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CIVIL PROCEDURE NEWS

A White Book Service

- Commentary on Practice Direction—Arbitrations
- Commentary on Practice Direction—Patents, etc.
- Practice Direction—Structured Settlements
- Practice Direction—Committal Applications
- Stop Press

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PR Focus

Practice Directions

Please note: The full text of both the Arbitration Practice Direction and the Patents Practice Direction can be obtained from the Lord Chancellor's website at http://www.open.gov.uk/lcd/index.htm

PRACTICE DIRECTION—ARBITRATIONS

Supplementing CPR Part 49

Comment

Practice Direction—Arbitrations replaces RSC O. 73. RSC O. 73 itself only came into effect on January 31, 1997, when it was introduced as a procedural accompaniment to the Arbitration Act 1996. Giving judgment in *Patel v. Patel* (March 24, 1999, unrep.), Lord Woolf described the "underlying spirit of the new Arbitration Act [as being] very much in accord with the underlying spirit of the new procedural rules". In the light of that comment it is hardly surprising that the Practice Direction does not differ in any substantial respect from the old Order.

There are some modest cosmetic differences between RSC O. 73 and the Practice Direction, limited to those necessary to tie the Practice Direction in to the balance of the CPR regime. Examples of these differences include:

- The previous requirement to file affidavit evidence in support of an arbitration application is now a requirement to file evidence, be it affidavit or witness statement (paras 9 and 31; see Pt 32—Evidence and its supplementary Practice Direction).
- The numbering in the Practice Direction is effectively the same as that used in O. 73, save that r. 24 becomes para. 24 and so on.
- Paragraph 14.1 provides that "the rules of the CPR relating to allocation questionnaires and track allocation do not apply to arbitration applications".
- Paragraph 14.6 provides that "Unless the Court orders otherwise, affidavits and witness statements may contain hearsay". The purpose of this new paragraph is not apparent. Under the RSC nearly all arbitration applications were deemed to be interlocutory (RSC O. 59, r. 1A), so hearsay contained in affidavits was admissible for that reason if no other. Under the Civil Evidence Act 1995, s.1, hearsay evidence is generally admissible, subject to the notice requirements set out in section 2; under the CPR those notice requirements do not apply to hearings other than trials (r.33.3). The Court's general power to exclude otherwise admissible evidence is contained in r.32.1.
- The new patois has been incorporated, so that "hearings in chambers" are now "hearings in private"; "*ex parte*" is now "without notice"; "permission", rather than "leave", is to be obtained; an application under section 9 to stay proceedings has now become "an application notice by which an application under section 9 …to stay legal proceedings is made" (para. 6).

It should be noted that in certain circumstances arbitration proceedings may be subject to Practice Direction 49D, the practice direction for commercial court proceedings. Paragraph 1.2 (1) of this Practice Direction brings arbitrations "arising out of trade and commerce in general" within its scope.

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PRACTICE DIRECTION—PATENTS, ETC.

Supplementing CPR Part 49

Comment

This Practice Direction—Patents, etc., supplements CPR Pt 49. It replaces, with modifications, RSC O.104 (proceedings relating to patents, registered designs and under the Defence Contracts Act 1958), O.100 (trade marks) and O. 93 (applications under ss. 114, 204 or 231 of the Copyright, Designs and Patents Act 1988) and the equivalent rules for the Patents County Court and CCR O.48A and O.49A. Most of the changes are designed to ensure that the same terminology applies to these specialist proceedings as apply to all others. Furthermore, some minor changes have to be made to ensure that case management in these areas is consistent with the new system.

As before, all claims made under the Patent Acts, the Registered Design Acts and under the Defence

Contracts Act are assigned either to the Patents Court, a part of the Chancery Division of the High Court, or the Patents County Court (2(a)). There is a possibility of transfer from one to the other. Every claim allocated to the Patents Court will be allocated to the multi-track. As a consequence the rules relating to track allocation do not apply (2(d)). It should be noted that claims and appeals arising under the Trade Marks Acts 1938 and 1994, and the Olympic Symbol, etc., Act 1995 are assigned to the Chancery Division, not the Patents Court (para. 21). In practice, actions for passing off and under the Copyright, etc., Act are also dealt with by the Chancery Division. All these types of cases are treated as any other form of litigation and the track allocation rules apply. With very few exceptions, all applications in patent and registered design matters are made direct to the Patents Court. Paragraph 4 contains detailed provisions relating to applications in the Patents Court for the amendment of patent specifications.

The Practice Direction requires the parties to take various steps to limit the scope of the dispute between them and to reduce the amount of material relied on at the trial. To this end, para. 6 stipulates that the claimant in a patent action must identify not only what the acts of infringement relied on are but also the particular claims which are said to be infringed. Similarly, in those cases where the defendant intends to attack the validity of a patent, para. 7 contains detailed provisions requiring him to specify the nature of the attack and any prior art he intends to rely upon. Similar directions exist for proceedings in which the validity of a trade mark is being put in issue (para. 23). Paragraph 9 limits the scope of disclosure in patent actions, particularly by exempting old documentation from disclosure and providing any claimant who is relying on commercial success to support the validity of his patent with a means of avoiding disclosure of the extensive documentation which might otherwise be relevant to that issue. Any party wishing to rely on experiments has to comply with para. 10 which specifies, amongst other things, the date on which a notice of experiments must be served. In fact, the order for directions made in patent actions frequently includes more detailed provisions for the timing and content of a notice of experiments. A standard form notice of experiments is annexed to the *Patents Court Guide*. (The latest issue of that document can be obtained from the Patents Court website at www.courtservice.gov.uk/highhome.htm.) Paragraph 12 prevents a party from relying on any evidence of which the other party has had inadequate notice.

Paragraph 13 sets a time limit of 28 days within which applications must be made to the Court in cases where the Comptroller General of Patents has either declined to deal with a question or application made to him under the 1977 Act or where he certifies under s.72(7)(b) that it is a matter which would be more properly determined by the Court.

The procedure to be adopted when an employee applies for compensation under s.40 of the 1977 Act is set out in para. 14, while para. 15 sets out the procedure to be adopted for appeals to the Court from decisions of the Comptroller where such an appeal lies.

The Honourable Mr Justice Laddie

PRACTICE DIRECTION—STRUCTURED SETTLEMENTS

This Practice Direction supplements CPR Part 40

Structured settlements

1.1 A structured settlement is a means of paying a sum awarded to or accepted by a claimant by way of instalments for the remainder of the claimant's life. The payments are either funded by an annuity from an insurance company or, where the party paying is a government body, by payments direct from that body.

1.2 The agreed sum which purchases the annuity or provides for payments (including any sum to be retained as capital for contingencies) is based on the sum offered or awarded on a conventional basis, less an amount representing the tax benefits obtained by the structure.

1.3 This type of order may be used both on settlement of a claim and after trial where the judge has found in favour of the claimant. In the latter case the claimant or his legal representative should ask the judge:

(1) not to provide for entry of judgment,
(2) to state the total amount to which the judge has found the claimant to be entitled, and
(3) for an adjournment to enable advice to be sought as to the formulation of a structured settlement based on that amount.

1.4 Where a claim settles before trial, an application should be made in accordance with CPR Part 23 for the consent order embodying the structured settlement to be made, and for the approval of the structured settlement where the claimant is a child or patient.

1.5 If the claimant is not a child or patient, the consent order may be made without a hearing.

1.6 Where a hearing is required and as the annuity rate applicable to the structure may only remain available for a short time, the claimant's legal representative on issue of his application notice, should immediately seek an early date for the hearing.

1.7 At such a hearing the court will require the following documents and evidence to be filed not later than midday on the day before the hearing is to take place:

(1) Counsel's or the legal representative's opinion of the value of the claim on the basis of a conventional award (unless approval on that basis has already been given or the judge has stated the amount as in paragraph 1.3(2) above),

(2) a report of forensic accountants setting out the effect of a structured settlement bearing in mind the claimant's life expectancy and the anticipated cost of future care,

(3) a draft of the proposed structure agreement,

(4) sufficient information to satisfy the court that—

(a) enough of the agreed sum is retained as a contingency fund for anticipated future needs, and

(b) the structured settlement is secure and the annuities are payable by established insurers,

(5) details of any assets available to the claimant other than the agreed sum which is the subject of the application, and

(6) where the claimant is a patient, the approval or consent of the Court of Protection.

1.8 To obtain the approval of the Court of Protection the claimant's legal representative should lodge the documents and information set out in paragraph 1.7(1) to (5) above together with a copy of the claim form and any statements of case filed in the proceedings in the Enquiries and Acceptances Branch of the Public Trust Office, Stewart House, 24 Kingsway, London WC2B 6JH by midday on the fourth day before the hearing.

1.9 If an application for the appointment of a receiver by the Court of Protection has not already been made:

(1) two copies of the application seeking his appointment (form CP1),

(2) a certificate of family and property (form CP5), and

(3) a medical certificate (form CP3)should be lodged at the same time as the documents and information mentioned in paragraph 1.8 above. Forms CP1, 3 and 5 may be obtained from the address set out in paragraph 1.8.

1.10 Wherever possible a draft order should also be filed at the same time as the documents in paragraph 1.7 above.

1.11 Examples of structured settlement orders are set out in an Annex to this practice direction which may be adapted for use after trial or as the individual circumstances require. It should be noted that the reference in the second paragraph of the Part 2—structured settlement order to the "defendant's insurers" means the Life Insurer providing the annuity on behalf of the defendant.

1.12 Where it is necessary to obtain immediate payment out of money in court upon the order being made, the claimant's legal representatives should:

(1) contact the officer in charge of funds in court at the Court Funds Office at least 2 days before the hearing, and arrange for a cheque for the appropriate sum made payable to the insurers or government body to be ready for collection,

(2) notify the court office the day before the hearing so that the court is aware of the urgency, and

(3) bring to the hearing a completed Court Funds Office form 200 for authentication by the court upon the order being made.

Annex

PART 1—STRUCTURED SETTLEMENT ORDER

(Order to settle for conventional sum and for an adjournment to seek advice on the formulation of a structured settlement)

Title of Claim

UPON HEARING (Counsel/solicitor) for the claimant and (Counsel/solicitor) for the defendant

AND UPON the defendant by (Counsel/solicitor) having undertaken to keep open an offer of £..... in full and final settlement of the claim and the claimant having undertaken to limit the claim to £.....

AND UPON the claimant's solicitors undertaking to instruct appropriate advisers to advise upon a structured settlement and to use their best endeavours promptly to make proposals to the defendant's solicitors as to the most equitable formulation of a structured settlement and after to seek (further directions/approval) from the court if necessary

IT IS ORDERED that this claim is adjourned with permission to both parties to apply in respect of the further hearing relating to further directions providing for a structured settlement as undertaken by the claimant's solicitors and that these proceedings be reserved to the (trial judge) unless otherwise ordered

AND IT IS ORDERED that the costs of these proceedings together with the costs relating to any proposal for a structured settlement be (as ordered).

PART 2—STRUCTURED SETTLEMENT ORDER

(Order giving effect to and approval of a structured settlement)

Title of Claim

UPON HEARING (Counsel/solicitor) for the claimant and (Counsel/solicitor) for the defendant

AND the claimant and defendant having agreed to the terms set forth in the Schedule to this order in which the claimant accepts the sum of £..... (*overall sum*) in satisfaction of the claim of which the sum of £..... is to be used by the [defendant's insurers for the purchase of an annuity][defendant for the provision of the appropriate payments]

AND UPON the Judge having approved the terms of the draft minute of order, the agreement and the schedule to this order

AND UPON the claimant and the insurer (name) undertaking to execute the agreement this day

BY CONSENT

IT IS ORDERED

(1) that of the sum of £..... (*total sum in court*) now in court standing to the credit of this claim the sum of £..... be paid out to (*insurers/payee*) on behalf of the defendant for the purchase of an annuity as specified in the payment schedule to this order

(2) (*other relevant orders*)

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

( ) that the parties have permission to apply to carry the terms into effect

SCHEDULE

(Attach draft agreement and set out any other terms of the settlement)

Comment

This Practice Direction contains a simple guide to the procedure to be followed:

(a) on settlement of a claim or at the conclusion of a trial when, after the court's decision, the parties wish to adjourn for consideration of a structured settlement;

(b) when the court is being asked to approve settlement where the claimant is a child or patient and the settlement proposals include a structured settlement.

In the main it sets out what was already regarded as best practice before April 26, 1999.

Four principal points should be noted:

- In any such case it is essential that there should not be a judgement, because that would lose the tax advantage of the structured settlement.
- Contrary to the implied suggestion in para.1.2, and earlier practice, it is not now usual for insurers to seek a discount for agreeing to a structured settlement. Most insurers appear to have accepted the Law Commission's argument that, as they have no administrative costs once the structure is in place and will normally be entitled to the commission on purchase of the annuity, no discount should be paid. It follows that, in a case where the claimant is a child or patient, the court should not approve a structured settlement if it involves giving such a discount, particularly at a time when the fiscal advantages of structured settlements appear to be outweighed by the low rates of annuity returns and when, because annuities are linked to RPI and not earnings, annuities under structures are unlikely to keep pace with long term costs of care. The advantages of a structured settlement remain that the money will not run out if the claimant outlives his or her life expectancy and, for an adult claimant, that it provides protection against losing their damages in some ill-judged venture. The latter advantage has no application in the case of a patient who

will have the protection of the court's supervision; a child, however, will only enjoy that protection until he or she becomes an adult.

- Because of these potential disadvantages, when approving a structured settlement in a case where the claimant is a child or patient, the court will require a forensic accountant's report which addresses them: see para. 1.7(2). Such a report should consider alternative schemes such as special needs trusts which can be a useful alternative, particularly in cases where settlement is at less than the full liability value of the claim and it is desired to preserve the claimant's entitlement to means-tested benefits.
- The Practice Direction makes it clear that the court can refuse approval of a proposed settlement in a case where the claimant is a child or a patient because it does not approve the terms of a structured settlement forming part of the overall settlement of the case or considers a structured settlement undesirable (*e.g.* where some other investment proposal appears to be more in the interests of the claimant). However, it does not resolve the uncertainty as to whether the court can refuse to approve settlement of a claim where it considers a structured settlement would be in the best interests of such a claimant but where the defendant is unwilling to fund one. Before April 26, 1999, the better view appeared to be that, because the court had no power to order a structured settlement unless both parties consented (and because the Law Commission's proposals to give the court such power had not been enacted) the court had no power to refuse approval of a settlement in a case where the claimant was a child or patient so as to force the parties to agree to a structured settlement. That probably remains the position under the CPR.

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PRACTICE DIRECTION—COMMITTAL APPLICATIONS

This Practice Direction is supplemental to RSC Order 52 (Schedule 1 to the CPR) and CCR Order 29 (Schedule 2 to the CPR)

General

1.1 This practice direction applies to any application for an order for committal of a person to prison for contempt of court (a "committal application").

1.2 Where the alleged contempt of court consists of or is based upon disobedience to an order made in a county court or breach of an undertaking given to a county court or consists of an act done in the course of proceedings in a county court, or where in any other way the alleged contempt is contempt of a county court, the committal application may be made in the county court in question.

1.3 In every other case, a committal application must be made in the High Court.

Commencement of committal proceedings

2.1 A committal application must, subject to paragraph 2.2, be commenced by the issue of a claim form. The Part 8 claim form must be used (see paragraph 2.5).

2.2 (1) If the committal application is made in existing proceedings:
(a) it may be commenced by the filing of an application notice in those proceedings, and
(b) the application notice must state that the application is made in existing proceedings and its title and reference number must correspond with those of the existing proceedings.
(c) In this paragraph "existing proceedings" means proceedings in respect of which a final judgment has not yet been given.

2.3 If the committal application is one which cannot be made without permission, the claim form or application notice, as the case may be, may not be issued or filed until the requisite permission has been granted.

2.4 If the permission of the court is needed in order to make a committal application—
(1) the permission must be applied for by filing an application notice (see CPR rule 23.2(4));
(2) the application notice need not be served on the respondent;
(3) the date on which and the name of the judge by whom the requisite permission was granted must be stated on the claim form or application notice by which the committal application is commenced;
(4) the permission may only be granted by a judge who, under paragraph 11, would have power to hear the committal application if permission were granted; and
(5) CPR rules 23.9 and 23.10 do not apply.

2.5 If the committal application is commenced by the issue of a claim form, CPR

Part 8 shall, subject to the provisions of this practice direction, apply as though references to "claimant" were references to the person making the committal application and references to "defendant" were references to the person against whom the committal application is made (in this practice direction referred to as "the respondent") but:

(1) the claim form together with copies of all written evidence in support must, unless the court otherwise directs, be served personally on the respondent,

(2) the claim form must set out in full the grounds on which the committal application is made and should identify, separately and numerically, each alleged act of contempt,

(3) an amendment to the claim form can be made with the permission of the court but not otherwise, and

(4) CPR rule 8.4 does not apply.

2.6 If a committal application is commenced by the filing of an application notice, CPR Part 23 shall, subject to the provisions of this practice direction, apply, but:

(1) the application notice together with copies of all written evidence in support must, unless the court otherwise directs, be served personally on the respondent,

(2) the application notice must set out in full the grounds on which the committal application is made and should identify, separately and numerically, each alleged act of contempt,

(3) an amendment to the application notice can be made with the permission of the court but not otherwise, and

(4) the court may not dispose of the committal application without a hearing.

Written evidence

3.1 Written evidence in support of or in opposition to a committal application must be given by affidavit.

3.2 Written evidence served in support of or in opposition to a committal application must, unless the court otherwise directs, be filed.

3.3 A respondent, notwithstanding that he has not filed or served any written evidence, may give oral evidence at the hearing if he expresses a wish to do so. If he does so, he may be cross-examined.

3.4 A respondent may, with the permission of the court, call a witness to give oral evidence at the hearing notwithstanding that the witness has not sworn an affidavit.

Case management and date of hearing

4.1 The applicant for the committal order must, when lodging the claim form or application notice with the court for issuing or filing, as the case may be, obtain from the court a date for the hearing of the committal application.

4.2 Unless the court otherwise directs, the hearing date of a committal application shall be not less than 14 clear days after service of the claim form or of the application notice, as the case may be, on the respondent. The hearing date must be specified in the claim form or application notice or in a Notice of Hearing or Application attached to and served with the claim form or application notice.

4.3 The court may, however, at any time give case management directions, including directions for the service of written evidence by the respondent and written evidence in reply by the applicant, or may convene and hold a directions hearing.

4.4 The court may on the hearing date:-

(1) give case management directions with a view to a hearing of the committal application on a future date, or

(2) if the committal application is ready to be heard, proceed forthwith to hear it.

Striking out

5. The court may, on application by the respondent or on its own initiative, strike out a committal application if it appears to the court:

(1) that the committal application and the evidence served in support of it disclose no reasonable ground for alleging that the respondent is guilty of a contempt of court,

(2) that the committal application is an abuse of the court's process or, if made in existing proceedings, is otherwise likely to obstruct the just disposal of those proceedings, or

(3) that there has been a failure to comply with a rule, practice direction or court order.

Miscellaneous

6. CPR Rules 35.7 (Court's power to direct

that evidence is to be given by a single joint expert), 35.8 (Instructions to single joint expert) and 35.9 (Power of court to direct a party to provide information) do not apply to committal applications.

7. An order under CPR rule 18.1 (Order for a party to give additional information) may not be made against a respondent to a committal application.

8. A committal application may not be discontinued without the permission of the court.

9. A committal application should normally be heard in public (see CPR rule 39.2), but if it is heard in private and the court finds the respondent guilty of contempt of court, the judge shall state in public:
(1) the name of the respondent,
(2) in general terms the nature of the contempt or contempts found proved, and
(3) the penalty (if any) imposed.

10. Any procedural defect in the commencement or conduct by the applicant of a committal application may be waived by the court if satisfied that no injustice has been caused to the respondent by the defect.

11. Except where under an enactment a Master or district judge has power to make a committal order, a committal order can only be made:
(1) in High Court proceedings, by a High Court Judge or a person authorised to act as such,
(2) in county court proceedings by a Circuit Judge or a person authorised to act or capable by virtue of his office of acting as such.

Comment

Committal is an important aspect of civil procedure. It touches the liberty of the subject. Given the serious nature of committal, the relevant provisions should be clear and accessible.

The Rules—The text of the surviving RSC O. 52 and CCR O. 29 remains largely unchanged. Even the provision for dealing with a person in custody "desirous of purging his contempt …" is retained. However, the new vocabulary has been incorporated, for example "claim forms" are referred to and "*ex parte*" has become "without notice".

Their implementation—What *has* gone is the benefit of experience as reflected in precedent, reported and accumulated over decades—*Bank of England v. Vagliano Bros* (1891) A.C. 107. Cases such as *Roberts v. Albert Bridge Co.* 1873 L.R. 8 Ch. 753, authority for the principle that "a civil contempt can be waived, for if the party for whose benefit an order was made is content that it should not be performed, the Court has generally no interest to interfere", may have disappeared forever. Some commentators on the CPR now quote *James v. Cliffe* (1987) *The Times*, June 16, as authority for the proposition that "The purpose of imprisoning a contemnor is to demonstrate that people disobey court orders at their peril"—a wholly different approach.

Unified procedure—PD4 FORMS perpetuates the different paper procedures for committal in the two courts.

Clarity—Those who read the commentary on the TCC Practice Direction in the last *Civil Procedure News* may recall "Harry", the company director who had a problem with some defective computers. The defects were not the only problem. Harry's company was pursued to judgment in the Guildford County Court by someone claiming to be the true owner ("TO"). Harry's company was ordered to hand over the computers by 4 p.m. on May 4, 1999. On May 5— the deadline having passed— TO looked at CCR O. 29, r. 1, which appeared to give him a choice of procedure, and decided to issue an *application notice* for committal against Harry, in accordance with r. 1(4). TO served the notice personally on Harry.

Accessibility—On May 5, "TL", one of the authors of this commentary, went to the General Office of the Guildford County Court to see what information might be available to Harry:

> "TL:Do you have any leaflets on committal proceedings … failure to deliver up goods in accordance with an order for possession?
> MEMBER OF STAFF: No
> TL: Is there a practice direction about committal proceedings?
> MEMBER OF STAFF: I don't know."

In chap. 20, para. 3 of the "Access to Justice" report Lord Woolf wrote, "Genuine access to justice requires people to be able to understand how the legal procedure works. The procedure, working properly, is a vital guarantee that justice will be done". This reflects the view of Strasbourg in *Geoffre de La Pradelle v. France* (1992) Series A no. 253, where the Court of Human Rights held there was an obligation for a legal system to be sufficiently coherent and clear in order to ensure practical and effective access to court.

The Practice Direction—Paragraph 2.2(1) of the PD provides that where a final judgment has been given, committal proceedings can be commenced only by the use of a *Part 8 claim form.* On the face of it, para. 2.2 severely restricts the wide words of CCR O. 29, r. 1(4) and it would appear to provide Harry with a technical answer to the proceedings.

However, para. 10 of the Practice Direction gives the Court the power to imprison despite non-compliance with procedure.

The power in the county court to correct errors was previously contained in CCR O. 37, r 5(1) but that has now

gone—there is an equivalent provision in CPR r. 3.10. The terms of PD 52, para. 10 are narrower. They make injustice to the respondent the overriding consideration. In *Nicholls v. Nicholls* (1997) 1 W.L.R. 314 at 326B, Lord Woolf M.R. suggested that wider considerations might come into play—the interests of other parties and the reputation of civil justice in general.

This Practice Direction ("PD") seems, at least implicitly, to have recognised the need for clear procedural protections for the respondent. Service of claim forms and written evidence must be upon the respondent personally, unless the court otherwise directs. This is of course not new—see *SCP 1999*, Vol. 1, para. 52/3/1. However, the PD also extends the minimum period required between service of the claim form or application notice and the hearing from 8 days (as under the former RSC O. 52, r.3), to 14 days under the new rule. The PD also states that a court may not dispose of a committal application without a hearing (PD, para. 2.6(4)) and that it should be held in public (PD, para. 9). When held in private and the court finds the respondent guilty of contempt of court the judge shall state in public, the name of the respondent, the general nature of the contempt(s) found proved and the penalty (if any). Such emphasis on adequate notice to the respondent, on "public hearing" and on reasons being given, whilst representing no significant change in practice, reflects an orientation towards the requirements of a "fair trial" and seems likely to have been drafted with Article 6 of the European Convention of Human Rights in mind.

Concluding remarks—The surviving committal rules were reproduced in January 1999. It is not apparent why publication of this Practice Direction had to be delayed until April. It is all very well posting material on the internet but there are quite a few lawyers, even, who find it difficult to locate and extract what they want from the net. At present, for those who cannot work a search engine, *Civil Procedure News* is the only service providing up-to-date CPR text along with commentary..

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Stop Press

This stop press details all changes made to the Practice Directions following publication of *Civil Procedure*. Changes to the Civil Procedure Rules were detailed in *Civil Procedure News*, Issue 3. This now brings the contents of *Civil Procedure* up-to-date to May 10, 1999.

Part 2—Application and Interpretation of the Rules

New Practice Directions:

- Court Offices
- Allocation of cases to levels of Judiciary

Page 36—Practice Direction—Striking out a Statement of Case

Add final para. 7:

7. Vexatious litigants

7.1 This Practice Direction applies where a "civil proceedings order" or an "all proceedings order" (as respectively defined under section 42(1A) of the Supreme Court Act, 1981) is in force against a person ("the litigant").

7.2 An application by the litigant for permission to begin or continue, or to make any application in, any civil proceedings shall be made by application notice issued in the High Court and signed by the litigant.

7.3 The application notice must state:

(1) the title and reference number of the proceedings in which the civil proceedings order or the all proceedings order, as the case may be, was made,

(2) the full name of the litigant and his address,

(3) the order the applicant is seeking, and

(4) briefly, why the applicant is seeking the order.

7.4 The application notice must be filed together with any written evidence on which the litigant relies in support of his application.

7.5 Either in the application notice or in written evidence filed in support of the application, the previous occasions on which the litigant made an application for permission under section 42(1A) of the said Act must be listed.

7.6 The application notice, together with any written evidence, will be placed before a High Court judge who may:

(1) without a hearing make an order dismissing the application or granting the permission sought, or

(2) give direction for further written evidence to be supplied by the litigant before an order is made on the application, or

(3) give directions for a hearing of the application.

7.7 Directions given under paragraph 6(3) may include an order that the application notice be served on the Attorney General and on any person against whom the litigant desires to bring the proceedings for which permission is being sought.

7.8 Any order made under paragraphs 6 or 7 will be served on the litigant at the address given in the application notice. CPR Part 6 will apply.

7.9 A person may apply to set aside the grant of permission if:

(1) the permission allowed the litigant to bring or continue proceedings against that person or to make any application against him, and

(2) the permission was granted other than at a hearing of which that person was given notice under paragraph 7.

7.10 Any application under paragraph 9 must be made in accordance with CPR Part 23.

Part 4—Forms

New Practice Direction—Forms.

Part 5—Court Documents

New Practice Direction—Court Documents.

Part 7—How to Start Proceedings—The Claim Form

New Practice Directions:

- Production Centre
- Claims for the Recovery of Taxes

Page 64—Where to start proceedings

In para. 2.1 change the words "£15,000 or more" *to read* "more than £15,000."

Page 65

In para. 2.9 delete "or transferred to" *and substitute* "unless the parties have agreed otherwise in writing".

■ Page 66—Start of proceedings

A new para. 4 has been inserted as follows (N.B. the original para. 4 becomes para. 5 and the subsequent paras are renumbered):

Title of proceedings

4.1 The claim form and every other statement of case, must be headed with the title of the proceedings. The title should state:

(1) the number of proceedings,
(2) the court or Division in which they are proceeding,
(3) the full name of each party,
(4) his status in the proceedings (i.e. claimant/defendant).

4.2 Where there is more than one claimant and/or more than one defendant, the parties should be described in the title as follows:-

(1) AB
(2) CD
(3) EF Claimants
and
(1) GH
(2) IJ
(3) KL Defendants

■ Page 68—Restrictions on where to start some Consumer Credit Act claims

In para. 4.1 after the words "regular hire purchase agreement" *add the words* " or conditional sale agreement".

■ Page 69—Matters which must be included in the particulars of claim

In para. 7.2 after the words "a hire purchase agreement" *add the words* " or conditional sale agreement".

■ Part 8—Alternative Procedure for Claims

New Practice Direction—How to Make Claims in the Schedule Rules and Other Claims (See *Civil Procedure News*, Issue 2 for commentary).

■ Page 79—Evidence

New paras 5.5.and 5.6. have been added as follows:

5.5 A party may apply to the court for an extension of time to serve and file evidence under Rule 8.5 or for permission to serve and file additional evidence under Rule 8.6(1).

(For information about applicants see Part 23 and the practice direction that supplements it.)

5.5 (1) The parties may, subject to the following provisions, agree in writing on an extension of time for serving and filing evidence under Rule 8.5(3) or Rule 8.5(5).

(2) An agreement extending time for a defendant to file evidence under Rule 8.5(3)—
(a) must be filed by the defendant at the same time as he files his acknowledgement of service; and
(b) must not extend time by more than 14 days after the defendant files his acknowledgement of service.

(3) An agreement extending time for a claimant to file evidence in reply under Rule 8.5(5) must not extend time to more than 28 days after service of the defendant's evidence on the claimant.

■ Page 97—Default judgment

Paragraph 1.2 (3) should now read:

(3) the claim is one to which RSC Order 88 (Schedule 1 to the CPR) (Mortgage claims) applies or if proceeding in a county court, is a claim for money secured by mortgage, unless, in either case, the claimant obtains the permission of the court, or

■ Page 97—Default judgment by request

In para. 3(2) the reference to court form N227 has been changed to a reference to form N225. The reference to court form N225B has been changed to a reference to form N205B.

■ Page 134—Recovery of land

The paras after para. 6 have been renumbered to run consecutively.

■ Page 134—Recovery of land

In para. 7.1 (formerly para. 8.1—see note above), after the words "hire purchase agreement" *add the words* "or conditional sale agreement".

Between para. 7.1 and para 7.2 add:

(if the agreement is a regulated agreement the procedure set out in the practice direction relating to consumer credit act claims (which supplements Part 7) should be used).

■ Page 136—Matters which must be specifically set out, etc.

The existing para. 11.3 has been deleted.

Page 138—Defamation

In para. 16 (formerly para. 17) a new para. 16.3 has been added. Paragraph 16 now reads:

Other matters

16.1 The defendant must give details of the expiry of any relevant limitation period relied on.

16.2 Rule 37.3 and paragraph 2 of the practice direction which supplements Part 37 contains information about a defence of tender.

16.3 A party may:

(1) refer in his statement of case to any point of law on which his claim or defence, as the case may be, is based,

(2) give in his statement of case the name of any witness he proposes to call and

(3) attach to or serve with this statement of case a copy of any document which he considers is necessary to his claim or defence, as the case may be (including any expert's report to be filed in accordance with Part 35).

Page 158—Case management where there is a Part 20 defence

In para. 5.1 add the words "other than to a counterclaim," *after the words* "defendant files a defence".

Page 159—Titles of proceedings where there are Part 20 claims

Add new para. 7.6 as follows:

7.6 Paragraph 4 of the practice direction supplementing Part 7 contains further directions regarding the title to proceedings.

Page 171—Settlement or compromise by or on behalf of a child or patient

Add new para.6.3 as follows (N.B. the original para. 6.3 becomes para. 6.4):

6.3 (1) An opinion on the merits of the settlement or compromise given by counsel or solicitor acting for the child or patient should, except in very clear cases, be obtained.

(2) A copy of the opinion and, unless the instructions on which it was given are sufficiently set out in it, a copy of the instructions, must also be supplied to the court.

Page 189—Telephone hearings

In para. 6.3(1) after the words "conference call 'call out' system" *add* "or by some other comparable system".

Page 190

In para. 6.3(5) replace the words "British Telecom" *with the words* "the telecommunications provider whose system is being used".

Page 190—Evidence

At the end of para. 9.6 add the sentence: "Exhibits should not be filed unless the court otherwise directs."

Page 224—Urgent applications and applications without notice

In para. 4.5(1) after the words "application in a High Court matter." *add the sentence* "The appropriate district registry may also be contacted by telephone."

Page 251—The Allocation Questionnaire

Add the following paragraph to para. 2.1:

Attention is drawn to the Costs Practice Direction, paragraph 4.5(1) which requires an estimate of costs to be filed and served when an allocation questionnaire is filed.

Page 255—Allocation Principles

Add the following text between paras 7.4 and 7.5:

It follows from these provisions that if, in relation to a claim the value of which is above the small claims track limit of £5,000, the defendant makes, before allocation, an admission that reduces the amount in dispute to a figure below £5,000 (see CPR Part 14), the normal track for the claim will be the small claims track. As to recovery of pre-allocation costs, the claimant can, before allocation, apply for judgment with costs on the amount of the claim that has been admitted (see CPR rule 14.3 but see also paragraph 5.1(3) of the Costs Directions relating to CPR Part 44 under which the court has a discretion to allow pre-allocation costs).

Page 257—The Multi-Track

Paragraph 10.2(10) is replaced as follows:

(10) Where there is reason to believe that more than one case management conference may be needed and the parties or their legal advisers are located inconveniently far from the Civil Trial Centre, a judge sitting at a feeder court

may, with the agreement of the Designated Civil Judge and notwithstanding the allocation of the case to the multi-track, decide that in the particular circumstances of the case it should not be transferred to a Civil Trial Centre, but should be case managed for the time being at the feeder court."

Page 270—Costs
Add the following text after para. 7.3(2):

(As to the recovery of pre-allocation costs in a case in which an admission by the defendant has reduced the amount in dispute to a figure below £5,000, reference should be made to paragraph 7.4 of the Practice Direction supplementing CPR Part 26 and to paragraph 5.1(3) of the Costs Directions relating to CPR Part 44)

Page 282—Directions on Allocation
Amend para. 3.6(3) to read: "The trial period must be no longer than 3 weeks"

Page 283
In para. 3.7(4), replace "meetings of the experts" *with* "discussions of the experts".

Page 285—Listing Questionnaires and Listing
Add the following paragraph to para. 6.1(4):

Attention is drawn to the Costs Practice Direction, paragraph 4.5(2) which requires an estimate of costs to be filed and served when an allocation questionnaire is filed.

Page 285
Paragraph 7.1(1) should now read:

(1) The court must confirm or fix the trial date, specify the place of trial and give a time estimate. The trial date must be fixed and the case listed on the footing that the hearing will end on the same calendar day as that on which it commenced.

Page 289—Trial Bundle, Etc.
The first paragraph on Trial Bundle Etc. should be amended to read:

The claimant shall lodge an indexed bundle of documents contained in a ring binder and with each page clearly numbered at the court not more than 7 days and not less than 3 days before the start of the trial.

Page 300—Case Management Conferences
At end of para. 5.5(2) add the words "except where he obtained the evidence in compliance with a pre-action protocol".

Page 302—The Trial
Replace para. 10.1 with the following:

The trial will normally take place at a Civil Trial Centre but it may be at another court if it is appropriate having regard to the needs of the parties and the availability of court resources.

Page 308—Procedure for an appeal against order or transfer
In para. 5 change the reference to para. 5.3(3) to a reference to para. 5.1(3).

Page 320—Disclosure and Inspection
Add a new para. 7 as follows:

Inspection of Documents Mentioned in Expert's Report (Rule 3.14(e))

7. Reference should be made to the practice direction supplementing Part 35 (Experts and Assessors) for provisions dealing with applications to inspect these documents.

Page 334—Heading
Amend para. 3.1. to read:

3.1 The affidavit should be headed with the title of the proceedings (see paragraph 4 of the practice direction supplementing Part 7 and paragraph 7 of the practice direction supplementing Part 20); where the proceedings are between several parties with the same status it is sufficient to identify the parties as follows:

	Number:
A.B (and others)	Claimants/Applicants
C.D. (and others)	Defendants/ Respondents (as appropriate)

Page 337—General provisions
A new para. 15.4 has been added as follows:

15.4 Where on account of their bulk the service of exhibits or copies of exhibits on the other parties would be difficult or impracticable, the directions of the court should be sought as to arrangements for bringing the exhibits to the attention of

the other parties and as to their custody pending trial.

Page 337—Heading
Paragraph 17.1 has been amended to read as follows:

17.1 The witness statement should be headed with the title of the proceedings (see paragraph 4 of the practice direction supplementing Part 7 and paragraph 7 of the practice direction supplementing Part 20); where the proceedings are between several parties with the same status it is sufficient to identify the parties as follows:

	Number:
A.B (and others)	Claimants/Applicants
C.D. (and others)	Defendants/ Respondents (as appropriate)

Page 338—Body of Witness Statement
In para. 18.5, the reference to para. 15.3 is changed to a reference to para. 15.4.

Page 339—Certificate of court officer
In para. 24.1 the reference to rule 28.14(4) changes to a reference to rule 32.13(4).

Part 33— Miscellaneous Rules About Evidence
New Practice Direction—Civil Evidence Act 1995.

Part 34—Depositions and Court Attendance by Witnesses
New Practice Direction—Fees for Examiners.

Page 359—Depositions to be taken in England and Wales, etc.
*In para. 6.1 replace the words "*The Schedule to Part 48 relating*" with the words "*RSC O.70, in Schedule 1, relates*".*

Page 376—Information
Paragraph 2 is amended to read as follows:

2. Under Part 35.9 the court may direct a party with access to information which is not reasonably available to another party to serve on that other party a document which records the information. The document served must include sufficient details of all the facts, tests, experiments and assumptions which underlie any part of the information to enable the party on whom it is served to make, or to obtain, a proper interpretation of the information and an assessment of its significance.

Page 393—Payment out of court
In para. 8.1 add the words "with the court" *at the end of the paragraph.*

Page 395—General
In para. 11.3 add the words "after 21 days" *after* "will be placed". *In para. 11.4 change the reference to para. 12.3 to para. 11.3.*

Page 398—Payments into court under an order
Paragraph 1.3 should be amended to read as follows:

1.3 Where the order is made in the Royal Courts of Justice, the payment will usually be made by cheque payable to the Accountant General of the Supreme Court, and should be;
(1) accompanied by
(a) a completed Court Funds Office form 100 or 101, and
(b) a sealed copy of the order, and
(2) lodged in the Court Fund Office.
A copy of the Court Funds Office receipt should be filed in the appropriate court office in the Royal Courts of Justice.

Page 399—Foreign currency
In para. 5 change reference to para. 10 to a reference to para 9.

Part 39—Miscellaneous provisions relating to hearings
New Practice Direction—Court Sittings.

Page 408—Hearings
Add new para 1.4A as follows:

1.4A The judge should also have regard to Article 6(1) of the European Convention for Human Rights. This requires that, in general, court hearings are to be held in public, but the press and public may be excluded in the circumstances specified in that Article. Article 6(1) will usually be relevant, for example, where a party applies for a hearing which would normally be held in public to be held in private as well as where a hearing would normally be held in private. The judge

may need to consider whether the case is within any of the exceptions permitted by Article 6(1).

Page 409

Insert new para. 1.5(11) as follows:

(11) an application under the Variation of Trusts Act 19568 where there are no facts in dispute.

Page 411—Representation at hearings

Insert new para. 5.2 as follows:

5.2 Where a party is a company or other corporation and is represented at a hearing by a director or other officer or employee the written statement should contain the following additional information:

(1) The full name of the company or corporation as stated in its certificate of registration.

(2) The registered number of the company or corporation.

(3) The position or office in the company or corporation held by the representative.

(4) The date on which and manner in which the representative was authorised to act for the company or corporation, e.g._____19_____: written authority from managing director; or _____19_____: Board resolution dated _____19_____.

Page 411—Recording of proceedings

In para. 6.1 after "the judgment" *insert the words* "and any summing up given by the judge)".

Add new paras 6.3, 6.4 & 6.5 as follows:

6.3 Any party or person may require a transcript or transcripts of the recording of any trial or hearing to be supplied to him, upon payment of the charges authorised by any scheme in force for the making of the recording or the transcript.

6.4 Where the person requiring the transcript or transcripts is not a party to the proceedings and the trial or hearing or any part of it was held in private under CPR rule 39.2, paragraph 6.3 does not apply unless the court so orders.

6.5 Attention is drawn to paragraph 7.9 of the Court of Appeal (Civil Division) Practice Direction which deals with the provision of transcripts for use in the Court of Appeal at public expense.

Part 40—Judgements and Orders

New Practice Directions:

- Judgments and Orders
- Accounts, Inquiries, etc.
- Structured Settlements

Part 41—Provisional Damages

New Practice Direction—Provisional Damages.

Part 49—Specialist Jurisdictions

New Practice Directions:

- Contentious Probate Proceedings
- Applications under the Companies Act 1985 and the Insurance Companies Act 1982
- Technology & Construction Court
- Commercial Court
- Patents, etc.
- Admiralty
- Arbitration
- Mercantile Courts and Business Lists

Page 532—Existing proceedings after one year

Add new paragraph 19(3)(d) as follows:

(d) applications relating to funds in court.

SCHEDULES

RSC Order 53

New Practice Direction—Application for Judicial Review.

RSC Order 54

New Practice Direction—Application for Writ of Habeas Corpus.

RSC Order 111

New Practice Direction—Service Out of the Jurisdiction.

Page 800—Practice Direction—Protocols

Paragraph 3.2(b) is replaced as follows:

(b) not making a full response within the time fixed for that purpose by the relevant protocol (3 months of the letter of claim under the Clinical Negligence Protocol, 3 months from the date of acknowledgement of the letter of claim under the Personal Injury Protocol),

Page 800

Add new para. 5.2 as follows (N.B. the subsequent paras are renumbered):

5.2 Where, in respect of proceedings commenced after 26 April 1999, the parties have by work done before that date substantially achieved the object designed to be achieved by steps to be taken under a protocol, the parties need not take those steps and their failure to do so will not be treated, for the purposes of paragraphs 2 and 3, as non-compliance.

Practice Directions not supplementing the Rules

- Court of Appeal Practice Direction
- Insolvency Practice Direction
- Directors Disqualification Proceedings
- Practice Direction relating to the use of the Welsh language in cases in the civil courts in Wales
- Cyfarwyddiadau ymarfer ar ddefnyddio'r iaith gymraeg mewn achosion yn y llysoedd sifil yng nghymru

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