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CIVIL PROCEDURE NEWS

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N BRIEF

Cases

■ ASSICURAZIONI GENERALI SPA v. ARAB INSURANCE GROUP (PRACTICE NOTE) [2002] EWCA Civ 1642; [2003] 1 W.L.R.577, CA (Ward & Clarke L.JJ. and Sir Christopher Staughton)
CPR, r.52.11—at trial of large commercial claim involving substantial oral and documentary evidence, judge giving judgment for claimants (C)—defendants (D) granted permission to appeal on the merits to Court of Appeal to challenge the judge's conclusions of fact—at commencement of hearing of appeal, C submitting that, by virtue of the general rule stated in r.52.11, the appeal should be restricted to a "review" of the judge's decision—held, rejecting that submission, (1) there is a distinction between an appeal by way of "review" and by way of "re-hearing", (2) there is also a distinction between an appeal (a) challenging a judge's conclusions of fact, and (b) against the exercise of a discretion by a lower court, (3) where the trial judge's findings of fact are challenged on appeal, but it is not suggested that the Court should rehear the evidence, the Court's approach should be the same whether it is conducting a "review" or a "rehearing"—guidance given as to how appellate courts should approach task where challenges to (a) conclusions of primary fact and (b) evaluations of facts (see *Civil Procedure*, Autumn 2002, Vol. 1, paras 52.11.1 & 52.11.10)

■ DOUGLAS v. HELLO! LTD. March 3, 2003, CA, unrep.(Lord Woolf C.J., Kennedy & Scott Baker L.JJ.)
CPR, rr.32.5 & 33.4—before trial of claimants' (C) claim for breach of confidentiality etc., employee (N) of one of the defendants (D1) providing witness statements for D1 and for C—C referring to N's evidence in their statements of case—at trial, neither C nor D1 putting in N's statements as evidence—however, another defendant (D2) seeking to adduce N's evidence as hearsay evidence under r.32.5(5)(b) for purpose of drawing inferences from it—C then applying to have N called as a witness for cross-examination on the statement provided to them—judge acceding to C's application, on ground that they were not seeking to cross-examine their own witness but a witness on whose evidence D2 sought to rely—held, dismissing D2's appeal, (1) D2 were proposing to rely on hearsay evidence, thereby triggering the terms of r.33.4, (2) when read with r.32.5(5), it was clear that the judge had a discretion under r.33.4 to permit C to call N, (3) in the circumstances, the judge had exercised his discretion properly (see *Civil Procedure,* Autumn 2002, Vol. 1, paras 32.5.3 & 33.4.1)

■ EAST WEST CORPORATION v. DKBS 1912 (COSTS) [2003] EWCA Civ 174; *The Times*, February 21, 2003, CA (Brooke, Laws & Mance L.JJ.)
CPR, rr.36.2, 36.21 & 44.3—cargo-owners (C) bringing claim against shipowners (D) for misdelivery of container without presentation of bills of lading—on June 14, 2001, C making Pt 36 offer—offer not accepted by D—at trial, judge giving judgment in favour of C for a sum in excess of that proposed by C in their offer ([2002] EWHC 83 (Comm); [2002] 2 Lloyd's Rep.182)—judge ordering that D should pay, from, July 7, 2001, (1) enhanced interest on D's damages (r.36.21(2)), and (2) C's costs on an indemnity basis (r.36.21(3))—upon the Court of Appeal dismissing D's substantive appeal, C applying for their costs of the appeal on an indemnity basis—held, dismissing application, (1) a claimant may make a Pt 36 offer for the purpose of protecting himself against (a) the costs of first instance proceedings, or (b) the costs of an appeal, but (2) an offer made for the first purpose does not provide protection for the second, (3) in the circumstances of this case, if C wished to obtain protection for the second purpose they should have made a further offer in the appeal proceedings (see *Civil Procedure,* Autumn 2002, Vol. 1, paras 36.2.1, 36.21.1 & 44.3.6)

■ JONES v. UNIVERSITY OF WARWICK [2003] EWCA Civ 151; 153 New L.J. 230 (2003), CA (Lord Woolf L.C.J., Hale & Latham L.JJ.)
CPR, rr.1.1 & 32.1, Human Rights Act 1998, s.6 & Sched. 1, Pt I, art. 8(1)—in personal injury claim, claimant (C) claiming special damages for significant continuing disability—inquiry agent (X) instructed by D's insurers, gaining access to C's home by deception and covertly filming C—on C's application, district judge directing that video evidence should be excluded—held, allowing D's appeal, (1) the court has a discretion under r.32.1, to be exercised in accordance with the overriding objective, to exclude evidence that would otherwise be admissible, (2) the fact that D's insurers had committed trespass and violated C's art. 8(1) (respect for private life and home) rights were matters relevant to the exercise of that discretion, (3) in the circumstances of this case, it would be artificial and undesirable to exclude the evidence, however (4) disapproval of the insurer's behaviour should be marked in costs orders made in the proceedings culminat-

ing in this appeal, and (5) that behaviour should also be taken into account by the trial judge when he comes to deal with the question of costs—*Rall v. Hume* [2001] EWCA Civ 146; [2001] 3 All E.R.248, CA, ref'd to (see *Civil Procedure*, Autumn 2002, Vol. 1, paras 1.3.3, 1.3.10 & 32.1.4, and Vol. 2, para. 3D-36)

■ ROBERT v. MOMENTUM SERVICES LTD. *The Times*, February 13, 2003, CA (Sir Andrew Morritt V.-C. & Hale L.J.)
CPR, rr.1.1, 3.1(2(a) & 3.9(1)—claimant (C) bringing claim against employers (D) for personal injuries suffered at work—before time limit fixed by r.7.4 had expired, district judge granting C extension of time under r.3.1(2)(a) for service of particulars of claim—judge allowing D's appeal—held, allowing C's appeal, (1) in these circumstances, in exercising his discretion the district judge was not required to consider the checklist of "relief from sanctions" criteria in r.3.9(1), (2) in considering whether D would suffer any prejudice by granting C an extension for service of particulars of claim, the court should focus on prejudice which would be occasioned by C's failure to serve within the time fixed by the rules and not on pre-existing prejudice—*Totty v. Snowden* [2001] EWCA Civ 1415; [2002] 1 W.L.R.1415, CA; *Sayers v. Clarke Walker* [2002] EWCA Civ 645; [2002] 1 W.L.R.3095, CA, ref'd to (see *Civil Procedure*, Autumn 2002, Vol. 1, para. 3.1.2)

Practice Directions

■ PRACTICE DIRECTION (PILOT SCHEME FOR COMMUNICATION AND FILING OF DOCUMENTS AND APPLICATIONS BY E-MAIL) TSO CPR Update 30, February 2003
CPR, rr.5.5 & 51.2—supplements r.5.5—replaces Practice Direction (Pilot Scheme for Communication and Filing of Documents by E-mail)—coming into force April 1, 2003—provides for pilot scheme for communication and filing of documents operating to January 31, 2004 from (in Walsall county court) December 2, 2002, and from (in Preston county court and district registry) April 1, 2003—also provides for pilot scheme for making applications operating to January 31, 2004 from (in Preston county court and district registry) April 1, 2003 (see Second Supplement to *Civil Procedure*, Autumn 2002, para. 5BPD.1, p.28)

■ PRACTICE DIRECTION (PATENTS AND OTHER INTELLECTUAL PROPERTY CLAIMS) TSO CPR Update 30, February 2003
supplements Pt 63, inserted in CPR by Civil Procedure (Amendment No. 2) Rules 2002 (S.I. 2002 No. 3219)—contains provisions about patents and registered marks (Sect. I, paras 2.1 to 17.5), registered trade marks and other intellectual property rights (Sect. II, paras 18.1 to 27.2), and appeals and references from the Comptroller (Sect. III, para. 28.1)—Pt 63 and this practice direction replace Practice Direction (Patents, Etc.)—coming into force April 1, 2003 (see *Civil Procedure*, Autumn 2002, Vol. 1, para. 2D-1)

■ PRACTICE DIRECTION (RESTRAINT ORDERS AND APPOINTMENT OF RECEIVERS IN CONNECTION WITH CRIMINAL PROCEEDINGS AND INVESTIGATIONS) TSO CPR Update 30, February 2003
supplements CPR Sched. 1, RSC O.115—applies to applications to the High Court for a restraint order or the appointment of a receiver under Criminal Justice Act 1988 Pt VI, Drug Trafficking Act 1994 Pt I, Terrorism Act 2000 Sched. 4—example of a restraint order annexed—Pt VI of 1988 Act and Pt 1 of 1994 Act are repealed by Proceeds of Crime Act 2002 from appointed day, whereafter applications will be made to Crown Court, but this Practice Direction will continue to apply to pending and transitional cases—coming into force February 17, 2003 (see *Civil Procedure*, Autumn 2002, Vol. 1, para. sc115.0.1)

■ PRACTICE DIRECTION (PROCEEDS OF CRIME ACT 2002 PARTS 5 AND 8 : CIVIL RECOVERY) TSO CPR Update 30, February 2003
contains general provisions for proceedings in the High Court under Pts.5 and 8 of the 2002 Act (Sect. I, paras 2.1 to 3.1), also contains provisions about applications for a recovery order and an interim recovery order (Sect. II, paras 4.1 to 7.2), for applications for types of order or warrant in connection with a civil recovery investigation (Sect III, paras 8.1 to 12.4), and further provisions relevant to Sect III (Sect. IV, paras 13.1 to 17.3)—this practice direction is free-standing and does not supplement any particular CPR Part—coming into force on appointed day

■ PRACTICE DIRECTION (ANTI-SOCIAL BEHAVIOUR (ORDERS UNDER SECTION 1B(4) OF THE CRIME AND DISORDER ACT 1998)) TSO CPR Update 30, February 2003
applies to applications in county courts by relevant authorities for orders under s.1B(4) of the 1998 Act—this practice direction is free-standing and does not supplement any particular CPR Part—coming into force April 1, 2003

N DETAIL

Appeals "allowed by consent"

In *Slaney v. Kean* [1970] 1 Ch. 243, the facts were that the general commissioners of taxation overruled a decision made by an inspector and held that a deduction made by a taxpayer as a personal allowance was proper. The Crown appealed, under the statutory scheme then prevailing, to a Chancery judge. When the appeal came on before Megarry J., only counsel for the Crown appeared. Counsel explained to the judge that the parties had agreed that the appeal should be allowed, and applied for an order carrying that agreement into effect, reversing the decision of the general commissioners. Counsel submitted that, although there was a general rule to the effect that an appellate court cannot reverse a decision by consent, there was an exception in the form of a settled practice of the Chancery Division to allow appeals by consent in income tax cases. By way of illustration, he cited two first instance decisions (*Wager v. Watson* (1956) 36 T.C. 468 (Roxburgh J.) and *Treen v. Parkinson*, March 20, 1962 (Wilberforce J.)). (A striking illustration of the application of the general rule in a criminal appeal is provided by *R. v. Majewski* [1977] A.C. 443, CA)

Megarry J. refused the application. In a detailed and careful judgment, his lordship examined the Court of Appeal authorities that supported the general rule (*Lloyd v. Rossleigh Ltd.* [1961] R.V.R.448, CA; *Lees v. Motor Insurers' Bureau* [1953] 1 W.L.R.620, CA). He summarised the authorities binding on him as follows:

"An appeal may, of course, be dismissed by consent; for the appellant thereby merely gives up his right of appeal, and the decision of the court or tribunal below is left standing. But certainly under the general law, an appellate court will not allow an appeal by consent. If it were to do so, it would be making an order holding that the decision below was wrong; and it would be doing this merely on the agreement of the parties and without hearing the case. Indeed, the appellate court might be reversing a decision based upon propositions of law which, if argued, would be held to be entirely correct. The law is a matter for decision by the court after considering the case, and not for agreement between John Doe and Richard Roe, with the court blindly giving its authority to whatever they have agreed."

Although the general rule that an appellate court cannot allow an appeal by consent was stated unequivocally in the Court of Appeal authorities to which Megarry J. referred, the proposition was not clearly brought out in the notes on RSC O.59 in editions of the White Book published either before or after *Slaney v. Kean* was decided (indeed, that case itself never figured in such notes). During the 1980s, the notes were much expanded by the Registrar of Civil Appeals, not only for the purpose of taking account of changes in the law relating to appeals, but also for the purpose of implementing changes in practice introduced by Lord Donaldson M.R. in his attempts to streamline the Court's operations. During that period, a separate paragraph headed "Allowing appeals by consent" was inserted in the notes on O.59. In the last edition of the "old" White Book, that paragraph appeared as para. 59/1/70 and read as follows (paras 59/1/71 and 59/1/71A dealt specifically with appeals involving infants or patients) (see *The Supreme Court Practice 1999*, Vol. 1, p.993):

"The Court of Appeal has jurisdiction to allow an appeal by consent, but it does not exercise that jurisdiction unless the court considers it appropriate to do so. If the consent order sought does no more than alter the relief granted, *e.g.* altering the quantum of damages, the percentages of contributory negligence or contribution, the terms of an injunction, or the incidence of costs, the Court of Appeal probably will make the consent order. The Court is also prepared to allow appeals by consent against orders of a procedural nature, *e.g.* orders made on application for summary judgment or for a default judgment to be set aside, interlocutory injunction and orders relating to discovery. If, however, the consent order sought involves reversing the judges decision on a point of law given at a final trial or hearing, the Court of Appeal will only make the order if special reason are shown. The Court of Appeal will not declare that the judge's view of the law is wrong merely because the parties consent to an order which has that effect. Examples of cases where the Court of Appeal has allowed an appeal on points of law by consent are: where it was accepted by all parties that the legal submission on which the judgment was founded was wrong by reason of other statutory provisions which were not cited to the judge (*e.g. Nabi v. Heaton* [1983] 1 W.L.R.626, CA), where the order made by the judge was one which neither party had asked for, and where the order made in the court below was contrary to Court of Appeal authority."

Para. 59/1/70 went on to say that, in order to save costs, the Court of Appeal would generally make an order on paper without a hearing in those cases where it is willing to allow an appeal by consent, and gave practical guidance as to how parties should proceed where an order on paper might have been appropriate.

In paragraph 59/1/70, there was no mention of *Slaney v. Kean*, or of the Court of Appeal authorities referred to by Megarry J. in that case. It could be said that the paragraph itself did not make it clear that the general rule is that an appellate court cannot allow an appeal by consent. The paragraph began by stating that the Court of Appeal has jurisdiction to allow an appeal by consent, but neglected to say that the jurisdiction consists of exceptions to the sound general rule. In *Nabi (Ghulam) v. Heaton* [1981] 1 W.L.R.1052, the case cited in paragraph 59/1/70 as an example of the exercise of the court's jurisdiction to allow an appeal by consent on a point of law, was another taxation appeal. In proceedings in the Chancery Division, Vinelott J. held that a taxpayer domiciled in Pakistan was not entitled to personal relief from income tax in respect of the maintenance of his second wife during the years to which the claim related as he was at the time still married to his first wife. The decision turned on the proper construction to be given to a particular statutory provision. When the taxpayer's appeal came on in the Court of Appeal (Civil Division), counsel for the Crown explained to the Court (Sir John Donaldson M.R., Dillon L.J. and Sir George Baker) that the revenue had reconsidered the question and were satisfied that the Crown's contentions before the judge should not be pursued in resisting the appeal. The report of the case says, simply, that the Court "allowed the appeal by consent". Though officially reported, the report is cryptic and there is no reference at all to, or discussion of, *Slaney v. Kean* or of the Court of Appeal authorities examined therein.

The statement of the law in para. 59/1/70 represented a sea-change, in the sense that it played down the primacy of the general rule stated by Megarry J. in *Slaney v. Kean*, even though there had been no clear holding by the Court of Appeal in anyway supporting such a shift of emphasis. Under the CPR, rules of court as to appeals are found in Pt 52, and the matter of allowing appeals by consent, is referred to in Practice Direction (Appeals), para. 13.1 (Allowing unopposed appeals or applications on paper) (see *Civil Procedure*, Vol. 1, para. 52PD.44, p.1217). It should be noted that para. 13.1 applies, not only to appeals to the Court of Appeal, but to appeals generally. In Issue 09/02 of *CP News* (November 18, 2002) it was explained that para. 13.1 was recently amended and now reads as follows:

"13.1 The appeal court will not normally make an order allowing an appeal unless satisfied that the decision of the lower court was wrong, but the appeal court may set aside or vary the order of the lower court with consent and without determining the merits of the appeal, if it is satisfied that there are good and sufficient reasons for doing so. Where the appeal court is requested by all parties to allow an application or an appeal the court may consider the request on the papers. The request should state that none of the parties is a child or patient and set out the relevant history of the proceedings and the matters relied on as justifying the proposed order and be accompanied by a copy of the proposed order."

Paragraph 13.1, when contrasted with the terms in which it appeared before its recent amendment, marks a further watering down of the general rule to the effect that an appellate court cannot reverse a decision by consent. By the addition of the word "normally" in the first sentence, the provision admits of the possibility that an appellate may allow an appeal by consent without being satisfied "that there are good and sufficient reasons for doing so". However, it should be noted that the paragraph draws a distinction between (1) an appellate court allowing an appeal by consent, and (2) an appellate court not allowing an appeal by consent, but setting aside or varying the order of the lower court with consent. The seeds of this distinction are found in para. 59/1/70 of the old White Book and it would seem that the illustrations given there are still of value.

The general rule is seen at its best when it is used to assert that an appellate court cannot resolve an issue of law by consent. In *Lloyd v. Rossleigh Ltd.* [1961] R.V.R.448, CA, Devlin L.J. said: "you are asking us to straighten the law without satisfying us that it has gone crooked, merely because you say two members of the Bar have agreed that it has gone crooked. Plainly we cannot do that." And Sellers L.J. said: "We cannot state the law by an agreement between the parties".

Protocols and procedure

Practice Direction (Protocols) applies to the several pre-action protocols which have been approved by the Head of Civil Justice (see *Civil Procedure*, Vol 1, para. C1-002, p.1939). The objectives of the pre-action protocols are (1) to encourage the exchange of early and full information about the prospective legal claim, (2) to enable parties to avoid litigation by agreeing a settlement of the claim before the commencement of proceedings, (3) to support the efficient management of proceedings where litigation cannot be avoided.

In TSO CPR Update 30, February 2003, substantial additions are made to the section headed "Pre-action behaviour in other cases" (paras 4.1 to 4.10) (see "CPR Update" section of this issue of *CP News*). Also, three new paragraphs (paras 3.3 to 3.5) are added to

the "Compliance with protocols" section. (All of the additions come into effect on April 1, 2003).

In practice, of course, it is often the case that proceedings are commenced before the parties have exhausted the procedure laid down in the applicable protocol. Therefore, the formal procedures stated in the CPR may begin to take effect and, as it were, run alongside the protocol procedures. To an extent, the drafting of the individual protocols takes this into account.

In an ideal world, the protocol procedures would run their course before proceedings were commenced if that, in the event, proved necessary. Parties are exhorted to comply with the protocols and not to commence proceedings precipitately. (Indeed, sometimes there is a tendency to treat the protocol procedures as a form of ADR which should be tried before.) Conflicts can emerge between the requirements of the relevant pre-action protocol and requirements as to commencement time limits in the rules. The problem has been highlighted in judicial review cases (see *R.(Hammerton) v. London Underground Ltd*. [2002] EWHC 2307 (Admin); November 8, 2002, unrep.(Ouseley J.), para. 190).

The complete texts of new paragraphs 3.3 to 3.5 are found in the "CPR Update" section of this issue of *CP News*. It will be noted that para. 3.5, after stating that the practice direction does not alter the statutory time limits for starting court proceedings, goes on to state that a claimant is required to start proceedings within those time limits and to adhere to subsequent time limits required by the rules or ordered by the court. However, para. 3.5 then says that, "if proceedings are for any reason started before the parties have followed the procedures in this practice direction" (meaning, presumably, the procedures stated in the relevant pre-action protocol), the parties are encouraged to agree to apply to the court for a stay of the proceedings "while they follow the practice direction".

Verifying points in dispute

CPR, r.22.1 provides that certain documents, including, for example, a statement of case and a witness statement, must be verified by a statement of truth. If a statement of truth or a witness summons is not so verified, then the consequences stated in, respectively, r.22.2 and r.22.3 may follow.

Part 22 is supplemented by Practice Direction (Statements of Truth). Para. 1.1 of that Practice Direction contains a list of documents that should be verified by a statement of truth. That list includes the documents referred to in r.22.1 and certain other documents; however the list is not exhaustive. It may be noted that the list does not include certain documents generated in the course of civil proceedings and which have to be signed by a party or his legal representative.

For example, it does not include points of dispute served by a party in detailed assessment proceedings (r.47.9). Sect. 35.3(4) of Practice Direction (Costs) (*Civil Procedure*, Vol. 1, para. 47PD.8, p.1033) states that points of dispute must "be signed by the party serving them or his solicitor". There is nothing in Pt 22 or the practice direction supplementing that Part to suggest that points of dispute must be verified by a statement of truth. Further, the precedent for points of dispute found in the Schedule of Costs Precedents annexed to Practice Direction (Costs) (Precedent G) does not have a statement of truth attached to it (see *Civil Procedure*, Vol. 1, para. 48PD.17, p.1108) (*cf.*, Precedent J (Claim Form)).

However, Sect. 1.5 of Practice Direction (Costs) (see *Civil Procedure*, Vol. 1, para. 43PD.1, p.925) states as follows (emphasis added):

"In respect of any document which is required by these Directions to be signed by a party or his legal representative the Practice Direction supplementing Part 22 will apply *as if the document in question was a statement of truth*."

Now, what does this mean? Undoubtedly, by virtue of Sect. 35.3(4) of Practice Direction (Costs), a document containing points of dispute would be a document "which is required by these Directions to be signed by a party or his legal representative" within the meaning of Sect. 1.5 of that Practice Direction. In terms, Sect. 1.5 states that the Practice Direction supplementing Part 22 will apply to such a document; but this is qualified by the words "as if the document in question was a statement of truth". That is an odd, indeed meaningless qualification.

It can be argued that the qualifying phrase ought to read (emphasis added) "as if the document in question was *a statement of case*". This would make sense of Sect. 1.5. In the Access to Justice Reports it was recommended that, as the basic function of "pleadings", which should be known as "statements of case", is to "state the facts relied on", statements of case should "contain a declaration on behalf of the party of belief in the accuracy and truth of the matters put forward" (see Interim Report, Chp.20, para. 30). It would be perfectly consistent with the CPR provisions implementing that recommendation that points of dispute served in detailed assessment proceedings should be treated as statements of case and should be verified by a statement of truth; after all, points of dispute are a form of pleading stating facts relied on.

CPR UPDATE

TSO CPR Update 30, February 2003, has made a number of changes (coming into effect on April 1, 2003) to seventeen existing CPR Practice Directions. Those practice directions, together with the changes made, are set out below.

Paragraph and page references are to *Civil Procedure*, Autumn 2002, Vol. 1, except where express reference is made to the Second Supplement or to Vol. 2.

New practice directions published for the first time in Update 30, are referred to on the "In Brief" page of this issue of *CP News*.

Practice Direction (Pilot Scheme for Communication and Filing of Documents and Applications by E-Mail)

para. 5PD.7, p 124

Rule 5.5 (Filing and sending documents) was added to Pt 5 by the Civil Procedure (Amendment) Rules 2002 (S.I 2002 No. 2058), r.4, and came into effect on December 2, 2002. Practice Direction (Pilot Scheme for Communication and Filing of Documents by E-Mail) was published in TSO CPR Update 29, October 2002, and came into effect on the same date. By TSO Update 30, February 2003, with effect from April 1, 2003, this practice direction is now revoked and replaced by Practice Direction (Pilot Scheme for Communication and Filing of Documents and Applications by E-Mail). The change in the title of the practice direction reflects a change in scope.

Sect. I of this practice direction contains provisions (paras 2.1 to 5.3) permitting parties in specified county courts to (1) communicate with the court by e-mail and (2) filed specified documents by e-mail. As was indicated in the practice direction published in October 2002, this pilot scheme applies to Walsall county court from December 2, 2002, to January 31, 2004. As re-issued, the scheme also applies to Preston county court from April 1, 2003. Paras 2.1 to 5.3 in the new practice direction are similar to paras 2.1 to 5.3 in the practice direction now revoked, but in places there are some changes in technical detail. For example, it is now expressly provided that attachments to e-mails must not be more than 10 pages long and the total e-mail must not exceed 2Mb (para. 3.5).

Sect. II contains provisions permitting legal representatives to make applications by e-mail. Where the context permits, "application" includes an appeal. This pilot scheme applies to Preston county court and District Registry from April 1, 2003. The types of application that may be made by e-mail under the scheme (subject to the conditions stated in para. 7.2l) include (1) applications in the course of proceedings, (2) applications for final orders by consent, and (3) in county court cases, (a) appeal notices in respect of appeals from a district judge to a circuit judge, and (b) applications for directions and extensions of time in connection with such appeals (para. 7.1).

Practice Direction (The Fast Track)

para. 28PD.2, p 625

As was explained in *CP News*, Issue 09/02 (November 2002), by the Civil Procedure (Amendment) Rules 2002 (S.I. 2002 No. 2058), with effect form December 2, 2002, the "listing questionnaire" provided for by r.28.5 and r.29.6 was renamed the "pre-trial check list" for the purpose of better reflecting the purpose of that document. As a consequence, by TSO CPR Update 29, October 2002, the references to "listing questionnaire" found in practice directions supplementing CPR provisions were amended accordingly. Unfortunately, not all of the necessary amendments were made by Update 29, and further amendments to particular practice direction paragraphs are made by TSO Update 30, February 2003 (with effect from April 2003). Thus, in para. 2.1 of this practice direction, "pre-trial check lists (listing questionnaires)" is now substituted for "listing questionnaires".

Practice Direction (The Multi-Track)

para. 29PD.2, p 644

In para. 2.4 of this practice direction, for "listing questionnaires" substitute "pre-trial check lists (listing questionnaires)"

Practice Direction (Disclosure and Inspection)

para. 31PD.8, p.703

In para. 8 of this practice direction, for "paragraph 27" substitute "paragraphs 28.1-28.3". This amendment ought to have made when certain of the paragraphs in Practice Direction (Written Evidence) were re-numbered in January 2002.

Practice Direction (Offers to Settle and Payments Into Court)

para. 36PD.4, p.829

It was explained in *CP News*, Issue 02/03

(February 7, 2003) that, with effect from April 1, 2003, CPR, r.36.6 (Notice of a Part 36 payment) is amended by the Civil Procedure (Amendment No. 2) Rules 2002. As a consequence, para. 4.1 of this practice direction is amended and para. 4.2 is added. From the same date, these paragraphs will provide as follows (note also amendments to paras 8.1 and 8.3, explained below):

"4.1 Except where paragraph 4.2 applies, to make a Part 36 payment in any court the defendant must—
(1) serve the Part 36 payment notice on the offeree;
(2) file at the court—
(a) a copy of the payment notice; and
(b) a certificate of service confirming service on the offeree; and
(3) send to the Court Funds Office -
(a) the payment, usually a cheque made payable to the Accountant General of the Supreme Court;
(b) a sealed copy of the claim form; and
(c) Court Funds Office form 100.

4.2 A litigant in person without a current account may, in a claim proceeding in a county court or District Registry, make a Part 36 payment by—
(1) lodging the payment in cash with the court;
(2) filing at the court—
(a) the Part 36 payment notice; and
(b) Court Funds Office form 100."

para. 36PD.8, p.831

Para. 8.1 is replaced and now reads:

"8.1 To obtain money out of court following acceptance of a Part 36 payment, the claimant should—
(1) file a request for payment in Court Funds Office form 201 with the Court Funds Office; and
(2) file a copy of form 201 at the court."

Para. 8.3 is replaced and now reads:

"8.3 Where a trial takes place at a different court to that where the case is proceeding, the claimant must also file notice of request for payment with the court where the trial is to take place."

Practice Direction (Miscellaneous Provisions About Payments Into Court)

para. 37PD.1, p.837

It was explained in *CP News*, Issue 02/03 (February 7, 2003) that, with effect from April 1, 2003, CPR, r.37.1 (Money paid into court under a court order—general) is amended by the Civil Procedure (Amendment No. 2) Rules 2002. As a consequence, paras 1.1 and 1.2 of this practice direction are amended and para. 1.3 is deleted. From the same date, these paragraphs will provide as follows (note also replacement of para. 2.1 with paras 2.1 and 2.1A, and addition of paras 11.1 to 11.5, explained below):

"1.1 Except where paragraph 1.2 applies, a party paying money into any court under and order must—
(1) send to the Court Funds Office—
(a) the payment, usually a cheque made payable to the Accountant General of the Supreme Court;
(b) a sealed copy of the order; and
(c) a completed Court Funds Office form 100.
(2) serve notice of payment on the other parties;
(3) file at the court—
(a) a copy of the notice of payment; and
(b) a certificate of service confirming service on each party.

1.2 A litigant in person without a current account may, in a claim proceeding in a county court or District Registry, make a payment into court by—
(1) lodging the payment in cash with the court;
(2) filing at the court—
(a) a notice of payment; and
(b) Court Funds Office form 100."

Para. 1.3 (which applied specifically where orders for payments into court were made at the RCJ, is deleted.

para. 37PD.2, p.837

Para. 2.1 is replaced by paras 2.1 and 2.1A. These paragraphs read as follows:

"2.1 Except where paragraph 2.1A applies, a defendant who wishes to pay a sum of money into court in support of a defence of tender should—
(1) send to the Court Funds Office—
(a) the payment, usually a cheque made payable to the Accountant General of the Supreme Court;
(b) a sealed copy of the claim form; and
(c) a completed Court Funds Office form 100;
(2) file at the court with his defence—
(a) a notice of payment into court; and
(b) a certificate of service confirming service of the notice on the claimant and his defence; and
(3) serve a copy of the notice of payment into court on the claimant.

2.1A A litigant in person without a current account may, in a claim proceeding in a county court of District Registry, pay a sum of money into court in support of a defence of tender by—
(1) lodging the payment in cash with the court; and
(2) filing with the court—
(a) a notice of payment with his defence; and

(b) Court Funds Office form 100."

para. 37PD.10, Second Supplement p.52

As was explained in *CP News*, Issue 09/02 (November 18, 2002), paras 6.1 to 10.2 were added to this practice direction in October 2002. Now, after para. 10.2, new paras 11.1 to 11.5 are inserted as follows:

"Payment into court under Vehicular Access Across Common and Other Land (England) Regulations 2002

11.1 In this Section of this Practice Direction—

(1) expressions used have the meanings given by the Vehicular Access Across Common and Other Land (England) Regulations 2002; and

(2) a regulation referred to by number alone means the regulation so numbered in those Regulations.

11.2 Where the applicant wishes to pay money into a county court under regulation 14 he must file an application notice when he lodges the money.

11.3 The application notice must—

(1) state briefly why the applicant is making the payment into court; and

(2) be accompanied by copies of—

(a) the notice served under regulation 6;

(b) any counter-notice served under regulation 8;

(c) any amended notice or counter-notice served under regulation 9;

(d) any determination of the Lands Tribunal of a matter referred to it under regulation 10; and

(e) any determination of the value of the premises by a chartered surveyor following the service of a valuation notice under regulation 12.

11.4 If an applicant pays money into court under regulation 14, he must immediately serve notice of the payment and a copy of the application notice on the land owner.

11.5 An application for payment out of the money must be made in accordance with paragraph 4 of this practice direction."

Practice Direction (Costs)

para. 43PD.3, p 926

In para. 3.3, for "paragraph 13.6" substitute "paragraph 13.5"

Practice Direction (Appeals)

paras 52PD.79 & 52PD.80, p.1225

The tables following para. 20.3 of this practice direction, and which indicate the paragraphs in Sect. III which relate to particular statutory provisions creating rights of appeal to the High Court and the county courts, are updated to take account of amendments to para. 22.3 and the addition of para. 24.3 (as explained below), and the addition (in October 2002) of para. 23.8A.

The result is that references to the following statutory provisions permitting appeals to the High Court are inserted:

Charities Act 1993
Dentists Act 1984, s.20 or s.44
Medical Act 1983, s.40
Opticians Act 1989, s.23
Osteopaths Act 1993, s.31

Further, for the purposes of making an addition that should have been made some time ago and for taking into account the insertion of para. 23.8A, the following are added to the list of statutory provisions permitting appeal to the county courts:

Housing Act 1996, ss.204 and 204A
Immigration and Asylum Act 1999, Pt II

para. 22.3, pp.1230 to 1231

Para. 22.3 (Appeal where court's decision is final) is re-titled, its scope is extended, and the table attached to it is modified. Thus, for the title and sub-para. (1), the following is substituted (sub-paras (2) to (4) remain as before):

"Appeals against decisions affecting the registration of architects and health care professionals

22.3 (1) This paragraph applies to an appeal to the High Court under—

(a) section 22 of the Architects Act 1997;

(b) section 82(3) and 83(2) of the Medicines Act 1968;

(c) section 12 of the Nurses, Midwives and Health Visitors Act 1997;

(cc) article 38 of the Nursing and Midwifery Order 2001;

(d) section 10 of the Pharmacy Act 1954;

(e) section 10 of the Medical Act 1983;

(f) section 29 or section 44 of the Dentists Act 1984;

(g) section 23 of the Opticians Act 1989;

(h) section 31 of the Osteopaths Act 1993; and

(i) section 31 of the Chiropractors Act 1994."

Further, the table at the end of para. 22.3, showing the persons to be made respondents, is amended to take account of the additions of the statutory provisions referred to in sub-paras (cc) and (e) to (f) of para. 22.3(1).

para. 24.2, p.1238

After this paragraph, the following new paragraph is now added:

"Appeal under Part II of the Immigration and Asylum Act 1999 (carriers' liability)

24.3 (1) A person appealing to a county court under

section 35A or section 40B of the Immigration and Asylum Act 1999 ("the Act") against a decision by the Secretary of State to impose a penalty under section 32 or a charge under section 40 of the Act must, subject to paragraph (2), file the appellant's notice within 28 days after receiving the penalty notice or charge notice.

(2) Where the appellant has given notice of objection to the Secretary State under section 35(4) or section 40A(3) of the Act within the time prescribed for doing so, he must file the appellant's notice within 28 days after receiving notice of the Secretary of State's decision in response to the notice of objection.

(3) Sections 35A and 40B of the Act provide that any appeal under those sections shall be a re-hearing of the Secretary of State's decision to impose a penalty or charge, and therefore rule 52.11(1) does not apply."

Practice Direction (Possession Claims)

para. 55PD.1, p.1307

After para. 1.6, the following two new paragraphs are added:

"1.7 A claim which is not a possession claim may be brought under the procedure set out in Section I of Part 55 if it is started in the same claim form as a possession claim which, by virtue of rule 55.2(1) must be brought in accordance with that Section.

(Rule 7.3 provides that a claimant may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings)

1.8 For example a claim under paragraphs 4, 5 or 6 of Part I of Schedule 1 to the Mobile Homes Act 1993 may be brought using the procedure set out in Section I of Part 55 if the claim is stared in the same claim form as a claim enforcing the rights referred to in section 3(1)(b) of the Caravan Sites Act 1968 (which, by virtue of rule 55.2(1) must be brought under Section I of Part 55)."

Practice Direction (Orders to Obtain Information from Judgment Debtors)

para. 71PD.8, p.1365

Forms EX140 (Record of examination (Individual)), and EX141 (Record of examination (officer of company or corporation)), referred to in, respectively, Appendix A and Appendix B of this practice direction have been reissued in amended forms.

Practice Direction (Traffic Enforcement)

Part 75 (Traffic Enforcement) was added to the CPR by the Civil Procedure (Amendment) Rules 2002. This Part replaced Sched. 2, CCR O.48B and came into effect on October 1, 2002. This practice direction (supplementing Pt 75) was published in TSO Update 29, October 2002 and is printed in the Second Supplement. The practice direction sets out the proceedings to which Pt 75 applies and is now amended to bring within the scope of Pt 75 proceedings for the collection of debts arising under the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001.

para. 75PD.1, Second Supplement p.95

At end of para. 1.1, add:

> (4) 'the Road User Charging Regulations' means the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001

At end of para. 1.2, add:

> (5) amounts payable by a person other than an authority under an adjudication of an adjudicator pursuant to the Schedule to the Road User Charging Regulations; and
> (6) increased penalty charges provided for in charge certificates issued under regulation 17 of the Road User Charging Regulations.

In para. 1.3(2), after sub-para. (b) delete "or", and after sub-para. (c) add "or", and then add new sub-para. (d) as follows:

> (d) a charge certificate issued under regulation 17 of the Road User Charging Regulations.

In para. 1.3(3), after sub-para. (c) delete "or" and after sub-para. (d) delete "and", and after sub-para. (d), and then add new sub-paras (e) and (f) as follows:

> (e) regulation 17 of the Road User Charging Regulations; or
> (f) regulation 18 of the Road User Charging Regulations; and

para. 75PD.3, Second Supplement p.96

In para. 3.1, after "the 1991 Act" insert "or the Schedule to the Road User Charging Regulations" and for "rule 75.2" substitute "rule 75.3"

para. 75PD.4, Second Supplement p.96

In para. 4.1(1), after sub-para. (a) delete "and", and after sub-para. (b) add new sub-para. (c) as follows:

> (c) regulations 19(4) and 19(5)(d) of the Road User Charging Regulations; and

para. 75PD.5, Second Supplement p.96

In para. 5.1, after sub-para. (2) delete "or", and after sub-para. (3) add "or", and then add new sub-para. (4) as follows:

> (4) regulation 19(3) of the Road User Charging Regulations

Practice Direction (Directors Disqualification Proceedings)

paras B2-011 & B2-003, pp.1879 & 1887

In para. 11.4 and para. 33.9, for "listing questionnaires" substitute "pre-trial check list (listing questionnaires)"

Practice Direction (Protocols)

para. C1-002, p.1940

After para. 3.2, add new paras 3.3 to 3.5 as follows (see further "In Detail" section of this issue of *CP News*):

"3.3 The court is likely to treat this practice direction as indicating the normal, reasonable way of dealing with disputes. If proceedings are issued and parties have not complied with this practice direction or a specific protocol, it will be for the court to decide whether sanctions should be applied.

3.4 The court is not likely to be concerned with minor infringements of the practice direction or protocols. The court is likely to look at the effect of non-compliance on the other party when deciding whether to impose sanctions.

3.5 This practice direction does not alter the statutory time limits for starting court proceedings. A claimant is required to start proceedings within those time limits and to adhere to subsequent time limits required by the rules or ordered by the court. If proceedings are for any reason started before the parties have followed the procedures in this practice direction, the parties are encouraged to agree to apply to the court for a stay of the proceedings while they follow the practice direction."

para. C1-003, p.1940

Para. 4 is re-numbered as para. 4.1, and paras 4.2 to 4.10 are added as follows:

"4.2 Parties to a potential dispute should follow a reasonable procedure, suitable to their particular circumstances, which is intended to avoid litigation. The procedure should not be regarded as a prelude to inevitable litigation. It should normally include—

(a) the claimant writing to give details of the claim;
(b) the defendant acknowledging the claim letter promptly;
(c) the defendant giving within a reasonable time a detailed written response; and
(d) the parties conducting genuine and reasonable negotiations with a view to settling the claim economically and without court proceedings.

4.3 The claimant's letter should—

(a) give sufficient concise details to enable the recipient to understand and investigate the claim without extensive further information;
(b) enclose copies of the essential documents which the claimant relies on;
(c) ask for a prompt acknowledgement of the letter, followed by a full written response within a reasonable stated period;
(For many claims, a normal reasonable period for a full response may be one month.)
(d) state whether court proceedings will be issued if the full response is not received within the stated period;
(e) identify and ask for copies of any essential documents, not in his possession, which the claimant wishes to see;
(f) state (if this is so) that the claimant wishes to enter into mediation or another alternative method of dispute resolution; and
(g) draw attention to the court's powers to impose sanctions for failure to comply with this practice direction and, if the recipient is likely to be unrepresented, enclose a copy of this practice direction.

4.4 The defendant should acknowledge the claimant's letter in writing within 21 days of receiving it. The acknowledgement should state when the defendant will give a full written response. If the time for this is longer than the period stated by the claimant, the defendant should give reasons why a longer period is needed.

4.5 The defendant's full written response should as appropriate—

(a) accept the claim in whole or in part and make proposals for settlement; or
(b) state that the claim is not accepted.

If the claim is accepted in part only, the response should make clear which part is accepted and which part is not accepted.

4.6 If the defendant does not accept the claim or part of it, the response should—

(a) give detailed reasons why the claim is not accepted, identifying which of the claimant's contentions are accepted and which are in dispute;
(b) enclose copies of the essential documents which the defendant relies on;
(c) enclose copies of documents asked for by the claimant, or explain why they are not enclosed;
(d) identify and ask for copies of any further essential documents, not in his possession, which the defendant wishes to see; and
(The claimant should provide these within a reasonably short time or explain in writing why he is not doing so.)
(e) state whether the defendant is prepared to enter into mediation or another alternative method of dispute resolution.

4.7 If the claim remains in dispute, the parties should promptly engage in appropriate negotiations with a view to settling the dispute and avoiding litigation.

4.8 Documents disclosed by either party in accordance with this practice direction may not be used for any purpose other than resolving the dispute, unless the other party agrees.

4.9 The resolution of some claims, but by no means all, may need help from an expert. If an expert is needed, the parties should wherever possible and to save expense engage an agreed expert.

4.10 Parties should be aware that, if the matter proceeds to litigation, the court may not allow the use of an expert's report, and that the cost of it is not always recoverable."

Pre-Action Protocol for Judicial Review

para. C8-002, p.1994

In Section 2 of Appendix A to this Protocol, the address for the Immigration and Nationality Directorate of the Judicial Review Management Unit is changed to:

1st Floor
Green Park House
29 Wellesley Road
Croydon CR0 2AJ

Practice Direction (Arbitration)

Vol. 2, para. 2B-41, p.231

The text of para. 2.3, as it appears before the table in that paragraph is amended and now reads as follows:

"2.3 Subject to paragraph 2.1, and arbitration claim form—

(1) may be issued at the courts set out in column 1 of the table below and will be entered in the list set out against that court in column 2;

(2) relating to a landlord and tenant or partnership dispute must be issued in the Chancery Division of the High Court."

Vol. 2, para. 2B-44, p.234

After para. 12.3, the following three new paragraphs are added:

"12.4 The court will normally determine applications for permission to appeal without an oral hearing.

12.5 Where the court refuses an application for permission to appeal without an oral hearing, it must provide brief reasons.

12.6 Where the court considers that an oral hearing is required, it may give such further directions as are necessary."

Practice Direction (Commercial Court)

Vol. 2, para. 2C-25, p.326

After para. 4.3 a new paragraph is inserted as follows:

"4.4 A party applying to the Commercial Court to transfer a claim to the commercial list must give notice of the application to the court in which the claim is proceeding, and the Commercial Court will not make an order for transfer until it is satisfied that such notice has been given."

Practice Direction (Patents, Etc.)

Vol. 2, para. 2D-1, p.339

With the coming into effect on April 1, 2003, of Pt 63 (Patents and Other Intellectual Property Claims), inserted in the CPR by the Civil Procedure (Amendment No. 2) Rules 2002 (2002 No. 3219), and the practice direction supplementing that Part, this practice direction is revoked.

Practice Direction (Technology and Construction Court)

Vol. 2, para. 2E-15, p.364

After para. 5.2, a new paragraph is inserted as follows:

"5.3 A party applying to a TCC judge to transfer a claim to the TCC specialist list must give notice of the application to the court in which the claim is proceeding, and a TCC judge will not make an order for transfer until he is satisfied that such notice has been given."

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