.10 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.

10.8.11 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.

10.8.12 Change of expert. Good reason is required to obtain permission to rely on an expert in substitution for an expert for whom permission has been earlier obtained. "Expert shopping" is to be discouraged. And 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.

10.8.13 Written questions (which must be proportionate) may be put once only to an expert within 28 days after service of their report, but 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.) The experts themselves may seek the directions of the court in relation to their functions, including the answering of written questions: see rule 35.14, 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.

10.8.14 The experts' evidence at trial. Where oral evidence is required experts have in the past always given their evidence separately from the witness box and this may continue to be the practice in many cases. Important new provisions have however been introduced enabling the court to direct that some or all of the experts of like discipline shall give their evidence concurrently: see PD35 paras 11.1 to 11.4. Thus, the parties may be directed that an agenda for the taking of concurrent evidence be agreed; at the appropriate time the relevant experts are to take the oath or affirm; and, subject to the Judge's discretion to modify the procedure in any particular case, a practical form of procedure for taking their evidence is laid down.

10.8.15 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. They will take such part in the proceedings as the court may direct. Their report is made available to the parties. Their remuneration is decided by the court and forms part of the costs of the proceedings.

10.9 Evidence

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

10.9.2 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.

10.9.3 A witness statement may be used as evidence of fact in support of an interim application: see rule 32.2(1)(b).

10.9.4 At trial, the general rule is that evidence of fact is given orally: rule 32.2(1)(a). The court will however have ordered each party to serve witness statements in respect of evidence of fact to be relied on at trial: see rule 32.4(2). The Master will have given directions as to such service, usually by way of exchange of

witness statements. It should be noted that under the new rule 32.2(3) 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. Part 33 contains provisions relating to the use of hearsay evidence in a witness statement at trial.

10.9.5 In addition to the requirements for making a witness statement mentioned in paragraph 10.9.2, 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. Application may be made by an opposing party to strike out inadmissible or irrelevant material.

4. the cost of preparation of an over-elaborate witness statement may not be allowed,

5. Rule 32.10 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.

6. Rule 32.14 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,

7. if a party discovers that a witness statement which they have served is incorrect they must inform the other parties immediately.

10.9.6 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.

10.9.7 The Part 32 Practice Direction, at paragraphs 3 to 6, 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.

10.9.8 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 other than at the trial.

10.9.9 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: rule 34.8. 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.

10.9.10 Provisions relating to applications for evidence to be taken by deposition either;

1. abroad for use in proceedings within the jurisdiction; or

2. in this country for use in a foreign court,

are set out in detail in PD34A, at paragraphs 5 and 6. The position as to taking of evidence by deposition between EU member states is governed by paragraphs 7 to 11.

10.9.11 Witness summonses. 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 to

1. attend court to give evidence

2. produce documents to the court, or

3. both

See rule 34.2 and PD 34A para 1. The summons may require the witness to produce documents on a date fixed for a hearing or on such date as the court may direct. But the only documents that a summons under this rule can require a witness to produce before a hearing are those which they could be required to produce at the hearing: rule 34.2(5). The summons must be in the relevant practice form which is Form N20.

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

10.9.13 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). A procedure to obtain disclosure of documents by a non-party, rather than to obtain production of documents by witness summons, is available under CPR 31.17. If a party seeks to avail themselves of that rule they should observe its requirements, which are specifically laid out, and be careful to follow them. On the other hand it will be seen that, as a matter of discretion, the court may give permission under rule 34.3(2)(b) to issue a witness summons for production of documents on any date except the date fixed for trial. If the court sees fit to give that permission, and if the production of the documents is not opposed by the witness, that may result in a less costly and more expeditious outcome than would be likely to be the case on an application for disclosure under rule 31.17.

10.9.14 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.

10.9.15 To issue a witness summons, two copies should be filed in the Action Department in Room E07 for sealing; one copy will be retained on the court file.

10.9.16 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 although it will be served less than 7 days before the date when the witness is required to attend. The Master hearing applications in the Urgent Applications list (see paragraphs 9.1.1 and 9.2 above) may be prepared to deal with this, without notice.

10.9.17 A witness summons will be served by the court 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.

10.9.18 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 (S.1.1986 No.1335) which can be found at www.legislation.gov.uk/ukji/1986/1335/made.

11. Striking out and summary judgment

11.1 Striking out

11.1.1 The court has wide powers, both under its inherent jurisdiction and under the CPR, to strike out proceedings or part of them. A sizeable proportion of the Masters' and District Judges' work concerns applications to strike out a statement of case, whether by a defendant to strike out a claim form or particulars of claim, or by a claimant to strike out a defence.

11.1.2 Statements of case must be intelligible. If they are garbled or incoherent or abusive they may be struck out without further order. The court has a discretion under rule 3.4(2)(b) to strike out a statement of case that is an abuse of the Court's process or is otherwise likely to obstruct the just disposal of the proceedings.

11.1.3 Though a statement of case may be properly presented it may nonetheless show no case on its merits. Thus an application may be brought by a party to strike out their opponent's case on the ground that it discloses no reasonable grounds for bringing or defending the claim: rule 3.4(2)(a). This may, for example, be because, assuming the facts stated to be true, the claim form or particulars of claim does not disclose a claim known to the law.

11.1.4 Parties should consult Practice Direction 3A which gives useful examples. A party applying to strike out may combine their application with an application for summary judgment under Part 24 (see para 11.2 below). Thus, as referred to in para 1.7 of the PD, a party may believe that they can show without trial that an opponent's case has no real prospect of success on the facts, or that the case is bound to succeed or fail, as the case may be, because of a point of law, including the construction (or interpretation) of a document. In such a case the party concerned may make an application under rule 3.4 (striking out) or Part 24 (summary judgment) or both as he thinks appropriate.

11.1.5 Evidence is admissible by witness statement in applications to strike out and is usually tendered. An applicant must however show that there is no valid answer to their application. The hearing is not in substitution for a trial. 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.

11.1.6 The power to strike out a statement of case extends to cases where there has been a failure to comply with a rule, practice direction or court order: rule 3.4 (2)(c). This power is frequently exercised, particularly in cases of failure to comply with a time limit in the rules, though in practice the court in some cases may in the first instance make an "unless order" including (typically) an order that unless the party complies with a certain requirement by a certain time on a

certain day, their statement of case will be struck out. Parties must nonetheless beware of the fact that a stricter approach is now applied to granting relief from sanctions imposed for a failure to comply with any rule, practice direction or court order: see para 17 below.

11.1.7 A statement of case which is defective and liable to be struck out may be curable by amendment. In such cases the Master may impose terms such as an order that, unless an application be made and served by (date) for permission to amend the statement of case, the same will be struck out; and that, upon the making of any such application for permission to amend, the application to strike out be adjourned for further consideration together with the application to amend. It frequently occurs that a claim is on the face of it barred by a statutory lime limit. In order to preserve the claimant's right to apply to exclude the time limit (as for example under section 33 of the Limitation Act 1980) the court may order that, unless such an application is made and served by a certain date, the claim be struck out; and that, upon the making of any such application, the case be listed for further directions to be given so that the application can appropriately be dealt with in the proceedings.

11.1.8 Striking out may well arise, not upon an application by a party, but by order of the court's own initiative: see the court's powers under rule 3.3 (and see para 18 below). Thus, as frequently happens, a court officer may be asked to issue a claim form which they believe falls within rule 3.4 (2)(a) or (b). In that case PD3A para 2.1 gives guidance. It provides that the court officer should issue the claim form but may then consult a judge (who is likely to be a Master or District Judge) before returning the claim form to the claimant or taking any other step to serve it. The judge may then of their own initiative make an immediate order designed to ensure that the claim is disposed of or (as the case may be) proceeds in a way that accords with the rules. Para 2.4 of the PD then gives an example of an order that is frequently adopted by the Master or District Judge. The fact, if it be the case, 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: para 2.6.

11.1.9 Claimants' cases that are totally without merit are the subject of special treatment under rule 3.4(6). If appropriate, the court may make a civil restraint order against the claimant: see para 16 below.

11.2 Summary Judgment

11.2.1 The court may give summary judgment under Part 24 against a claimant or defendant on the whole of a claim or on a particular issue if

(a) it considers that (i) the claimant has no real prospect of succeeding on the claim or issue, or (ii) the defendant has no real prospect of successfully defending the claim or issue; and

(b) there is no other compelling reason why the claim or issue should be disposed of at a trial.

11.2.2 The court may give summary judgment against a claimant in any type of proceedings; and against a defendant in any type of proceedings except (a) proceedings for possession of residential premises against a mortgagor, or a tenant or person holding over after the end of their tenancy whose occupancy is protected within the meaning of the Rent Act 1977 or the Housing Act 1988, and (b) proceedings for an admiralty claim in rem. For information about summary disposal of defamation claims see Part 53, the Part 53 Practice Direction and paragraph 19.3 below.

11.2.3 Parties should note that a claimant may not apply for summary judgment against a defendant who has not filed an acknowledgment or service or a defence unless the court gives permission or a practice direction provides otherwise. Such permission may be given in very clear cases where it is appropriate that the claimant should have the opportunity to apply for judgment on the merits rather than entering judgment in default.

11.2.4 An application for summary judgment should be made in accordance with Part 23. The application notice must comply with the requirements of paragraph 2 of the Part 24 Practice Direction. Particular attention is drawn to the requirements of para 2(3), failure to comply with which may result in the application notice being rejected. The application notice should be filed and served on the respondent giving at least 14 days' notice of the date fixed for the hearing and of the issues to be decided at the hearing. Unless the application notice itself contains all the evidence on which the applicant relies, the application notice should identify that evidence.

11.2.5 The application will normally be listed before a Master unless, for example, an injunction falling within one of the categories set out in 2BPD.2 para 3.1. is also sought. In that case the application notice should state that the application is intended to be made to a Judge. The Master may also, in an appropriate case, direct that the application be referred to a Judge for hearing: see 2BPD para 1.2.

11.2.6 The orders which the court may make on a summary judgment application are concisely set out in PD24 para 5. Where an order made on an application for summary judgment does not dispose of the claim or issue, the court will give case management directions in respect of the claim or issue.

12. Hearings

12.1 Hearings in public/private

12.1.1 All hearings are in principle 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). The requirement for a public hearing does not however require the court to make special arrangements for accommodating members of the public: rule 39.2(2). Thus, many hearings, whilst in public, are held in the Masters' own rooms or in chambers in the Bear Garden which are relatively small. In an appropriate case the court may decide to hold a hearing, or part of it, in private. Rule 39.2(3) lists 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.

12.1.2 Paragraph 1.5 of the Part 39 Practice Direction lists certain matters falling under rule 39.3(2)(c), which relates particularly to confidential information on personal financial matters, which are in the first instance to be listed in private.

12.1.3 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. Such orders are granted only in exceptional cases.

12.1.4 References in the CPR and the Practice Directions to hearings being in public or private do not restrict any existing rights of audience or confer any new rights of audience in respect of applications or proceedings which under the rules previously in force would have been heard in court or chambers respectively. Nor is it intended that the new routes of appeal should restrict the advocate's right of audience, in that a solicitor who appeared in a county court matter which is the subject of an appeal to a High Court Judge would normally be allowed to appear at the appeal hearing. Advocates (and judges) do not wear robes at interim hearings before High Court Judges. Robes are worn for trials and certain other proceedings such as preliminary issues, committals etc.

12.2 Conduct at Hearings

12.2.1 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.

12.3 Preparation for hearings including skeleton arguments

12.3.1 To ensure that court time is used efficiently there must be adequate preparation prior to the hearing. This includes the preparation and exchange of skeleton arguments, the compilation of bundles of documents and the giving of realistic time estimates. Where estimates prove inaccurate, a hearing may have to be adjourned to a later date, and the party responsible for the adjournment is likely to be ordered to pay the costs thrown away. For the obligations of the parties and of the court in relation to the trial timetable, see paragraphs 10.4.2 to 10.4.4 above.

12.3.2 The parties should use their best endeavours to agree beforehand 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.

12.3.3 A bundle of documents must be compiled for the court's use at the trial, and also for hearings before the Interim Applications Judge or a Master where the documents to be referred to total 25 pages or more, or the hearing is by telephone or videolink. The party lodging a trial or hearing bundle should supply identical bundles to all parties and for the use of witnesses. The efficient 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. Where documents are copied unnecessarily or bundled incompetently, the costs may be disallowed. Paragraph 3 of the Part 39 Practice Direction sets out in full the requirements for compiling bundles of documents for hearings or trial. Under para 3.9 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. Furthermore, 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.

12.3.4 The trial bundle must be filed not more than 7 and not less than 3 days before the start of the trial. Bundles for a Master's hearing should be lodged with the usher in Room E114 or with the Master directly 1-3 days in advance. 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.

12.3.5 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.

12.3.6 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.

12.3.7 Skeleton arguments should be prepared, filed and served;

1. for trials, not later than10.00am 2 days before the trial in the Judges Listing Office or the Masters' Usher in the Bear Garden; 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 try to provide their skeleton argument to the litigant two days before the hearing.

12.3.8 A skeleton argument should;

1. concisely summarise 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. cite the main authorities relied on, which may be attached,

3. contain a reading list and an estimate of the time it will take the Judge to read,

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. identify any core documents which it would be helpful to read beforehand.

12.3.9 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.

12.4 Recording of proceedings

12.4.1 The recording of proceedings in the High Court, whether before a Judge or a Master, is now governed by paragraphs 6.1 to 6.5 of Practice Direction 39A. All hearings will be recorded unless the Judge or Master orders otherwise. Any party or person may require a transcript of the recording of a hearing to be supplied to them on payment of the appropriate charges. All transcription requests are to be submitted directly to the Court Division where the case was heard. For transcriptions of hearings or judgments of Queen's Bench Judges and Masters, apply to AdministrativeCourtOffice.QB&ACOTranscriptsRequests@hmcts.x.gsi.gov.uk A person who is not a party may not however obtain a transcript of a hearing which took place in private unless the court so orders.

12.4.2 No party or member of the public may use unofficial recording equipment in any court or judge's room without the permission of the court. To do so without permission constitutes a contempt of court.

13. Applications

13.1 Procedure generally

13.1.1 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. The Practice Direction states that form N244 may be used; however, parties may prefer to use form PF244 which is available for use in the Royal Courts of Justice only. 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. A Master will not normally make an order on the basis of correspondence alone. Where a hearing of more than 30 minutes is required the applicant must complete the Masters' Private Room Appointment form (see Annex 3) after having obtained the necessary details from the respondent or having given the respondent a reasonable opportunity to provide such details.

13.1.2 An application notice must be served on every party (and generally not less than 3 days before the hearing) unless the application is permitted to be made without service by a rule, practice direction or court order: see rule 23.4. PD23A para 3(1) refers to cases (including cases of exceptional urgency) where service may not be required. These may include for example applications for search orders. See also for further examples those cases referred to in paragraph 13.1.4 below.

13.1.3 Applications for remedies which a Master has jurisdiction to grant should ordinarily be made to a Master. 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. An application notice for hearing by a Judge should be issued in the Queen's Bench Listing Office Room WG08. An application for hearing by a Master should be issued in the QB Issue & Enquires Section, Room E07. All applications should be accompanied by a draft in double spacing of the order sought.

13.1.4 The following are examples of applications which may be heard by a Master where service of the application notice is not required:-

(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 PD 19A, 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).

13.1.5 Where an application is heard in the absence of one or more of the parties, it is the duty of the party attending to disclose fully all matters relevant to the application, even those matters adverse to the applicant. Failure to do so may result in the order being set aside. In addition rule 23.9 requires that, where the court has made an order on an application which it permitted to be made 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. Applications under rule 23.10 to set aside or vary such orders, which must be made within 7 days after service of the order, frequently arise in practice.

13.1.6 Where notice of an application is to be given, the application notice should be served as soon as practicable after issue 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.

13.1.7 The court may and often does deal with an application without a hearing if:-

(1) the parties agree the terms of the order sought,

(2) the parties agree that the application should be dealt with without a hearing, or

(3) the court does not consider that a hearing would be appropriate.

13.1.8 Under para 6.2 of PD23A certain hearings, including interim applications, case management conferences and pre-trial reviews lasting not more than one hour are to be held by telephone unless the court orders otherwise. In practice, the Master will be likely to hold short CMCs, and other short applications where there are few contested issues, by telephone. The order listing the hearing will always indicate whether the parties are to attend, or whether the matter is to be dealt with on the telephone. The actual procedure for conducting a telephone hearing is laid down by para 10 of the PD. The Master will often direct after reaching their decision on the telephone that one party is to draw the order, send the draft to the other party for agreement, and then to the Master to give permission to seal the order. The order is to be dated as at the date when it

was orally made, and such date will appear on the face of the order, although the date of sealing may well be a subsequent date.

13.2 Urgent applications to Duty Judge

13.2.1 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.

13.2.2 Initial contact should be made through the Security Office on 0207 947 6260 who will require the applicant's phone number. The clerk to the duty Judge will then contact the applicant 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 degree of urgency, and

(5) the contact telephone number(s).

13.2.3 The duty Judge will indicate to the Judge's clerk whether it is appropriate for the application to be dealt with by telephone or in court. The clerk will inform the applicant and make the necessary arrangements. Where the duty Judge decides to deal with the application by telephone, and the facility is available, it is likely that the Judge will require a draft order to be faxed to them. An application for an injunction will be dealt with by telephone only where counsel or solicitors represent the applicant.

13.2.4 It is not normally possible to seal an order out of hours. The Judge is likely to order the applicant to file the application notice and evidence in support on the same or next working day, together with two copies of the order for sealing.

14. Interim remedies including injunctions and interim payments

14.1 Interim remedies which the court may grant are listed in rule 25.1(1). They are many and various in nature and it should be noted that the fact that a particular remedy is not listed does not affect any power that the court may have to grant that remedy. 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.

14.2 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 in the QB Judges' Listing Office, Room WG08 for a hearing to be listed. If the application is to be made without giving notice to the other parties in the first instance, the application notice stamped with the appropriate fee should be brought to the Interim Applications Court, Court 37, together with the evidence in support, a skeleton argument (where appropriate) and two copies of the order sought. 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.

14.3 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 before the application notice for the return date is filed in Room WG08 prior to service. Furthermore, service of particulars of claim should not be deferred pending the return date.

14.4 Practice Direction 25A – interim injunctions – deals fully with the procedure for making an application for an injunction. Para 2 states what the application notice must contain. In general it must be served not less than 3 days before the court is due to hear the application. Para 3 requires any application for an injunction to be supported by evidence (in the case of application for search orders or freezing injunctions by affidavit evidence). Para 4 deals with urgent applications and applications without notice. These fall specifically into two categories, according as to whether a claim form has or has not already been issued. The procedure for making urgent applications by telephone (already referred to in paragraph 13.2 above) is set out in para 4.5 of the PD. Orders for injunctions must, unless the court otherwise orders, contain an undertaking by the applicant to the court to pay damages and, if the application is made without notice, to serve the application and evidence in support as soon as practicable: see para 5.1. Paras 6 and 7 contain important provisions as to freezing orders and search orders respectively; examples of both such orders are annexed to the PD.

14.5 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.

14.6 Applications for interim payments fall under rules 25.6 to 25.9 and are heard by a Master. Rule 25.7 sets out the conditions which must be satisfied if an order for interim payment is to be made. These include (as often arises in practice) the conditions which apply where the claimant is seeking an order against one or more of the defendants and the court is satisfied that judgment for a substantial sum of money would be obtained at trial against at least one of the defendants but the court cannot determine which. The application notice should be filed in the Queen's Bench Issue and Enquiries section, Room E07. The procedural requirements for obtaining an order are fully dealt with in Practice Direction 25B – Interim Payments.

15. Court Orders. Drawing the Order

Orders made by the Masters

15.1 In the majority of cases orders by Masters in the Queen's Bench Division are drawn up by one of the parties, who must then arrange to have the order sealed in the Queen's Bench Issue and Enquiries section (Room E07) and effect service on all other parties. 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. Reference should be made to CPR40.3 in this respect.

15.2 Where there has been a hearing, the order will be drawn up and sealed by one of 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) send to the other parties, and when agreed by them as an accurate statement of the order made, email to the Master who will make any amendments considered necessary and then arrange for the order to be sealed and served by the court or sealed by the court and collected by one of the parties who will arrange service on all other parties. If the parties are unable to agree the wording the Master should be informed and will finalise the electronic copy of the order; or

(2) the Master will endorse the order in handwriting upon the original application notice. (If the original is not at the hearing, the party drawing up the order will have to ask the Master's permission to treat a photocopy as an original). If the parties have provided a draft order, the Master will endorse this, with or without amendment. The application notice will then be endorsed "Order in form initialled". The Masters habitually use their initials, rather than their full signatures, when making orders. Parties should familiarise themselves with these initials, as the name of the Master who made the Order must be stated on the Order. The date when the order is made is inserted below the initials. If the hearing is one where there is no application notice, for example a case management conference, then the Master will endorse the order on any notice of the hearing sent by the court, or will use a draft order provided by one of the parties to endorse the order.

(3) 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 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, filed for sealing and served, but if no date is provided the default provision is 7 days from the date the order was made, by 40BPD para. 1.2. If a party fails in their obligation to draw an order for filing, any other party may do so: see also PD40B, para 1.2. 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.

15.4 Unless the order is dealt with electronically as set out in paragraph 15.2(1) above the party responsible for drawing up the order should lodge with the QB Issue & Enquiries Section:

(i) The application notice (or other document) endorsed by the Master;

(ii) Clean copies for sealing, one for each party and one for the court file;

(iii) Evidence of payment of the court fee

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 9.2 above.

15.6 If an order is made without a hearing, the party making the application must likewise draw up, file and serve the order in accordance with the procedure set out above.

15.7 Accidental slips or omissions are dealt with under rule 40.12 and PD40B para 4. A party may apply informally (by letter) 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 he 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 rule 40.12.

Orders made by a High Court Judge

15.8 Orders made by a Judge on an interim application will, where the parties have legal representation, generally be drawn up in the same way as orders made by the Masters. However, the court will draw, seal and serve orders on behalf of litigants in person, and also orders made in appeal proceedings.

16. Civil restraint orders

16.1 The power of the court to make civil restraint orders ("CROs") is governed by CPR 3.11. However, Practice Direction 3C – Civil Restraint Orders – sets out the procedure in detail.

16.2 There are 3 types of CRO in ascending order of severity – 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 civil restraint order may be made by any of the other parties to the proceedings.

16.3 For a limited CRO ("LCRO") to be made the court must have found that two or more applications made by the litigant are totally without merit. An LCRO may be made by a Judge of any court, which includes a Master or District Judge. An 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. Para 2 of PD3C sets out in detail (amongst other matters) how permission is to be applied for, including service of notice on the other parties; and the effect of making any further application in the proceedings without obtaining such permission.

16.4 An extended CRO ("ECRO") may be made where a litigant has persistently issued claims or made applications which are totally without merit. 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. 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. Again, under para 3 of the PD, detailed provisions are set out as to how permission may be applied for, including service of notice on the other parties; and the effect of issuing claims or making applications without first obtaining such permission. 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 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.

16.5 A general CRO ("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. 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. A 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. Again, under para 4 of the PD, provisions are set out as to how permission may be applied for, including service of notice on the other parties and the effect of issuing claims or making applications without first obtaining permission. A GCRO 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 Master or District Judge considers that it would be appropriate to make a GCRO they must transfer the proceedings to a High Court Judge.

17. Relief from sanctions

17.1 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.

17.2 Litigants should note that the rule, as recently amended, requires the court to consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need:

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

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

A stricter test is now applied than under the former rule. The most important factors are the two specifically referred to in (a) and (b) above: see *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537, including particularly the guidance given by the judgment of the Court of Appeal at paragraphs 40 and onwards of the judgment in relation to any application for relief from sanctions, but importantly also the clarification and further explanation given by the Court of Appeal in *Denton v T.H. White Ltd* [2014] EWCA Civ 169.

18. Orders of the court's own initiative

18.1 The court has power to make an order of its own initiative. The power is exercised under rule 3.3. 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)). In the last case 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.

18.2 It frequently happens that upon reading an application notice the Master is minded to make an order, not as asked by the applicant, but of their own initiative. The Master may do so, and in such case it is very desirable that the order should make the position clear. Thus, the order should be drawn "Upon reading an application notice by the (party) dated…., and of the court's own initiative under CPR 3.3(4), it is ordered" etc. Of course in such case the order must contain the statement of the right to apply to set aside, vary or stay.

19. The Media and Communications List

19.1 – 19.4 General

19.1 The Media and Communications List was created in March 2017. It was intended to give new focus to this important specialism within the Queen's Bench Division and to modernise the listing arrangements. Mr Justice Warby is the Judge in charge of the List. Mr Justice Nicklin is the other High Court judge specialising in this area of QB work.

19.2 In May 2017, in order to identify the issues that might affect the work of the List, a consultation exercise was undertaken, addressed particularly to those who work within this field of law and other interested parties. Among the topics for consultation was the adequacy or otherwise of the relevant CPR and Practice Directions, and potential areas for improvement. Mr Justice Warby published a report following that consultation in June 2017, and a Media and Communications User Group was established shortly afterwards.

19.3 Claims which include the following causes of actions/remedies should be allocated to the Media and Communications list:

- Defamation (libel or slander)
- Malicious falsehood
- Misuse of private information
- Breach of Confidence
- Breach of Data Protection rights, including misuse of personal data
- Harassment
- Injunctions to restrain publication

19.4 Solicitors issuing a claim form which includes one or more of such claims will be asked to complete a QB Allocation of Claims Form and identify which claims are included. Litigants in person who are unsure how to complete the form may leave it for court staff to refer to the assigned Master, but their claim form will still be issued.

19.5 Defamation claims

19.5 Defamation claims come within the Media and Communications List. They

are governed by Part 53 and the Part 53 Practice Direction. Paragraph 2 of the Practice Direction sets out the information which should be included in a statement of case.

19.6 Offer to make amends

19.6.1 Under section 2 of the Defamation Act 1996 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

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.

19.6.2 The defendant may not make use of the offer of amends procedure after service of a defence in defamation proceedings brought in respect of the publication. They should accordingly make up their mind whether or not to make an offer by the time limited for serving a defence.

19.6.3 Where a section 2 offer is accepted by an aggrieved person they may not bring or continue defamation proceedings, but further steps may be taken by the parties 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 accordingly

(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.

(c) if the parties are not agreed on the amount of compensation to be paid the amount is to be determined by the court on the same principles as damages in defamation proceedings. The aggrieved party may apply for that purpose.

19.6.4 The application to invoke the court's assistance under paragraph 19.6.3 above should, in existing proceedings, be made by application notice under Part 23; otherwise a Part 8 claim form should be issued. Such application or claim form must comply with para 3 of the Practice Direction to Part 53. It must, in particular, be supported by written evidence and must contain all the material set out in para 3.3(2) and (3). The application notice or claim form will be filed or issued in the Queen's Bench Issue and Enquiries section (Room E07). It will be laid before a Master or, if the application or claim seeks approval of a statement to be read in open court, the Senior Master. In either case the Master may direct that the matter be referred to the Judge in charge of the jury list for the Court's assistance.

19.6.5 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.

19.7 Ruling on meaning

19.7.1 Prior to s.11 of Defamation Act 2013 coming into force, by virtue of s.69 (1) of the Senior Courts Act 1981, parties in claims for libel and slander had a (qualified) right to jury trial, in which the issue of what defamatory meaning or meanings were conveyed by a statement complained of was a question for the jury to decide at trial. The court can now determine at any stage the actual meaning or meanings of the statement.

19.7.2 An application for a ruling by a Judge on meaning may have a valuable effect in determining critical questions in defamation actions before trial. Any such ruling 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.

19.7.3 An application for an order determining whether or not a statement complained of:-

(1) has any meaning attributed to it in a statement of case,

(2) is a statement of fact or opinion

(3) is defamatory of the claimant at common law, or

(4) bears any other meaning defamatory of the claimant

may be made by the claimant or the defendant and may be made at any time after service of the particulars of claim. It should however be made promptly: PD53 para 4.2. PD53, paras 4.3 and 4.4 set out the matters which the application notice and/or the evidence in support of it must contain.

19.7.4 The application notice should be filed in the Judges' Listing Office, Room WG08, for hearing by a Judge, usually a Judge of the Media and Communications List.

19.8 Serious harm (Section 1 of the Defamation Act 2013)

19.8.1 Where 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 interlocutory stage. If the defendant seeks to contend that a claim should not be allowed to proceed to trial, then in the ordinary course he 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 75). 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. Consideration of meaning will necessarily be part of any application under s.1 of Defamation Act 2013 ("serious harm"). Accordingly applications concerning serious harm should be made to a judge of the Media and Communications List.

19.9 Summary disposal

19.9.1 Section 8 of the Defamation Act 1996 gives the court power to dispose summarily of the claimant's claim. 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.

In considering whether the claim should be tried the court must have regard to the matters set out in section 8(4).

19.9.2 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.

19.9.3 Applications for summary disposal are dealt with in rule 53.2 and paragraphs 5.1 to 5.3 of the Part 53 Practice Direction. 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 of the Jury List or another designated Judge, and the application notice should be filed in the Listing Office, Room WG08. Applications for summary disposal in other defamation claims may be made at first instance to a Master.

19.9.4 Whilst combined applications have in practice been made under section 8 for summary disposal and under Part 24 for summary judgment, the restrictions imposed by rule 52.2(3) on hearing an application for summary judgment until an application for summary disposal has been disposed of should be noted.

19.9.5 An application notice for summary disposal must state;

1. that it is an application for summary disposal made in accordance with section 8 of the Act,

2. the matters set out in paragraph 2(3) of the Part 24 Practice Direction, and

3. whether or not the defendant has made an offer to make amends under section 2 of the Act, and whether or not it has been withdrawn.

When providing evidence in support of an application for summary disposal, in accordance with para 2(3) of the Part 24 Practice Direction, a claimant should as a matter of practice specifically deal with the points set out in section 8(4) of the Act. The application may be made at any time after service of the particulars of claim and the provisions of rule 24.4(1)(a) and (b) do not apply.

19.9.6 Where the court has made an order for summary relief as in 19.9.2 above (specifying the date by which the parties should agree the content, time, manner, form and place of publication of the correction and apology) and the parties are unable to comply within the specified time, the claimant must prepare a summary of the court's judgment and serve it on the other parties within 3 days following the date specified in the order for the content to be agreed by the parties.

19.9.7 If the parties are unable to agree the summary, they must within 3 days of its receipt, apply to the court to settle the summary by:-

1. filing an application notice, and

2. filing and serving on all the other parties a copy of the summary showing the revisions they wish to make to it.

The court (normally the Judge who delivered the judgment) will then settle the summary.

19.10 Statements read in Open Court

19.10.1 Paragraph 6 of the Part 53 Practice Direction only applies where a party wishes to accept a Part 36 offer or other offer of settlement. For Part 36 offers, see paragraph 8.5 above.

19.10.2 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, and should be made in accordance with Part 23 to a Judge of the Media and Communications List.

19.10.3 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.

19.10.4 The application notice for permission, together with a copy of the proposed statement, should be filed in the Judges' Listing Office, Room WG08 for the matter to be listed before a judge for mention.

20. Listing before judges

20.1 Responsibility for listing

20.1.1 At the case management conference the Master will order a "trial window", i.e. a period of time within which the Queen's Bench Judges' Listing Officer (formerly known as the Clerk of the Lists) is to arrange for the trial to take place. The window may be a period defined by reference to certain named dates or months, or defined by reference to a stated Law Term. The trial window will be no longer than three months, unless for good reason the court considers that a longer trial window is required, in which case directions will be given for a trial window no longer than four months. The Master will not generally order a fixed trial date without first consulting the Listing Officer.

20.1.2 The Queen's Bench Judges Listing Office will then notify all parties of a listing appointment for a trial date or period within the trial window. The listing appointment will usually be about 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. If parties have any queries in relation to the listing appointment they should contact Queen's Bench Judges Listing on qbjudgeslistingoffice@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 qbjudgeslistingoffice@justice.gov.uk as soon as possible.

20.1.3 The Listing Officer is in general responsible for listing. All applications relating to listing should in the first instance be made to the Listing Office. Any party dissatisfied with any decision by them may, on one day's notice to all other parties, apply to the Judge in charge of the relevant list. Any such application should be made within 7 days of the decision of the Listing Officer.

20.1.4 It should be emphasised that, once a Master has ordered that a trial should take place within a particular trial window, all listing matters are thenceforth under the control and supervision of the Judge in charge of the Queen's Bench Civil List or, where relevant, the Judge in charge of the Media and Communications List. It follows that any requested 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 Queen's Bench Civil List or, as appropriate, the Judge in charge of the Media and Communications List or by a judge nominated by them. Any practice that may have existed in the past of the parties simply placing a consent order providing for the change of trial window before a Master no longer obtains. Any application for such an order will simply be transferred by the Master to the Judge in charge of the Queen's Bench Civil List or, as appropriate, the Judge in charge of the Media and Communications 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 of whatever duration as set by order of a Master or which will affect the choice of date within that period or the listing of a fixed trial must be lodged in the QB Listing office with a view to being considered by the relevant judge.

20.1.5 Parties must 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 QB 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.

20.2 The Lists

20.2.1 There are three Lists, namely:

(1) the Jury List

(2) the Non-Jury List, and

(3) the Interim Hearings List.

These Lists are described below.

20.3 The Jury List

20.3.1 Claims for damages for fraud, malicious prosecution and false imprisonment will, upon proper application by the party entitled made in accordance with CPR 26.11(1), be tried by a Judge and jury unless the court orders trial by a Judge alone: see section 69(1) of the Senior Courts Act 1981. The application must be made within 28 days of the service of the defence. By section 11 of the Defamation Act 2013 however section 69(1) no longer applies to claims for libel or slander. Thus, in such cases, the action will be tried without a jury unless the court in its discretion orders it to be tried with a jury. Application for trial with a jury will thus have to be made for that purpose, and made in

accordance with CPR 26.11(2) which requires the application to be made at the first case management conference.

20.3.2 Where a claim is being tried by a Judge and jury it is vitally important that the jury should not suffer hardship and inconvenience by having been misled by an incorrect time estimate. It is therefore essential that time estimates given to the court are accurate and realistic.

20.3.3 Dates for the trial of substantial claims will be fixed by the Listing Office within the trial window after consideration of the parties' views.

20.3.4 Furthermore, in substantial claims likely to take more than 10 days to try, the Master will probably have directed a pre-trial review to be heard. The parties will thus be required to obtain from the Listing Officer an appointment for such PTR on a suitable date to be fixed, and to be heard if practicable by the Judge allocated to conduct the trial.

20.3.5 Jury applications (i.e. applications in jury actions other than the trial itself) will enter the Interim Warned List not less than two weeks from the date the application notice is filed. Parties may "offer" a date for hearing the application either within or outside the week for which they are warned. Subject to court availability, the application will be listed on the offered date. Any application not reached on the offered date will return to the current Warned List and will be taken from that List as and when required.

20.3.6 Applications in defamation claims in respect of "meaning" (see paragraph 19.4 above) may be listed for hearing on a specific day allocated for such matters.

20.3.7 Applications for directions and other applications in jury actions within the Master's jurisdiction should firstly be made to a Master unless:

(1) a direction has been given for the arranging of a trial date or period, or

(2) a date has been fixed or a period given for the trial.

Interim applications made after (1) or (2) above should (because they may have the effect of impacting on the trial date) be made to the Judge. In other circumstances the Master will use their discretion to refer a matter to the Judge if it is right to do so.

20.3.8 If a party believes that the Master is very likely to refer the application to the Judge, for example where there is a substantial application to strike out, the matter should first be referred to the assigned Master on notice to the other parties without waiting for a private room appointment. The Master will then decide whether the application should be referred to the Judge.

20.4 The Non-Jury List

20.4.1 This List consists of trials (other than Jury trials), preliminary questions or issues ordered to be tried (for example under CPR 3.1(2)(i)) and proceedings to commit for contempt of court.

20.4.2 The Royal Courts of Justice present 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 Queen's Bench Divisions.

20.4.3 The requirement of Judges in the Queen'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 Queen's Bench Listing Office in the Royal Courts of Justice.

20.4.4 At as early an interim stage as practicable, the court will give directions identifying the trial window (see paragraph 20.1.1 above).

20.4.5 A listing appointment will be given by the Listing Officer to all parties. (See paragraph 20.1.2 above).

20.4.6 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 period as soon as possible within the trial window or, as the case may be, after the "not before" date directed by the court under paragraph 20.4.5 above. 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. 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.

20.4.7 The Listing Officer will notify the Masters' Listing Office of any trial date or trial period given. In accordance with rule 29.2(3) notice will also be given to all the parties.

20.4.8 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 in the Listing Office and served, giving one day's notice, on the other parties.

20.5 The Interim Hearings List

20.5.1 This List consists of interim applications whether in jury or non-jury actions, and appeals to Judges.

20.5.2 All matters in this List likely to take an hour or less will be listed before the Interim Applications Judge in Court 37 in the West Green Building. All matters likely to last longer will be put into the Interim Hearings List to be heard by another Judge on a date to be fixed and notified by the Listing Officer to the parties.

20.5.3 Appeals from the Masters' decisions will appear in the Interim Hearings List. The appeal notice (stamped with the appropriate fee) must be filed in Room WG08. On filing the appeal notice the solicitors should inform the Listing Officer whether they intend to instruct counsel and, if so, the names of counsel.

20.6 Listing before the Interim Applications Judge

20.6.1 The work of the Interim Applications Judge is taken week by week by a High Court Judge on a rota basis.

20.6.2 All applications must have a time estimate inserted by the parties. If an hour or less, the matter will be heard on a requested or ordered date notified by the Listing Office to the parties. If more than one hour, the matter will go into the Interim hearings Warned List (see paragraph 20.5.2 above). The parties are required to give convenient dates before the date when the Warned List is due to commence and will if required attend on the Listing Officer to fix a date within the Warned List.

20.6.3 In order that a complete set of papers in proper order is available for the Judge to read before the hearing, the parties should not less than 3 days before the hearing lodge in Room WG08 a bundle, properly paginated in date order, and indexed, containing copies of the following documents:

1. the application notice or notice of appeal
2. any statements of case
3. copies of all written evidence (together with copy exhibits) on which any party intends to rely, and
4. any relevant order made in the proceedings

20.6.4 The bundle should be agreed if possible. In all but simple cases a skeleton argument and, where that would be helpful, a chronology should also be lodged. See paragraph 12.3 above and paragraphs 20.8.1 and 20.8.2 below in respect of skeleton arguments.

20.6.5 Except with the permission of the Judge no document may be used in evidence or relied on unless a copy of it has been included in the bundle referred to in paragraph 20.6.3 above. If any party seeks to rely on written evidence which has not been included in the bundle, that party should lodge the original (with copy exhibits) in Room WG08 in advance of the hearing, or otherwise with the Court Associate before the hearing commences.

20.6.6 In appeals from Masters and Circuit Judges to a High Court Judge, and from the decisions of District Judges sitting in the District Registries to a High Court Judge, the requirements as to a hearing bundle set out in paragraphs 20.6.3 and 20.6.4 above should be complied with. In addition, a copy of the judgment, or relevant parts thereof, given by the Master, Circuit Judge or District Judge should be made available.

20.6.7 Subject to the discretion of the Judge, any application or appeal normally made to the Interim Applications Judge may be made in the month of September. In the month of August, save with the permission of the Judge, appeals will be limited to those matters where, under Practice Direction 39B paragraph 2.5, an application might be made to a Master returnable in August without the Master's permission namely:-

1. to set aside a claim form or particulars of claim, or service of a claim form or particulars of claim
2. to set aside judgment
3. for a stay of execution
4. for any order by consent
5. for judgment or permission to enter judgment
6. for approval of settlements or for interim payment
7. for relief from forfeiture
8. for a charging order
9. for a third party debt order
10. for appointment or discharge of a receiver
11. for relief by way of application by a High Court Enforcement Officer
12. for transfer to a county court or for trial by a Master

20.6.8 As to applications in August, only those of real urgency will be dealt with, for example urgent applications in respect of injunctions or for possession of land.

20.6.9 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". 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 PD 39B para 2.3(3).

20.7 The lists generally

20.7.1 Where a fixed date has been given it is the duty of the parties, notwithstanding that pre-trial checklists have been filed, to keep the Listing Officer fully informed as to the current position of the matter with regard to negotiations for settlement, whether all aspects of the claim are being proceeded with, an up to date estimate of the length of the hearing, and so on.

20.7.2 Adjournments. 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.

20.7.3 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.

20.7.4 If the application is made by agreement, the parties should, by application notice in Form N244, apply to the Listing Officer who will 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 that may include giving directions for a new hearing date.

20.7.5 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 applied for should accompany the application notice. The parties must decide what if any evidence they seek to rely on.

20.7.6 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.

20.7.7 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.

20.8 Judges' Listing Office – general matters

20.8.1 To facilitate the efficient listing of proceedings, parties are reminded that skeleton arguments concisely summarising each party's submissions must be prepared and filed with the Listing Office;

1. for trials, not later than 10.00am 2 days before the trial, and

2. for substantial applications or appeals, not later than 10.00am 1 day before the hearing.

20.8.2 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.

20.8.3 For parties' information, the following targets for the disposal of matters in the Lists have been agreed as set out below:

(1) Interim Hearings Warned List, within 4 weeks from date of fixing

(2) Trials of 1 to 3 days, within 4-6 months after trial directions

(3) Trials of 3 to 5 days, within 6-8 months after trial directions

(4) Trials over 5 days but under 10 days, within 8-12 months after trial directions

(5) Trials of 10 days or over but under 20 days, within 12-15 months after trial directions

(6) Trials of 20 days or over are likely to be fixed for a date exceeding 12 months.

21. Trial, judgments and orders

21.1 General

21.1.1 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.

21.1.2 Claims for malicious prosecution or false imprisonment are at present tried by a Judge sitting with a jury unless the court orders otherwise: see paragraph 20.3.1 above.

21.2 The Trial

21.2.1 See paragraph 2.6. above about representation at the trial, and paragraphs 12.4.1 and 12.4.2 above about recording of proceedings.

21.2.2 Rule 39.3 sets out the consequences of a party's failure to attend the trial: and see also paragraph 2 of the Part 39 Practice Direction.

21.2.3 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.

21.2.4 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. In a jury trial such matters would normally be dealt with before the jury is sworn in.

21.2.5 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 22.5(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.

21.2.6 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.

21.2.7 The Associate will normally draw the formal judgment or order made at the trial. The reserved judgment of the Judge will be made available to the parties either by being handed down in writing or, where delivered orally, by request for a transcript of the same: see para 12.4.1 above.

21.2.8 At a jury trial, it is the parties' responsibility to provide sufficient bundles of documents for the use of the jury.

21.2.9 Facilities are available to assist parties or witnesses with special needs. The Queen's Bench Listing Office should be notified of any needs or requirements prior to the trial, in writing.

21.3 Judgments and orders

21.3.1 Part 40 deals with judgments and orders. Rule 40.2 contains the standard requirements, i.e. the matters to be included in any judgment or order. Note particularly what is to be included where application for permission to appeal was made at the hearing at which the judgment or order was given.

21.3.2 Drawing the order: see paragraphs 15.1 to 15.8 above. Rule 40.3 contains extensive provision about the drawing up and filing of judgments and orders, including by whom they are to be drawn up and filed and the time for doing so. See also PD 40B para 1 for more information.

21.3.3 Of particular importance in relation to drawing Masters' orders in the Royal Courts of Justice is rule 40.3(4). This reads "Except for orders made by the court of its own initiative and unless the court otherwise orders, every judgment or order made in claims proceeding in the Queen's Bench Division at the Royal Courts of Justice….. will be drawn up by the parties, and rule 40.3 is modified accordingly." The procedure for drawing orders is as set out in paragraphs 15.1 to 15.7 above.

21.3.4 Provisions concerning consent orders are contained in Rule 40.6 which sets out in paragraph (2) the types of consent judgments and orders that may be sealed and entered by a court officer, provided;

1. that none of the parties is a litigant in person, and

2. the approval of the court is not required by a rule, practice direction or an enactment.

Other types of consent order require an application to be made to a Master or Judge for the granting of the order. It is common for a respondent to a consent order not to attend the hearing but to provide a written consent. The consent may either be written on the document or contained in a letter, and must be signed by the respondent, or where there are solicitors on the record as acting

for them, by their solicitors. The Master will be concerned to know, for example where a draft consent order is signed on behalf of a company, the status and authority of the signatory in question. All signatures should be accompanied by a legible statement in capital letters of the person's name. Paragraph 3 of the Part 40B Practice Direction contains further information about consent orders.

21.3.5 Under rule 40.7(1) a judgment or order takes effect from the day on which it is given or made, or such later date as the court may specify.

21.3.6 Rule 40.8 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.

21.3.7 Rule 40.11 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.

21.3.8 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.

21.3.9 Where judgment is reserved, the Judge may deliver judgment by handing down the written text without reading it out in open court. Where this is the case, the advocates will be supplied with the full text of the judgment in advance of delivery. The advocates should then familiarise themselves with the contents and be ready to deal with any points which may arise when the judgment is delivered. Any direction or requirement as to confidentiality must be complied with.

21.3.10 Such judgment does not take effect until formally delivered in court. If the judgment is to be handed down in writing copies will then be made available to the parties and, if requested and so far as practicable, to the law reporters and the press.

21.3.11 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, Room WB14, from where further copies may be obtained (and see paragraph 12.4.1 above).

21.4 Judgment or order for payment of money on behalf of a child or protected beneficiary

21.4.1 The usual order made at trial will 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 placed to a special investment account (or other investment account as may be directed) pending application for investment directions. Such application is directed to be made to a Master or District Judge in the case of a child's fund or to the Court of Protection in the case of a protected beneficiary's fund. The Judge's order will specify the time within which the application is to be made. 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/Protected Party's account in respect of any consequent loss of interest. The order will 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. And see paragraphs 7.3.10 – 7.3.16 above.

21.4.2 The litigation friend or legal representative will then apply:

1. in the case of a child, to the Master or District Judge in accordance with paragraphs 7.3.12 to 7.3.15 above and para 9.4 of the Part 21 Practice Direction. In the Royal Courts of Justice the application is sent to the Queen's Bench Issue and Enquiries section in Room E07; and

2. in the case of a protected beneficiary, to the Court of Protection in accordance with para 10 of the Practice Direction.

21.4.3 Where at trial the Judge has given judgment for an award of damages to a child or protected beneficiary by way of periodical payments their order will specify those matters that are required to be specified by rule 41.8.

21.5 Provisional damages

21.5.1 Rule 41.1 defines an award of provisional damages; and rule 41.2 lays down the circumstances in which (including at trial) the court may make such an award in a claim for personal injuries. Where there is a chance that a claimant

may in the future develop a particular disease or suffer a particular deterioration in their physical or mental condition as a result of the event giving rise to the claim they may seek an award of damages on the assumption that they will not develop the disease or suffer the deterioration, with provision for them to make a further application if they do develop the disease or suffer the deterioration. Rule 41.2(2) stipulates in precise terms what any order for provisional damages (if made) must contain.

21.5.2 The Part 41 Practice Direction 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. A precedent for a provisional damages judgment is annexed to the Practice Direction.

22. Appeals

22.1 General

22.1.1 Appeals are governed by Part 52 as now enacted to take effect from 3rd October 2016 (and replacing, subject to transitional provisions, the earlier Part 52), and by the clear terms of the five Practice Directions supplementing that Part.

22.1.2 The five Practice Directions 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

22.1.3 Part 52 complements the provisions of sections 54 to 57 of the Access to Justice Act 1999 and provides a uniform procedure for appeals in the County Court and the High Court and a modified procedure for the Civil Division of the Court of Appeal.

22.1.4 In the case of any appeal the relevant Practice Direction or Directions must be read together with the rules in Part 52 and must be consulted in detail for their terms. Indeed, each of the Practice Directions is specifically described as supplementing Part 52; and by rule 52.2 all parties to an appeal must comply with the Practice Directions.

22.1.5 Under rule 52.1, the rules in Part 52 are to apply to appeals to

(a) the civil division of the Court of Appeal;

(b) the High Court; and

(c) the County Court

22.1.6 Appeals only in (a) and (b) above arise for consideration in this Guide.

22.2 Permission to appeal

22.2.1 This is the subject of the newly drafted Section II of Part 52. Rule 52.3 contains the cardinal requirement that, save in certain specified cases, permission to appeal is required.

22.2.2 An application for permission to appeal may be made

(a) to the lower court at the hearing at which the decision to be appealed was made; or

(b) to the appeal court (i.e. the court to which the appeal is made) in an appeal notice.

See rule 52.3(2). By PD 52A para 4.1, in order to facilitate the making of an application to the lower court for permission to appeal in an appropriate case, the lower court may adjourn the hearing to give a party an opportunity so to apply. If an application to the lower court is refused, or if no application is made to the lower court, a party may nonetheless apply to the appeal court in accordance with rule 52.12. See rule 52.3(3) and PD52A para 4.1(b).

22.2.3 The permission to appeal test. In the case of first appeals permission to appeal may be given only where:

(a) the Court considers that the appeal would have a real prospect of success; or

(b) there is some other compelling reason for the appeal to be heard.

See rule 52.6(1).

22.2.4 In the case of second appeals, as defined in rule 52.7(1), permission, which is required from the Court of Appeal, 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.

See rule 52.7(2).

22.2.5 An order giving permission may -

(a) limit the issues to be heard; and

(b) be made subject to conditions.

See rule 52.6(2). Such conditions may, and not infrequently do, provide for security for the costs of the appeal.

22.2.6 The determination of applications for permission to appeal differs as between, on the one hand, applications for permission to the County Court and the High Court and, on the other hand, applications for permission to the Court of Appeal. In the first case, the application will be determined on paper with a right, subject to certain exceptions, if the application is refused, to request the decision to be reconsidered at an oral hearing: see rule 52.4. In the second case, the Court of Appeal will determine the application on paper with no right to request an oral hearing save that the judge considering the application on paper may direct an oral hearing, and must so direct if they are of the opinion that the application cannot fairly be determined on paper without an oral hearing: rule 52.5(1) and (2).

22.3 Routes of appeal and powers on appeal

22.3.1 Paragraphs 3.1, 3.4 and 3.5 of Practice Direction 52A conveniently set out the destinations of appeal, i.e., the appropriate court to which an appeal must be made. These provisions implement the Access to Justice Act 1999 (Destination of Appeals) Order 2016 (S.I. 2016/917) with effect from 3rd October 2016. The distinction, which formerly existed for this purpose between an interim and a final decision, no longer applies. Thus, under Table 1 referred to in paragraph 3.5, the route of appeal from any decision of a Circuit Judge in the County Court is to the High Court; and from any decision of a Master (or District Judge sitting in a District Registry in the High Court) is to a High Court Judge; and from any decision of a High Court Judge in the High Court is to the Court of Appeal. The only exception is second appeals, e.g. where a Circuit Judge is determining an appeal from a District Judge in the County Court, the appeal would lie to the Court of Appeal and not the High Court. However, see also paragraph 22.9 below regarding statutory appeals where a different route of appeal may apply.

22.3.2 Rule 52.20 sets out the appeal court's powers on appeal, which include power to affirm, set aside or vary any order or judgment of the lower court, refer any claim or issue for determination by the lower court, or order a new trial or hearing. There is express power to vary an award of damages made by a jury.

22.3.3 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).

22.3.4 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.

22.3.5 Stay pending appeal. It should be noted that (except in certain immigration appeals), unless the appeal court or the lower court orders otherwise, an appeal does not operate as a stay of any order or decision of the lower court. Appellants seeking a stay should specifically include an application in the appeal notice, or make separate application in accordance with Part 23.

22.4 Appellant's Notice

22.4.1 In all cases an appellant is required to file an appellant's notice. The notice is in Form N161. The venue for filing the appellant's notice is dealt with below.

22.4.2 If the appellant has not already obtained permission to appeal, and seeks that permission from the appeal court, they must include an application for such permission in the appellant's notice: see rule 52.12.

22.4.3 The time for filing the appellant's notice is:

(a) such period as may be directed by the lower court, which may be longer or shorter than the period in (b) below; or

(b) if the lower court makes no such direction, and subject to the specific provision about time limits in rules 52.8 to 52.11 and Practice Direction 52D, 21 days after the date of the decision of the lower court that it is sought to appeal.

22.4.4 Provisions for seeking a variation of time are contained in rule 52.15, whereby an application to vary the time limit must be made to the appeal court. A party may however, in an appeal in the County Court or High Court, seek an extension of time from the lower court and, if he does so, he must seek it at the same time as applying to the lower court for permission to appeal: see PD 52B para 3.1. If applying after the time for filing has expired an appellant must include such application in their appeal notice stating the reason for the delay and the steps taken prior to making the application.

22.4.5 Service. Unless the appeal court orders otherwise, an appellant's notice must be served on each respondent as soon as practicable and in any event not later than 7 days after it is filed: rule 52.12 (3).

22.5 Respondent's Notice

22.5.1 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. 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.

22.6 Disposal of applications and appeals by consent

22.6.1 Section 6 of Practice Direction 52A deals with the position.

22.6.2 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. This is not the case if the matter settles at the ex parte permission stage. Usually the court will approve a consent order dismissing the permission application with no order for costs.

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: paras 6.1 to 6.3. 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: para 6.4.

22.6.3 Notwithstanding the above, 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: para 6.5

22.7 Procedure on appeals in the County Court and the High Court

22.7.1 Practice Direction 52B sets out the procedure on

(a) appeals within the County Court

(b) appeals from the County Court to the High Court, and

(c) appeals within the High Court, including appeals from a Master or a District Judge sitting in a District Registry to a Judge of the High Court.

22.7.2 The venue for making the appeal, including filing all notices and making all applications, is the subject of section 2 of the PD. The tables at the end of the PD set out appeal centres which relate to the circuit on which the case has been heard and which will constitute the venue for the appeal. In appeals in the Royal Courts of Justice, appeal notices and applications should be filed in the High Court Appeals Listing Office in Room WG08. The office has a useful leaflet available to litigants entitled "I want to appeal" which provides information about High Court appeals.

22.7.3 Section 4 of the PD sets out the documents which must be filed with the appellant's notice. These include grounds of appeal which must be set out in a separate sheet and which must set out in simple language, clearly and concisely, why the order of the lower court was wrong or unjust because of a serious procedural or other irregularity.

22.7.4 Any application made in the appeal should be made in the appeal notice. Thus, for example, where an appellant qualifies for fee remission he may seek in the appellant's notice a transcript of the judgment of the lower court at public expense: para 4.3.

22.7.5 Para 6.2 of the PD deals specifically with the obtaining of a transcript of the judgment or other record of the reasons of the lower court and must be carefully followed in all cases.

22.7.6 Para 6.3 requires filing by the appellant, as soon as practicable but in any event within 35 days of filing the appellant's notice, of an appeal bundle which is to be paginated and indexed. The documents which (subject to any order) must be included in the bundle are set out in para 6.4(1). Those which should be considered for inclusion, but which should be included only where relevant, are set out in para 6.4(2).

22.7.7 Service of the appeal bundle, depending on the question whether and at what stage permission to appeal has been granted, is dealt with in para 6.5.

22.7.8 Skeleton arguments are the subject of para 8.3. They should be produced (subject to any order of the court) only where the complexity of the issues of fact or law justify them; or they would assist the court in respects not readily apparent from the papers in the appeal. In any event, it should be noted that skeleton arguments are subject to the specific requirements of section 5 of Practice Direction 52A which, if a skeleton argument is filed, should be carefully followed.

22.7.9 In appeals in the High Court to be heard in the Royal Courts of Justice, the High Court Appeals Office (Room WG08) will notify the parties of either the hearing date or the "listing window" during which the appeal is likely to be heard.

22.8 Procedure on appeals in the Court of Appeal

22.8.1 Practice Direction 52C sets out the procedure in detail.

22.8.2 An appellant's notice in Form N161 must be filed and served in all cases, and must be accompanied by the appropriate fee or fee remission certificate.

22.8.3 The notice and accompanying documents (see para 22.8.4 below) must be filed in the Civil Appeals Office Registry, Room E307, Royal Courts of Justice, Strand, London WC2A 2LL.

22.8.4 The accompanying documents are described in para 3 of the Practice Direction. These include the appellant's skeleton argument in support of the appeal. Grounds of appeal are required by para 5 of the Practice Direction. These must, as in appeals within the High Court, identify as concisely as possible the respects in which the judgment of the court below is

(a) wrong; or

(b) unjust because of a serious procedural or other irregularity

It should be noted however that the reasons why the decision is wrong or unjust must not be included in the grounds of appeal but must be confined to the skeleton argument.

22.8.5 Paragraph 4 of the Practice Direction lays down procedural requirements for applying for an extension of time for filing an appellant's notice. If permission to appeal has been granted in the lower court or is not required, the respondent has the right to oppose an application for an extension of time and to be heard at any hearing of that application.

22.8.6 The Civil Appeals Office does not serve documents in an appeal. Service must be effected by the parties: para 7.

22.8.7 Paragraphs 8 to 13 of the Practice Direction deal with respondent's notices and skeleton arguments including filing and service thereof. Thus a respondent who seeks to appeal against any part of the order below must file an appeal notice; and if they seek a variation of the order they must obtain permission to appeal. A respondent's notice is in Form N162.

22.8.8 The procedure where permission to appeal is sought from the Court of Appeal is further set out in Section 4 (paragraphs 14 to 20). Within 14 days of filing

the appeal notice, the appellant must lodge a core bundle (and, if necessary, a supplementary bundle) for the application for permission to appeal, prepared in accordance with paragraph 27. Under paragraph 15, in line with rule 52.5(2) as referred to above, applications for permission to appeal will be determined without a hearing unless the judge considering the application directs that an oral hearing should take place. If he does so direct, the hearing will be listed before the same judge no later than 14 days after their direction (subject to the court directing otherwise). As to the respondent's position, the court will notify the respondent of any oral hearing but the respondent is not expected to attend unless the court so directs: see paragraph 16(1). If the respondent is directed to attend the permission hearing the appellant must supply them with a copy of the skeleton argument and any documents to which the appellant intends to refer. In respect of any application for permission to appeal, under para 19(1)(a) a respondent is permitted, and encouraged, within 14 days of service of the appellant's notice or skeleton argument if later to file and serve on the appellant a brief statement of any reasons why permission should be refused. Para 19 makes further provision in detail for any further steps that the respondent should take in the circumstances. Under Para 19(3) however, unless the Court directs otherwise, a respondent need take no further steps when served with an appellant's notice prior to being notified that permission to appeal has been granted.

22.8.9 Section 5 of Practice Direction 52C sets out in precise detail newly drafted provisions for a timetable leading to the hearing of an appeal itself. Such timetables proceed on the assumptions (a) that permission to appeal has been given by the lower court or is not needed; or (b) that notification of the granting of permission is given by the Court of Appeal; or (c) that notification is given that the permission application will be listed with the appeal to follow. The steps in Part 1 of the timetable relate to the period after notification of a listing window. The steps in Part 2 relate to the period following the fixing of a hearing date. The steps to be taken show clearly the obligations of each party at each stage of the appeal. And furthermore such steps are accompanied by cross-references e.g., to para 27 of the Practice Direction which lays down, in particular but not exclusively, the preparation of a bundle of documents for the hearing of the appeal. Thus, in each case the respective parties must consult and abide by their detailed obligations set out in the timetables contained in para 21 and cross-referenced in those timetables.

22.8.10 Practitioners and litigants in person should note the various Court of Appeal leaflets:

(1) How to Appeal to the Court of Appeal – Form 202

(2) How to Prepare an Appeal Bundle for the Court of Appeal – Form 204

(3) Applying for Permission to Appeal to the Court of Appeal – Form 206

(4) Time Limits for Appealing to the Court of Appeal – Form 207

22.9 Statutory appeals and appeals subject to special provision

22.9.1 Practice Direction 52D 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 Queen's Bench Division, will hear such appeals: see para 5.1. The Table has cross-references to the relevant paragraphs in PD 52D which govern the relevant procedure in the particular cases.

22.9.2 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. Thus, in such cases, the appeal court may not exercise the powers generally available to it under rule 52.15.

22.9.3 Contempt of court. Appeals in cases of contempt of court fall under PD 52D. 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 Queen'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 in Room WG08, Royal Courts of Justice, Strand, London WC2A 2LL.

22.10 Appeals by way of case stated

22.10.1 Practice Direction 52E 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 Practice Direction 52D (see para 22.9.1 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 set forth in para 3.13.

23. Enforcement

23.1 General

23.1.1 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).

23.1.2 The procedure with respect to writs of control was brought into force under the Tribunal, Courts and Enforcement Act 2007, and under the Taking Control of Goods Regulations 2013 (S1 2013/1894). The provisions of the Act and Regulations must be read together with CPR Parts 83 to 86. Particular attention should be paid to section 62 of and schedule 12 to the Act in relation to the issue and execution of writs conferring a power to use the TCG procedure.

23.1.3 Issue of the writ of execution or control. The procedure is governed by rule 83.9. This provides that issue takes place on the writ being sealed by a court officer of the appropriate office. In all cases save those stipulated in rule 83.9 (1)(a)(b) (c) and (ca) this will be the Central Office of the Senior Courts at the Royal Courts of Justice. A request for the issue of the writ must be filed in the Enforcement Section in Room E15. Such request must be signed by the person entitled to execution, 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).

23.2 Judgments for land

23.2.1 A judgment or order for the possession of land may be enforced in the High Court

(a) by a writ of possession

(b) (in a case to which CPR rule 81.4 applies, by an order of committal, and

(c) in a case to which CPR rule 81.20 applies, by an order of sequestration. See rule 83.13.

23.2.2 The court's permission is required to issue a writ of possession save (a) in mortgage claims, and (b) in claims against trespassers under Part 55 unless (in that case) the writ is to be issued after the expiry of three months from the date of the order: see rule 83.13.

23.2.3 Where such permission is required it will not, by virtue of rule 83.13(8), be granted unless it is shown that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the court to be sufficient to enable them to apply to the court for any relief to which they may be entitled. Where the defendant or any other persons are in actual possession of the premises the application for leave to issue a writ must, in addition to dealing with the matters required by rule 83.13(8), contain the following information: -

(a) whether the premises or any part thereof is a dwelling house;

(b) if so

(i) what is the rateable value of the dwelling house;

(ii) whether it is let furnished or unfurnished and, if furnished, what is the amount of furniture therein;

(c) any other matters which will assist the Master in determining whether the occupier is protected by the Rent Acts.

See the Practice Direction at [1955] 1 W.L.R 1314 and [1955] 3 All E.R 646
See also the decision in *Gupta v Partridge* [2017] EWHC 2110 (QB) which provides useful guidance as to the form the notice under rule 83.13(8) should take. It was held that the usual practice of making a without notice application for permission to issue a writ of possession made by witness statement was adequate, provided that the occupants had received sufficient notice to enable them to apply for relief. Where there is a sole occupant with full knowledge of the possession proceedings, a reminder of the terms of the possession order and a request that possession be given up under the order was sufficient. Where other occupants were known to occupy the property then a letter in similar terms addressed to them by name, or to "The Occupants" if unknown, was required. It is necessary to include reference to the intention to apply for permission for a writ of possession, and that eviction would follow if possession was not delivered up by the date prescribed in the order.

23.2.4 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 Applications List. A draft order in the form of PF 52 should be provided.

23.2.5 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 endorse it: rule 83.3(9). Application should be made in Form N244 supported by witness statement.

23.2.6 Stay of execution of writ of possession. It should be noted that 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.

23.2.7 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).

23.3 Judgments for goods

23.3.1 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.

23.3.2 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.

23.3.3 In all such cases where a question of committal or sequestration arises the full terms of CPR Part 81 must be considered.

23.3.4 On the other hand, 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.

(d) 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).

23.4 Judgments for money

23.4.1 The usual means of execution in the High Court of a judgment or order for the payment of money is by the issue of a writ of control. 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. PD84 contains a useful direction that the Act and the Regulations can both be found at www.justice.gov.uk.courts/procedure-rules; and also that a flow chart providing guidance and setting out the interrelationship of the Rules, the Act and the Regulations can be found at the same source. Such flow chart will, particularly, provide information as to the occasions on which, and how, an application to the court will need to be made in the process.

23.4.2 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.

23.4.3 Enforcement agent. 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 (S1 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 153-157 Cleveland Street, London W1T 6OW (telephone 0207 391 7299). Further information can be found on the High Court Enforcement Officers Association website at http://www.hceoa.org.uk/; or by telephone enquiry to the Association's office at 0844 244575.

23.4.4 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. The reader is advised to consult the legislation for its terms in any particular case but it may be helpful to point out that paragraphs 4 to 69 of schedule 12 delineate the general powers of the enforcement agent, including, at para 13, the four ways in which he may take control of the goods, whereas Part 84 of the CPR regulates specific matters that may, and often will, arise on applications in the process of taking control. Thus, to take examples, rule 84.3 provides that, in pre-existing proceedings, any application to the court must be made to the High Court or the County Court in accordance with rule 23.2. Further, 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. 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 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. 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.

23.4.5 Issue of a writ of control. This is the subject of rules 83.2 and 83.9. Permission to issue is required in the cases set forth in 83.2(3). As to the matters to be complied with to enable issue to take place see para 23.1.3 above.

23.4.6 Validity of the writ. The validity of a writ of control is governed by rule 83.4(3) whereby 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).

23.4.7 Goods which may be taken.

23.4.7.1 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

Under paragraph 10 he may take control of goods only if they are goods of the debtor.

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".

23.4.7.2 Exempt goods - 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.

23.4.8 Stay of writ of control.

23.4.8.1 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.

23.4.8.2 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). It is specifically provided, in line with the position under the former RSC Order 47 rule 1(1), 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, notwithstanding anything in paragraph (5) or (6), 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: see rule 83.7 (4). Paragraphs (5) and (6) set out what any application under rule 83.7 shall contain. Any application under this rule should always set out the applicant's case as fully as possible so that the Master may consider, if a stay is to be granted, what conditions should be imposed.

23.4.8.3 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 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. See also 23.4.9.7 below.

23.4.9 Transfer of county court judgments for enforcement in the High Court.

23.4.9.1 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 (S1 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.

23.4.9.2 The procedure for transfer under para 23.4.9.1 above 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.

23.4.9.3 The judgment creditor should use the new 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 so 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.

23.4.9.4 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.

23.4.9.5 The judgment creditor will then make a request in writing to the High Court, in Form PF86B, 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 (Room E17) 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.

23.4.9.6 The writ of control, when issued in accordance with the request, will be in Form 53B, 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 for allocation.

23.4.9.7 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. Thus 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.

23.4.10 Foreign currency. 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 £….."

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.

The writ of control will then be issued for the sterling equivalent of the judgment in foreign currency as appears from the certificate.

23.5 Claims on controlled goods and executed goods

23.5.1 Part 85 of the CPR introduces new rules, replacing in substance the interpleader procedure provided by RSC Order 17 (revoked), 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.

23.5.2 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.

23.5.3 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.

23.5.4 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.

23.5.5 Exempt goods. See paragraph 23.4.7 above. 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. 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.

23.5.6 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 PD 2B, jurisdiction to dispose of any issue arising in the application.

23.6 Stakeholder claims

23.6.1 These are the subject of Part 86, which replaces the jurisdiction previously available under RSC Order 17, rule 1(1)(a).

23.6.2 The jurisdiction will, as before, 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 paragraph 4.5 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.

23.6.3 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.

23.6.4 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).

23.7 Injunctions and undertakings

23.7.1 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 81.20 (see paragraph 12.12 below). Applications for such orders in the Queen's Bench Division will, invariably, be listed before and heard by a Judge.

23.8 Examination of judgment debtor (Part 71)

23.8.1 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.

23.8.2 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 proceedings in the Queen's Bench Division in which judgment has been given there, or proceedings which have been transferred for enforcement to the Queen's Bench Division, may be the subject of an application to that Division for examination.

23.8.3 The application must (a) be in the form and (b) contain the information required by the PD71. Thus, under PD71 para 1.2 the application must, among other requirements, state the amount presently owed under the judgment or order, the name and address of the judgment debtor, and, if the judgment debtor is a company or other corporation, the name and address of the officer of the corporation whom the judgment creditor wishes to be ordered to attend court, and their position in the corporation.

23.8.4 An application for an order may be dealt with by a court officer without a hearing. But the court officer may in a case of any complexity refer it to a judge (which will include a Master or a District Judge); and they will refer it to a Master where the application requests that the questioning take place before a judge: see PD 71 para 1.3.

23.8.5 The order if made will be that the judgment debtor or other person to be questioned attend the County Court hearing centre serving the address where they reside or carry on business, unless a judge decides otherwise. The order will normally direct an examination before an officer of the court. It will provide for questioning to take place before a judge only if the judge considering the

request decides that there are compelling reasons to make such an order: PD71 para 2.

23.8.6 A person served with an order must under rule 71.2 (b)

(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.

23.8.7 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).

23.8.8 The order must, unless otherwise stated, be served personally not less than 14 days before the hearing. Thus the order will need to allow sufficient time for the judgment creditor to serve it.

23.8.9 The person ordered to attend may, within 7 days, ask the judgment creditor to pay them a sum reasonably sufficient to cover travelling expenses, which the judgment creditor must then pay.

23.8.10 Rule 71.6 makes provision for the judgment creditor to attend the hearing and ask questions; and indeed to conduct the questioning if the hearing is to be before a judge rather than a court officer.

23.8.11 Failure to comply. 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 of Appeal has given guidance to judges asked to make a suspended committal order under rule 71.8 in *Broomleigh Housing Association Ltd v Okonkwo* [2010] EWCA Civ 113.

23.9 Third Party Debt Order proceedings (CPR Part 72)

23.9.1 Where a judgment creditor has obtained in the High Court (or in proceedings which have been transferred to the High Court for enforcement) a judgment or order for payment of a sum of money against a judgment debtor, 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.

23.9.2 The application should be made by filing an application notice in Practice Form N349, verified by a statement of truth, 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 as set out in CPR 72 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 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.

23.9.3 The third party debt order to show cause must be served on the third party, and on the judgment debtor, in accordance with CPR 72.5.

23.9.4 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.

23.9.5 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.

23.9.6 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.

23.9.7 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.

23.9.8 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."

23.10 Charging Orders (CPR Part 73)

23.10.1 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. 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.

23.10.2 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. Thus, as quite frequently happens, 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.

23.10.3 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.

23.10.4 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 may be 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] ChD 370, C.A. The application for the order should make plain what interests are sought to be charged.

23.10.5 If an interim charging order is made on stocks or shares in more than one company, a separate order must be drawn 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 23.4.16 above.

23.10.6 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, or N380 if the application relates to securities. Paragraph 1.2 of PD 73 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 order in form N86 appointing a time for the judgment debtor to attend and show cause why the order should not be made absolute.

23.10.7 The interim order and the application notice and any documents in support must be served in accordance with rule 73.7. 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.

23.10.8 After further consideration at the hearing the Master will either make the order final (with or without modifications) as in Form N87, or discharge it. He 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).

23.10.9 Rule 73.9 deals with the effects of a charging order on funds in court, which includes securities held in court.

23.10.10 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 23.4.16 above.)

Enforcement of Charging Order

23.10.11 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 Chancery Chambers at the Royal Courts of Justice or to one of the Chancery district registries (see para 4.2 of PD73). The limit of the county court jurisdiction is £350,000: see s.23(c) of the County Courts Act 1984. The written evidence in support of the claim must set out all those matters contained in para 4.3 of PD73.

23.11 Receivers; equitable execution (CPR Part 69)

23.11.1 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 23.10 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).

23.11.2 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.

23.11.3 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 23.11.7 below, will include provision for persons affected to apply to set aside or vary the order.

23.11.4 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 the PD.

23.11.5 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.

23.11.6 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.

23.11.7 An order appointing a receiver which may be in Form No.84 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

23.11.8 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.

23.12 Contempt of Court and Committals

23.12.1 The court has power to punish contempt of court by an order of committal to prison or by other means. Such other means include an order for payment of a fine, an order for the sequestration 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 committal, the committal shall be for a fixed term and that term shall not on any occasion exceed 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.

23.12.2 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).

23.12.3 The procedure under which the court exercises jurisdiction in contempt proceedings is governed by new legislation which came into effect on 1st October 2012 in the form of Part 81 of the CPR and the Practice Direction to that Part. Unless otherwise stated Part 81 applies to procedure in the Court of Appeal, the High Court and the County Court: rule 81.1(3).

23.12.4 It should be noted that Part 81 is concerned only with procedure and does not itself confer any power on the court to make any of the above orders; nor does it affect any statutory or inherent power of the court to make a committal order of its own initiative: rule 81.2.

23.12.5 The structure of Part 81 is divided into sections. Section 2 (and in particular 81.4) is concerned with committal of a person who disobeys a judgment or order of the court to do an act within a fixed time, or disobeys a judgment or order not to do an act. Note that PD 40B para 8 requires that an order which requires an act to be done (other than a judgment or order for the payment of money) must specify the time within which the act should be done. Under rule 81.9, no order may be made under rule 81.4 unless the judgment or order in question has prominently displayed on the front of the copy served on the respondent a penal notice in terms of the rule.

23.12.6 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.

23.12.7 An order of committal may be made under rule 81.4 against any director or other officer of a company or corporation required to do or abstain from doing an act: see 81.4(3).

23.12.8 Rules 81.5 to 81.8 make provision for service, and the method of service, of judgments or orders, and undertakings, on persons required to do or abstain from doing an act, and rule 81.9 lays down the requirement for such judgments and orders to be endorsed with a penal notice.

23.12.9 Applications for an order of committal under rule 81.4 are made by application notice in the existing proceedings. The application must set out the grounds on which the application is made and must identify, separately and numerically, each act of contempt relied on. The application must be supported by evidence by affidavit: see rule 81.10. The application notice and evidence must be served personally on the respondent, subject to qualifications contained in the rule.

23.12.10 Such applications are made to the appropriate court as defined in PD81 para 10. If the application is one which must be made in the High Court then (save for the unusual cases where, under an enactment, a Master or District Judge has power to make a committal order) the application must be made to a High Court Judge or a person authorized to act as such. The application notice should be lodged in Room WG08, where a date for hearing will be set, and endorsed on or served with the application notice.

23.12.11 Section 3 of Part 81 regulates committal applications relating to interference with the due administration of justice in connection with proceedings. The full terms of rule 81.12 should be consulted. Applications for committal in such cases may be made only with the permission of the court: rule 81.12(3).

23.12.12 Rule 81.13 defines the court to which the application for permission under section 3 must be made. Again the rule should be consulted in detail. Thus, in connection with proceedings in the High Court (other than proceedings in a Divisional Court) the application for permission may be made only to a single judge of the Division in which the proceedings were commenced or to which they have subsequently been transferred. Where contempt is committed otherwise than in connection with proceedings, the application must be made to the Administrative Court (a part of the Queen's Bench Division).

23.12.13 An application for permission under section 3 must be made by Part 8 claim form. Rule 81.14 makes provision as to the contents of the claim form; service (which is to be personal service unless the court otherwise directs); and response by the respondent. Where permission to proceed is given the court may give such directions as it thinks fit including listing before a single judge or a Divisional Court.

23.12.14 Section 4. This section provides the procedural code applicable in cases where the High Court has power under any enactment to punish any person charged with conduct in relation to proceedings before a court, tribunal or person. The section is supplemented by PD81 para 3.

23.12.15 Section 5. Contempt in the face of the court. This section, which is supplemented by PD81 para 4, provides that where contempt has occurred in the face of the court, and that court has power to commit for contempt, the court may deal with the matter of its own initiative and give directions for the disposal of the matter. In the Queen's Bench Division, if contempt occurs in the

face of the court in proceedings before a Master, the Master is likely to direct under PD81 para 10.2 that the matter be referred to a single judge for disposal.

23.12.16 No application notice is necessary in cases falling under section 5, but the closely-written terms of para 4 of the Practice Direction, which envisage an opportunity for the respondent to reflect on their behaviour, should be given particular attention.

23.12.17 Section 6. Committal for making a false statement of truth or disclosure statement. Rule 81.17 contains detailed provisions as to the procedure to be followed in such cases, including provisions as to the interaction with other sections where the contempt involves not only the making of a false statement but other forms of contempt. A committal application in relation to a false statement in proceedings in the High Court may be made only with the permission of the court: rule 81.18(1). In such case the application for permission is made by application notice. PD81 para 5.2 governs the contents of the affidavit evidence required to support a permission application. In any such case the court may refer the matter to the Attorney General with a request to them to consider whether to bring proceedings for contempt.

23.12.18 Section 7. Writ of sequestration to enforce a judgment, order or undertaking. Rules 81.19 to 81.27 govern the position. The court may punish breach of an order to do or abstain from doing an act, or breach of an undertaking, by a writ of sequestration against the property of the person in breach. Permission is required to make the application. If the person in breach is a company or corporation the writ may in addition be issued against the property of any director or other officer. Rules 81.21 to 81.26 should be consulted as to service of the judgment or order in question; the requirement for endorsement thereof with a penal notice; and how to make the application for permission. The application is by application notice and is made to a single judge of the Division of the High Court in which the proceedings were commenced or to which they have been transferred; or in any other case to a single judge of the Queen's Bench Division.

23.12.19 Section 8. This section contains general rules, applicable to cases arising under all the above sections for:

(a) the conduct of hearings, including restrictions on the evidence on which an applicant may rely at the hearing: rule 81.28;

(b) stating the name of the respondent, and in general terms the nature of the contempt, where the hearing has been held in private under CPR 39.2: rule 81.28(5);

(c) the power to suspend execution of a committal order: rule 81.29;

(d) the issue of a warrant of committal where a committal order is made, and service of the committal order on the respondent: rule 81.30;

(e) applications by a contemnor for their discharge from custody: rule 81.31; and

(f) discharge of a person in custody where a writ of sequestration has been issued, and giving directions for dealing with the property taken in sequestration: rule 81.32.

23.12.20 Section 8 is further supplemented by the Practice Direction at paras 8 to 16. These paragraphs provide in particular

(a) for observance of Convention rights. It is emphasized that the allegation of contempt be proved beyond reasonable doubt: para 9;

(b) for the court to which a particular committal application, or permission application, should be made: paras 10 and 11;

(c) for the form and contents of a claim form or application notice as appropriate: paras 12 and 13. It should be observed that the claim form or application notice must contain a prominent notice stating the possible consequences of the court making a committal order and of the respondent not attending the hearing. A form of notice which may be used is annexed to the Practice Direction at Annex 3;

(d) for the form and filing of written evidence in a committal application: para 14; and

(e) for the hearing of a committal application. In particular the applicant must obtain from the court a date for hearing; and unless the court otherwise directs the hearing must not be less than 14 days after service of the claim form or application notice on the respondent. Such date must be specified on the claim form or application notice or in a notice of hearing served therewith.

23.13 Execution against property of Foreign or Commonwealth States

23.13.1 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:

1. 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.

2. The Master, having been so informed will, as soon as practicable, notify the Head of Diplomatic Missions and International Organisations Unit (DMIOU) of the Foreign and Commonwealth Office (FCO) of the intended enforcement by email at protocol.enquiries@fco.gsi.gov.uk or by telephone on 020 7008 0991. 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 FCO Protocol Directorate has been so informed.

3. 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 FCO 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).

23.14 Recovery of enforcement costs

23.14.1 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 to have been unreasonably incurred, whether because the earlier attempt was unreasonable in all the circumstances or for any other reason.

23.14.2 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.

23.14.3 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.

23.15 Enforcement of Magistrates' Courts' orders

23.15.1 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.

23.15.2 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.

23.15.3 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).

23.15.4 The application notice and evidence in support together with an additional copy of the exhibit should be filed in Room E15 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.

23.15.5 This practice will also be followed in the District Registries with such variations as circumstances may render necessary.

23.16 Enforcement in England and Wales of Foreign Judgments; and Enforcement abroad of High Court Judgments

23.16.1 CPR 74 provides the procedure for enforcement of judgments in different jurisdictions as above.

23.16.2 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 IV applies to the enforcement in England and Wales of European Community judgments. Section V applies to (a) the certification of judgments in England and Wales as European Enforcement orders; and (b)

the enforcement in England and Wales of judgments certified as European Enforcement Orders by other Member States. Section VI applies to: (a) the certification in England & Wales of outgoing protection measures; and (b) the enforcement in England & Wales of certified protection measures from Member States of the European Union other than the United Kingdom or Denmark.

23.16.3 If a foreign country is not a party to an agreement with this country 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.

Section I. Incoming judgments

23.16.4 This section sets out the procedure for enforcement of foreign judgments in England and Wales in the following cases:

(a) under section 9 of the Administration of Justice Act 1920;

(b) under section 2 of the Foreign Judgments (Reciprocal Enforcement) Act 1933

(c) under section 4 of the Civil Jurisdiction and Judgments Act 1982;

(d) under the Lugano Convention as defined in rule 74.1 (see section 4A of the Civil Jurisdiction and Judgments Act 1982);

(e) under the previous Judgments Regulation (Council Regulation (EU) Regulation No 44/2001, known as 'Brussels I'); and

(f) under the 2005 Hague Convention as defined in rule 74.1 (see section 4B of the Civil Jurisdiction and Judgments Act 1982, amended by paragraph 4 of the Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements) Regulations 2015).

23.16.5 Registration of Foreign Judgments

23.16.5.1 The criteria for registration required by the legislation in each of the cases in paragraphs 23.16.4 , must, of course, be satisfied to enable a successful application to be made.

23.16.5.2 A list of the countries that are covered by each of the various cases set out above is contained in Her Majesty's Court Service "Notes for Guidance" on the above, which can be obtained from the Enforcement Section of the Central Office in Rooms E15-17. This also contains the standard forms used and sets out the procedure for registration (see paragraphs 23.16.5.3 to 23.16.5.10 (below).

23.16.5.3 The application for registration must be made to the High Court. Such applications are assigned to the Queen'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.

23.16.5.4 The written evidence (including exhibits) required to be filed in each of the cases set out above is set out in detail in rule 74.4. Note that the evidence required differs in certain respects as between each of the cases. The requirements should be strictly followed. Assistance is obtained from PD74A paras 5, 6 and 6A in respect of the evidence required in support of such applications.

23.16.5.5 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 23.4.10 above.

23.16.5.6 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. The order will be entered in the register of judgments kept in the 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.

23.16.5.7 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 or the Lugano Convention , the right of the judgment debtor to appeal against the order.

23.16.5.8 Rule 74.7 governs the procedure on applications to set aside (including the time for doing so).

23.16.5.9 Rule 74.8 governs the procedure on appeal against both the grant or refusal of registration under the 1982 Act or the Lugano Convention, (including matters of extension of time for appealing). Permission is not required to appeal or to put in evidence.

23.16.5.10 In order to enforce the judgment following registration there must be filed evidence of service on the judgment debtor of the registration order and any other relevant order: rule 74.9.

23.16.6 Enforcement under the Recast Judgments Regulation (Council Regulation (EU) No. 1215/2012)

23.16.6.1 In the case of judgments from EU member states entered on or after 10 January 2015 Section I also provides rules for enforcement in this country under the recast Judgments Regulation (Council Regulation (EU) No.1215/2012): see rules 74.3A, 74.4A. The registration process is no longer required and the judgment can be enforced in England & Wales in the same way as a judgment of a court of this jurisdiction, provided the relevant documents required by article 42 of the Regulation are provided. These must be submitted to the QB Enforcement Section in Room E15. No fee is charged.

23.16.6.2 Rule 74.7A sets out the procedure for applications under Arts 45 or 46 of the Judgments Regulation that the court should refuse to recognise or enforce a judgment, and for appeals against a decision granting or refusing such an application.

23.16.6.3 Rule74.7B governs any application for relief under Art.44 of the Judgments Regulation and rule 74.7C deals with applications for suspension of proceedings under Art 38. 74.9(1). Rule 74.11A provides for the procedure where an adaptation order is required under Art 54 of the Judgments Regulation.

Section II. Outgoing Judgments

23.16.7.1 This section covers enforcement in foreign countries of judgments of the High Court or the County Court of England and Wales. The procedure is by way of application 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 by application notice under Part 23.

23.16.7.2 The application must, under PD 74A para 4.2, be made, in the case of a judgment given in the Chancery Division or Queen'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.

23.16.7.3 There is some question whether a judgment given in the County Court and transferred to the High Court for enforcement may be regarded as a judgment which will be enforced in a foreign country under the Act of 1920 or the Act of 1933. In those cases 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.

23.16.7.4 The written evidence in support, including exhibits, is the subject of rule 74.13 and its requirements must be closely followed. These include, particularly, 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 the required particulars of any interest on the judgment which is recoverable. This last requirement is not a requirement to state particulars of any interest incorporated in and forming part of the judgment sum itself.

23.16.7.5 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 PD 74A 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. In applications under the Judgments Regulation the certificate will be in the form of Annex V to the Regulation; and, in applications under the Lugano Convention, in the form of Annex V to the Convention. The forms of certificate are included in the "Notes for Guidance" referred to in para 23.16.5.2 above.

Section III. Enforcement of United Kingdom Judgments in other parts of the United Kingdom

23.16.8.1 This section 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 74.15 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 in Room E17 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 PD 74A paras 8.1 to 8.3.

23.16.8.2 The certificates will be entered in the register of certificates kept for that purpose in the Central Office under PD 74A para 3.

Section IV. European Community Judgments

23.16.9.1 This section deals with enforcement in England and Wales of European Community judgments, i.e. judgments not of the national courts of Member States but rather the judgments of the courts and institutions of the Community itself.

23.16.9.2 An application to the High Court for registration of such a judgment may be

made without notice and must be supported by written evidence containing the material set out in rule 74.21.

23.16.9.3 The order for registration must contain the material set out in rule 74.22 and must be served on every person against whom the judgment was given: rule 74.22. The order will be entered in the register in Room E17.

23.16.9.4 Provision is made for application to vary or cancel a registration order under this section on the ground that it has been partly or wholly satisfied. Further, in any case where the European Court has made an order that the enforcement of a registered Community judgment should be suspended, provision is made for application to the High Court for registration of the European Court's order: rules 74.23 to 74.25.

Section V. European Enforcement Orders

23.16.10.1 The European Enforcement Order (EEO) creates a simplified method of enforcement for uncontested claims throughout the EU member states (except Denmark). Details of the procedure are contained in Section V of Part 74, as supplemented by Practice Direction 74B. The procedure is governed by Council Regulation (EC) No. 805/2004. A pack containing guidance for obtaining such orders is available in the Enforcement Section. A claim that does not meet the requirements of the Regulation, or which the judgment creditor does not wish to enforce using the Regulation may be enforceable using another method of enforcement.

23.16.10.2 An application for an EEO certificate of a judgment given in England and Wales must be made by Form N219 or N219A depending upon whether the judgment was by agreement/admission/settlement or in default of defence or objection. The application may be made without notice and will be dealt with without a hearing, unless the Master orders a hearing: see rule 74.28 and PD 74B para 2.

23.16.10.3 An application under Article 6(2) of the EEO Regulation for a certificate indicating the lack or limitation of enforceability of an EEO certificate must be made to the court of origin by application in accordance with Part 23: see rule 74.29 and PD 74B para 3.

23.16.10.4 An application under Article 10 of the EEO Regulation for rectification or withdrawal of an EEO certificate must be made to the court of origin and may be made by application in accordance with Part 23. It must be supported by written evidence: See rule 74.30 and para 4 of the PD.

23.16.10.5 A person seeking to enforce an EEO in England and Wales must lodge at the court in which enforcement proceedings are to be brought the documents required by Article 20 of the EEO Regulation: see rule 74.31 and para 5 of the PD.

23.16.10.6 Where an EEO certificate has been lodged and the judgment debtor applies to stay or limit the enforcement proceedings under Article 23 of the EEO Regulation, such application must be made by application in accordance with Part 23 to the court in which the EEO is being enforced: see rule 74.33 and PD 74B para 7. The written evidence must state that an application has been brought in the Member State of origin.

23.16.10.7 An application under Article 21 of the EEO Regulation that the court should refuse to enforce an EEO must be made by application in accordance with Part 23 to the court in which the EEO is being enforced: see rule 74.32 and PD 74 para 6.

Section VI. Recognition and Enforcement of Protection Measures

23.16.11 This section 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. Rule 74.34 (f) defines what protection measures are included in the Regulation, and Rules 74.36 to 74.45 set out the procedure where recognition or enforcement is sought of a protective measure ordered by the High Court or the County Court in the courts of another member state ("outgoing protection measures"). Rules 74.46 to 74.50 set out the procedure for recognition and enforcement of a protective measure ordered by the court of another member state in this jurisdiction ("incoming protective measures"). By rule 74.35 all applications under the Regulation, whether to the High Court or the County Court, must be made in accordance with Part 23.

Practice Direction 74 Part II. The Merchant Shipping (Liner Conferences) Act 1982

23.16.12 Applications for registration of a recommendation, determination or award under this Act are made to a Commercial Judge by application notice under Part 23. The procedure is the subject of PD 74A Section II which should be consulted for its detail. The order giving permission must be drawn up by the applicant and will be entered in the register kept in the Admiralty and Commercial Registry under the direction of the Senior Master. See also the Commercial Court Guide.

Other Enforcement Matters

23.17 Bills of Sale Acts 1878 and 1882, and Section 344 of the Insolvency Act 1986

23.17.1 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. And, under section 11 of the 1878 Act, the registration of a bill of sale must be renewed at least once every five years.

23.17.2 The Queen'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 Room E15 and contains the particulars required under the Acts and a list of the names of the grantors of every registered bill of sale.

23.17.3 An application to register a bill of sale is made under section 10(2) of the 1878 Act by presenting at Room E15 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.

23.17.4 The copy of the bill and the original affidavit are then filed at Room E15.

23.17.5 The evidence required may in the case of a security bill be in Form PF179 and in the case of an absolute bill 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 CPR 32.15(1).

23.17.6 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.

23.17.7 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 Queen's Bench Master and be accompanied by the prescribed fee. The procedure is now governed by PD8A paras 10A.1 to 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.

23.17.8 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. Likewise, if so satisfied in the case of omission or misstatement of the name, residence or occupation of any person, they 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.

23.17.9 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 so applying will depend on whether the person entitled to the benefit of the bill has or has not consented to the satisfaction. The procedure is governed by PD8A paras 11.1 to 11.5 which should be consulted in detail. 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 Room E15 for the entry to be made on the copy bill in the registry.

23.17.10 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 PD8A paras 11A.1 to 4.

23.17.11 Assignment of book debts. 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 Room E15 in the

Central Office. The procedure on application to register is now the subject of PD8A paras 15B.1 to 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.

24. Cross-Border Service and Taking of Evidence

24.1 Service of incoming foreign process

(a) CPR 6.48 to 6.51 (Section V of Part 6 of the CPR)
(b) The Hague Service Convention
(c) The Service Regulation

Part 6 Section V.

24.1.1 This section of Part 6 (rules 6.48 to 6.51) applies to service in England and Wales of any document in connection with civil or commercial proceedings in a foreign court or tribunal. It does not however, by reason of 6.48(b), apply where the Service Regulation applies, as to which see para 24.1.7 below.

24.1.2 Where the provisions of Section V are resorted to, a request for service is made to the Senior Master. The request is 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 and Commonwealth Affairs, with a recommendation that service should be effected.

24.1.3 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.

24.1.4 The method of service is for the Senior Master to determine. The usual practice is to require service by a county court bailiff and to provide a certificate to complete and return. The Senior Master may make an order for alternative service based on the certificate if appropriate.

24.1.5 Where the bailiff has served the document he will send the Senior Master a copy of the document 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 was served or the reason why it has not been served, together with a copy of the document. Where appropriate, the Senior Master will also state the amount of costs, certified by a costs judge: rule 6.52 (2).

The Hague Convention

24.1.6 Section V also applies where parties to proceedings in a foreign country subscribing to The Hague Service Convention (i.e. the Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters signed at The Hague on 15 November 1965) seek to serve documents on persons in this jurisdiction. 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 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.

The Service Regulation

24.1.7 The Service Regulation (i.e. Council Regulation (EC) No.1393/2007) applies to service on a person in England and Wales of judicial and extrajudicial documents in civil and commercial matters arising in other European Union Member States and provides a complete code for such service. It should be noted that, under Article 20 para.1, the Regulation shall, in relation to matters to which it applies, prevail over other provisions contained in agreements or arrangements concluded by Member States, and in particular The Hague Service Convention. Under Article 20, para 2, however the Regulation shall not preclude individual Member States from maintaining or concluding agreements or arrangements to expedite further or simplify the transmission of documents, provided that they are compatible with the Regulation. The Senior Master is the "transmitting agency" for England and Wales designated under Art.2, and is the "central body" for England and Wales designated under Art.3. Requests to her for assistance should be addressed for the attention of the Foreign Process Section at Room E16 of the Royal Courts of Justice. Standard forms of (a) request for service, (b) acknowledgment of receipt, (c) notice of return of request and document, (d) notice of retransmission of request and document to the appropriate receiving agency, (e) certificate of service or non-service of documents, and (f) information to the addressee about the right to refuse to accept a document are contained in Annexes I and II to the Regulation and may be obtained from the Foreign Process Section. The full terms of the Service Regulation are annexed to Practice Direction 6B to Part 6 of the CPR. Questions may arise under Art.15 of the Regulation as to "direct" service of any particular document which may need to be resolved on a case by case basis by enquiries to the Foreign Process Section.

24.1.8 For service of outgoing foreign process see paragraph 5.4 above.

24.2 Requests for Taking of Evidence from Witnesses Abroad

(a) The Hague Convention on the Taking of Evidence in non Convention countries CPR 34.13, 34.13A

(b) The Taking of Evidence Regulation - CPR 34.23

24.2.1 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. 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. Accordingly, if a witness is unwilling to attend trial to give evidence either in person or by Videolink (provided the trial judge gives permission for evidence by Videolink) any party that 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.

Where the witness is in a Hague Convention country or a non-Convention country

24.2.2 Rule 34.13 sets out the procedure to be adopted. The Order that must first be made by the High Court, provided for in rule 34.13 (1A) and rule 34.13(3), 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.

24.2.3 The documents which must be filed, 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 QB Action Department in Room E16. 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.

24.2.4 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.

24.2.5 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 under the Proceeds of Crime Act 2002.

24.2.6 Litigants should note that it can take some time for the requests to be processed, frequently many months, and that some countries take much longer than others, so a court order for a Letter of Request to be issued should be sought well in advance of trial.

Where the witness is in a Member State of the EU

24.2.7 This is governed by The Taking of Evidence Regulation (Council Regulation (EU) No. 1206/2001. Rule 34.23 sets out the procedure to be adopted. Rule 34.23 (3) sets out the documents which must be filed. Litigants should note that the standard Form A annexed to the Regulation should be used. These documents must be submitted to the Foreign Process Section of the QB Action Department in Room E16.

24.2.8 The Senior Master will then consider the Letter of Request, and if in order will sign and date where indicated at the end of Form A (please note this is not to be completed by the applicant or their solicitors but left blank) and arrange for the same to be transmitted to the Transmitting Agency in the requested member state.

24.2.9 Litigants should note that it can take some time for the requests to be processed, frequently many months, and that some countries take much longer than others, so a Letter of Request in Form A should be submitted well in advance of trial.

25. Group Litigation Orders "GLOs"

25.1 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.

25.2 CPR 19.10 defines a GLO as an order made under rule 19.11 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 19.11 make a GLO where there are or are likely to be a number of claims giving rise to such issues.

25.3 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.

25.4 The solicitors acting for the proposed applicant should consult the Law Society's Multi Party Action Information Service 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.

25.5 Any application must be made under Part 23; and may be made at any time before or after any relevant claims have been issued.

25.6 In the Queen's Bench Division, a GLO may not be made without the consent of the President of the Queen's Bench Division: para 3.3 (as amended). 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 she will send a copy of the application notice to the President.

25.7 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 25.11 below.

Such order may give directions as to the management of claims which raise one or more of the GLO issues: CPR 19.11(2) and (3).

25.8 A form of order for the GLO is contained in Form PF19 which may be adapted according to the circumstances. 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.

25.9 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 PD 19B para 6.1. Paragraph 6.1A now makes it plain that a claim must be issued before it can be entered on the Register.

25.10 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 6.2 to 6.4 of the Practice Direction.

25.11 The management of cases under a GLO is the subject of directions which are given by the management court under rule 19.13 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. 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 PD 19B para 14.1.

25.12 Publicising the GLO. 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, Queen's Bench Division, Royal Courts of Justice, Strand, London WC2A 2LL.

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, and the Courts and Tribunals Service website at http://www.justice.gov.uk/about/hmcts.

25.13 The Senior Master will arrange inclusion of details of the GLO on the website at https://www.gov.uk/guidance/group-litigation-orders.

25.14 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 19.12.

25.15 Costs. CPR 46.6 contains rules as to costs where the court has made a GLO.

26. Miscellaneous

26.1 Enrolment of deeds and other documents

26.1.1 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. The matter most 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. In cases of doubt the Senior Master or, in her absence, the Master hearing the Urgent and Short Applications List will refer the matter to the Master of the Rolls.

26.2 Bail

26.2.1 With the coming into force on 5th April 2004 of section 17 of the Criminal Justice Act 2003 the powers of the High Court to entertain applications relating to bail have become 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.

26.3 References to the Court of Justice of the European Union

26.3.1 A party wishing to apply for an order under CPR 68 may do so by application before or at the trial or hearing. An application made before the trial or hearing should be made in accordance with Part 23.

26.3.2 "Order" means an order referring a question to the European Court for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union or as provided for under any agreement to which the European Union or the Member States are parties: see rule 68.1(c).

26.3.3 The procedure for making a reference has been recently updated by the new Part 68 which came into force on 1st October 2013 and by its accompanying Practice Direction. The court and the parties will pay close attention to these, and also to the European Court Procedural Rules, and to the updated guidance by the European Court to national courts, namely "Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling

proceedings", published by the Official Journal on 6th November 2012. Both these latter two documents are available on the European Court's website at: http://curia.europa.eu.

26.3.4 An order may be made by the court of its own initiative or on application by a party, but will not normally be made by a Master or District Judge.

26.3.5 The reference must contain the matters specified in the European Court Procedure Rules (see particularly Articles 93-118 of the Rules) and must comply with any guidance given by the European Court (see above).

26.3.6 The reference itself must be set out in a schedule to the order. Under para 1.1 of the Practice Direction the court may direct the parties to produce a draft but responsibility for the terms of the reference lies with the court and not the parties.

26.3.7 The reference should identify as clearly and succinctly as possible the question on which the court seeks the ruling of the European Court.

26.3.8 Further directions as to the contents of the reference are set out in the Practice Direction. Particular attention is drawn to Article 94 of the European Court Procedure Rules and to paragraphs 20 to 28 of the European Court's "Recommendations".

26.3.9 Transmission. It is the responsibility of the parties to provide a sealed copy of the order containing the reference to the Queen's Bench Division Associates' Department at Room WG03, Royal Courts of Justice. Strand, London WC2A 2LL. The parties should also provide the contact details of their legal representatives. The Senior Master will then send a copy of the order (and of any request to the European Court made under rule 68.3) to the Registrar of the European Court: see rule 68.4(2). It should be noted that under rule 68.4(3), unless the court orders otherwise, the Senior Master will send the documents to the Registrar without waiting for the time for appealing against the order to expire. Thus, parties should inform the Associates' Department in any case where the order provides that time for appealing should be awaited and should inform the Department of the determination of any appeal or application for permission to appeal.

26.3.10 Under para 2.2 of the Practice Direction the parties should prepare a bundle of key documents to be sent direct to the Registrar of the European Court.

26.3.11 Where an order for reference is made the proceedings will, unless the court orders otherwise, be stayed until the European Court has given its ruling: see rule 68.5.

27. Election Petitions

27.1 Under Part III of the Representation of the People Act 1983, the result of a parliamentary or local government election may be questioned on the ground of some irregularity either before or during the election. The provisions of Part III have also been applied to European parliamentary elections.

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, and

(b) in the case of a local government 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, Room E13, 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). Petitioners are usually requested by the court to effect service themselves.

27.6 The petition is tried by an election court consisting of two High Court judges of the Queen'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.

27.7 The election court shall 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.

27.8 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 opposite Room E08. 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.

27.9 Applications for remedies or relief under various sections of the Act are also issued in Room E13 and are usually dealt with by a single judge or by the Senior Master.

27.10 Further information can be obtained from the leaflet entitled "I want to challenge the outcome of an election and how do I apply for relief", which can be found on the Justice website by inserting the reference LOC002 into the form finder.

Annex 1 – Plans of the Royal Courts of Justice

Keys to these plans are as follows:

Plan A The Royal Courts of Justice

1. The Interim Applications Judge sits in Court 37 in the West Green Building

2. The Queen's Bench Judges' Listing Office is in Room WG08 in the West Green Building.

3. The Masters' rooms, and the Bear Garden and Ante-Room, are on the first floor of the East Block (at the south end).

4. The Queen's Bench Masters' Listing Section is in Rooms E107-E109 on the first floor of the East Block (at the south end).

5. The following rooms of the Action Department: the QB Issue and Enquiries Section, the Foreign Process Section and the Enforcement Section are on the ground floor of the East Block (at the south end).

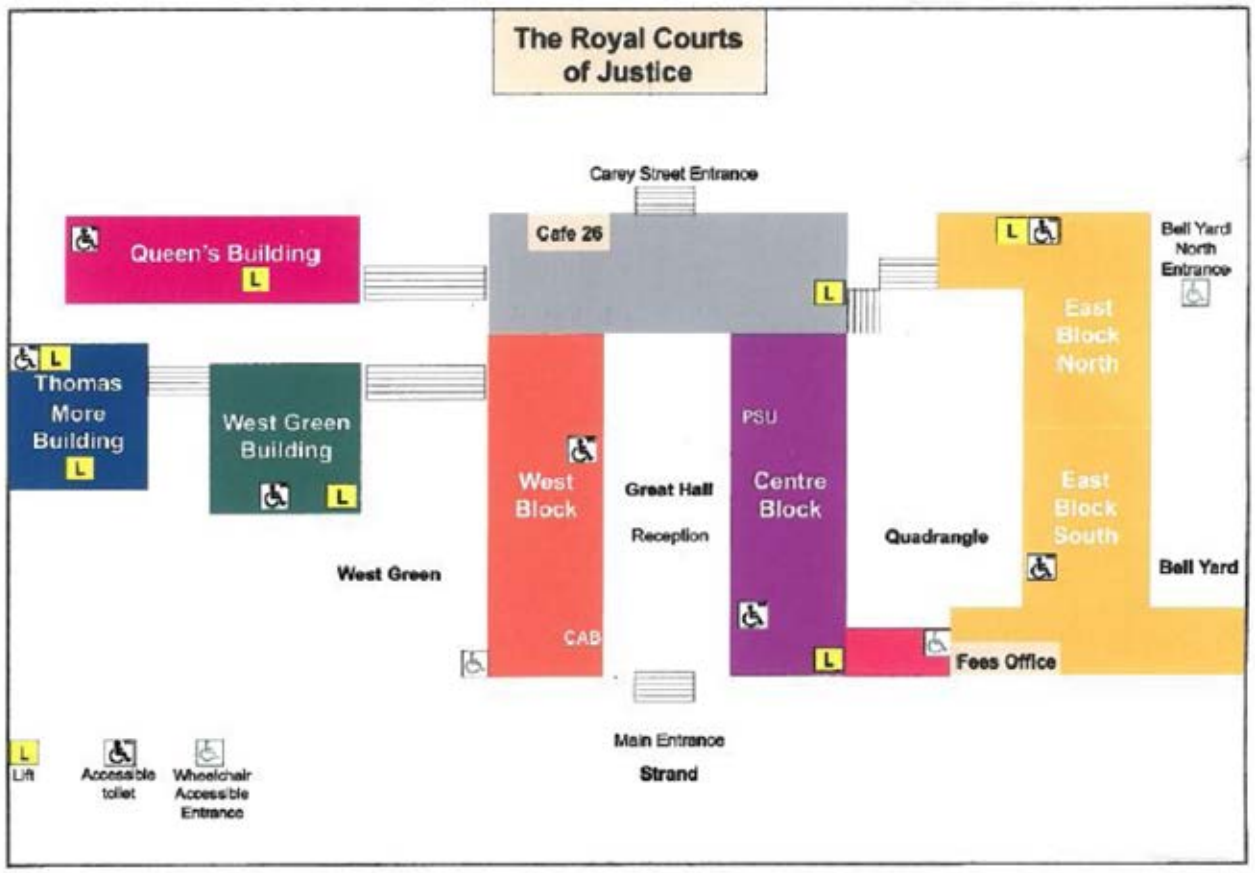
6. The Children's Funds Section is in Room E113 on the First Floor.

7. The Fees office is in Room E01, also on the ground floor of the East Block (at the south end).

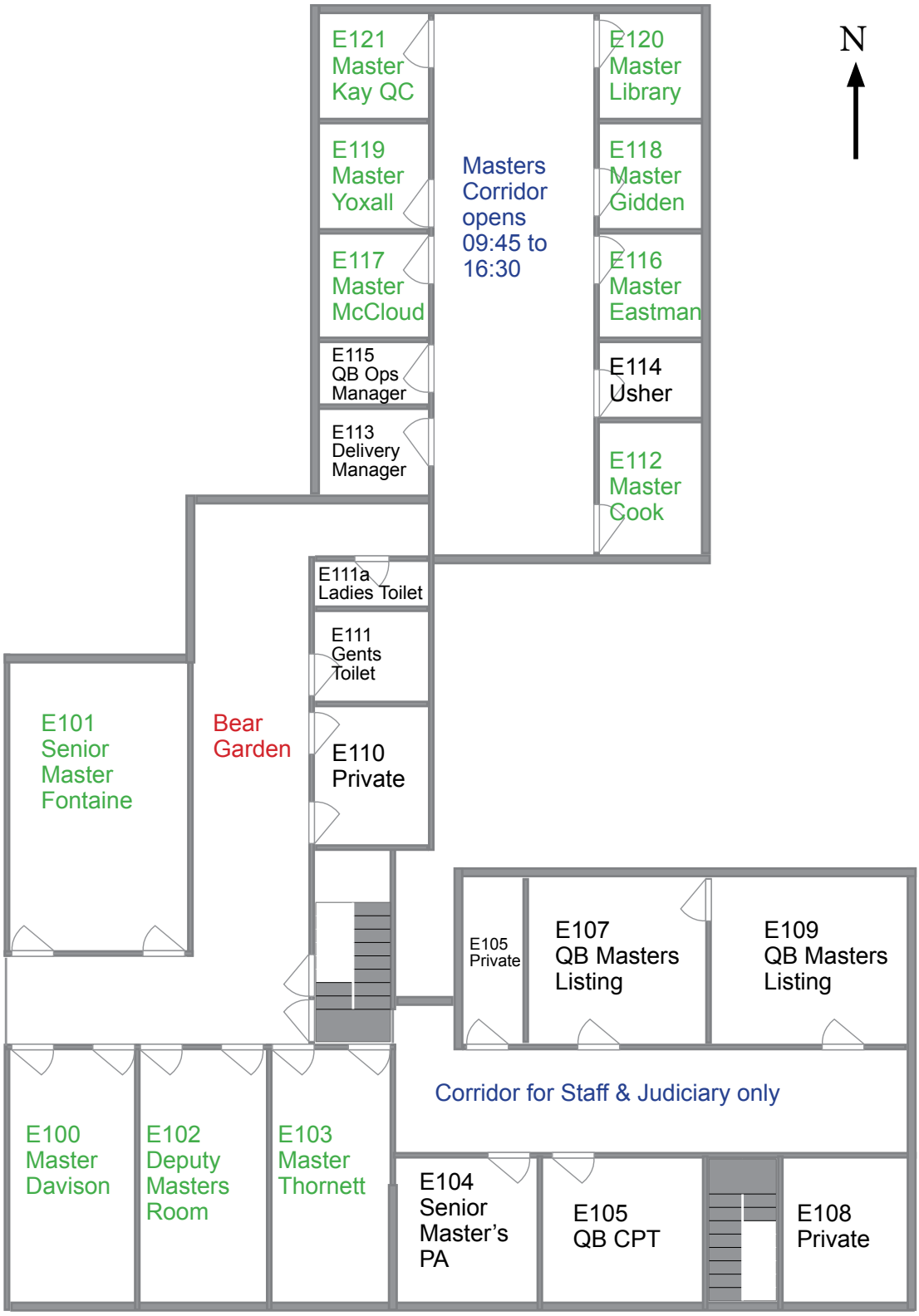
8. The Citizens' Advice Bureau is as marked by the main entrance. The Personal Support Unit is as marked on the first floor of the Central Block.

Plan B. East Block (first floor) and Queen's Bench Masters' Rooms. The Queen's Bench Masters' rooms are as shown.

Plan A. The Royal Courts of Justice



Plan B. East Block and Queen's Bench Masters' Rooms



Annex 2 – Masters' Abbreviations

The following is a list of abbreviations commonly used by Masters in the endorsements of their orders though there may be some variations as between individual Masters. They invariably endorse their orders with their own initials (as opposed to a full signature) and with the actual date when the order is made. Parties should familiarize themselves with the initials so that the identity of the Master (or Deputy Master) making the order is readily recognized.

Adj	Adjourn
A/D	Amended defence
ADR	Alternative dispute resolution
Affid	Affidavit
AMT	Allocate to multi-track
A/N	Application notice
A/P/C	Amended particulars of claim
Appn	Application
Appt	Appointment
AQ	Allocation questionnaire
Ack/service	Acknowledgment of service
BNLT	By no later than
CC	County Court
CCMC	Costs and Case Management Conference
Cert	Certificate
CIA	Costs in the application
C in C	Costs in the case
CF	Claim form
Cl's costs iae	Claimant's costs in any event

Cl	Claimant
CMC	Case Management Conference
COS	Certificate of service
CPR	Civil procedure rule (s)
Col	Counsel
C/R	Costs reserved
C/sched	Counter schedule
DA	Detailed assessment
Def	Defendant/Defence
D/C	Defence and counterclaim
Dir	Directions
Disc	Disclosure
DQ	Directions questionnaire
DTBF	Date to be fixed
ET	Extension of time
Exch	Exchange
FC	Fixed costs
FCO	Final charging order
FD	Further directions
Final 3pDO	Final Third Party Debt Order
FI	Further information
FO	Further order
FOD	First open date
GLO	Group litigation order
IAE	In any event
IB	Indemnity basis

ICO	Interim charging order
Insp	Inspection
Interim 3pDO	Interim Third Party Debt Order
I/P	Interim payment
1st OD	First open date
J	Judgment
JC	Judgment creditor
JD	Judgment debtor
JS	Joint statement
LA	Legal aid
O	Order
O exn	Order examination of judgment debtor
On COS	On producing certificate of service
Orse	Otherwise
P	Permission
P/C	Particulars of claim
PD	Practice Direction
PP	Periodical payments
PR	Permission to restore
PRA	Private Room Appointment
PRFD	Permission to restore for further directions
PTCL	Pre-trial check list
PTR	Pre-trial review
R/D/C	Reply and defence to counterclaim
Resp	Respondent
SA	Summary assessment

SAJ	Set aside judgment
SAO	Set aside order
SB	Standard basis
S/C	Statement of case
Sched	Schedule
S/D	Standard disclosure
S/O	Strike out
SOC	Strike out claim
SOE	Stay of execution
Solors	Solicitors
SOT	Statement of truth
Spec disc	Specific disclosure
TBA	To be assessed
TBD	To be determined
W/in	Within
W/out	Without
WS	Witness Statement

Annex 3 – QB Masters Listing Forms

PRA FORM

Request for a Private Room Appointment before a QB Master

If this form is not fully completed it will not be shown to the Master and no hearing will be listed. The court file will NOT be before the Master unless the Parties request, to the QB Registry, no later than 48 hours before hearing.

Claim Number

Assigned Master (if any)

PARTIES:

Applicant

Nature of application

Applicant's Solicitors

Email

Phone

Contact name

Applicant's Time Estimate

(i) Reading time	
(ii) Hearing time	
(iii) Judgment time	
Total time	

Volume of Applicant's documents anticipated at hearing

SHARED DATES of **AVAILABILITY**
(printouts of diaries, etc, are not accepted)

Respondent

Nature of application

Respondent's Solicitors

Email

Phone

Contact name

Respondent's Time Estimate

(i) Reading time	
(ii) Hearing time	
(iii) Judgment time	
Total time	

Volume of Respondent's documents anticipated at hearing

TICK relevant box if the Respondent has:

☐ failed or refused to cooperate in completion of this form; OR

☐ the Applicant certifies that this is a legitimate ex parte application for which no notice to the Respondent is required.

Date of submission of this form

D D M M Y Y Y Y

Notice of cancellation of a Private Room Appointment following lodging of Consent Order

Case Number

Title of Action

Hearing Details

☐ There is no hearing pending.

☐ There is a hearing (enter details below)

Before Master

On date D D M M Y Y Y Y

At time H H : M M

Dated D D M M Y Y Y Y

Signed

Print Name

Firm's Name

Phone No.

Ref.

NOTE: Consent orders will not be sealed until this form has been completed.

QB ALLOCATION OF CLAIMS

We need you to help us allocate your case to the right list. Please indicate which if any of the following is alleged or claimed in your case, by ticking all boxes that apply.

☐ **Asbestos Exposure Related Disease**

☐ **Personal Injury**

☐ **Clinical Negligence**

☐ **Media and Communications**

☐ Libel	☐ Slander	☐ Malicious falsehood
☐ Misue of Information	☐ Breach of confidence	☐ Data protection
☐ Breach of privacy	☐ Harassment	☐ Injunction to restrain publication

☐ **None of the above**