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Cases

■ CONTRACT FACILITIES LTD v. REES [2003] EWCA Civ 1105; July 24, 2003, CA, unrep. (Waller & Hale L.JJ.)
CPR rr.2.1(2), 3.1(2)(3), 3.8, 25.15, 52.3(7) & 52.9, Supreme Court Act 1981 s.51—company (C) with no assets bringing High Court claim against deceased estate (D) for breach of contract for purchase of shares—proceedings funded by individual (S)—at trial, judge dismissing claim and making costs order in favour of D—judge granting C permission to appeal—D applying to Court of Appeal for order that, unless C satisfy outstanding costs orders, their appeal be struck out—held, granting the application, (1) the Court has case management powers in addition to those that it may have under r.52.9, (2) the general powers of case management stated in r.3.1 may be exercised by the courts referred to in r.2.1(1), and therefore may be exercised by the Court of Appeal, (3) the imposing of the condition would not prejudge the issue whether S should be personally liable for the costs of the trial (see *Civil Procedure* 2003, Vol. 1, paras 2.1.1, 3.1.4, 3.1.5, 25.12.2, 48.2.1, 52.3.11 & 52.9.4, and Vol. 2, para. 9A-265)

■ BODLE v. COUTTS & CO. [2003] EWHC 1865 (Ch); July 17, 2003, unrep. (Peter Smith J.)
Human Rights Act 1998 Sched.1 Pt I art.6—in 1994, bank (D) obtaining judgment against borrower (C)—in 2002, on basis of this judgment debt, statutory demand served on C by D—C applying to set statutory demand aside—in course of these proceedings, C applying for order restraining firm of solicitors (X) from acting for D—X acting for C from early 1990s to 1995 in relation to a number of matrimonial matters and also acting for her in early stages of proceedings relating to D's obtaining of their judgment against her—concern that solicitors in X now acting for D might wish to have access to information in files held in their office relating to matters on which the firm acted for C—conceivably, such information might be relevant to (1) issue whether statutory demand statute barred and (2) issue whether C had ever acknowledged debt—X asserting unpaid lien over files—judge examining files—held, dismissing application (1) the files contained no relevant information that would assist C, (2) even if there were, X had satisfied the court that there was no risk of disclosure of confidential information to D, (3) there was no procedural unfairness in the procedure adopted (see *Civil Procedure* 2003, Vol. 2, para. 7C-225)

■ BRADFORD & BINGLEY BUILDING SOCIETY v. HARPER [2003] EWCA Civ 216; January 24, 2003, CA, unrep. (Simon Brown & Arden L.JJ.)
CPR rr.52.3(6) & 52.10, Supreme Court Act 1981 s.15—in county court possession proceedings, district judge striking out mortgagor's (D) defence and granting mortgagees (C) possession order—judge dismissing D's appeal—D's application for re-hearing refused—Court of Appeal granting D permission to appeal and appeal disposed of by consent order staying possession on terms—after D's death, C moving to gain possession in accordance with the consent order and obtaining warrant for possession—district judge refusing D's executor's (X) application to a county court to set aside the Court of Appeal's order on ground that it had been obtained by fraud in form of C's reliance on inflated and false figures—judge dismissing X's appeal and refusing permission to appeal—X (in person) applying to Court of Appeal for permission to appeal—held, refusing application but granting short stay of warrant of execution, (1) the application was misconceived and had no prospect of success, (2) this was not a case in which, without causing practical difficulties, it was possible to establish clearly whether a fraud had been committed as part of the appeal process, (3) the alleged fraud may have materially contributed to the order sought to be set aside, (4) in any event, the allegation should be made, not by way of appeal, but in a separate action to set the judgment aside (see *Civil Procedure* 2003, Vol. 1, paras 3.1.9, 40.2.1, 40.6.3, and Vol. 2, para. 9A-47)

■ CARLCO LTD. v. CHIEF CONSTABLE OF THE DYFED POWYS POLICE [2002] EWCA Civ 1754; November 18, 2002, CA, unrep. (Simon Brown, May & Clarke L.JJ.)
CPR rr.3.4(2)(c) & 22.1, Practice Direction (Statements of Truth) para. 3.4, Companies Act 1975 s.726(1)—company (C) bringing action against police (D) claiming damages for misfeasance in public office, defamation and breach of confidence—High Court judge concluding (1) that C had seriously failed to give proper disclosure to D in accordance with a peremptory order made at a case management conference in relation to disclosure order, and (2) that C's claim was highly speculative—after substantial witness statements

had been exchanged, in purported compliance with the order, an individual (X) who was not an authorised officer of C, preparing and serving a statement—at further case conference, judge finding that C (1) had not properly complied with the disclosure order and (2) were in gross breach of the peremptory order—on D's application, judge striking out C's claim and entering judgment for D—single lord justice granting C permission to appeal—held, allowing C's appeal on terms that £10,000 be paid into court as security for D's costs, (1) the judge had taken into account all relevant considerations and had applied the right principles, (2) X's statement was deficient in form and in certain material respects (especially as to issues of causation and quantum), however (3) it was not so deficient as to constitute a gross breach of the order and, in the circumstances, C's claim should not be struck out as that would be an unjust outcome, (4) it was not suggested that C's claim had no prospects of success [Ed.: this was not a case where application was made under r.3.9 for relief from a procedural sanction] (see *Civil Procedure* 2003, Vol. 1, paras 3.4.4 & 22PD.3)

■ CITIBANK N.A. v. RAFIDIAN BANK [2003] EWHC 1950 (QB); July 31, 2003, unrep. (Tugendhat J.)
CPR rr.3.1(2)(a), 3.9, 52.6 & 74.8, Judgment Regulation (Council Regulation (EC) No. 44/2001) art.43—bank (C) bringing proceedings in Dutch court against corporation (D) domiciled in non-Contracting State—C obtaining judgment for US $11.4m—Master granting C's application to register judgment in High Court—notice of registration served on D on March 21, 2002—time for appealing against registration (then fixed by CPR Sched.1, O.71, r.33(1)(b)) expiring on May 21, 2002 (see now CPR, r.74.8(4))—on June 12, 2003 (after CPR Pt. 74 coming into force), D applying to extend time limit for appealing—single judge refusing D's application on paper—held, dismissing C's appeal, (1) under r.74.8(3), the court may extend time for appealing against the registration of a judgment for enforcement, provided the application is made within two months of service of the registration notice, (2) under r.3.1(2)(a), except where the rules "provide otherwise", the court may extend a time limit fixed by rule, even if an application for extension is made after the time for compliance has expired, (3) in this context, r.74.8(3) did not "provide otherwise" and, therefore, the court had jurisdiction to extend time notwithstanding that D's application was made after May 21, 2002, however (4) in the exercise of discretion, and applying the criteria stated in r.3.9, the application should not be granted (see *Civil Procedure* 2003, Vol. 1, paras 3.1.2, 52.6.2, 74.11.17 & 74.11.37, and Vol. 2, para. 5-256)

■ INDEPENDIENTE LTD v. MUSIC TRADING ONLINE (HK) LTD [2003] EWHC 470 (Ch); March 13, 2003, unrep. (Sir Andrew Morritt V.-C.)
CPR rr.1.2 & 19.6 [RSC O.15, r.12]—several copyright holders (C) bringing claim against retailers (D) for infringement—C suing on behalf of themselves and other members (X) of copyright protection trade groups—D applying for direction under r.19.6(2) preventing claimants from acting in representative capacity—held, dismissing D's application, (1) a representative claimant may sue in a representative capacity without the authority of those he claims to represent provided the claim satisfies the conditions of r.19.6(1), (2) in cases falling within r.19.6(1), the rule itself provides the authority of the person represented, (3) C did not have actual authority from X to commence proceedings on their behalf, (4) the applicability of r.19.6 depends, in part, on the nature of the issues raised by the particulars of claim, (5) the requirement in r.19.6(1) that the claimant and those he purports to represent should "have the same interest" is the same as that previously contained in RSC O.15, r.12, and the general principles applicable under r.12 apply, (6) the rule should be applied flexibly and in conformity with the overriding objective, (7) C and X had (a) a common interest and (b) a common grievance, and the relief sought by C was in its nature beneficial to X, (8) in the circumstances, the court should not direct under r.19.6(2) that the claimants may not act as representatives (see *Civil Procedure* 2003, Vol. 1, para. 19.6.3; see also *Supreme Court Practice* 1999, para. 15/12/2)

■ JOHNSON v. PEROT SYSTEMS EUROPE LTD [2003] EWHC 1581 (QB); June 20, 2003, unrep. (Gray J.)
CPR rr.3.4, 17.1 & 24.2—in case raising allegations of breach of contract and defamation, claimants (C) applying to amend particulars of claim—defendants (D) not making application to strike out or for summary judgment but contending that, as amended, claim would have no real prospect of success—Master granting C's application without prejudice to D's entitlement subsequently to apply to strike out—D appealing to judge and applying to strike out and/or for summary judgment—held, dismissing D's appeal and refusing their application to strike out (r.3.4) but granting their application for summary judgment (r.24.2) on part of C's claim, (1) under r.3.4 the court must assume that the facts are as pleaded whereas under r.24.2 it is permissible for the court to consider the factual evidence, (2) in the present case, the ultimate question was whether the amended pleading had a real

prospect of success, (3) in holding that C's amendment should not be refused simply on the ground that, as amended, their case had no real prospect of success, the Master fell into error (see *Civil Procedure* 2003, Vol. 1, paras 17.1.3 & 24.2.5)

■ LAW DEBENTURE TRUST CORP. (CHANNEL ISLANDS) LTD v. LEXINGTON INSURANCE CO. [2003] EWHC 2297 (Comm); 153 New L.J. 1551 (2003) (Colman J.)
CPR r.5.4(2)—claimant (C) bringing insurance claim against two defendants (D1 & D2)—D1's defence making allegations against D2, including allegations of fraud, and allegations relating to other transactions not the subject of these proceedings—intervenor (X) and D2 involved in other litigation—C's claim settled after trial hearing had begun—X applying for disclosure of the pleadings and written opening submissions insofar as they related to particular allegations of fraud—at material time, no allegations of fraud in other litigation—D2's written submissions referring to unpleaded allegations of fraud against them in the other litigation—held, granting the application in part, (1) the purpose of the inherent jurisdiction to grant a non-party access to written skeletons or submissions is to ensure open justice, (2) where a court is invited to exercise the jurisdiction it is essential for the court to investigate what part those documents played in the trial, (3) from the commencement of a trial, written submissions play an active role in facilitating the conduct of the trial, (4) the policy of openness requires that non-parties should be given access to those documents in the course of hearing before judgment, (5) there is no logical objection to an order to this effect being made where a case is settled in the course of trial, (6) as the admissibility of the unpleaded issues of fraud referred to in D2's submissions had not been determined at the trial, it would be unfair to D2 to permit these allegations against it to be exposed to X (see *Civil Procedure* 2003, Vol. 1, para. 5.4.1)

■ MOUNT COOK LAND LTD. v. WESTMINSTER CITY COUNCIL [2003] EWCA Civ 1346; *The Times*, October 16, 2003, CA (Auld, Clarke & Jonathan Parker L.JJ.)
CPR rr.54.4, 54.8, Practice Direction (Judicial Review) paras 8.5 & 8.6—company (C) applying for permission to proceed in judicial review claim against local authority (D) to quash planning decision—judge dismissing application and granting D their costs of filing acknowledgment of service and opposing C's oral application—held, dismissing C's appeal, (1) it is important that parties should be able to rely on para. 8.6 as indicating the normal practice of the courts, (2) the express discouragement in para. 8.6 of the award of defendant's costs is a clear indication that a permission hearing should be short and not, in effect, a hearing of the substantive claim—proper approach to costs where applicant unsuccessful at permission stage explained (see *Civil Procedure* 2003, Vol. 1, paras 54.8.1, 54.12.5)

■ OMEGA ENGINEERING INC. v. OMEGA S.A. [2003] EWHC 1482 (Ch); *The Times*, September 29, 2003 (Pumfrey J.)
CPR rr.1, 1(2), 3.1(2)(a), 52.6 & 40.12, Sched.1, RSC O.45, r.6—D objecting to registration of trade mark by C—on March 13, 2003, judge disposing of D's appeal by ordering that registration be refused unless C filed with controller amending form within 28 days—this order, as perfected and sealed, making no provision anticipating delay in C's compliance with it in event of C's wishing to appeal to Court of Appeal—on May 12, 2003, C applying to judge for (1) stay of order and (2) extension of time for complying with it—held, granting application in part, (1) the order was a judgment within the meaning of r.40.2 and, as it had been sealed, could not be corrected, (2) the court had no jurisdiction to stay the order, (3) under r.3.1(2)(a), except where the CPR "provide otherwise", the court may extend time, (4) in these circumstances, r.40.12 (the slip rule) does not "provide otherwise", (5) the purpose of r.3.1(2)(a) is to achieve the same result as achieved by former RSC O.3, r.5, (6) the power to extend time for compliance with an order does not come to an end with the drawing and entry of the order, (7) the time for filing the amending form should be extended until 14 days after the disposal by the Court of Appeal of any appeal to it - judge explaining that effect of r.6 (fixing and varying time for doing act required to be done) is the same now as it was before the CPR came into effect (see *Civil Procedure* 2003, Vol. 1, paras 3.1.2, 40.2.1 & sc45.6.1)

■ SHIRE v. SECRETARY OF STATE FOR WORK AND PENSIONS [2003] EWCA Civ 1465; *The Times*, October 30, 2003, CA (Lord Woolf L.C.J., Chadwick & Buxton L.JJ.)
CPR r.52.8—asylum seeker (C) applying for permission to appeal against decision of Social Security Commissioners (D)—C identifying three grounds in her notice of appeal and obtaining permission to appeal on the basis of them—C serving skeleton argument supporting these grounds—shortly before hearing, and without applying to amend notice of appeal, C serving new skeleton argument on counsel for D in which whole nature of C's case changed significantly—held, in these circumstances an appellant should inform the court and the respondent and seek directions as

to whether and how the appeal should proceed—practice to be followed explained (see *Civil Procedure* 2003, Vol. 1, para. 52.8.2)

■ SMITH v. PAROLE BOARD [2003] EWCA Civ 1014; June 30, 2003, CA, unrep. (Lord Woolf L.C.J., Auld & Clarke L.JJ.)
CPR rr.52.15 & 54. 15—Secretary of State accepting Parole Board's (D) recommendation, revoking prisoner's (C) licence and returning him to custody—in April 2002, D rejecting C's representations against recall—in December 2002, C applying for permission to apply for judicial review of D's decision—application for permission refused on paper—at renewed application, judge granting permission on point whether, by taking their decision without an oral hearing, D breached C's art.6 rights but refusing permission on question whether D breached C's art.5 rights—at hearing of application, in exercise of his discretion judge refusing C's application under r.54.15 for permission to revive art.5 point - held, allowing C's appeal, (1) parties to applications for judicial review are under an obligation to bring forward their full case at the start, however (2) situations may arise where good sense makes it clear that the argument should be wider than it would otherwise be if it was confined to the grounds upon which permission had been granted, (3) the court's discretion under r.54.15 may properly be exercised in circumstances wider than those identified by Lightman J. in *R.(Opoku) v. Principal of Southwark College* [2003] EWHC 2092 (Admin); [2003] 1 W.L.R. 234, (4) the argument upon which C wished to rely in relation to art.5 was so closely related to the argument in regard to art.6 that it was preferable in everybody's interests that the full argument be heard (see *Civil Procedure* 2003, Vol. 1, para. 54.15.1)

■ SMITHKLINE BEECHAM PLC v. GENERICS (UK) LTD [2003] EWCA Civ 1109; *The Times*, August 25, 2003, CA (Aldous, Chadwick & Latham L.JJ.)
CPR rr.31.17, 31.22 & 39.2(3)—S bringing claim against G for patent infringement—G revealing confidential documents to S—B bringing claim against S for declaration that patent invalid—claims not consolidated but coming on for trial together—at outset of trial, S and G reaching settlement—judge granting S's application for permission to use G's documents in trial of B's claim—documents used in cross-examination (which took place in private)—at end of trial, judge (1) giving judgment for S and referring to the documents therein, and (2) prohibiting any further use of the documents (first order)—S bringing claim against A for patent infringement—judge refusing S's application for permission to use G's documents in these proceedings (second order)— held, dismissing S's appeal against first order, (1) a document disclosed voluntarily or referred to in an expert's report is a document "which has been disclosed" within r.31.22(2), and allowing S's appeal against the second order, (2) as the judge who was to try the claim of S against A was the same judge who had examined the documents in the trial of B's claim against S, the interests of justice required that S should be permitted to deploy them before the trial court sitting in private (see *Civil Procedure* 2003, Vol. 1, paras 31.22.1 & 39.2.2)

■ STUBBS v. COMMISSIONER OF POLICE FOR THE METROPOLIS [2002] EWHC 2903 (QB); December 11, 2002, unrep. (Davis J.)
CPR rr.3.4(2)(c), 3.9, 7.4 & 18.1—following criminal proceedings in which he was convicted, claimant (C) commencing proceedings against police (D1) to recover property seized and retained by them—subsequently, security firm (D2), from whom property alleged to have been stolen, joined a second defendants—D2 serving defence and making Pt 20 claim (counterclaim)—upon C not complying with order to serve further information as to ownership and provenance of the disputed property, Master making order providing that if C failed to comply then his claim was without further order to stand struck out—in purported compliance with this order, C providing further particulars—at subsequent hearing, upon finding that C had failed properly to comply with the peremptory order, Master relieving C from sanctions stated therein but ordering that if C did not comply with the order by a particular date then his claim should be struck out and D2 should have permission to enter judgment on their defence and counterclaim—after C had served further witness statement, D2 contending that C had still not complied with order—on D2's application, Master (1) giving D2 judgment on C's claim and declaratory relief on their counterclaim, and (2) refusing C's application for relief from this sanction—judge granting C permission to appeal—held, allowing C's appeal, (1) C did not hold back information available to him, rather he did not give information which he ought otherwise to give, simply because he was not in a position to do so, (2) C had substantially complied with the order and, insofar as he had not done so, his failure was not intentional and did not justify striking out, (3) the question of the provenance of the property remained a live issue on D2's claim for damages in their counterclaim which should not be foreclosed by an order striking out C's claim, (4) in the circumstances, C's application for relief from procedural sanctions under r.3.9 should be granted (see *Civil Procedure* 2003, Vol. 1, paras 3.4.4, 3.9.1, 7.4.3 & 18.1.9)

■ THOMAS-EVERARD v. SOCIETY OF LLOYD'S [2003] EWHC 1890 (Ch); *The Times*, August 28, 2003 (Laddie J.)
Insolvency Rules 1986 r.6.5, Practice Direction (Insolvency Proceedings) paras 12.3 & 12.4—on application to amend counterclaim judge at first instance (1) holding issue too insubstantial to be pleaded and (2) refusing permission to appeal—on application to set aside statutory demand, held (1) r.6.5(4)(a) should be read in conjunction with paras 12.3 & 12.4, (2) the judge's holding and refusal were important considerations in deciding whether the issue was genuinely triable and the appeal was real, but were not determinative (see *Civil Procedure* 2003, Vol. 2, para. 3E-12)

■ THOMPSON DIRECTORIES LTD v. PLANET TELECOM PLC [2003] EWHC 1882 (Ch); July 4, 2003, unrep. (Laddie J.)
CPR r.39.3—company (C) bringing claim against businessman (D) for breach of intellectual property rights—claim compromised by a consent order and D submitting to inquiry as to damages—at inquiry, judge dealing first with preliminary issue and in so doing made aware of material that judicial officer conducting an inquiry should not have had access to—accordingly, inquiry carried on before another judge—at adjourned inquiry D not appearing, apparently because he was suffering from medical condition (though no medical evidence was then provided)—judge deciding to proceed with inquiry in absence of D and making order against D for £1.3m—two months later, D applying under r.39.3(3) to set order aside—held, dismissing application, (1) a party applying under r.39.9(3) must satisfy all three of the requirements stated in r.39.3(5), (2) the purpose of this is to prevent the court's time being unnecessarily taken up, and the parties' costs being unfairly wasted, on re-hearings of matters which should have been disposed of earlier, (3) in the circumstances, D had not "acted promptly" and did not have a good reason for not attending the inquiry (see *Civil Procedure* 2003, Vol. 1 para. 39.3.7)

■ WESTMINSTER CITY COUNCIL v. O'REILLY [2003] EWCA Civ 1007; *The Times*, August 21, 2003, CA (Lord Woolf C.J., Auld & Clarke L.JJ.)
Supreme Court Act 1981 ss.16, 18(1)(c) & 28A(4), Magistrates' Courts Act 1980 s.111, Access to Justice Act 1999 ss.54 & 55, Access to Justice Act 1999 (Destination of Appeals) Order 2000 art.5, Licensing Act 1964 s.77A(3)—magistrates granting licensees (C) special hours certificate under s.77A(3)—High Court judge allowing local authority's (D) appeal by way of case stated under s.111, but granting C permission to appeal ([2003] EWHC 485 (Admin), Mackay J.)—held, (1) no appeal shall lie to the Court of Appeal from a decision which, by virtue of any provision in any Act, is final, (2) s.111 is an example of such provision, (3) nothing in ss.54 and 55 or in art.5(4) altered the clear ouster of the Court's jurisdiction in these circumstances, (4) therefore the Court had no jurisdiction to hear C's appeal—observations on (1) whether judicial review might lie of decision by a court on any fresh application by C for a special licence and (2) whether appeal to Court of Appeal might lie from any decision on such review (see *Civil Procedure* 2003, Vol. 2, paras 9A-50.1, 9A-55, 9A-865.1 & 9A-885)

Practice Directions

■ PRACTICE DIRECTION (CARE CASES: JUDICIAL CASE MANAGEMENT) [2003] 1 W.L.R. 2209, Fam.D.
Family Proceedings Rules 1991, Family Proceedings Courts (Children Act 1989) Rules 1991—applies to all courts (including family proceedings courts) hearing applications issued by local authorities under Children Act 1989 Pt IV ("care cases")—designed to ensure (a) that care cases are dealt with in accordance with the overriding objective, (b) that there are no unacceptable delays in the hearing and determination of care cases, and (c) that save in exceptional or unforeseen circumstances every care case is finally determined within 40 weeks of the application being issued—principles and protocol annexed (website address for protocol given)

■ PRACTICE DIRECTION (COAL MINING HAND ARM VIBRATION SYNDROME (VIBRATION WHITE FINGER)) [2003] 4 All E.R. 318, QB
CPR rr.7.1 & 44.5, Practice Direction (How to Start Proceedings—The Claim Form) para. 2.7—applies to proceedings in which party had not at May 16, 2003, lodged letter of claim in British Coal Corporation Vibration White Finger litigation—provides that proceedings begun after that date should be commenced in the county courts of either Newcastle-upon-Tyne, Sheffield or Cardiff—disapplies Practice Note (White Finger Vibrations), *The Times*, January 13, 1994, Practice Direction (Coal Mining Vibration White Finger Actions) (No. 2), *The Times*, August 5, 1999, in relation to such proceedings—unjustified failures to comply with this practice direction may be taken into account in assessment of costs (see *Civil Procedure* 2003, Vol. 1, paras 7.1.1, 7PD.2 & 44.5.1)

IN DETAIL

Satisfying costs orders as condition of appeal permission

In *Contract Facilities Ltd v. Rees* [2003] EWCA Civ 1105; July 24, 2003, CA, unrep., the facts were that a company (C) with no assets brought a High Court claim against a deceased's estate (D) for breach of contract for purchase of shares. Throughout, the proceedings were funded by an individual (S) (some other funders had dropped out). At trial on December 6, 2002, the judge dismissed C's claim and made a costs order in favour of D.

The judge granted C permission to appeal on the substantive issue raised in the case. The judge ordered that C should make an interim payment of costs of £15,000 (being the sum which C had been ordered to put up as security for costs). The judge refused C's request that the costs should be assessed on an issues basis. On February 21, 2003, the judge refused D's applications (1) to make C's appeal conditional on payment of D's costs in sum of £100,000, and (2) to make S personally liable for costs under section 51 of the Supreme Court Act 1981.

C filed a notice of appeal and applied to the Court of Appeal for a stay of execution of the costs order against them. A single Lord Justice ordered that the detailed assessment process should be stayed on C's paying £50,000 into a joint account ([2003] EWCA Civ 465; March 24, 2003, CA, unrep.). The single Lord Justice explained that he was concerned about the possibility that costs would be expended on the detailed assessment proceedings "simply by virtue of the fact that those acting for C may want to take advantage of the time that assessment will take, so as to produce a situation in which there is no final order which can be enforced prior to this appeal coming on".

D applied for security for costs of the appeal. This application was compromised on the basis that C should provide security in sum of £20,000 by April 7, 2003 (in the event, that sum was provided ten minutes late).

On June 6, 2003, a costs judge issued an interim costs certificate requiring C to pay £37,000 into court within 14 days and awarding D £2,000 costs. On June 24, 2003, the trial judge dismissed C's application to vary his costs order to make it an issues based order and awarded £4,791 costs. These payments remained outstanding.

D applied to the Court of Appeal for an order (1) that C should pay the outstanding costs within a short time or the appeal be dismissed, or (2) that the appeal be taken out of the list and adjourned until the costs were paid. This application came on before Waller L.J. and Hale L.J.

In dealing with this application, Waller L.J. said (paras 7 & 8) that those acting for C had done all they could to postpone the assessment of costs so that if possible the appeal would come on before D had a sum in relation to which they could execute against C. The solicitors acting for C appeared to have been put in funds to make such applications as they deemed necessary to support stalling tactics or to resist D's attempt to get the order they need. If the substantive appeal was lost, C would have no assets and go into liquidation. S would then fight tooth and nail to prevent any individuals who backed the original action and who backed the appeal being liable for costs. His Lordship noted (para. 14) that there was no question of any stifling of the appeal if the sums outstanding were ordered to be paid. S would find it inconvenient to pay those monies but he would also be able to do so if it was made a condition of C being entitled to pursue their appeal that those orders should be met.

The Court concluded that D's application should be granted and ordered that, unless by 4 pm on Friday July 18, 2003, C were to pay the sum of £37,000 into court, and the sums of £2,000 and £4,792 to D, the appeal be struck out.

In reaching this conclusion, the Court had to deal with two substantial arguments put by C.

First C contended that the Court had no jurisdiction to grant D's application. It was submitted that CPR, r.52.9(3) prevented the Court from imposing conditions upon which C's appeal may be brought. Rule 52.9 deals with the striking out of appeal notices and setting aside or imposing conditions on permission to appeal. (The rule applies to appeal courts generally, not to the Court of Appeal exclusively.) Rule 52.9(1) states that the appeal court may (a) strike out the whole or part of an appeal notice, (b) set aside permission to appeal in whole or in part, (c) impose or vary conditions upon which an appeal may be brought. Rule 52.9(3) states that where a party was present at the hearing at which permission was given he may not subsequently apply for an order that the court exercise its powers under sub-paragraphs (1)(b) or (1)(c).

C argued that in their application D were endeavouring to persuade the Court to exercise its power under r.52.9(1)(c) to place a condition on the permission that the trial judge had given them (C) to appeal. As D were "present at the hearing at which

permission was given" by the trial judge, the Court was prevented from doing this by r.52.9(3). C further argued that, even if r.52.9(3) did not prevent the Court from imposing conditions, it would be wrong for the Court to entertain what is in effect the same application as that already rejected by the judge.

The Court rejected this submission. Waller L.J. noted that in *Société Eram Shipping Co. Ltd v. Compagnie International de Navigation* [2001] EWCA Civ 568; April 6, 2001, unrep., Rix L.J. was inclined to the view that r.52.9(3) related only to applications for permission to appeal made to an appeal court. But his Lordship thought that the answer to C's contention lay in taking a broader view of the Court of Appeal's powers. He said (1) the Court has case management powers in addition to those that it may have under r.52.9, (2) the general powers of case management stated in r.3.1 may be exercised by the courts referred to in r.2.1(1), and therefore may be exercised by the Court of Appeal. The case management powers particularly relevant in the present case were found in r.3.1(2)(m) and r.3.1(3). In support of his conclusion on this matter, Waller L.J. referred to *Great Future International Ltd v. Sealand Housing Corporation* [2003] EWCA Civ 682, where the Court of Appeal was concerned with its jurisdiction to impose a security for costs condition on appellant's application for permission to appeal made to the Court.

C's second substantial argument on the appeal was that, by their application, D were attempting to pre-judge the issue whether S as a non-party should be personally liable for the costs of the trial below. This involved a consideration by the Court of CIBC *Mellon Trust Co. v. Mora Hotel Corporation NV* [2002] EWCA Civ 1688; [2003] 1 All E.R. 564, CA, and *Hammond Suddard Solicitors v. Agrichem International Holdings Ltd* [2001] EWCA Civ 2065; [2001] All E.R. (D) 258 (Dec). Waller L.J. held that D's application did not pre-judge the issue. S had financed, or been a party to the financing of, the whole trial process. An application for costs against him as a non-party would stand a considerable prospect of success. This was not a case where D were simply seeking to inflate the funds against which they could later execute any judgment. S had financed the trial and was financing the appeal. There is no reason why he should be allowed to conduct that appeal "on a heads he wins and tails they lose basis". C could abandon the appeal and S could fight the question of personal liability for costs. But if S chose to fund the appeal there is no reason why the Court should not say that C can bring the appeal but only on terms.

PRE-ACTION PROTOCOLS

Disease and Illness Claims Protocol

The Pre-Action Protocol for Disease and Illness Claims was issued in September 2003, and comes into effect on December 8, 2003.

The opening paragraphs of this protocol state that it is intended to apply to all personal injury claims where the injury is not as the result of an accident but takes the form of an illness or disease. The protocol covers disease claims which are likely to be complex and frequently not suitable for fast-track procedures even though they may fall within fast-track limits. Disease for the purpose of this protocol primarily covers any illness physical or psychological, any disorder, ailment, affliction, complaint, malady, or derangement other than a physical or psychological injury solely caused by an accident or other similar single event.

The protocol is not limited to diseases occurring in the workplace but will embrace diseases occurring in other situations for example through occupation of premises or the use of products. It is not intended to cover those cases, which are dealt with as a "group" or "class" action.

The "cards on the table" approach advocated by the personal injury protocol is equally appropriate to disease claims. The spirit of that protocol, and of the clinical negligence protocol is followed here, in accordance with the sense of the civil justice reforms.

This protocol is not a comprehensive code governing all the steps in disease claims. Rather it attempts to set out a code of good practice which parties should follow.

The protocol contains detailed provisions dealing with the obtaining of occupational records, including health records, and other records. The letter of claim and the response thereto are dealt with in sections 7 and 8 of the protocol. Section 9 deals with experts.

Para. 2.5 of the protocol states that the timetable and the arrangements for disclosing documents and obtaining expert evidence may need to be varied to suit the circumstances of the case. If a party considers the detail of the protocol to be inappropriate they should communicate their reasons to all of the parties at that stage. If proceedings are subsequently issued, the court will expect an explanation as to why the protocol has not been followed, or has been varied. In a terminal disease claim with short life expectancy, for instance for a claimant who has a disease such as mesothelioma, the time scale of the protocol is likely to be too long. In such a claim, the claimant may not be

able to follow the protocol and the defendant would be expected to treat the claim with urgency.

Housing Disrepair Protocols

The Pre-Action Protocol for Housing Disrepair Cases was issued in September 2003, and comes into effect on December 8, 2003.

It is explained in the protocol that a disrepair claim is a civil claim arising from the condition of residential premises and may include a related personal injury claim. It does not include disrepair claims which originate as counterclaims or set-offs in other proceedings. (In cases which involve a counterclaim or set-off, the landlord and tenant will still be expected to act reasonably in exchanging information and trying to settle the case at an early stage.)

The types of claim covered by the protocol include those brought under the Landlord and Tenant Act 1985 s.11, the Defective Premises Act 1972 s.4, common law nuisance and negligence, and those brought under the express terms of a tenancy agreement or lease. It does not cover claims brought under the Environmental Protection Act 1990 s.82 (which are heard in magistrates' courts). The protocol covers claims by any person with a disrepair claim as described above, including tenants, lessees and members of the tenant's family. (The use of the term "tenant" throughout the protocol is intended to cover all such people.)

In practice, most disrepair cases will have a value of more than £1,000 but less than £15,000 and so are likely to be allocated to the fast track if they come to court. The protocol is aimed at this type of case. The need to keep costs down is especially important in claims of lower value. The approach of the protocol is however, equally appropriate to all claims and the protocol should also be followed in small track and multi-track claims. The court will expect to see reasonable pre-action behaviour applied in all cases.

The heart of this protocol is section 3. This section contains sub-sections dealing with the early notification letter, the letter of claim, the landlord's response, experts and costs. Section 4 contains guidance notes keyed to the sub-sections in section 3 and in addition contains information about mechanisms for negotiation and settlement of disrepair claims apart from litigation, and about the disclosure of documents.

CPR UPDATE

AMENDMENTS TO PRACTICE DIRECTIONS

CPR Supplement 33, published by TSO on September 24, 2003, makes various changes to CPR Practice Directions. Some of these revisions follow upon the coming into effect of changes to the rules made by the Civil Procedure (Amendment No. 4) Rules 2003 (S.I. 2003 No. 2113) (referred to in CP News issue 08/2003).

A number of the changes to practice directions came into effect on October 6 or October 13, 2003; others will not come into effect until December 8, 2003, or January 1, 2004. The October and December 2003 changes are explained below; the changes coming into effect in January 2004 will be explained in a forthcoming issue of CP News. Paragraph and page references are to *Civil Procedure* 2003, Vol. 1. The changes referred to below came into effect on October 6, 2003, except where indicated as coming into effect on October 16, or December 8, 2003.

para. 2PD.2, p.59

Practice Direction (Court Offices)

As was explained in CP News Issue 07/03 (July 18, 2003), this paragraph was substituted by CPR Supplement 32. Corrections are made as follows:

"In paragraph 2.1(2), for "Principal Probate Registry" substitute "Principal Registry of the Family Division" and for the postcode "WC1A 6HA" substitute "WC1V 6NP""

para. 2BPD.5, p63

Practice Direction (Allocation of Cases to Levels of Judiciary)

With effect from October 13, 2003, sub-para. (g) is substituted as follows:

"(g) making an order for rectification, except for –
(i) rectification of the register under the Land Registration Act 1925; or
(ii) alteration or rectification of the register under the Land Registration Act 2002,
in plain cases."

para. 5BPD.1, p.136

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

This practice direction, supplementing CPR, r.5.5, was added in February 2003, and replaced a practice direction inserted in the CPR in October 2002. The Schedule to that practice direction indicated the courts to which it applied. It is now re-titled as Practice Direction (Communication and Filing of Documents by E-Mail) and entirely replaced by new text.

Para. 1.2 of the new practice direction states that it provides for parties to claims "in specified courts" to (a) communicate with the court by e-mail, and (b) file specified documents by e-mail. Para. 1.2 states that a "specified court" is a court or court office which has published an e-mail address for the filing of documents on the court service website (www.courtservice.gov.uk). As published, the new practice direction retains the Schedule found in the practice direction now replaced and indicating the courts to which the old practice direction applied. Given the terms of paras 1.1 and 1.2, this would appear to be a mistake.

Initially it was stated that this new practice direction would come into effect on February 1, 2004 (after the existing pilot schemes came to an end). However, subsequently it was made clear that the practice direction came into effect on October 6, 2003.

The full text of Practice Direction (Communication and Filing of Documents by E-Mail) is not printed herein but will be including in Civil Procedure 2004.

para. 6PD.2, p.202

Practice Direction (Service)

In para. 2.2, delete ", unless the contrary is proved,".

para. 21PD.6, p.450

Practice Direction (Children and Patients)

Para. 6.4 is re-numbered as para. 6.5, and a new para. 6.4 is inserted as follows:

"6.4 In any case where future loss is likely to equal or exceed £500,000, and in any other case in which the considers it might be appropriate, the court will need to be satisfied that consideration has been given to entering into a structured settlement. A copy of written financial advice, together with any other relevant written material such as counsel's opinion and any relevant medical opinion must be supplied to the court. The advice(s) should consider the matters specifically identified by the practice direction on structured settlements supplementing Part 40 (Judgments and Orders)."

para. 22PD.1, p.463

Practice Direction (Statements of Truth)

The following amendments to this practice direction come into effect on December 8, 2003.

In para. 1.1, delete sub-para. (6), and for para. 1.4, substitute the following:

"**1.4** In addition, the following documents must be verified by a statement of truth:
(1) an application notice for—
(a) a third party debt order (rule 72.3),
(b) a hardship payment order (rule 72.7), or
(c) a charging order (rule 72.3);
(2) a notice of objections to an account being taken by the court, unless verified by an affidavit or witness statement;
(3) a schedule or counter-schedule of expenses and losses in a personal injury claim, and any amendments to such a schedule or counter-schedule, whether or not they are contained in a statement of case."

para. 27PD.5, p.636

Practice Direction (Small Claims Track)

Paras 5.1 to 5.8 are replaced by new paras 5.1 to 5.5 (former paras 5.2, 5.6 and 5.8 survive in terms; see now, respectively, paras 5.2, 5.4 and 5.5):

"**5.1** A hearing that takes place at the court will be tape recorded by the court. A party may obtain a transcript of such a recording on payment of the proper transcriber's charges.
5.2 Attention is drawn to section 9 of the Contempt of Court Act 1981 (which deals with the unauthorised use of tape recorders in court) and to the Practice Direction ([1981] 1 WLR 1526) which relates to it.
5.3 (1) The judge may give reasons for his judgment as briefly and simply as the nature of the case allows.
(2) He will normally do so orally at the hearing, but he may give them later at a hearing either orally or in writing.
5.4 Where the judge decides the case without a hearing under rule 27.10 or a party who has given notice under rule 27.9(1) does no attend the hearing, the judge will prepare a note of his reasons and the court will send a copy to each party.
5.5 Nothing in this practice direction affects the duty of a judge at the request of a party to make a note of the matters referred to in section 80 of the County Courts Act 1984."

para. 29PD.3, p.673

Practice Direction (The Multi-Track)

After para. 3.10, new para. 3A is inserted as follows:

"Case Management—consideration of structured settlement

3A Attention is drawn to Practice Direction C supplementing Part 40 and in particular to the direction that parties should raise the question of a structured settlement with the court during case management."

para. 30PD.7, p.686

Practice Direction (Transfer)

After para. 7, insert the following new paragraphs (paras 8.1 to 8.8):

"Enterprise Act 2002

8.1 In this paragraph—
(1) "the 1998 Act" means the Competition Act 1998;
(2) "the 2002 Act" means the Enterprise Act 2002; and
(3) "the CAT" means the Competition Appeal Tribunal.
8.2 Rules 30.1, 30.4 and 30.5 and paragraph 3 and 6 apply.

Transfer from the High Court or a county court to the Competition Appeal Tribunal under section 16(4) of the Enterprise Act 2002

8.3 The High Court or a county court may pursuant to section 16(4) of the 2002 Act, on its own initiative or on application by the claimant or defendant, order the transfer of any part of the proceedings before it, which relates to a claim to which section 47A of the 1998 Act applies, to the CAT.
8.4 When considering whether to make an order under paragraph 8.3 the court shall take into account whether—
(1) there is a similar clam under section 47A of the 1998 Act based on the same infringement currently before the CAT;
(2) the CAT has previously made a decision on a similar claim under section 47A of the 1998 At based on the same infringement; or
(3) the CAT has developed considerable expertise by previously dealing with a significant number of cases arising from the same or similar infringements.
8.5 Where the court orders a transfer under paragraph 8.3 it will immediately—
(1) send to the CAT—
(a) a notice of the transfer containing the name of the case; and

(b) all papers relating to the case; and
(2) notify the parties of the transfer.

8.6 An appeal against a transfer order made under paragraph 8.3 must be brought in the court which made the transfer order."

para. 33BPD.1, p.785

Practice Direction (Land Registration Act)

With effect from October 13, 2003, this practice direction is deleted. See now Practice Direction (Appeals) paras 23.2 and 23.8(B) as amended and inserted (below).

para. 39PD.6, pp.911 to 912

Practice Direction (Miscellaneous Provisions Relating to Hearings)

In para. 6.1, delete "the judgment (and any summing up given by the judge)" and "Oral evidence will normally be recorded also."

In para. 6.3, delete "trial or".

In para. 6.4, delete "trial or".

para. 40CPD.1, p.955

Practice Direction (Structured Settlements)

This practice direction is replaced entirely with new text. Paras 1.1, 1.2, 3.1, 3.2, 4.1, 4.2. 7.1, 7.2, 8.1, 8.2 and 9 of the new practice direction accord, respectively, with paras 1.1, 1.2, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10. 1.11 and 1.12 of the old (though not in exact terms in all respects), and draft orders are again annexed. Para. 5 (Contents of written advice) and para. 6 (Consideration of other means of meeting future income needs) contain wholly new material. This practice direction is referred to in Practice Direction (The Multi-Track) para. 3A, and Practice Direction (Children and Patients) para. 6.4 (see above).

The full text of Practice Direction (Structured Settlements) as replaced is not printed herein but will be including in *Civil Procedure* 2004.

para. 43PD.5, p.991

Practice Direction (Costs)

Para 5.13 is substituted as follows:

"**5.13** (1) VAT will be payable in respect of every supply made pursuant to a legal aid/LSC certificate where—

(a) the person making the supply is a taxable person; and
(b) the assisted person/LSC funded client—
(i) belongs in the United Kingdom or another member state of the European Union; and
(ii) is a private individual or receives the supply for non-business purposes.

(2) Where the assisted person/LSC funded client belongs outside the European Union VAT is generally not payable unless the supply relates to land in the United Kingdom.
(3) For the purpose of sub-paragraphs (1) and (2), the place where a person belongs is determined by section 9 of the Value Added Tax Act 1994.
(4) Where the assisted person/LSC funded client is registered for VAT and the legal services paid for by the LSC are in connection with that person's business, the VAT on those services will be payable by the LSC only."

para. 45PD.2, p.1061

After para. 25.2, add new paras 25A.1 to 25A.10 as follows:

"Section 25A Road Traffic Accidents: Fixed Recoverable Costs in Costs-only Proceedings

Scope

25A.1 Section II of Part 45 ('the Section') provides for certain fixed costs to be recoverable between parties in respect of costs incurred in disputes which are settled prior to proceedings being issued. The Section applies to road traffic accident disputes as defined in rule 45.7(4)(a), where the accident which gave rise to the dispute occurred on or after 6th October 2003.

25A.2 The Section does not apply to disputes where the total agreed value of the damages is within the small claims limit or exceeds £10,000. Rule 26.8(2) sets out how the financial value of a claim is assessed for the purposes of allocation to track.

25A.3 Fixed recoverable costs are to be calculated by reference to the amount of agreed damages which are payable to the receiving party. In calculating the amount of these damages—

(a) account must be taken of both general and special damages and interest;
(b) any interim payments must be included;
(c) where the parties have agreed an element of contributory negligence, the amount of damages attributed to that negligence must be deducted;
(d) any amount required by statute to be paid by the compensating party directly to a third party (such as sums paid by way of compensation recovery payments and National Health Service expenses) must not be included.

25A.4 The Section applies to cases which fall within the scope of the Uninsured Drivers Agreement dated 13 August 1999. The section does not apply to cases which fall within the scope of the Untraced Drivers Agreement dated 14 February 2003.

Fixed recoverable costs formula

25A.5 The amount of fixed costs recoverable is calculated by totalling the following—

(a) the sum of £800;

(b) 20% of the agreed damages up to £5,000; and

(c) 15% of the agreed damages between £5,000 and £10,000.

For example, agreed damages of £7,523 would result in recoverable costs of £2,178.45 i.e.

£800 + (20% of £5,000) + (15% of £2,523).

Additional costs for work in specified areas

25A.6 The areas referred to in rule 45.9(2) are (within London) the county court districts of Barnet, Bow, Brentford, Central London, Clerkenwell, Edmonton, Ilford, Lambeth, Mayors and City of London, Romford, Shoreditch, Wandsworth, West London, Willesden and Woolwich and (outside London) the county court districts of Bromley, Croydon, Dartford, Gravesend and Uxbridge.

Multiple claimants

25A.7 Where there is more than one potential claimant in relation to a dispute and two or more claimants instruct the same solicitor or firm of solicitors, the provisions of the section apply in respect of each claimant.

Information to be included in the claim form

25A.8 Costs only proceedings are commenced using the procedure set out in rule 44.12A. A claim form should be issued in accordance with Part 8. Where the claimant is claiming an amount of costs which exceed the amount of the fixed recoverable costs he must include on the claim form details of the exceptional circumstances which he considers justifies the additional costs.

25A.9 The claimant must also include on the claim form details of any disbursements or success fee he wishes to claim. The disbursements that may be claimed are set out in rule 45.10(1). If the disbursement falls within 45.10(2)(d) (disbursements that have arisen due to a particular feature of the dispute) the claimant must give details of the exceptional feature of the dispute and why he considers the disbursement to be necessary.

Disbursements and success fee

25A.10 If the parties agree the amount of the fixed recoverable costs and the only dispute is as to the payment of, or amount of, a disbursement or as to the amount of a success fee, then proceedings should be issued under rule 44.12A in the normal way and not by reference to Section II of Part 45."

para. 52PD.1, p.1284

In para. 1.1, for "three sections" substitute "four sections" and at end add:

"* Section IV—Provisions about reopening appeals"

para. 52PD.41, pp.1295 to 1297

With effect from October 13, 2003, paras 8.1 to 8.10 are replaced by new paras 8.1 to 8.14 as follows:

"Applications

8.1 This paragraph applies where an appeal lies to a High Court judge from the decision of a county court or a district judge of the High Court.

8.2 The following table sets out the following venues for each circuit—

(a) Appeal centres – court centres where appeals to which this paragraph applies may be filed, managed and heard. Paragraphs 8.6 to 8.8 provide for special arrangements in relation to the South Eastern Circuit.

(b) Hearing only centres – court centres where appeals to which this paragraph applies may be heard by order made at an appeal centre (see paragraph 8.10).

[Ed.: For Table following para. 8.2 showing Appeal Centres and Hearing Only Centres on each Circuit, see para. 52PD.41, p.1296.]

Venue for appeals and filing of notices on circuits other than the South Eastern Circuit

8.3 Paragraphs 8.4 and 8.5 apply where the lower court is situated on a circuit other than the South Eastern Circuit.

8.4 The appellant's notice must be filed at an appeal centre on the circuit in which the lower court is situated. The appeal will be managed and heard at that appeal centre unless the appeal court orders otherwise.

8.5 A respondent's notice must be filed at the appeal centre where the appellant's notice was filed unless the appeal has been transferred to another appeal centre, in which case it must be filed at that appeal centre.

Venue for appeals and filing of notices on the South Eastern Circuit

8.6 Paragraphs 8.7 and 8.8 apply where the lower court is situated on the South Eastern Circuit.

8.7 The appellant's notice must be filed at an appeal centre on the South Eastern Circuit. The appeal will be managed and heard at the Royal Courts of Justice unless the appeal court orders otherwise. An order that an appeal is to be managed or heard at another appeal centre may not be made unless the consent of the Presiding Judge of the circuit in charge of civil matters has been obtained.

8.8 A respondent's notice must be filed at the Royal Courts of Justice unless the appeal has been transferred to another appeal centre, in which case it must be filed at that appeal centre. The appeal court may transfer an appeal to another appeal centre.

General provisions

8.9 The appeal court may transfer an appeal to another appeal centre (whether or not on the same circuit). In deciding whether to do so the court will have regard to the criteria in rule 30.3 (criteria for a transfer order). The appeal court may do so either on application by a party or of its own initiative. Where an appeal is transferred under this paragraph, notice of transfer must be served on every person on whom the appellant's notice has been served. An appeal may not be transferred to an appeal centre on another circuit either for management or hearing, unless the consent of the Presiding Judge of that circuit in charge of civil matters has been obtained.

8.10 Directions may be given for—

(a) an appeal to be heard at a hearing only centre; or

(b) an application in an appeal to be heard at any other venue,

(c) instead of at the appeal centre managing the appeal.

8.11 Unless a direction has been made under 8.10, any application in the appeal must be made at the appeal centre where the appeal is being managed.

8.12 The appeal court may adopt all or any part of the procedure set out in paragraphs 6.4 to 6.6.

8.13 Where the lower court is a county court:

(1) appeals and applications for permission to appeal will be heard by a High Court judge or by a person authorised under paragraphs (1), (2) or (4) of the Table in section 9(1) of the Supreme Court Act 1981 to act as a judge of the High Court; and

(2) appeals and applications for permission to appeal will be heard by a High Court judge or by a person authorised under paragraphs (1), (2) or (4) of the Table in section 9(1) of the Supreme Court Act 1981 to act as a judge of the High Court; and

(3) other applications in the appeal may be heard and directions in the appeal may be given either by a High Court Judge or by any person authorised under section 9 of the Supreme Court Act 1981 to act as a judge of the High Court.

8.14 In the case of appeals from Masters or district judges of the High Court, appeals, applications for permission and any other applications in the appeal may be heard and directions in the appeal may be given by a High Court Judge or by any person authorised under section 9 of the Supreme Court Act 1981 to act as a judge of the High Court."

para. 52PD.82, p.1307

In the part of the table headed "Appeals to the High Court", after the reference to the Land Registration Act 1925, insert:

"Land Registration Act 2002 23.2, 23.8B"

para 52PD.104, p.1317

With effect from October 13, 2003, at the end of sub-para. (9) of para. 23.2 "and" is deleted, and after sub-para. (10) the following is added:

"(11) section [sic] 13 and 13B of the Stamp Act 1891;
(12) section 705A of the Income and Corporation Taxes Act 1988;
(13) regulation 22 of the General Commissioners (Jurisdiction and Procedure) Regulations1994;
(14) section 53.56A or 100C(4) of the Taxes Management Act 1970;
(15) section 222(3), 225, 249(3) or 251 of the Inheritance Tax Act 1984;
(16) regulation 8(3) or 10 of the Stamp Duty Reserve Tax regulations 1986;
(17) the Land Registration Act 2002."

para. 52PD.110, p.1321

With effect from October 13, 2003, after this paragraph new paras 23.8(A) and 23.8(B) are added as follows:

"Appeal against an order or decision of the Charity Commissioners

23.8(A)(1) In this paragraph—
'the Act' means the Charities Act 1993; and
'the Commissioners' means the Charity Commissioners for England and Wales.
(2) The Attorney-General, unless he is the appellant, must be made a respondent to the appeal.
(3) The appellant's notice must state the grounds of the appeal, and the appellant may not rely on any other grounds without the permission of the court.
(4) Sub-paragraphs (5) and (6) apply, in addition to the above provisions, where the appeal is made under section 16(12) of the Act.
(5) If the Commissioners have granted a certificate that it is a proper case for an appeal, a copy of the certificate must be filed with the appellant's notice.
(6) If the appellant applies in the appellant's notice for permission to appeal under section 16(13) of the Act—

(a) the appellant's notice must state—

(i) the appellant has requested the Commissioners to grant a certificate that it is a proper case for an appeal, and they have refused to do so;

(ii) the date of such refusal;

(iii) the grounds on which the appellant alleges that it is a proper case for an appeal; and

(iv) if the application for permission to appeal is made with the consent of any other party to the proposed appeal, that fact;

(b) if the Commissioners have given reasons for refusing a certificate, a copy of the reasons must be attached to the appellant's notice;

(c) the court may, before determining the application, direct the Commissioners to file a written statement of their reasons for refusing a certificate.

(d) the court will serve on the appellant a copy of any statement filed under sub-paragraph (c).

Appeal against a decision of the adjudicator under section 111 of the Land Registration Act 2002

23.8(B) (1) A person who is aggrieved by a decision of the adjudicator and who wishes to appeal that decision must obtain permission to appeal.

(2) The appellant must serve on the adjudicator a copy of the appeal court's decision on a request for permission to appeal as soon as reasonably practicable and in any event within 14 days of receipt by the appellant of the decision on permission.

(3) The appellant must serve on the adjudicator and the Chief Land Registrar a copy of any order by the appeal court to stay a decision of the adjudicator pending the outcome of the appeal as soon as reasonably practicable and in any event within 14 days of receipt by the appellant of the appeal court's order to stay.

(4) The appellant must serve on the adjudicator and the Chief Land Registrar a copy of the appeal court's decision on the appeal as soon as reasonably practicable and in any event within 14 days of receipt by the appellant of the appeal court's decision."

para. 52PD.112, p.1322

With effect from October 13, 2003, a new Section IV (paras 25.1 to 25.7) is inserted after para. 24.3 as follows:

"Section IV—Provisions About Reopening Appeals

Reopening final appeals

25.1 This paragraph applies to applications under rule 52.17 for permission to reopen a final determination of any appeal.

25.2. In this paragraph, 'appeal' includes an application for permission to appeal.

25.3 Permission must be sought from the court whose decision the applicant wishes to reopen.

25.4 The application for permission must be made by application notice and supported by written evidence, verified by a statement of truth.

25.5 A copy of the application for permission must not be served on any other party to the original appeal unless the court so directs.

25.6 Where the court directs that the application for permission is to be served on another party, that party may within 14 days of the service on him of the copy of the application file and serve a written statement either supporting or opposing the application.

25.7 The application for permission, and any wrote state supporting or opposing it will be considered on paper by a single judge, and will be allowed to proceed only if the judge so directs."

para. 55PD.9, p.1398

Practice Direction (Possession Claims)

With effect from October 13, 2003, para. 5.5 (Evidence in mortgage possession claims) is deleted.

para. 56PD.30, p.1414

Practice Direction (Landlord and Tenant Claims and Miscellaneous Provisions About Land)

After para. 13.5, new para. 13.6 is inserted as follows:

"**13.6** An application made to the High Court under section 19 or 27 shall be assigned to the Chancery Division."

para. 70PD.5 p.1465

Practice Direction (Enforcement of Judgments and Orders)

For the heading before para. 5.1, substitute "Enforcement of awards and decisions in the High Court for enforcement – rule 70.5(8)".

Paras 5.1 and 5.2 are replaced as follows and para. 5.3 is deleted:

"**5.1** An application to the High Court under an enactment to register a decision for enforcement must be made in writing to the head clerk of the Action Department at the Royal Courts of Justice, Strand, London WC2A 2LL.

5.2 The application must—

(1) specify the statutory provision under which the application is made;

(2) state the name and address of the person against whom it is sought to enforce the decision;

(3) if the decision requires that person to pay a sum of money, state the amount which remains unpaid."

para. 73PD.4, p.1508

Practice Direction (Charging Orders, Stop Orders and Stop Notices)

The following amendments to this practice direction come into effect on December 8, 2003.

In sub-para. (4) of para. 4.3, for "so far as is known" substitute "so far as the claimant is able to identify".

After sub-para. (5) of para. 4.3, add:

"(6) If the claim relates to land, give details of every person who to the best of the claimant's knowledge is in possession of the property; and
(7) if the claim relates to residential property—
(a) state whether—
(i) a land charge of Class F; or
(ii) a notice under section 31(10) of the Family Law Act 1996, or under any provision of an Act which preceded that section,
has been registered; and
(b) if so, state—
(i) on whose behalf the land charge or notice has been registered; and
(ii) that the claimant will serve notice of the claim on that person."

After para. 4.3, insert new para. 4.4 as follows and renumber existing para. 4.4 as para. 4.5:

"**4.4** The claimant must take all reasonable steps to obtain the information required by paragraph 4.3(4) before issuing the claim."

para. scpd91.1, p.1694

Practice Direction (Revenue Proceedings)
CPR Sched.1, RSC O.91 (Revenue Proceedings) was revoked by the Civil Procedure (Amendment No. 4) Rules 2003 (S.I. 2003 No. 2113) r.19(a) and this practice direction, supplementing that Order, is now deleted and is in effect replaced by Practice Direction (Appeals) para. 23.2(11) (see above).

para. B11-002, p.1965

Practice Direction (Proceeds of Crime Act 2002 Parts 5 and 8: Civil Recovery)
In para. 2.1, for "made to" substitute "issued in".

After para. 2.1, add new para. 2.2 as follows:

"**2.2** The Administrative Court will thereupon consider whether to transfer the claim or application to another Division or Court of the High Court."

para. C1-005, p.1986

Practice Direction (Protocols)
At end of para. 5.1 add:

"Disease and Illness	8 December 2003	September 2003
Housing Disrepair	8 December 2003	September 2003"

EDITOR: **Professor I. R. Scott**, University of Birmingham.
Published by Sweet & Maxwell Ltd, 100 Avenue Road, London NW3 3PF.
ISSN 1470-2525

Typeset by Matthew Marley, desk top publishing and design
email: matthew.marley@btinternet.com
Printed by St Austell Printing Company, St Austell, Cornwall