
CIVIL PROCEDURE NEWS

- Judicial review of refusal of permission to appeal
- Extending time on condition limiting claim
- Interest waiver in Pt 36 offer
- Changes to Practice Directions
- Recent cases



N BRIEF

Cases

- ALI REZA-DELTA TRANSPORT CO. LTD. v. UNITED ARAB SHIPPING CO. S.A.G. (NO. 2) [2003] EWCA Civ 811; *The Times*, July 4, 2003, CA (Peter Gibson & Tuckey L.JJ. and Nelson J.) CPR, rr.33.21 & 44.3—claimant (C) making Pt 36 offer to settle appeal—offer containing term waiving uplift interest on damages and costs—defendants (D) not accepting offer—on appeal, damages awarded matching exactly C’s offer—C applying for their costs of the appeal on indemnity basis under r.36.21—held, dismissing application, an offer as to uplift interest is not part of the offer to be taken into account in determining the applicability of r.36.21 (see *Civil Procedure*, 2003, Vol. 1, paras 36.21.1 & 44.4.2)
- GREGORY v. TURNER [2003] EWCA Civ 183; [2003] 1 W.L.R. 1149, CA; [2003] 2 All E.R. 1114, CA (Brooke, Sedley & Carnwath L.JJ.) CPR, rr.52.3 & 54.3, Access to Justice Act 1999, s.54(4)—householder (C), acting in person, bringing county court claim against neighbours (D) for injunctive relief and damages for trespass (including aggravated damages) limited to £5,000—county court dealing with case as small claim—at trial, district judge awarding C £100 damages for trespass against D—circuit judge refusing C permission to appeal—held, though s.54(4) precluded any attempt by C to reopen the permission to appeal issue in the Court of Appeal, it does not oust the jurisdiction of the High Court, by judicial review, over decisions made by circuit judges in county courts to grant or refuse permission to appeal to themselves—*R.(Sivasubramaniam) v. Wandsworth County Court* [2002] EWCA Civ 1738; [2003] 1 W.L.R. 475, CA, ref’d to (see *Civil Procedure*, 2003, Vol. 1, para. 52.3.6, and Vol. 2, para. 9A-864)
- PRICE v. PRICE [2003] EWCA Civ 888; June 26, 2003, CA, unrep. (Brooke, Sedley & Hale L.JJ.) CPR, rr.1.1, 1.3, 1.4, 3.1, 3.4, 3.9 & 7.4, Human Rights Act 1998, Sched.1, Pt 1, art. 6—in April 2001, legally aided claimant (C) issuing claim form in multi-track case for damages for personal injuries suffered in May 1998—in July, 2002, C applying for extension of time for serving particulars of claim—evidence in support of application revealing for first time claim for £550,000 including special damages—circuit judge refusing application—Court of Appeal allowing C’s appeal on condition that no claim was made for special or general damages other than what might be substantiated by any pre-April 2001 medical report—*Walsh v. Misseldine* February 29, 2000, CA, unrep., ref’d to (see *Civil Procedure*, 2003, Vol. 1, paras 3.1.2, 3.9.1 & 7.6.3)
- AMERICAN INTERNATIONAL SPECIALITY LINES INSURANCE CO. v. ABBOTT LABORATORIES [2003] EWHC 2714 (Comm); [2003] 1 Lloyd’s Rep. 267 (Cresswell J.) CPR, r.25.1(1)(a)—American insurer (C) obtaining anti-suit injunction in relation to a dispute arising out of insurance policies in which D was the insured—D filing claim against C arising under the policies in the courts of Illinois—C contending that these proceedings were in breach of a London arbitration clause in the policies—held, granting D’s application to set aside the injunction, (1) the court will only restrain a party from pursuing proceedings in a foreign court if such pursuit would be vexatious or oppressive, (2) it had not been shown to a high degree of probability that the London arbitration clause had been incorporated into the policies—review of principles and authorities relating to the grant of anti-suit injunctions—*Donohue v. Armco Inc.* [2001] UKHL 64; [2002] 1 All E.R. 749, H.L., ref’d to (see *Civil Procedure*, 2003, Vol. 1, para. 25.1.12)
- BATES v. MICROSTAR LTD. [2003] EWHC 661 (Ch); *The Times*, April 15, 2003 (Mr. Bernard Livesey Q.C.) CPR, rr.1.1(2) & 25.1(1)(f)—C obtaining judgment against D in breach of contract claim—subsequently post-judgment freezing order made against D on condition that C undertake not to commence foreign proceedings against D without permission—C applying for permission to issue such proceedings—held, granting application, (1) strict compliance with certain conditions of a freezing order is necessary to prevent the order being used as a weapon of oppression against the defendant, (2) “oppression” includes the institution (a) of multiple proceedings in different jurisdictions, and (b) of other proceedings based on the improper use of information obtained by compulsion under the very order obtained and in breach of the implied undertakings against such use, (3) the central question is whether, in the context of the litigation as a whole, the release of the claimant from one or other of his undertakings is appropriate in the interests of justice, (4) any consideration of the basis on which leave should be granted has to include the considerations set out in r.1.1(2) (see *Civil Procedure*, 2003, Vol. 1, paras 1.3.2 & 25.1.27)

- **CHAN U SEEK v. ALVIS VEHICLES LTD.** [2003] EWHC 1238 (Ch); *The Times*, May 16, 2003 (Neuberger J.)
CPR, rr.3.4—Master striking out claimant's (C's) claim—held, allowing C's appeal, (1) if the court considers that a claim, although weak, stands some chance of success, it is not consonant with basic principles of English justice or with human rights law for a party seeking to pursue such a claim to be barred from proceeding with it, (2) however much it might seek to apply the rules of proportionality, it was not the court's function to stifle a claim merely because it looks unlikely to succeed, (3) furthermore, it is important to bear in mind the well-established principle that the court should not carry out mini-trial at the interlocutory stage (see *Civil Procedure*, 2003, Vol. 1, paras 1.3.5 & 3.4.1)
- **JONES v. CONGREGATIONAL AND GENERAL INSURANCE PLC.** *The Times*, July 7, 2003 (Judge Chambers Q.C.)
CPR, rr.44.4, 44.5 & 44.17, Access to Justice Act 1999, s.11(1)—claimant (C), who was legally aided, bringing claim against insurers (D)—C's claim dismissed and C ordered to pay D's costs on indemnity basis—C's case, and his obtaining of legal aid, founded upon fraudulent claims—held, dismissing C's application (1) s.11(1) provides that costs ordered against an assisted party should not exceed reasonable amount, (2) the protection of the sub-section does not apply to those whose conduct amounted to serious crime (see *Civil Procedure*, 2003, Vol. 1, paras 44.17.1, 48.13.0.3 & 48.13.0.8)
- **MILLER BREWING CO. v. RUHI ENTERPRISES LTD.** *The Times*, June 6, 2003 (Neuberger J.)
CPR, r.25.1(1)(a), Practice Direction (Injunctions) para. 5.1—claimant (C) bringing trade mark claim against company (D1) and individual (D2)—C obtaining interim injunction against D2 preventing him from dealing in product—D1 applying for order requiring C to pay costs and charges which they claimed they had incurred as a result of that injunction—held, dismissing application, (1) where a claimant seeks an interim injunction other than a freezing order, the court will not, as a matter of course, make the grant of an order conditional on the claimant undertaking to pay the reasonable costs of any third party incurred as a result of the order, but (2) in appropriate circumstances the court may consider imposing a wider undertaking in damages than that normally extracted from an applicant for an interlocutory injunction—*Galaxia Maritime S.A. v. Mineralimportexport* [1982] 1 W.L.R. 539, CA, ref'd to (see *Civil Procedure*, 2003 Vol. 1, paras 25.1.9, 25.1.15, 25.1.16.1 & 25PD.5)
- **MORESFIELD LTD. v. BANNERS** [2003] EWHC 1602 (Ch); July 3, 2003, unrep. (Lawrence Collins J.)
CPR, rr.20.6, 31.16 & 31.17—company (C) bringing professional negligence claim against solicitors (D)—C alleging D negligence in drafting share sale agreement—accountants (K) carrying out work for C in relation to sale of the shares—before C's claim commenced, (1) D considering bringing Pt 20 claim against K, and (2) K offering to disclose documents to D on terms—after C's claim commenced, (1) D apparently not intending, unless C successful against them, to bring claim against K, and (2) K withdrawing disclosure offer—during pre-trial stages of C's claim against them, D applying for pre-action disclosure (r.31.16) and for non-party disclosure (r.31.17) by K of certain documents—held, granting the application, (1) in Pt 20 proceedings by D against K the documents would be subject to standard disclosure, (2) D had made out a case for disclosure (a) under r.31.16, and alternatively (b) under r.31.17—judge observing that the general principles governing r.31.16 and r.31.17 are to be found in *Black v. Sumitomo Corporation* [2001] EWCA Civ 1819; [2002] 1 W.L.R. 1562, CA, applying *Bermuda International Securities Ltd. v. K.P.M.G.* [2001] EWCA Civ 269; *The Times*, March 14, 2001, CA, ref'd to (see *Civil Procedure*, 2003, Vol. 1, paras 31.16.3 & 31.17.3)
- **MOTOROLA CREDIT CORPORATION v. UZAN (NO. 2)** [2003] EWCA Civ 752; *The Times*, June 19, 2003, CA (Thorpe, Potter & Tuckey L.JJ.)
CPR, rr.6.20 & 25.1(1)(f), Supreme Court Act 1981, s.37, Civil Jurisdiction and Judgments Act 1982, s.25—American company (C) bringing proceedings in American court against four defendants (D1, D2, D3 and D4)—D4 resident in England—C alleging that each defendant had fraudulently induced C to enter into financing agreements with a company owned by companies in the ownership or control of the defendants—further alleged that each of the defendants was personally liable for the whole amount outstanding—High Court granting C's application for worldwide freezing injunction in aid of the American proceedings—defendants, though not disputing that a good arguable case of fraud was established, applying to have injunction discharged—held, allowing appeals of D2 and D3, (1) neither s.37, r.6.20 nor r.25.1(1)(f) fetter the High Court's power in any way, (2) however, under s.25(2) the Court may refuse an application for interim relief in aid of a foreign court (perhaps in the form of a freezing injunction), "if, in the opinion of the court, the fact that the court has no jurisdiction apart from this section in relation to the subject-matter of the proceedings in question makes it inexpedient for the court to grant it", (3) no criterion or guideline is provided by s.25(2) as to the test to be applied by the court in considering whether it is

expedient to grant an order, but (4) the authorities show that there are certain particular considerations which the court should bear in mind—these considerations explained—*Refco Inc. v. Eastern Trading Co.* [1999] 1 Lloyd's Rep. 159, CA, ref'd to (see *Civil Procedure*, 2003, Vol. 1, paras 6.21.27, 25.1.27, and Vol. 2, paras 5-26 & 9A-112)

- **SNOWSTAR SHIPPING CO. LTD. v. GRAIG SHIPPING PLC.** [2003] EWHC 1367 (Comm); June 13, 2003, unrep. (Morison J.)
CPR, r.31.16—C and D negotiating for sale of container ships—D proposing to fund purchase through Inland Revenue approved UK tax lease scheme—sale of one ship falling through, apparently because, though this was disputed by C, D unable to complete tax lease documentation within stipulated time—C considering bringing against D claims (1) for breach of contract, and (2) for misrepresentation and/or negligent misstatement in relation to the funding of the purchase and completion of the tax lease documentation—under r.31.16, C applying (1) for disclosure by D of all documents that passed between them and the tax authorities concerning the proposed tax lease scheme, and (2) for confirmation of date when those documents were provided (if not expressly shown)—held, dismissing the application, (1) on applications under r.31.16, the court must exercise its discretion if satisfied that (a) the potential claim overcomes a minimum threshold of credibility, and (b) the qualifying conditions have been fulfilled, (2) if the qualifying conditions are satisfied, the court may exercise its discretion, otherwise the application must be dismissed, (3) in the circumstances of this case, the potential claim (a) in contract satisfied the “credibility” test but faced clear difficulties, and (b) for misrepresentation was speculative and its credibility was not aided by the allegation of fraud, (4) C's application (a) fished for disclosure of documents that would be commercially sensitive or covered by privilege, and (b) was too widely drawn, (5) the court did not have the power under r.31.16 to order the date confirmations sought—*Black v. Sumitomo Corporation* [2001] EWCA Civ 1819; [2002] 1 W.L.R. 1562, CA, ref'd to (*Civil Procedure*, 2003, Vol. 1, para. 31.16.3)

- **TASYURDU v. SECRETARY OF STATE FOR THE HOME DEPARTMENT** [2003] EWCA Civ 447; *The Times*, April 16, 2003, CA (Lord Phillips MR & Sedley L.J.)
CPR, rr.1.1, 1.3 & 52.3—adjudicator dismissing asylum seeker's (C) claim—C making renewed application for permission to appeal to Court of Appeal—half an hour before hearing on a Monday morning, Court informed that application withdrawn—Master of the Rolls stating (1) under r.1.3 the parties and their legal advisers have a duty to help the court to achieve the overriding objective (r.1.1), (2) that

objective includes the appropriate use of court resources, (3) in order to ensure that judges' time is not wasted, the parties and their legal advisers have a duty promptly to advise the Court that a case listed for hearing is not proceeding (see *Civil Procedure*, 2003, Vol. 1, paras 1.3.7 & 1.3.8)

- **VOICE AND SCRIPT INTERNATIONAL LTD. v. ALGHAFAR** [2003] EWCA Civ 736; May 8, 2003, CA, unrep. (Judge & Dyson L.J.J.)
CPR, rr.1.1(2)(c) & 27.14(3), Practice Direction (Case Management-Preliminary Stage : Allocation and Re-allocation para. 12.5—claimant (C) bringing county court claim against defendant (D) for £9,140, exclusive of interest—parts of claim unsustainable and some sums pleaded mistakenly overstated—at disposal hearing, district judge entering default judgment against D for £4,700 (including interest) and assessing costs at £6,000—claim not allocated to case management track, either at disposal hearing or previously—on appeal, circuit judge reducing judgment sum to £2,970 and reducing costs to £5,000 (being two-thirds of C's costs to date when pleading errors recognised)—D appealing on ground that costs awarded against him should have been assessed as if C's claim had proceeded as a small claim—Court directing that appeal raised point of principle of sufficient importance to justify second appeal (r.52.13)—held, allowing appeal, (1) this was not a claim in excess of £5,000 which failed on the evidence to produce an award in excess of that amount, (2) it was a claim that was advanced in an amount in excess of £5,000 as a result of mistake, oversight or carelessness, (3) the fact that the claim was not allocated to the small claims track (or to any track) did not preclude the court from considering whether it would be reasonable to make a costs assessment consistent with the small claims costs regime (see r.27.14(3))—Court emphasising overriding requirement of proportionality in civil litigation—*Lownds v. Secretary of State for the Home Department* [2002] EWCA Civ 363; [2002] 1 W.L.R. 2450, CA, ref'd to (see *Civil Procedure*, 2003, Vol. 1, paras 1.3.5, 26PD.12, 27.14.1 & 52.3.8)

Practice Directions

- **PRACTICE DIRECTION (PILOT SCHEME FOR TELEPHONE HEARINGS)** TSO CPR Update 32, May 30, 2003
CPR, r.51.2—supplements Pt 23—provides for a Telephone Hearings Pilot Scheme to operate at Newcastle Combined Court Centre from September 1, 2003, to February 24, 2004—for duration suspends or modifies effects of Practice Direction (Applications) paras 6.1 to 6.5 (see *Civil Procedure*, 2003, Vol. 1, paras 23PD.6 & 51.1.2)

IN DETAIL

Extending time on condition limiting claim

In *Price v. Price* [2003] EWCA Civ 888; June 26, 2003, CA, the facts were that, in April 2001, a claimant (C) issued a claim form in a personal injuries action arising out of an accident occurring in May 1998. The particulars of claim were not served with the claim form, and were not served within the time limit fixed by r.7.4(1) (*i.e.* by April 28, 2001).

The particulars had still not been served by July 2002, when C applied for an extension of time for serving them. The evidence in support of C's application included an expert report and revealed for the first time a claim for £550,000 including special damages. Previously, D had laboured under the impression that the claim would be somewhere in excess of £50,000. C's application was allowed by a deputy district judge, but a circuit judge allowed D's appeal.

When the CPR case management system was brought into effect in April 1999, assurances were given that, with "court control", cases such as this would become things of the past. Certainly, courts are no longer plagued with striking out for want of prosecution applications and with the difficulties involved in applying the *Birkett v. James* test (as elaborately and unhelpfully embroidered over the years by a series of Court of Appeal and House of Lords decisions).

But it remains the position that district judges and circuit judges are required to deal with far too many applications for extensions of time. Their position has been made more difficult than it should be by a series of Court of Appeal decisions applying r.3.9 (Relief from sanctions) generously in favour of badly disorganised parties on the basis that a fair trial of the issues was still possible. This has made judges reluctant to refuse applications for time extensions (often made with some misconceived art. 6 arguments thrown in) and has created a climate in which it is possible for parties "to muck one another about" and to inconvenience the court at late stages in pre-trial timetables, particularly in personal injury cases. Case "management" has been replaced by case "coddling". In far too many instances the scrambling about that has to go on to deal with amended pleadings and new evidence when trial is imminent is just plain silly, and gives the lie to any suggestion that England now has a robust case management system in place.

In *Price v. Price* [2003] EWCA Civ 888; June 26, 2003, CA, unrep., the Court of Appeal (Brooke, Sedley & Hale L.J.J.), though allowing C's appeal, struck a blow for common sense by reminding judges and

practitioners that, when a court exercises its power under r.3.1(2)(a) to extend time, the order made may be subject to conditions (see r.3.1(3)(a)).

The Court drew attention to *Walsh v. Misseldine* February 29, 2000, CA, unrep. (decided after *Biguzzi v. Rank Leisure Plc.* [1999] 1 W.L.R. 1926, CA, and referred to in CP News Issue 4/2000). That was a case in which the claimant (C) commenced county court proceedings in July 1989 for personal injuries arising from an accident in 1986. The defendant (D) admitted liability, made interim payments and, in January 1994, paid money into court. At that time, the sole issue remaining in dispute between the parties was the likely prognosis for one of C's injuries. During a long period of inaction, for much of which both parties were to blame, the action was automatically struck out under CCR O.17, r.11(9). In April 1999 (when the CPR came into effect), following a further period of procedural wrangling, the action was reinstated and then, in June 1999, it was struck out by a district judge for want of prosecution. On appeal, a judge held that, under the CPR, the action should not have been reinstated. C prepared a new schedule of special damages including for the first time substantial items for loss of earnings.

The Court of Appeal (Stuart-Smith & Brooke L.J.J.) allowed C's appeal. The Court held: (1) by focusing on the issue of reinstatement, in the circumstances the judge had adopted the wrong approach, (2) it was possible to conduct a fair trial of the issues as they stood in March 1995 when the case should have been tried, but not on the loss of earnings issues added subsequently, accordingly (3) the action, confined to those issues, should be permitted to proceed subject to conditions, including a condition that C be not entitled to interest on damages between March 1995 and the date of his appeal to the Court of Appeal. The Court emphasised the significance of the fact that the issue of liability was not in dispute.

In the earlier case of *Stockman v. Payne* February 17, 2000, unrep., a case decided before the full significance of r.3.9 was understood, Buckley J. at first instance held that it would be an "overreaction" and not in furtherance of the overriding objective to grant the defendant's application to strike out the claimant's statement of case entirely, but ruled that the trial of the claim should be restricted to the existing schedule of loss and the evidence in support thereof.

In *Price v. Price*, the Court of Appeal recognised its responsibilities by saying: "It is very important that this Court should not relax the disciplinary framework created by the Civil Procedure Rules in a case like this". The Court said that this case was a case in which it was appropriate for the Court to adopt a sim-

ilar approach to that adopted in *Walsh v. Misseldine*.

In allowing C's appeal the Court held: (1) the deputy district judge erred in not addressing his mind to a number of the most important considerations set out in the checklist in r.3.9, (2) the circuit judge erred in not clearly weighing in the balance the prejudice to C caused by a refusal to extend time, (3) in exercising its discretion afresh, the Court held (a) it was not now possible to deal with the case in a manner that was fair to both parties if time was extended unconditionally, (b) barring C from pursuing his claim as it stood in April 2001, when the particulars of claim should have been served, would be a disproportionate response and would give D's insurers an unjustified windfall, accordingly, (4) C's appeal should be allowed by extending the time for service of the particulars of claim on condition that no claim was made for special or general damages other than what might be substantiated by any pre-April 2001 medical report.

Interest waiver in Part 36 offer

CPR, r.36.21 applies where at trial (a) a defendant is held liable for more, or (b) the judgment against a defendant is more advantageous to the claimant, than the proposals contained in a claimant's Part 36 offer.

Where r.36.21 applies, the court may order interest on the whole or part of any sum of money (excluding interest) awarded to the claimant at a rate not exceeding 10% above base rate for some or all of the period starting with the latest date on which the defendant could have accepted the offer without needing the permission of the court (r.36.21(2)). The court will make such an order "unless it considers it unjust to do so" (r.36.21(4)).

The court may also order that the claimant is entitled to (a) his costs on the indemnity basis from the latest date when the defendant could have accepted the offer without needing the permission of the court, and (b) interest on those costs at a rate not exceeding 10% above base rate (r.36.21(3)). Again, the court will make such an order "unless it considers it unjust to do so" (r.36.21(4)).

Rule 36.21(6) states that, in considering whether it would be unjust to make orders under r.36.21(2) or r.36.21(3), the court will take into account all the circumstances of the case including certain particular matters (e.g. the terms of any Part 36 offer).

In *Mitchell v. James* [2002] EWCA Civ 997; [2003] 2 All E.R. 1064, CA, the claimants (C) brought a claim against defendants (D) for specific performance of an oral agreement as to shares. C succeeded at trial and was awarded costs against D. Before proceedings had started, C had made an offer to settle the claim. That offer contained terms as to costs, includ-

ing a term that each side should pay its own costs. D did not accept the offer. After trial, C contended that, pursuant to r.36.21(3), the costs awarded to them by the judge should be assessed on an indemnity basis. This was rejected by the judge. The Court of Appeal (Peter Gibson & Potter L.JJ. and Sir Murray Stuart-Smith) dismissed C's appeal. The Court held that, in determining whether, at trial, a claimant has done better than he proposed in his offer, terms as to costs should not be considered as part of the offer.

In *Ali Reza-Delta Transport Co. Ltd. v. United Arab Shipping Co. S.A.G. (No. 2)* [2003] EWCA Civ 811; *The Times*, July 4, 2003, CA, the facts were that, at trial, the claimants (C) succeeded and were awarded damages of US\$115,800. However, they were dissatisfied with the award and appealed. In the Court of Appeal, C succeeded in that the Court held that the award should be increased to US\$227,400. No question arose as to C's entitlement to their costs of the trial. C had made offers before trial and had, in the event, done better than those offers. Therefore r.36.21 applied to the trial costs and C were entitled to those costs on the indemnity basis.

However, the position as to the costs of the appeal was not so clear-cut. It transpired that C had made, but the defendants (D) had not accepted, an offer by C to settle the appeal for US\$227,400. On the face of it, it seemed that r.36.21 did not apply. However, C's offer included a term in which C waived an entitlement to enhanced (or "uplift") interest on the US\$227,400 (r.36.21(2)) or on costs (r.36.21(3)). The short question which arose was: was the term containing the waiver to be considered part of the offer? If it was, C could argue that the Court of Appeal's judgment was more advantageous to them than their offer, and that, therefore, r.36.21 applied and the Court should award them their costs in accordance with that rule.

The Court (Peter Gibson & Tuckey L.JJ. and Nelson J.) held that the waiver term should not be considered part of the offer. As to C's offer to waive interest on the damages, the Court accepted that such interest, unlike costs, relates directly to the substantive liability claimed. However, the Court pointed out that this aspect of C's offer related solely to uplift interest, that is to say, to interest that a court may award under r.36.21(2) over the ordinary rate, assuming r.36.21 applies. The Court added (para. 9):

"The court can award uplift interest only if the conditions of r.36.21(1) are satisfied. Thus while the provisions of Part 36 expressly contemplate that a Part 36 offer may include an offer as to interest (see r.36.22), and while the court is directed by r.36.21(4) to make an order as to interest in accordance with r.36.21(2) unless it considers it unjust to do so, the draftsman of the rule cannot have contemplated that uplift interest should be any part of the offer to be taken into account in determining the applicability of the rule."

The Court held that D should pay C's costs of the appeal on the standard basis. The Court rejected C's submission that they were entitled to their costs on an indemnity basis under r.44.3 and r.44.4. The Court said that D did not act unreasonably in resisting the appeal, and their conduct of the appeal was in no way improper. This was not one of those rare cases in which indemnity costs were appropriate.

Judicial review of refusal of permission to appeal

Section 54(1) of the Access to Justice Act 1999 states that rules of court may provide that any right of appeal may be exercised only with permission. CPR, r.52.3 was made in exercise of this power and sets out circumstances in which permission to appeal is required (note also Practice Direction (Appeals) para. 4.8).

Section 54(4) of the 1999 Act states: "No appeal may be made against a decision of a court under this section to give or refuse permission (but this subsection does not affect any right under rules of court to make a further application for permission to the same or another court."

In the case of *In re The Housing of the Working Classes Act, Ex p. Stevenson* [1892] 1 Q.B. 609, CA, Lord Esher M.R. said that on the basis of the authorities, including *Lane v. Esdaile* [1891] A.C. 210, H.L., he was prepared to lay down the general proposition that wherever power is given to a legal authority (e.g. a court or tribunal) by legislation to grant or refuse leave to appeal, the decision of that authority is, from the very nature of the thing, final and conclusive; no appeal may be made from a decision in exercise of such a power unless the legislation expressly states otherwise.

As was explained in a note in the Civil Justice Quarterly following *Kemper Reinsurance Co. v. Minister of Finance (Bermuda)* [2000] 1 A.C. 1, P.C., the rule in *Lane v. Esdaile* is based on the view that the purpose of leave requirements is to restrict needless and frivolous appeals. If it were the case (contrary to the rule) that appeals could be made from the grant or refusal of leave to appeal, the result would be that, in attempting to prevent needless and frivolous appeals, the legislative authority would have introduced a news series of appeals with regard to leave to appeal (17 C.J.Q. 359 (1998)).

Section 54(4) may be seen as a statutory expression of the rule in *Lane v. Esdaile*. The significance of the subsection was explained by the Court of Appeal in *Riniker v. University College London (Practice Note)* [2001] 1 W.L.R. 13, CA, where the Court (Brooke & Robert Walker L.J.J.) rejected the submission that, despite s.54(4), it retains an inherent non-statutory jurisdiction to correct errors in the court below.

In the recent case of *Gregory v. Turner* [2003] EWCA Civ 183 (now fully reported at [2003] 1 W.L.R. 1149, CA; [2003] 2 All E.R. 1114, CA) the Court of Appeal (Brooke, Sedley & Carnwath L.J.J.) noted that, in recent months, a new practice has developed. Litigants in person "were now seeking orders from the Administrative Court for permission to apply for judicial review to quash a decision of a circuit judge, sitting as an appeal court, to refuse permission to appeal to him" (para. 29).

The Court explained the viability of this new route of challenge was authoritatively considered by the Court of Appeal in *R.(Sivasubramaniam) v. Wandsworth County Court* [2002] EWCA Civ 1738; [2003] 1 W.L.R. 475, CA, where the Court rejected the submission that it was clearly implicit in s.54(4) that the decision of an appeal court refusing leave to appeal was not susceptible to challenge by judicial review. The decision that the judicial review jurisdiction is not ousted by s.54(4), and that a county court judge's decision refusing permission to appeal may be challenged by an application for judicial review, draws attention to the circumstances in which the jurisdiction might be exercised. It is apparent from what was said in the *Sivasubramaniam* case and in *Gregory v. Turner* that the Court is anxious to ensure that such applications should not be made as a matter of routine where permission to appeal is refused.

In the *Sivasubramaniam* case, Lord Phillips M.R. made clear (at para. 54) that the new statutory scheme provided a litigant with fair, adequate and proportionate protection against the risk that a district judge may have acted without jurisdiction or fallen into error. In those circumstances judges of the Administrative Court should ordinarily exercise their discretion to dismiss such applications for judicial review in a summary manner. The Master of the Rolls added (para. 56) that, however, the possibility remains that there may be very rare cases "where a litigant challenges the jurisdiction of a circuit judge giving or refusing permission to appeal on the ground of jurisdictional error in the narrow, pre-Anisimic sense, or procedural irregularity of such a kind as to constitute a denial of the applicant's right to a fair hearing". If such grounds are made out "we consider that a proper case for judicial review will have been established".

In *Gregory v. Turner*, the Court explained (para. 40) that, unfortunately, the cases before *Anisimic Ltd. v. The Foreign Compensation Commission* [1969] 2 A.C. 147, H.L., do not provide clear guidance. The Court suggested that what is required, at least, is "some fundamental departure from the correct procedures"; a "mere irregularity in procedure" is not enough.

CPR UPDATE

AMENDMENTS TO PRACTICE DIRECTIONS

By TSO CPR Update 32 (May 2003), a number of amendments were made to existing Practice Directions supplementing particular CPR Parts. These changes are explained below. They come into effect on July 31, 2003, except where otherwise indicated. (Other changes made by this Update, and coming into effect on earlier dates, were explained in Issue 6, June 13, 2003, of *CP News*.)

Paragraph and page references are to the 2003 edition of Civil Procedure.

PRACTICE DIRECTION (COURT OFFICES)

para. 2PD.2, p.59

For sub-para (2) of para. 2.1, substitute the following

“(2) The hours during which the offices of the Supreme Court at the Royal Courts of Justice and at the Principal Probate Registry at First Avenue House, 42-49 High Holborn, London WC1V 6HA shall be open to the public shall be as follows:

- (a) from 10 am to 4.30 pm;
- (b) such other hours as the Lord Chancellor, with the concurrence of the Heads of Division, may from time to time direct.”

PRACTICE DIRECTION (SERVICE)

para. 6PD.3, p.202

Paras 3.1 to 3.4 are substituted as follows:

“Service by Facsimile

3.1 Subject to the provisions of paragraph 3.3 below, where a document is to be served by electronic means—

(1) the party who is to be served or his legal representative must previously have expressly indicated in writing to the party serving—

- (a) that he is willing to accept service by electronic means; and
- (b) the fax number, e-mail address or electronic identification to which it should be sent; and

(2) the following shall be taken as sufficient written identification for the purposes of paragraph 3.1(1)—

- (a) the fax number set out on the writing paper

of the legal representative of the party who is to be served; or

(b) a fax number, e-mail address or electronic identification set out on a statement of case or a response to a claim filed with the court.

3.2 Where a party seeks to serve a document by electronic means he should first seek to clarify with the party who is to be served whether there are any limitations to the recipient’s agreement to accept service by such means including the format in which documents are to be sent and the maximum size of attachments that may be received.

3.3 An address for service given by a party must be within the jurisdiction and any fax number must be at the address for service. Where an e-mail address or electronic identification is given in conjunction with an address for service, the e-mail address or electronic identification will be deemed to be at the address for service.

3.4 Where a document is served by electronic means, the party serving the document need not in addition send a hard copy by post or document exchange.”

PRACTICE DIRECTION (PILOT SCHEME FOR TELEPHONE HEARINGS)

para. 23PD.14, p.488

After Practice Direction (Applications) add Practice Direction (Pilot Scheme for Telephone Hearings), made under r.51.2

PRACTICE DIRECTION (ACCOUNTS, INQUIRIES ETC.)

para. 40PD.15, p.948

In para. 15, for “at such rate” to “the testator’s death” substitute

“at the basic rate payable for the time being for funds in court or at such other rate as the court shall direct, beginning one year after the testator’s death.”

PRACTICE DIRECTION (LANDLORD AND TENANT CLAIMS AND MISCELLANEOUS PROVISIONS ABOUT LAND)

As a result of an amendment made to the CPR by the Civil Procedure (Amendment No. 2) Rules 2002,

in Pt 56 (Landlord and Tenant Claims, etc) a “landlord and tenant claim” includes a claim under the Commonhold and Leasehold Reform Act 2002.

Provisions in the 2002 Act affecting the practice direction supplementing Pt 56 come into force, in relation to proceedings in England, on July 31, 2003, and will come into force, in relation to proceedings in Wales, at a later date. New para. 15.1 is added to this practice direction, but is restricted in its application to proceedings in England, and amendments are made to certain paragraphs for the purpose of making it clear that their application is restricted to proceedings in Wales.

para. 56PD.14, p.1410

In heading to para. 6.1 for “leasehold tribunal” substitute “leasehold valuation tribunal”

In para. 6.1(2)(b), delete “by”

At end of para. 6.1, add

(Paragraph 6.1 no longer applies to proceedings in England but continues to apply to proceedings in Wales)

para. 56PD.26, p.1412

Add at end of para. 9.6

(Paragraphs 9.1—9.6 no longer apply to proceedings in England but continue to apply to proceedings in Wales)

para. 56PD.30, p.1414

Add at end of para. 13.3

(Paragraph 13.3 no longer applies to proceedings in England but continues to apply to proceedings in Wales)

para. 56PD.31, p.1415

Add at end of para. 14.6

(Paragraph 14.6 no longer applies to proceedings in England but continues to apply to proceedings in Wales)

After para. 14.7 add the following new paragraph 15.1:

“Transfer to leasehold valuation tribunal under the Commonhold and Leasehold Reform Act 2002

15.1 If a question is ordered to be transferred to a leasehold valuation tribunal for determination under paragraph 3 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 the court will -

- (1) send notice of the transfer to all parties to the claim; and
- (2) send to the leasehold valuation tribunal—
 - (a) the order of transfer; and
 - (b) all documents filed in the claim relating to the question.

(Paragraph 15.1 applies to proceedings in England

PRACTICE DIRECTION (PROBATE)

para. 57PD.2, p.1425

For sub-para. (3) of para. 2.2, substitute

“(3) if the claim is suitable to be heard in the county court—

- (a) a county court in a place where there is also a Chancery district registry; or
- (b) the Central London County Court.”

CUMULATIVE INDEX to CIVIL PROCEDURE NEWS

issues January to June 2003 [1 to 6]

[references are to [year] issue/page]

Access to Justice Act 1999

Commencement Orders, [2003] 6/7

Action for discovery

case summaries, [2003] 6/5

Address for service

case summaries, [2003] 6/2

Admiralty proceedings

case summaries
jurisdiction of High Court, [2003] 6/7

Allocation of track

case summaries
multi-track, [2003] 4/5
relevant matters, [2003] 4/4—[2003] 4/5

Amendments to statements of case

case summaries
grant of permission, [2003] 2/3

Anti-social behaviour orders

Practice Direction, [2003] 3/3

Anti-suit injunction

case summaries, [2003] 1/2—[2003] 1/3

Appeals

case summaries
assignment to Court of Appeal, [2003] 4/4—[2003] 4/5
court's powers, [2003] 4/3—[2003] 4/4
destination, [2003] 6/2
grounds for allowing, [2003] 3/2
hearings, [2003] 1/3, [2003] 3/2, [2003] 6/2
permission, [2003] 4/4, [2003] 6/2
review or re-hearing, [2003] 6/2
second appeals, [2003] 2/3, [2003] 6/2
comment
allowed by consent, [2003] 3/4—[2003] 3/5
contempt of court, [2003] 1/9—[2003] 1/10
CPR, amendments to
architects, registration of, [2003] 3/9
Competition Commission Appeal Tribunal, [2003] 4/10

health care professionals, registration of, [2003] 3/9
immigration and asylum, [2003] 3/9—[2003] 3/10
Immigration Appeals Tribunal, [2003] 4/10
Practice Direction, amendments to
routes of appeal, [2003] 6/14—[2003] 6/15

Application of CPR

case summaries
insolvency proceedings, [2003] 2/2
CPR, amendments to, [2003] 6/12

Arbitration

CPR, amendments to
claim form, [2003] 3/12

Architects, registration of

CPR, amendments to, [2003] 3/9

Armed forces

case summaries
asbestosis claim, [2003] 6/5

Assessors

case summaries
role, [2003] 1/2
comment
race discrimination claims, [2003] 1/5—[2003] 1/7

Audience, rights of

case summaries
direction of Lord Chancellor, [2003] 5/3

Carriers' liability

CPR, amendments to
immigration and asylum, [2003] 3/9—[2003] 3/10

Case management

case summaries
allocation of track, [2003] 4/4—[2003] 4/5
correction of errors, [2003] 2/3, [2003] 6/2
court's duty, [2003] 2/2
extending time limits, [2003] 3/3
making order of court's own initiative, [2003] 2/2, [2003] 4/4—[2003] 4/5
multi-track, [2003] 4/5
order in which issues resolved, [2003] 5/4

relief from sanctions, [2003] 1/3, [2003] 5/4, [2003] 6/4
setting aside struck out judgment, [2003] 5/4
stay of proceedings, [2003] 1/2—[2003] 1/3, [2003] 5/4, [2003] 6/2
striking out statement of case, [2003] 6/3, [2003] 6/4
trial with jury, [2003] 5/3
comment
correction of errors, [2003] 2/3

CPR, amendments to
sanctions for non-payment of fees, [2003] 6/12

Citation of authorities

case summaries
compliance with Practice Direction, [2003] 4/2—[2003] 4/3

Civil Procedure Rules 1998

amendments, [2003] 6/7

Claim form

case summaries
dispensing with service, [2003] 6/2
extension of time for service, [2003] 6/2
generally, [2003] 6/2
title of proceedings, [2003] 6/2
comment
dispensing with service, [2003] 6/8—[2003] 6/9
naming defendant, [2003] 6/10—[2003] 6/11

Collective conditional fee agreements

case summaries
requirements for contents, [2003] 1/4, [2003] 6/4
Regulations, amendments to requirements for contents, [2003] 6/14

Commercial Court

CPR, amendments to
transfer of proceedings, [2003] 3/12

Commonhold and Leasehold Reform Act 2002

CPR, amendments to, [2003] 2/8

Communication by e-mail

CPR, amendments to
pilot scheme, [2003] 3/7
Practice Direction
pilot scheme, [2003] 3/3

Companies

case summaries
discretion, [2003] 1/3
interest, [2003] 1/3
representation at trial, [2003]
1/2
service, [2003] 5/3, [2003]
6/2

Competition Commission Appeals Tribunal

CPR, amendments to, [2003]
4/10

Conditional Fee Agreements Regulations 2000

amendments, [2003] 6/7,
[2003] 6/13

Consent judgments and orders

case summaries
Tomlin order, [2003] 5/4

Conduct money

case summaries
witnesses, [2003] 2/3

Contempt of court

comment
appeals, [2003] 1/9—[2003]
1/10
interests of justice, [2003] 6/5
sources of information,
[2003] 6/5

Contribution

case summaries
assessment, [2003] 6/3

Correction of errors

case summaries
effect of non-compliance,
[2003] 6/2
comment
court's powers, [2003] 2/3

Costs

case summaries
basis of assessment, [2003]
4/4
costs-only proceedings,
[2003] 4/3
definitions, [2003] 4/2
detailed assessment, [2003]
2/2, [2003] 4/3
discretion, [2003] 1/3, [2003]
2/2, [2003] 2/3—[2003]
2/4, [2003] 3/2, [2003] 6/4
factors in determination of
amount, [2003] 2/2, [2003]
4/3funding arrangements,
[2003] ?

indemnity principle, [2003] 6/4
interim certificates, [2003]
2/2, [2003] 5/2—[2003] 5/3
non-party disclosure, [2003]
2/3

Part 36 offers and payments,
[2003] 1/3, [2003] 3/2,
[2003] 4/2, [2003] 4/3,
[2003] 4/4

payment on account, [2003]
2/2, [2003] 2/3—[2003]
2/4, [2003] 5/2—[2003] 5/3
summary assessment, [2003]
2/2, [2003] 3/9

time for compliance with
order, [2003] 5/2—[2003]
5/3

transitional arrangements,
[2003] 2/2, [2003] 6/4
trustees, [2003] 2/3—[2003]
2/4

wasted costs order, [2003]
5/4

CPR, amendments to
definitions, [2003] 6/12
SCA 1981, amendments to
civil division of Court of
Appeal, [2003] 6/14

Costs-only proceedings

case summaries, [2003] 4/3

Costs orders

case summaries
funding arrangements,
[2003] 1/4

Court Funds Rules

amendments, [2003] 4/6,
[2003] 6/7

Criminal investigations

Practice Direction
restraint orders, [2003] 3/3

Cross-examination

case summaries
hearsay evidence, [2003] 3/2

Crown proceedings

case summaries
armed forces, [2003] 6/5

Declaratory judgments

case summaries
jurisdiction of court, [2003]
6/6

Defamation claims

case summaries
evidence, [2003] 4/2
offer to amend, [2003] 4/2,
[2003] 6/3, [2003] 6/7
s.3 procedure, [2003] 4/2
summary disposal, [2003]
2/4

Default judgment

case summaries
conditions to be satisfied,
[2003] 5/2
setting aside, [2003] 5/2
comment
tests for setting aside, [2003]
5/6

Defence

case summaries
contents, [2003] 6/5—[2003]
6/6

Defence of tender

CPR, amendments to, [2003]
3/8—[2003] 3/9

Destination of appeals

case summaries, [2003] 6/2

Destination of Appeals Order

amendments, [2003] 4/6

Detailed assessment

case summaries
brief fee, [2003] 2/2
liability for costs of proceed-
ings, [2003] 4/3
two counsel rule, [2003] 2/2

Directions

case summaries
issues on which evidence
required, [2003] 6/5—
[2003] 6/6

Directors disqualification proceedings

CPR, amendments to
listing questionnaires, [2003]
3/11

Disclosed privileged document, use of

case summaries, [2003] 5/2
comment, [2003] 5/5—[2003]
5/6

Disclosure

case summaries
claim for disclosure and pro-
duction, [2003] 6/5
documents in party's control,
[2003] 6/3
documents referred to in state-
ments of case, [2003] 6/7
legal professional privilege,
[2003] 5/2, [2003] 6/4
non-party disclosure, [2003]
2/3, [2003] 6/4
pre-action disclosure, [2003]
1/2
privilege, [2003] 1/3—[2003]
1/4, [2003] 6/2—[2003] 6/3
specific disclosure, [2003]
1/2, [2003] 4/5, [2003] 6/7
standard disclosure, [2003]
4/5

- use of disclosed privileged documents, [2003] 5/2
without prejudice communications, [2003] 1/3—[2003] 1/4
comment
legal advice privilege, [2003] 5/7
use of disclosed privileged documents, [2003] 5/5—[2003] 5/6
CPR, amendments to
generally, [2003] 3/7
- Disclosure and production, claim for**
case summaries, [2003] 6/5
- Discovery, action for**
case summaries, [2003] 6/5
- Discretion**
case summaries
costs, [2003] 1/3, [2003] 2/2, [2003] 2/3—[2003] 2/4, [2003] 3/2
specific disclosure, [2003] 1/2
- Dispensing with service**
case summaries
court's powers, [2003] 6/2
- Disputing court's jurisdiction**
case summaries, [2003] 6/4—[2003] 6/5
- E-mail filing**
CPR, amendments to
pilot scheme, [2003] 3/7
Practice Direction
pilot scheme, [2003] 3/3
- Equal footing of parties**
case summaries, [2003] 2/3—[2003] 2/4
- Errors, correction of**
case summaries
effect of non-compliance, [2003] 6/2
comment
court's powers, [2003] 2/3
- Estates, trusts and charities**
CPR, amendments to, [2003] 4/11
- European Court, references to**
case summaries
trade mark infringements, [2003] 1/2
Practice Direction, amendments to
Court Information Note, [2003] 6/15
- Evidence**
case summaries
court's powers, [2003] 1/3—[2003] 1/4, [2003] 4/2 [2003] 4/5, [2003] 5/2, [2003] 6/2—[2003] 6/3, [2003] 6/5, [2003] 6/6
cross-examination on hearsay, [2003] 3/2
directions as to issues, [2003] 6/5—[2003] 6/6
exclusion of otherwise admissible evidence, [2003] 3/2—[2003] 3/3, [2003] 5/3
question of foreign law, [2003] 6/5
witness statements, [2003] 2/2, [2003] 3/2
Extending time limits
case summaries
generally, [2003] 3/3
service of claim form, [2003] 6/2
- Failure to attend hearing**
case summaries
claimants, [2003] 1/2
comment
good reasons, [2003] 1/7—[2003] 1/8
- Fast track**
CPR, amendments to
listing questionnaire, [2003] 3/7
- Fees Orders**
amendments, [2003] 4/6, [2003] 5/4
- Filing of documents**
CPR, amendments to
e-mail, [2003] 3/7
Practice Direction
e-mail, [2003] 3/3
- Foreign law, question of**
case summaries, [2003] 6/5
- Forms**
Practice Direction, amendments to
witness summons, [2003] 6/15
- Freedom of expression**
case summaries, [2003] 1/3—[2003] 1/4
- Freezing injunction**
case summaries, [2003] 1/4, [2003] 6/4
- Fresh evidence**
case summaries
judicial review, [2003] 6/6
- Funding arrangements**
case summaries
costs orders, [2003] 1/4
- Group litigation order**
case summaries, [2003] 2/2
- Health care professionals, registration of**
CPR, amendments to, [2003] 3/9
- Hearings**
case summaries
appeals, [2003] 1/3, [2003] 3/2
claimant's failure to attend, [2003] 1/2
representation of companies, [2003] 1/2
summary judgment, [2003] 2/2
comment
good reasons for failure to attend, [2003] 1/7—[2003] 1/8
- Hearsay evidence**
case summaries
cross-examination, [2003] 3/2
- High Court jurisdiction**
case summaries
exercise other than by judge of the court, [2003] 5/2
inherent jurisdiction, [2003] 5/3
- Hire purchase**
CCR, amendments to
particulars of claim, [2003] 6/13
Practice Direction, amendments to
starting proceedings, [2003] 6/14
- Human rights**
case summaries
freedom of expression, [2003] 1/3—[2003] 1/4
judicial remedies, [2003] 6/6
overriding objective, [2003] 1/3, [2003] 3/2—[2003] 3/3, [2003] 5/3
prohibition of torture, [2003] 6/6
remedial action, [2003] 1/3—[2003] 1/4
right to a fair trial, [2003] 5/2
right to respect for private and family life, [2003] 5/3, [2003] 6/6
- Immigration and asylum**
CPR, amendments to
carriers' liability, [2003] 3/9—

- [2003] 3/10
- Immigration Appeals Tribunal**
CPR, amendments to, [2003] 4/10
- Indemnity principle**
case summaries, [2003] 6/4
- Information about property or assets**
case summaries, [2003] 4/5
- Insolvency proceedings**
case summaries
application of CPR, [2003] 2/2
- Inspection**
case summaries
specific inspection, [2003] 1/2
- Insurance premiums**
case summaries
recoverability, [2003] 1/4, [2003] 4/3
- Intellectual property claims**
CPR, amendments to
generally, [2003] 4/11
procedural rules, [2003] 2/4
- Interest on costs**
case summaries
date from which runs, [2003] 1/3
- Interim certificate of costs**
case summaries
power to issue, [2003] 2/2, [2003] 5/2—[2003] 5/3
- Interim injunctions**
case summaries
generally, [2003] 6/2
restraint of publication of confidential information, [2003] 6/3
- Interim remedies**
case summaries
anti-suit injunction, [2003] 1/2—[2003] 1/3
applicant's duties on application without notice, [2003] 1/4
freezing injunction, [2003] 1/4, [2003] 6/4
generally, [2003] 2/2
information about property or assets, [2003] 4/5
interim injunctions, [2003] 6/2, [2003] 6/3
pre-action disclosure, [2003] 1/2
securing specified fund, [2003] 4/5
- Judges**
maximum number, [2003] 6/7
- Judgment in default**
case summaries
conditions to be satisfied, [2003] 5/2
setting aside, [2003] 5/2
comment
tests for setting aside, [2003] 5/6
- Judicial review**
case summaries
fresh evidence, [2003] 6/6
generally, [2003] 6/6
CPR, amendments to
generally, [2003] 4/10, [2003] 4/10—[2003] 4/11
pre-action protocol, [2003] 3/12
title of Part, [2003] 4/6
- Jurisdiction**
case summaries
admiralty proceedings, [2003] 6/7
anti-suit injunction, [2003] 1/2—[2003] 1/3
declarations, [2003] 6/6
- Jury trial**
case summaries
application, [2003] 5/4
- Land, provisions about**
CPR, amendments to
Commonhold and Leasehold Reform Act 2003, [2003] 2/8
- Legal aid**
transitional cases, [2003] 2/4
- Legal professional privilege**
case summaries
client/unknown third party, [2003] 5/2
generally, [2003] 5/2
injurious to public interest, [2003] 6/4
use of disclosed privileged documents, [2003] 5/2
waiver, [2003] 5/2
comment
legal advice privilege, [2003] 5/7
use of disclosed privileged documents, [2003] 5/5—[2003] 5/6
- Listing windows**
Practice Direction, [2003] 4/5—[2003] 4/6
- Lugano Convention**
case summaries
prorogation of jurisdiction, [2003] 6/4—[2003] 6/5
special jurisdiction, [2003] 6/2
- Mareva injunction**
case summaries, [2003] 1/4
- Multi-track**
case summaries
case management, [2003] 4/5
CPR, amendments to
listing questionnaire, [2003] 3/7
- Naming defendant**
comment, [2003] 6/10—[2003] 6/11
- New hearings**
comment, [2003] 6/9—[2003] 6/10
- Non-parties**
case summaries
costs orders, [2003] 2/3
disclosure, [2003] 2/3, [2003] 6/4
- Non-payment of fees, sanctions for**
CPR, amendments to, [2003] 6/12
- Obtaining information from judgment debtors**
CPR, amendments to
breach of terms of suspended committal, [2003] 3/10
- Offers to amend**
case summaries
court's powers, [2003] 6/7
disclosure, [2003] 6/3
s.3 procedure, [2003] 4/2
- Offers to settle**
case summaries
costs consequences where beat offer, [2003] 1/3, [2003] 3/2, [2003] 4/2, [2003] 4/3, [2003] 4/4
disclosure, [2003] 6/3
generally, [2003] 3/2, [2003] 4/3, [2003] 4/4, [2003] 5/2
pre-commencement offers, [2003] 4/3, [2003] 4/4
comment
pre-commencement offers, [2003] 4/8—[2003] 4/9
- Order in which issues resolved**
case summaries, [2003] 5/4
- Order of court's own initiative**
case summaries
case management, [2003] 2/2, [2003] 4/4—[2003] 4/5
summary judgment hearings, [2003] 2/2

Overriding objective

case summaries
 cost and delay, [2003] 1/2—
 [2003] 1/3, [2003] 1/3,
 [2003] 4/4—[2003] 4/5
 duties of the parties, [2003]
 5/3
 equal footing of parties,
 [2003] 2/3—[2003] 2/4
 generally, [2003] 2/2, [2003]
 2/3, [2003] 5/4, [2003] 6/2,
 [2003] 6/4
 human rights, [2003] 1/3,
 [2003] 3/2—[2003] 3/3,
 [2003] 5/3
 justice and fairness, [2003]
 3/2—[2003] 3/3, [2003]
 5/3, [2003] 6/7
 proportionality, [2003] 2/3—
 [2003] 2/4, [2003] 4/4—
 [2003] 4/5
 resources of court, [2003] 5/2

Part 20 claims

case summaries
 meaning, [2003] 4/2

Part 36 offers and payments

case summaries
 costs consequences where
 beat offer, [2003] 1/3,
 [2003] 3/2, [2003] 4/2,
 [2003] 4/3, [2003] 4/4
 costs consequences where
 fail to beat offer, [2003] 4/2
 disclosure, [2003] 6/3
 generally, [2003] 3/2, [2003]
 4/3, [2003] 4/4, [2003] 5/2
 pre-commencement offers,
 [2003] 4/3, [2003] 4/4
 comment
 pre-commencement offers,
 [2003] 4/8—[2003] 4/9
 recoverable benefits, [2003]
 4/7—[2003] 4/8
 CPR, amendments to
 acceptance of payment in,
 [2003] 3/8
 notice of payment, [2003]
 2/8, [2003] 3/7—[2003] 3/8
 payment in under court
 order, [2003] 2/8

Particulars of claim

CCR, amendments to
 hire purchase, [2003] 6/13

Patent claims

CPR, amendments to
 generally, [2003] 4/11
 Practice Direction, [2003]
 3/12

procedural rules, [2003] 2/4
 Practice Direction, [2003] 3/3

Patents Court Guide

website, [2003] 2/7

Payment on account of costs

case summaries, [2003] 2/2,
 [2003] 2/3—[2003] 2/4,
 [2003] 5/2—[2003] 5/3

Payments in to court

case summaries
 generally, [2003] 3/2, [2003]
 4/3, [2003] 4/7—[2003]
 4/8, [2003] 5/2

comment
 recoverable benefits, [2003]
 4/6

CPR, amendments to
 acceptance, [2003] 3/8
 defence of tender, [2003]
 3/8—[2003] 3/9

listing questionnaire, [2003]
 3/7

notice, [2003] 2/8, [2003]
 3/7—[2003] 3/8

payment under court order,
 [2003] 2/8, [2003] 3/8

vehicular access across
 common land, [2003] 3/9

Permission to appeal

case summaries
 basic criteria for grant, [2003]
 4/4
 second appeals, [2003] 2/3,
 [2003] 6/2

Pilot schemes

CPR, amendments to
 e-mail filing, [2003] 3/7
 Practice Direction
 e-mail filing, [2003] 3/3
 small claims, [2003] 1/4

Points of dispute

comment
 verification, [2003] 3/6

Possession claims

CPR, amendments to
 starting claims, [2003] 3/10

Practice Directions

anti-social behaviour orders,
 [2003] 3/3

intellectual property claims,
 [2003] 3/3

listing windows, [2003] 4/5—
 [2003] 4/6

patent claims, [2003] 3/3

pilot schemes

e-mail filing, [2003] 3/3

small claims, [2003] 1/4

recovery orders, [2003] 3/3

restraint orders, [2003] 3/3

Pre-action disclosure

case summaries
 generally, [2003] 1/2
 procedure, [2003] 1/2

Pre-action protocol

CPR, amendments to
 judicial review, [2003] 3/12

Pre-action offers

case summaries, [2003] 4/3,
 [2003] 4/4
 comment, [2003] 4/8—[2003]
 4/9

Privilege

case summaries
 legal professional privilege,
 [2003] 5/2, [2003] 6/4
 without prejudice communi-
 cations, [2003] 1/3—
 [2003] 1/4, [2003] 6/2—
 [2003] 6/3

Privileged document, use of

case summaries, [2003] 5/2
 comment, [2003] 5/5—[2003]
 5/6

Proceeds of crime

Practice Direction
 recovery orders, [2003] 3/3

Proportionality

case summaries, [2003] 2/3—
 [2003] 2/4, [2003] 4/4—
 [2003] 4/5

Protocols

comment, [2003] 3/5—[2003]
 3/6

CPR, amendments to
 compliance, [2003] 3/11
 pre-action behaviour, [2003]
 3/11—[2003] 3/12

Receivers, appointment of

Practice Direction
 criminal proceedings, [2003]
 3/3

Recovery orders

Practice Direction
 proceeds of crime, [2003]
 3/3

References to European Court

case summaries
 trade mark infringements,
 [2003] 1/2

Practice Direction, amend-
 ments to
 Court Information Note,
 [2003] 6/15

Registered design claims

CPR, amendments to
 generally, [2003] 4/11
 procedural rules, [2003] 2/4

Rehearings

case summaries, [2003] 1/3,
[2003] 3/2, [2003] 6/2
comment, [2003] 6/9—[2003]
6/10

Relief from sanctions

case summaries
court's powers, [2003] 1/3,
[2003] 5/4, [2003] 6/4
interests of justice, [2003] 3/3

Remedial action

case summaries, [2003] 1/3—
[2003] 1/4

Representation at trial

case summaries
companies, [2003] 1/2

Representative parties

case summaries
death, [2003] 6/6

Restraint of publication, injunctions in

case summaries
confidential information,
[2003] 6/3

Restraint orders

Practice Direction, [2003] 3/3

Rights of audience

case summaries
direction of Lord Chancellor,
[2003] 5/3

Sanctions for non-payment of fees

CPR, amendments to, [2003]
6/12

Sanctions, relief from

case summaries
court's powers, [2003] 1/3,
[2003] 5/4, [2003] 6/4
interests of justice, [2003] 3/3

Second appeals

comment
permission, [2003] 2/3,
[2003] 6/2

Securing specified fund

case summaries, [2003] 4/5

Security for costs

CPR, amendments to
conditions to be satisfied,
[2003] 2/8
comment, [2003] 2/5—[2003]
2/6

Service

case summaries
address, [2003] 6/2
dispensing, [2003] 6/2
foreign corporation in
England, [2003] 5/3
methods, [2003] 5/3, [2003]

6/2

registered companies, [2003]
5/3, [2003] 6/2
comment
dispensing with service of
claim form, [2003] 6/8—
[2003] 6/9

Service out of the jurisdiction

Practice Direction, amend-
ments to, [2003] 6/14

Setting aside default judgment

case summaries
regular judgments, [2003] 5/2
comment
tests, [2003] 5/6

Setting aside struck out judgment

case summaries, [2003] 5/4

Small claims

Practice Direction
pilot scheme, [2003] 1/4

Specialist proceedings

CPR, amendments to, [2003]
2/8

Specific disclosure

case summaries, [2003] 1/2,
[2003] 4/5, [2003] 6/7

Standard disclosure

case summaries, [2003] 4/5

Starting proceedings

case summaries
claim form, [2003] 6/2
extension of time, [2003] 6/2
title of proceedings, [2003]
6/2

CPR, amendments to
possession claims, [2003]
3/10

Statement of value

case summaries
claim form, [2003] 4/4—
[2003] 4/5

Statements of case

case summaries
amendments, [2003] 2/3
defence, [2003] 6/5—[2003]
6/6
disclosure of documents
referred to in, [2003] 6/7
striking out, [2003] 1/2,
[2003] 2/2, [2003] 4/4—
[2003] 4/5, [2003] 5/2,
[2003] 6/3, [2003] 6/4

Practice Direction, amend-
ments to
hire purchase claims, [2003]
6/14

Statements of truth

comment

verification, [2003] 3/6

Statutory review

CPR, amendments to, [2003]
4/6, [2003] 4/10, [2003]
6/12—[2003] 6/13

Stay of proceedings

case summaries
generally, [2003] 1/2—[2003]
1/3, [2003] 5/4, [2003] 6/2
transitional arrangements,
[2003] 1/3

Striking out statements of case

case summaries
abuse of process, [2003] 6/3,
[2003] 6/4
generally, [2003] 2/2, [2003]
4/4—[2003] 4/5
no reasonable grounds for
claim, [2003] 1/2
obstruction of just disposal,
[2003] 6/3, [2003] 6/4
overlap with Part 24, [2003]
5/2
setting aside, [2003] 5/4

Success fees

case summaries
recoverability, [2003] 1/4,
[2003] 4/3

Summary assessment of costs

case summaries, [2003] 2/2
CPR, amendments to
meaning, [2003] 3/9

Summary disposal

case summaries
defamation claims, [2003] 2/4

Summary judgment

case summaries
burdens of proof, [2003] 5/2
grounds, [2003] 2/2, [2003]
2/4
hearings, [2003] 2/2
no other compelling reason for
trial, [2003] 2/4, [2003] 6/5
no real prospect of succeed-
ing, [2003] 4/3—[2003]
4/4, [2003] 5/2
overlap with power to strike
out, [2003] 5/2
comment
judgment at trial, [2003]
2/6—[2003] 2/7
tests, [2003] 5/6

Technology and Construction Court

case summaries
jurisdiction of judges, [2003]
5/2
CPR, amendments to

transfer of proceedings,
[2003] 3/12

Tender, defence of

CPR, amendments to, [2003]
3/8—[2003] 3/9

Time limits

case summaries
actions begun after expiry of
primary period, [2003] 6/6
extension, [2003] 3/3

Title of proceedings

case summaries
generally, [2003] 6/2

Tomlin orders

case summaries, [2003] 5/4

Trade mark claims

CPR, amendments to
generally, [2003] 4/11
procedural rules, [2003] 2/4

Trade mark infringement

case summaries
reference to European Court,
[2003] 1/2

Traffic enforcement

CPR, amendments to
Practice Direction, [2003]
3/10

Practice Direction, amend-
ments to
definitions, [2003] 6/15
period for filing statutory dec-
laration, [2003] 6/15

Transitional arrangements

case summaries
costs, [2003] 2/2, [2003]
6/4
stay of proceedings, [2003]
1/3

Travelling expenses

case summaries
witnesses, [2003] 2/3

Trial with jury

case summaries
application, [2003] 5/4

Trustees

case summaries
costs, [2003] 2/3—[2003] 2/4

**Vehicular access across com-
mon land**

CPR, amendments to
payments into court, [2003]
3/9

Waiver

case summaries
legal professional privilege,
[2003] 5/2

Wasted costs orders

case summaries
procedure, [2003] 5/4

**Without prejudice communica-
tions**

case summaries
disclosure, [2003] 1/3—
[2003] 1/4

**Witness statements as evi-
dence, use of**

case summaries
generally, [2003] 2/2
witness not called, [2003] 3/2

Witness summonses

case summaries
conduct money, [2003] 2/3
generally, [2003] 2/3
Practice Direction, amend-
ments to
form, [2003] 6/15