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IN BRIEF

Cases

■ GARRATT v. SAXBY, February 18, 2004, CA, unrep. (Ward, Buxton & Dyson L.JJ.)
CPR, rr.1.1, 36.19(2) & 52.12(1)—following road accident, claimant (C) bringing personal injuries claim in a county court—defendant (D) making Pt 36 offer—claim failing at trial and C making appeal—D's offer inadvertently included in documentation filed with High Court for appeal—appeal judge finding D negligent and C guilty of contributory negligent and making orders accordingly—held, dismissing D's appeal, (1) there was no evidence that the judge had actually read of the offer, (2) had the judge been aware of the offer (a) the guidance in *Millensted v. Grosvenor House (Park Lane) Limited* [1937] 1 K.B. 717, CA, would have applied, and (b) in determining whether to recuse herself, the judge would have been entitled to take into account the additional time, cost and difficulty involved if the hearing were to be aborted (see *Civil Procedure* 2003, Vol. 1, paras 36.19.1 & 52.12)

■ PHILLIPS v. SYMES [2003] EWCA Civ 1769; December 5, 2003, CA, unrep. (Waller, Hale & Carnwath L.JJ.)
CPR, rr.32.7 & 32.14, Sched. 1, RSC O.52, r.4—administrators (C) bringing High Court proceedings against deceased's former partner (D)—court striking out D's defence and giving judgment for C and directing an account and inquiries—C applying for orders (1) that D had not complied with his undertakings made during interlocutory contempt proceedings, and (2) that D should attend for cross-examination on his compliance affidavits—judge (1) directing that D should attend for cross-examination generally on the matters raised in C's amended application, and (2) granting C permission to bring further committal applications for contempt—held, allowing D's appeal, cross-examination of a general kind designed to assist execution should not be "blended" with cross-examination aimed either at establishing a breach of the conditions upon which sentence was suspended or at establishing further contempts of court (see *Civil Procedure* 2003, Vol. 1, paras 32.7.1, 32.14.2 & sc52.4.6)

■ AUJLA v. SANGHERA [2004] EWCA Civ 122; January 23, 2004, CA, unrep. (Thorpe & Arden L.JJ. and Park J.)
CPR, rr.3.1(2)(a) & 52.4(2)(b)—claimant (C) bringing county court claim in which distribution of assets of alleged partnership disputed—claim tried on October 8, 2001, but order not drawn up until a further hearing on June 14, 2002—at that hearing, judge extending time for application for permission to appeal by D—in cross-appeal, C contending that, because time limit prescribed by r.52.4(2)(b) had already expired, the lower court judge did not have jurisdiction to extend time—held, allowing D's appeal, the judge had jurisdiction to grant the extension, (2) such extension should be granted only where appropriate in exceptional circumstances, (3) the lower court should not exercise its discretion to grant such an extension if a Notice of Appeal has already been lodged with the Court of Appeal (see *Civil Procedure* 2003, Vol. 1, paras 3.1.2 & 52.4.1)

■ HUTT v. COMMISSIONER OF POLICE FOR THE METROPOLIS [2003] EWCA Civ 1911; December 3, 2003, CA, unrep. (Auld, Hale & Dyson L.JJ.)
CPR, rr.3.1(2) & 26.11, Supreme Court Act 1981, s.69, County Courts Act 1984, s.66, Police and Criminal Evidence Act 1994, s.38—person (C) arrested by civilian warrant officer bringing claim against police (D)—in addition to allegations of false imprisonment and assault, C alleging negligence in his treatment as a diabetic in custody—claim coming on for trial before judge and jury—in course of trial, judge ruling that s.38 provided a justification for the detention of C, notwithstanding the fact that the offence for which he had been arrested was one that did not entitle an arrest without warrant—on basis of two general questions framed by judge, jury rejecting C's negligence claim, but finding D liable under some of the other allegations and awarding damages accordingly—judge granting C permission to appeal on s.38 point—single lord justice granting C permission to appeal on way in which negligence left to jury—held, allowing C's appeal and ordering re-trial, (1) the judge's s.38 ruling was wrong, (2) even though C's claims included false imprisonment, entitling him to demand jury trial, the judge could have exercised his powers under r.3.1(2) to decide the negligence allegation himself, (3) having decided to involve the jury in the negligence allegation, the parties were entitled to have specific facts found by the jury together with a reasoned ruling by the judge as to whether those facts constituted negligence [Ed.: on using different modes of trial for separate issues, see also *Phillips v. Commissioner of Police for the Metropolis* [2003] EWCA Civ 382; *The Times*, April 2, 2003, CA] (see *Civil Procedure* 2003, Vol. 1, paras 1.4.8 & 3.1.1, and Vol. 2, paras 9A-325 & 9A-624)

■ JOHNSON v. GORE WOOD & CO. (NO. 2) [2004] EWCA Civ 14; *The Times*, February 17, 2004, CA (Potter, Hale & Arden L.JJ.)
CPR, rr.1.1, 36.19, 36.20 & 44.3—company (X), C's alter ego, bringing negligence proceedings against their solicitors (D) relating to advice on development option—action compromised in course of trial—C then bringing claim for £4.3m for professional negligence against D for various personal losses arising from X's losses—in particular, C claiming damages for cost of borrowings (on which substantial interest still accumulating) entered into in reliance on D's advice—D making payment into court on August 24, 2001—at trial (May 3, 2002), following last minute admission of liability by D (leaving issue of scope of duty and measure of damages to be tried), C succeeding in part, but recovery of £88,000 plus interest not exceeding D's payment in of £120,000 ([2002] EWHC 776 (QB))—judge ordering C to pay D's costs from date of payment in—on December 3, 2003, Court of Appeal concluding that C's appeal and D's cross-appeal should be allowed, both in part—in particular, Court holding ([2003] EWCA Civ 1728) that C was entitled to recover cost of borrowings in respect of commitments incurred, not merely up to July 1989 (as the judge had held), but also up to December 1, 1989 (when D ceased to act)—had trial judge reached similar conclusions, C's recovery would still not have exceeded payment in—however, because of continuing accumulation of interest on C's borrowings, by date of appeal amount to be recovered by C exceeding payments in—held, (1) allowing C's application, (a) C should pay only 50 per cent of D's costs after last date for acceptance of the payment in as it would be unjust to order him to pay all of D's costs after that date, and (b) C's damages by way of interest on borrowings as determined by Court of Appeal should run up to date three months hence (March 17, 2004) as that was likely to be minimum time for C to receive judgment monies and satisfy the relevant loans, and (2) dismissing D's application, (a) r.36.19 provides that payment in can only be used on arguments as to costs and the overriding objective cannot be relied on to give that provision a strained construction, accordingly (b) it could not be argued that the damages awarded to C, insofar as they exceeded the amount that C would have received had he accepted the payment in made on August 24, 2001, were not damage caused by any act of D and that C's damages should be assessed at that date and not at the date of trial, (c) had D wanted to have the judge to take into account the offer they were prepared to make when assessing damages they should have made an open offer (which could have made without any admission liability—*Vinos v. Marks and Spencer Plc* [2001] 3 All E.R. 784, CA, ref'd to (see *Civil Procedure* 2003, Vol. 1 paras 36.19.1 & 36.20.1))

■ LYNCH v. TAYLOR [2004] EWHC 89 (QB); February 3, 2004, unrep. (Hughes J.)
CPR, r.48.8, Practice Direction (Costs) Sect. 54, Solicitors Act 1974, s.74(3)—C retaining D as his solicitors to prosecute county court claim—claim succeeding and C awarded costs on standard basis—on summary assessment, judge finding D's costs assessment of £7,600 neither reasonable nor proportionate and awarding only £3,000—D thereupon rendering C bill—C calling for detailed assessment—court allowing £5,570—held, dismissing C's appeal, (1) s.74(3) does not have the effect of turning an assessment between parties into a limit on costs as between solicitor and client, (2) s.74(3) applies where (unlike the circumstances in this case) there are limits under the CPR as to the level of costs recoverable as between parties (see *Civil Procedure* 2003, Vol. 1, paras 48.8.2 & 48PD.5 and Vol. 2, para. 7C-135)

■ PHILLIPS v. ASSOCIATED NEWSPAPERS LTD [2004] EWHC 190 (QB); 154 New L.J. 249 (2004) (Eady J.)
CPR, r.36.13, Practice Direction (Defamation Claims) para. 6.1—in libel claim, defendants (D) making Pt 36 offer—claimant (C) accepting offer, knowing that D were not prepared to participate in the making of a joint statement in open court—subsequently, C's application under Pt 23 for permission to make unilateral statement not opposed by D—judge granting permission—at hearing, C making statement and D making no objection—held (1) there has been no significant change of practice following the implementation of the CPR, (2) C was entitled to his costs up to the date of his acceptance of D's offer, (3) he could also be awarded the costs of his subsequent Pt 23 application and the hearing thereof, even though it was unopposed—Barnet v. Crozier [1987] 1 W.L.R. 272, CA, ref'd to (see *Civil Procedure* 2003, Vol. 1, paras 53PD.15.2)

■ THISTLE HOTELS LTD v. GAMMA FOUR LTD, February 2, 2004, unrep. (Miss Sonia Proudman Q.C.)
CPR, r.25.13—claimant (C) bringing claim against company (D) relating to transfer of hotels—D filing defence and making counterclaim—C, as defendant to the counterclaim, applying for order for security for costs on grounds (a) that D were resident out of the jurisdiction, and/or (b) that there was reason to believe that they would be unable to pay C's costs if ordered to do so—held, granting the application (1) in the circumstances, the court had jurisdiction as the conditions in paras (a) and (c) of r.25.23(2) were satisfied, (2) although D's counterclaim arose out of the same transaction as C's claim, it raised new issues and the facts

required to establish it went well beyond those required to establish the defence, (3) in these circumstances, in exercising its discretion the court had to consider all the circumstances including the prospects of the success of the counterclaim, (4) there was no evidence that D's counterclaim would be stifled by a security for costs order—*Hutchinson Telephone (UK) v. Ultimate Response* [1993] B.C.L.C. 307, CA; *Keary Developments Ltd v. Tarmac Construction Ltd* [1995] 3 All E.R. 534, CA, ref'd to (see *Civil Procedure* 2003, Vol. 1, paras 25.13.8 & 25.13.13)

■ YELL LTD v. GARTON [2004] EWCA Civ 87; *The Times*, February 26, 2004, CA (Peter Gibson, Laws & Longmore L.JJ.)
CPR Pt 52, Practice Direction (Appeals), para. 12.4—claimant making appeal to Court of Appeal against decision of EAT—hearing of appeal listed for two days commencing on a Monday—at 6 p.m. on the preceding Friday, counsel informed that parties had reached agreement and that the appeal was to be withdrawn by consent—Civil Appeals Office not notified of this until 9 a.m. on the Monday—Court stating (1) there is a professional obligation on legal advisers to notify the Court as soon as possible if there is a likelihood that judicial time would be wasted in preparing for an appeal, (2) the obligation arises, not only where an appeal has been settled, but also where it is subject to negotiations which might lead to settlement, (3) in the circumstances of this case, it would have been possible at 6 p.m. on the Friday for the 24 hour switchboard at the RCJ to have been contacted—*Tasyurdu v. Secretary of State for the Home Department* [2003] EWCA Civ 447; *The Times*, April 16, 2003, CA, ref'd to (see *Civil Procedure* 2003, Vol. 1, paras 1.3.7, 1.3.8 & 52PD.46)

Practice Direction

■ PRACTICE DIRECTION (COMPETITION LAW—CLAIMS RELATING TO THE APPLICATION OF ARTICLES 81 AND 82 OF THE EC TREATY), TSO CPR Update 34, January 2004
CPR, r.30.8, Competition Act 1998 Chaps I & II, Council Regulation (EC) No. 1/2003, arts 15 & 16, EC Treaty arts 81 & 82—relates to r.30.8 (venue) and reflects terms of arts 15 & 16 so as (1) to provide for management of cases raising issues of competition and the abuse of a dominant position in the market, and (2) to avoid conflict with Commission decisions—in force May 1, 2004 (see *Civil Procedure* 2003, Vol. 1, Sect. B)

■ PRACTICE STATEMENT (LATE CLAIM FOR ASYLUM: INTERIM RELIEF) [2004] 1 All E.R. 923, QBD (Collins J.)
CPR, rr.1.1(2)(e), 3.1(2)(a) & 54.8(2), Practice Direction (Judicial Review) para. 7.1, Nationality, Immigration and Asylum Act 2002, s.55—Administrative Court practice— application to apply for judicial review by asylum seekers following withdrawal of support under s.55 (late claim for asylum: refusal of support)—unless the court directs otherwise, and without respondent's application, it will be assumed that the time for serving acknowledgement of service under r.54.8(2)(a) will be two months and not 21 days—where respondent fails to provide acknowledgment within that time the claim will be put before a judge within 14 days to consider whether permission should be granted (see *Civil Procedure* 2003, Vol. 1, paras 1.3.7, 3.1.2, 54.8.1 & 54PD.6)

IN DETAIL

Offer inadvertently disclosed to judge

Para. (2) of CPR, r.36.19 states that the fact that a Pt 36 payment has been made shall not be communicated to the trial judge until all questions of liability and the amount of money to be awarded have been decided. Para. (1) of the rule states that, where a Pt 36 offer has been made, it will be treated as "without prejudice as to costs". The implication of this is that the fact that a Pt 36 offer has been made should not be communicated to the court until all questions, other than costs, have been determined.

Para. (1) of r.52.12 (as recently amended) states that the fact that a Pt 36 offer or Pt 36 payment has been made must not be disclosed to any judge of the appeal court who is to hear or determine (a) an application for permission to appeal, or (b) an appeal. This rule does not apply if the offer or payment is relevant to the substance of the appeal (r. 52.12(2)), and it does not prevent disclosure in any application in the appeal proceedings (including, presumably, an application for permission to appeal) if disclosure of the fact that an offer or payment has been made is properly relevant to the matter to be decided (r.52.12(3)).

In *Garratt v. Saxby*, February 18, 2004, CA, unrep., the facts were that, following a road accident, the claimant (C) brought a personal injuries claim in a county court. The defendant (D) made a Pt 36 offer. C's claim failed at trial and C appealed. Unfortunately, D's offer was inadvertently included in the documentation filed with High Court for the appeal. In the event, the appeal judge found D negligent but also found C guilty of contributory negligent and made orders accordingly.

D appealed to the Court of Appeal contending, amongst other things, that the inadvertent disclosure of the offer was a procedural irregularity of such seriousness that the appeal court judge's decision should not stand. The Court (Ward, Buxton & Dyson L.JJ) dismissed the appeal, finding that there was no evidence that the judge had actually read of the offer. In disposing of the appeal, the Court affirmed the guidance set out in *Millensted v. Grosvenor House (Park Lane) Limited* [1937] 1 K.B. 717, CA.

In the *Millensted* case, the trial judge awarded the plaintiff £50 damages with costs in a personal injuries action brought in the High Court. The judge was then informed that there had been a £20 payment into court. On the following day, when an application was made to the judge as to costs, the judge informed the parties that he had had second thoughts and ordered that the plaintiff should recover only £35 damages with costs restricted to the county court scale. That case remains an authority on the question whether a judge may recall his judgment for the purpose of changing it before the order carrying it into effect has been drawn up and perfected (see *White Book*, para. 40.2.1). However, as the Court indicated in *Garratt v. Saxby*, the case is also an authority on the effect of the rules now found in CPR, r.36.19(2) and r.52.12(1).

In the *Millensted* case, the Court of Appeal said that RSC O.22, r.6 (an ancestor of CPR, r.36.19(2)) was directory and not compulsory. The prohibition in the rule is supported by no sanction; nothing is said as to what is to happen if the rule is broken. The rule constitutes a direction to counsel, parties and witnesses. According to Scott L.J. (p.725), a dereliction from the duty indicated by the rule is an incident which the judge trying the case is left free to deal with in his complete discretion, acting under the inherent jurisdiction of the court, according to the actual circumstances of the case in which the incident happens. Breach of the rule leads to no "paralysis of jurisdiction" (partial or otherwise).

According to Farwell J. (p.727), the matter was for the judge to determine in accordance with the object of the rule, which is to prevent the premature disclosure of a fact which was not relevant to the issues to be tried, but the disclosure of which might prejudice one or more of the parties to the proceedings. His lordship added that, if the judge thinks it proper or necessary for the due administration of justice, he may refuse to hear the action any further and direct it to be tried before another tribunal. On the other hand, if he is satisfied that no injustice will be done, he may allow the matter to proceed.

In *Garratt v. Saxby*, the Court of Appeal put the *Millensted* case in the context of the CPR and drew attention to the overriding objective. The Court said a judge with knowledge of an offer or payment would have to determine whether the disclosure made a fair trial possible or whether justice required him to recuse himself. In making this decision, the judge would be entitled to take into account the additional time, cost and difficulty involved for all concerned if the hearing were to be aborted.

It may be noted that Farwell J. and Slesser L.J. agreed that a judge's decision to proceed with the trial would afford no ground for an appeal from the order ultimately made and for the ordering of a new trial. However, in *Garratt v. Saxby*, the Court said that a breach of r.52.12(1) was a procedural irregularity that had the potential of being so serious as to allow an appeal from that decision.

Cross-examination of deponent

In *Phillips v. Symes* [2003] EWCA Civ 1769; December 5, 2003, CA, unrep., the defendant (D1) and the deceased (X) had been in business together. The administrators (C) of X's estate brought High Court proceedings against D1 and a company (D2) owned by D1.

The court made various interlocutory orders, including orders restricting the disposal of property by D1 and D2. The court authorised D1 to sell a particular article, provided certain conditions were met. After the sale of that article to P Co, on ground that the sale was made in breach of the terms, C made a further application to the court. In affidavits filed in response, D1 first denied and then admitted certain breaches of the terms. The court then (1) directed C to apply for D1's committal for contempt, and as a necessary part of the committal process (particularly, for the purpose of assessing the seriousness of the contempt) (2) ordered the trial of the question whether, before the sale to P Co, the article was owned, not (as C alleged) solely by D2, but (as D1 alleged) jointly by D2 with X and Y (who were joined as parties). In the meantime, as a result of D1's failure to comply with disclosure orders, the court struck out D1's defence and gave judgment for C.

On May 22, 2003, the judge (1) on the basis of D1's admission committed him for contempt, but suspended the sentence of imprisonment upon the giving by D1 of certain undertakings, and (2) held that the article sole to P Co was 100 per cent owned by D2. D1 did not appeal against the committal or the sentence. However, he applied for permission to appeal against the judge's holding as to the ownership of the article. On the basis that D1 (unlike X and Y) had no interest, the Court of Appeal refused him permission to appeal against that decision.

The undertakings given by D1 required him, by a particular date, to swear affidavits giving information as to the location of certain antiques and the sources of certain funds received. C applied for an order that D1 should attend for cross-examination on his compliance affidavits and for orders as to whether he had complied with his undertakings (if he had not, C could apply for the lifting of the suspension of the sentence of imprisonment). Upon C informing the judge that they had formed the view from evidence obtained from elsewhere that D1 was in contempt of earlier orders (including orders other than those mentioned above), the judge gave directions. Consequently, upon C amending their application to include these allegations, the judge (1) directed that D1 should attend for cross-examination generally on the matters now raised in C's application (r.32.7), and (2) granted C permission to bring further committal applications for contempt (r.32.14). A single lord justice granted D1 permission to appeal.

The Court of Appeal (Waller, Hale & Carnwath L.JJ.) allowed the appeal. In giving the judgment of the Court, Waller L.J. said the perfectly proper desire to trace and preserve the partnership assets had led to a number of different techniques being used at once, in such a way that it was difficult to work out the proper and fair procedures for determining the various issues before the court. It was necessary to draw careful distinctions between the several issues raised in the applications before the judge. The court's concentration should be on whether evidence given by D1 has now provided the information required to be provided by his undertakings. His lordship added that it was wrong to subject D1 to general cross-examination at this stage, solely because he is being given the opportunity finally to comply with his undertakings. In the Court's opinion, cross-examination of a general kind designed to assist execution should not be "blended" with cross-examination aimed either at establishing a breach of the conditions upon which sentence was suspended or at establishing further contempts of court.

In reaching these conclusions, the Court made a number of interesting observations. For example, after noting that, where a party comes to court alleging that affidavits sworn by a party in compliance with an undertaking or an order do not comply with an undertaking or an order, the burden of proving this will obviously lie on that party. The Court then said (para. 51):

"The standard of proof will depend upon the purpose for which the allegation is made. If it is for the purpose of supporting a fresh allegation of contempt with a view to obtaining a fresh order for committal, then clearly it will be to the criminal standard. If it is for some other purpose, such as obtaining an order for further affidavits, the civil standard will suffice. We are not aware of any authority dealing with the standard of proof to which non-compliance with the conditions of suspension of a committal order must be proved. Yet this is a question which theoretically arises every time a suspended committal order is used to secure compliance with some procedural requirement, an everyday occurrence in county courts up and down the land. The committal order has already been imposed, following the proof of a contempt to the criminal standard. A breach of condition may or may not involve a further contempt of court, but the application is not to impose a further sentence but to implement the one which has already been imposed. It is not self-evident that proof to the criminal standard is required. In practice, we suspect that the difficulty is more apparent than real: it will usually be obvious whether or not the condition has been complied with."

CPR UPDATE

AMENDMENTS TO RULES

In the CPR Update section of Issue 2/04 of *CP News*, the effects of changes made by the Civil Procedure (Amendment No. 5) Rules 2003 (S.I. 2003 No. 3361) coming into effect on February 1 and March 1, 2004, were explained. The changes coming into effect on April 1 and May 1, 2004, are explained below.

para. 21.1, p.436

With effect from April 1, 2004, in para. (1) of r.21.1, for "administering his own affairs" substitute "administering his property and affairs".

para. 30.7, p.685

With effect from May 1, 2004, the following new rule (r.30.8) is inserted after r.30.7. The addition of this rule, and of Practice Direction (Competition Law—Claims Relating to the Application of Articles 81 and 82 of the EC Treaty) (see below), is a consequence of the coming into effect of provisions in the Competition Act 1998 (c.41). Amongst other things, the Practice Direction provides that a claim relating to the application of Art. 81 or Art. 82 of the EC Treaty must be commenced in the High Court at the Royal Courts of Justice and will be assigned to the Chancery Division (para. 2.1).

"Transfer of EC Competition Law claims

30.8 If in any proceedings in the Queen's Bench Division, a district registry of the High Court or a county court, a party's statement of case raises an issue relating to the application of Article 81 or Article 82 of the Treaty establishing the European Communities—

(a) rules 30.2 and 30.3 do not apply; and

(b) the court must transfer the proceedings to the Chancery Division of the High Court at the Royal Courts of Justice."

para. 52.12, p.1278

With effect from April 1, 2004, for the purpose of making it clear that a Pt 36 offer or payment should not be disclosed to a judge dealing with an application for permission to appeal, para. (1) of r.52.12 is substituted as follows:

"(1) The fact that a Part 36 offer or Part 36 payment has been made must not be disclosed to any judge of the appeal court who is to hear or determine—

(a) an application for permission to appeal; or

(b) an appeal."

para. 54.1, p.1338

With effect from May 1, 2004, paras (b), (c) and (d) are omitted from r.54.1(2) for the purpose of omitting references to the Latin names of the prerogative orders available by judicial review. (Henceforward, "quashing order" and "mandatory order" are to be used instead of certiorari and mandamus.)

para. 54.3, p.1346

Rule 54.3 deals with the circumstances in which Pt 54 (Judicial Review) may be used. With effect from May 1, 2004, r.54.3 is amended to allow the remedies of restitution and the award of a liquidated sum to be sought on a claim for judicial review.

This is achieved by amending para. (2) by inserting after "damages", where it first occurs inserting ", restitution or the recovery of a sum due" and by substituting for "damages" where it next occurs "such a remedy". In addition, in the cross-reference at the end of para. (2) ", restitution or the recovery of a sum due" is inserted after "damages".

para. 57.9, p.1421

With effect from April 1, 2004, in r.57.9 (Probate counterclaim in other proceedings), at the end of sub-para. (4)(b) the words "or the Central London County Court" are inserted.

para. 74.19, p.1539

With effect from April 1, 2004, para. (a) of r.74.19 is amended by removing "or" from the end of sub-para. (iii) and placing it at the end of sub-para. (iv), and by adding after sub-para. (iv) the following new sub-paragraph:

"(v) article 71 of Council Regulation (EC) 6/2002 of 12 December 2001 on Community designs;"

para. sc17.1, p.1563

With effect from April 1, 2004, r.1 of RSC O.17 (Interpleader) is amended and reads in its entirety as follows (see also Sched. 2, CCR O.16, r.7 below).

"(2) References in this Order to a sheriff shall be construed as including references to—

(a) an individual authorised to act as an enforcement officer under the Courts Act 2003; and

(b) any other officer charged with the execution of process by or under the authority of the High Court."

para. sc45.1.1, p.1574

The Courts Act 2003, s.99 and Sched. 7 abolish any rule of law requiring a writ of execution issued from the High Court to be directed to a sheriff and provide for the authorisation of High Court enforcement officers. As a consequence, a number of amendments are made to CPR Sched. 1, RSC Ords 45 to 47.

At the beginning of RSC O.45 (Enforcement of Judgments and Orders: General), the following new rule is inserted at the beginning and comes into effect of April 1, 2004.

"Interpretation

1A In this Order, and in RSC Orders 46 and 47—

(a) "an enforcement officer" means an individual who is authorised to act as an enforcement officer under the Courts Act 2003; and

(b) "relevant enforcement officer" means—

(i) in relation to a writ of execution which is directed to an single [sic] enforcement officer;

(ii) in relation to a writ of execution which is directed to two or more enforcement officers, the officer to whom the writ is allocated."

para. sc45.2, p.1574

In r.2 of RSC O.45, with effect from April 1, 2004, "or the relevant enforcement officer" is inserted after "the Sheriff or his officer".

para. sc45.8, p.1588

With effect from May 1, 2004, in r.8 of RSC O.45 "an order of mandamus" is deleted.

para. sc52.7.6, p.1646

With effect from April 1, 2004, after r.7 of Sched. 1, RSC O.52 (Committal), a new provision, r.7A, is inserted. A similar addition is made to Sched. 2, CCR O.29 (see below).

"Warrant for arrest

7A A warrant for the arrest of a person against whom an order of committal is made shall not, without further order of the court, be enforced more than 2 years after the date on which the warrant is issued."

para. sc79.9, p.1683

With effect from May 1, 2004, in para. (11) of RSC O.79, r.9 (Bail) "a quashing order" is substituted for "an order of certiorari".

para. sc93.22, p.1697

With effect from May 1, 2004, in para. (2) of RSC O.79, r.22 (Proceedings under the Financial Services and Markets Act 2000) "an application for a mandatory order" is substituted for "an application for mandamus".

para. cc16.7, p.1794

With effect from April 1, 2004, in CCR O.16, r.7 (Interpleaded proceedings under execution), after para. (1) the following new paragraph is inserted (see also Sched. 1, RSC O.17, r.1, above):

"(1A) In this rule references to the sheriff shall be interpreted as including references to an individual authorised to act as an enforcement officer under the Courts Act 2003."

para. cc29.1, p.1836

With effect from April 1, 2004, after para. (5) of CCR O.29, r.5, insert:

"(5A) A warrant of committal shall not, without further order of the court, be enforced more than 2 years after the date on which the warrant is issued."

Volume 2, para. 2F-30, p.516

With effect from April 1, 2004, r.63.7 (Case management) para. (3)(a) is amended by omitting the words "and pre-trial reviews" and para. (3)(c) is amended by substituting "paragraph (1)(b) and (c)" for "rule 29.5(1)(c)".

Volume 2, para. 2F-54, p.521

With effect from April 1, 2004, the heading of r.63.9 is amended by substituting "to" for "of".

Volume 2, para. 2F-76, p.528

With effect from April 1, 2004, r.63.16 (Service) is substituted as follows:

"(1) Subject to paragraph (2), Part 6 applies to service of a claim form and any document under this Part.

(2) A claim form relating to a registered right may be served—

(a) on a party who has registered the right at the address for service given for that right in the United Kingdom Patent Office register, provided the address is within the jurisdiction; or

(b) in accordance with rule 6.9(1) or (1A) on a party who has registered the right at the address for service given for that right in the appropriate register at—

(i) the United Kingdom Patent Office; or

(ii) the Office for Harmonisation in the Internal Market."

AMENDMENTS TO PRACTICE DIRECTIONS

In the CPR Update section of Issue 01/04 of *CP News* (January 2004) the new practice direction containing provisions for the pilot scheme for the detailed assessment by the SCCO of costs of proceedings in London county courts was noted and amendments to Practice Direction (Appeal) and Practice Direction (Traffic Enforcement) were explained.
A number of further changes to CPR practice directions, brought about by TSO Update 34, published towards the end of January 2004 (and including a further change to Practice Direction (Appeals)), are explained below. Some of the changes are consequences of amendments made to the CPR by the Civil Procedure (Amendment No. 5) Rules 2003 (S.I. 2003 No. 3361) (referred to in recent issues of *CP News*).

Except where reference is made to Volume 2 or to the *Second Supplement*, paragraph and page references are to Volume 1 of *Civil Procedure* 2003.

Practice Direction (Communication and Filing of Documents by E-Mail)

Second Supplement, para. 5BPD.1, p.11

With effect from May 1, 2004, this practice direction (supplementing r.5.5) is re-titled and replaced by Practice Direction (Electronic Communication and Filing of Documents). As substituted, this Practice Direction is printed in *Civil Procedure* 2004, para. 5BPD.6. A new section 2 makes provision for use of the online forms service which may be used for both submission of forms and for submission of documents.

Practice Direction (Pilot Scheme for Money Claim Online)

para. 7EPD.1, p.264

With effect from February 1, 2004, para. 1.1 is replaced by new text as follows:

"**1.1** This practice direction provides for a scheme in which, in the circumstances set out in this practice direction, a request for a claim form to be issued and other specified documents may be filed electronically ("Money Claim Online")."

Practice Direction (Addition and Substitution of Parties)

para. 19BPD.1, p.408

In this practice direction the List of Authorised Government Departments required to be published.

The Crown Proceedings Act 1947, s.17 requires that a List of Authorised Government Departments and the names and addresses for service of the person who is acting for the purposes of that Act should be published by the Minister for the Civil Service (see Vol. 2, para. 9B-333). The List is useful for persons wishing to bring proceedings against the Crown. Para. 6A of this Practice Direction provides that notice given under CPR, r.19.4A (Human Rights) must be served on the person referred to in the s.17 List. For convenience, the List is set out in an Annex to the Practice Direction. Until recently, the List so annexed was the one published by the Minister on July 31, 2000. That List was superseded by subsequent editions of the List but the Annex was not updated accordingly. This has now been rectified by replacing (with immediate effect) the List of July 31, 2000, with one published on April 5, 2003.

Practice Direction (Children and Patients)

para. 21PD.1, p.446

With effect from April 1, 2004, in paragraph 1.1 "his own affairs" is replaced by "his property and affairs". This reflects the amendment made to CPR, r.21.1(2)(b) by the Civil Procedure (Amendment No. 5) Rules 2003.

Practice Direction (Pilot Scheme for Telephone Hearings)

Second Supplement, para. 23BPD.1, p.36

With effect from February 1, 2004, for para. 1.1 substitute:

"**1.1** This practice direction is made under rule 51.2. It provides for a pilot scheme ("the Telephone Hearings Pilot Scheme") to operate at the courts specified in the Appendix between the dates specified for each court in the Appendix. The purpose of the Telephone Hearings Pilot Scheme is to extend the scope of hearings which may be conducted by telephone."

And, after para. 3.2, add:

"Appendix

Newcastle Combined Court Centre

1st September 2003 - 27th February 2005

Bedford County Court

1st February 2004 - 27th February 2005

Luton County Court

1st February 2004 - 27th February 2005"

Practice Direction (Depositions and Court Attendance by Witnesses)

Second Supplement, para.34PD.5, p.52

By TSO CPR Update 33, published in October 2003, sub-para (4) of para. 5.3 of this Practice Direction (see para. 34PD.1, p.814 of the Main Work) was replaced with new text with effect from January 1, 2004, and that amendment (as advised in that Update) was noted in the *Second Supplement*, para. 34PD.5, p.52. In TSO CPR Update 34, published in January 2004, it is explained that the replaced text contained surplusage. Sub-para (4) of para. 5.3 should read as follows:

"(4) a translation of the documents in (1), (2) and (3) above, unless the proposed deponent is in a country of which English is an official language, and"

Practice Direction (Miscellaneous Provisions About Payments Into Court)

para. 37PD.1, p.888

When RSC O.92 was revoked on December 2, 2002, para. 9.2 was inserted in this Practice Direction. With effect from February 1, 2004, a correction is made to that paragraph by substituting "application notice" for "witness statement".

Practice Direction (Court Sittings)

para. 39BPD.2, p.914

With effect from April 1, 2004, in para. 2.5(1) (vacation applications before Masters), "sheriff's interpleader" is replaced by "interpleader by a sheriff or High Court enforcement officer".

The provisions as to Court Sittings in 2002 (para. 39BPD.2) are deleted.

Practice Direction (General Rules About Costs)

para. 44PD.2, p.1026

With effect from February 1, 2004, para. 8.2 is replaced as follows:

"**8.2** In a probate claim where a defendant has in his defence given notice that he requires the will to be proved in solemn form (see paragraph 8.3 of the practice direction supplementing Part 57), the court will not make an order for costs against the defendant unless it appears that there was no reasonable ground for opposing the will. The term "probate claim" is defined in rule 57.1(2)."

para. 44PD.13, p.1039

With effect from April 1, 2004, para. 19.4(3) is replaced as follows:

"(3) Where the funding arrangement is an insurance policy, the party must state the name and address of the insurer, the policy number and the date of the policy, and must identify the claim or claims to which it relates (including Part 20 claims if any)."

Practice Direction (Fixed Costs)

Second Supplement, para. 45PD.7, p.104

With effect from February 1, 2004, in para. 25A.9 (which deals with fixed recoverable costs in costs-only proceedings in road traffic cases) "exceptional" is replaced by "particular".

Practice Direction (Appeals)

Second Supplement, para. 52PD.90, p.192

In sub-para (2) of para 21.7 (Appeals from Immigration Appeals Tribunal), "28 days" replaced by "14 days".

Practice Direction (Patents and Other Intellectual Property Claims)

With effect from April 1, 2004, the following changes are made to certain of the provisions in this Practice Direction (supplementing Pt 63) dealing with case management, disclosure and inspection.

Volume 2, para. 2F-86, p.530

For paras 4.8 and 4.9, substitute the following:

"**4.8** Not less than 4 days before a case management conference, each party must file and serve an application notice for any order which that party intends to seek at the case management conference.

4.9 Unless the court orders otherwise, the claimant, or the party who makes an application under paragraph 4.6, in consultation with the other parties, must prepare a case management bundle containing—

(1) the claim form;

(2) all statements of case (excluding schedules), except that, if a summary of a statement of case has been filed, the bundle should contain the summary, and not the full statement of case;

(3) a pre-trial timetable, of one has been agreed or ordered;

(4) the principal orders of the court; and

(5) any agreement in writing made by the parties as to disclosure,

and provide copies of the case management bundle for the court and the other parties at least 4 days before the first case management conference or any earlier hearing at which the court may give case management directions."

Volume 2, para. 2F-87, p.531

In para. 5.1(1), after "if, before" insert "or at the same time as".

Volume 2, para. 2F-93, pp.533 to 534

In the heading to para. 11.1, replace "of" with "to".

In sub-para. (1) of para. 11.1, in each place that it occurs (two) replace "claim form" with "statement of case".

In sub-para. (2) of para. 11.1, in each place that it occurs (two) replace "claim form" with "statement of case".

In the opening words in para. 11.3, for "validity of a patent" substitute "the validity of a patent or a registered design".

In para. 11.3, at the end of sub-para. (1), delete "and" and at the end of sub-para. (2) delete the full-stop and substitute "; or" and then add then add a third sub-paragraph as follows:

"(3) that the registered design is not new, the particulars must specify such details of the matter in the state of art relied on, as set out in paragraph 11.4."

In para. 11.4, in the opening words, for "paragraph 11.3(1)" substitute "paragraphs 11.3(1) and 11.3(3)".

In sub-para. (1) and in sub-para. (2) of para. 11.4(1), after "of matter" insert "or a design".

In the opening words of para. 11.5, insert "the" before "validity".

In para. 11.5(1) for "claim form" substitute "statement of case".

Volume 2, paras 2F-107 & 2F-108, pp.537 to 538

In the heading to para. 25.1, after "97(2)" insert "or section 229(3)".

In the opening words of para. 25.1, after "97(2)" insert "or section 229(3)".

In the opening words of para. 26.1, for "195 or 204" substitute "195, 204, 230 or 231".

FORMS

Civil Procedure Forms Volume, pp.1/209 & 1/215

N243A/F201 (Notice of acceptance of payment into court (Part 36)) has been amended with effect from March 1, 2004, principally for purpose of clarifying position regarding who should sign the form where claimant legally aided.

Form N251 (Notice of funding of case or claim) has been revised to include amongst the information as to funding required to be provided the insurance policy numbers and addresses of insurers.

NEW PRACTICE DIRECTION

As was explained above, r.30.8 (Transfer of EC Competition law claims) was added to the CPR recently and comes into effect on May 1, 2004. That rule requires any proceedings which raise an issue of competition law relating to the application of Art. 81 or Art. 82 of the EC Treaty to be transferred to the Chancery Division of the High Court at the Royal Courts of Justice.

For reasons that will become clear in what is said below, r.30.8 suspends the operation of the normal rules as to transfer of proceedings in proceedings where an issue relating to the application of Art. 81 or Art. 82 arises.

By TSO CPR Update 34, Practice Direction (Competition Law—Claims Relating to the Application of Articles 81 and 82 of the EC Treaty) dealing with such proceedings is added to the CPR and comes into effect on the same date. This practice direction does not specifically supplement r.30.8 or any other specific rule in the CPR. (The text of this practice direction will appear in Section B of Vol. 1 of *Civil Procedure* 2004.)

All this is a consequence of the Competition Act 1998 (c.41). That Act makes new provision about competition and the abuse of a dominant position in the market, and conferred powers in relation to investigations conducted in connection with (what are now) Art. 81 or Art. 82 of the EC Treaty.

Provisions in Chap. I of the Act prohibit agreements preventing, restricting or distorting certain agreements. Chap. II contains provisions about the abuse of dominant position. These Chapters in the Act reflect, respectively, Art. 81 and Art. 82.

Art. 15 and Art. 16 of Council Regulation (EC) No. 1/2003 of 16th December 2002 on the implementation of rules of competition laid down in Articles 81 and 82 of the Treaty, contain provisions affecting the handling of claims to which r.30.8 refers. The terms of these provisions are reflected in Practice Direction (Competition Law—Claims Relating to the Application of Articles 81 and 82 of the EC Treaty), which contains provisions dealing with venue, notice of proceedings, case management, avoidance of conflict with Commission decisions, and judgments.

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