CIVIL PROCEDURE NEWS

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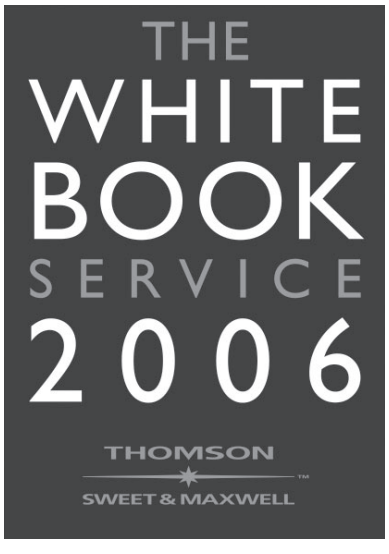

IN BRIEF

Cases

R. (KUMAR) v. SECRETARY OF STATE FOR CONSTITUTIONAL AFFAIRS [2006] EWCA Civ 990, July 13, 2006, CA, unrep. (Brooke, Dyson & Lloyd L.JJ.)

Civil restraint order—jurisdiction

CPR rr.3.11 & 52.10(1) & (2A), Practice Direction (Civil Restraint Orders) para. 4.1—on November 8, 2004, judge dismissing claimant's (C) renewed application for permission to apply for judicial review—at same hearing, at instigation of D, judge making general CRO against C—rule-based CRO regime coming into effect on October 1, 2004, not brought to attention of judge—C granted permission to appeal—held, allowing appeal (1) notwithstanding the existence of a comprehensive rule-based regime in the CPR, the judge may have had jurisdiction under the inherent jurisdiction to impose a general CRO, (2) however, in the circumstances it would have been inappropriate for him to do so, (3) on the evidence before him, it would have been open to the judge to grant an extended CRO, and (4) in exercise of its powers under r.52.10(1) and (2)(a), the appeal court should substitute such an order—development of CROs explained (see ***Civil Procedure 2006*** Vol. 1 para. 3.11.1)

THE BOLTON PHARMACEUTICAL COMPANY 100 LTD. v. DONCASTER PHARMACEUTICALS GROUP LTD. [2006] EWCA Civ 661, May 26, 2006, CA, unrep. (Mummery & Longmore L.JJ. & Lewison J.)

Summary judgment—test to be applied

CPR r.24.2—claimants (C) bringing claim for permanent injunction to restrain infringement of trade mark in connection with repackaged and re-labelled pharmaceutical products imported by the defendants (D) from Spain and marketed in the United Kingdom—judge granting C's application for summary judgment—held, allowing D's appeal, (1) C's application involved substantive EU competition law, the EU doctrine of the exhaustion of rights and UK trade mark law, as applied to particular facts, some of which were disputed, (2) in the circumstances, the judge was wrong to treat this case as a suitable case for summary judgment—test to be applied explained—observations on summary judgment procedure generally (see ***Civil Procedure 2006*** Vol. 1 para. 24.2.5)

A-B v. BRITISH COAL CORPORATION [2006] EWCA Civ 172, January 24, 2006, C.A, unrep. (Auld, Rix & Gage L.JJ.)

Nominated judge—further proceedings—risk of apparent bias

CPR Pt 19 Sect III—personal injury claims by coal miners against employers (D1) handled under group litigation order—High Court judge designated (T) as judge in charge—T giving judgment in two substantial trials, one establishing D1's liability, the other the contribution of D1's contractors (D2)—claims handling agreement (CHA), incorporating medical assessment process (MAP) and (for certain claimants) a fast-track offer procedure (FTO), developed by D before T to deal with claims in light of his decisions—subsequently, FTO varied so as to make it unnecessary for claimants suffering least damage to go through MAP—although it was open to them to attend hearings at which FTO was developed and varied, D2 choosing not to do so—possibility arising that there would have to be a further trial on question of D2's contribution in respect of the FTO process—D2 raising objection to T continuing to sit as judge for these purposes and requesting him either (1) to refer the question of whether a new judge should be appointed for such trial, or (2) to recuse himself on ground of apparent bias—T ruling that he should continue to hear the further contribution proceedings—D2 making renewed application to Court of Appeal for permission to appeal, held, dismissing application, (1) there was no reasonable prospect that D2 would succeed on appeal, (2) the nature of T's involvement in the group litigation would not lead a fair-minded and informed observer to conclude that there was a real possibility of bias, (3) T was in essence in no different position from that of any judge who, after hearing primary liability proceedings, has to go on to resolve contribution claims—Court observing that, to characterise too readily a judge's conduct in managing group litigation (which may include his revisiting his earlier rulings) as conduct at risk of being perceived as apparent bias, would subvert the proactive case management role of judges expected under the CPR (see ***Civil Procedure 2006*** Vol. 1 para. 19.9.9, and Vol. 2 para. 9A–44.1)

AL-KORONKY v. TIME-LIFE ENTERTAINMENT GROUP LTD. [2006] EWCA Civ 1123, *The Times* August 28, 2006, CA (Sedley, Keene & Longmore L.JJ.)

Security for costs—full and candid disclosure of means

CPR rr.25.12, 25.13 & 52.11(2), Human Rights Act 1998 s.3(1) & Sched.1 Pt 1 art. 6—claimants (C), now resident abroad in non-EU State, bringing libel claim against publishers and co-author (D) of book—C entering into CFA with legal advisers with no ATE insurance—D making plea of justification to defamatory meanings

complained of by C—D applying for order for security for their costs to cover period up to disclosure of documents in sum of £375,000—judge granting the application ([2005] EWHC 1688 (QB))—C granted permission to appeal—held, dismissing C's appeal, (1) a court must not order security in a sum which it knows the claimant cannot afford, (2) a claimant resident abroad who wants to ensure that any security is within his means must be full and candid in setting out what his means are, (3) where the court is satisfied (a) that the case is one in which C ought to put up security, and (b) that it does not have a sufficiently full and candid account of the resources available to C to calculate with reasonable confidence how much C can afford, the court has a discretion to set an amount which represents its best estimate of what the claimant can afford, (4) a claimant's entry into a CFA has by itself no impact on the case for or against the making of an order for security for costs, (5) as the outcome of this case would depend entirely upon which side was telling the truth, it was overwhelmingly likely that, if C lost, it would be on grounds which rendered their ATE cover ineffective, (6) it followed that Cs' CFA, while it did not count against them either in law or in the exercise of the judge's discretion, did not help them to ward off an order for security—observations on admissibility of fresh evidence on interlocutory appeals (see ***Civil Procedure 2006*** Vol. 1 paras. 25.13.1, 25.13.2 & 52.11.2)

■ **C. PLC. v. C**. [2006] EWHC 1226 (Ch), 156 New L.J. 988 (2006), The Times June 8, 2006 (Evans-Lombe J.)

Search order—self-incrimination privilege

CPR r.25.1(1)(h), Civil Procedure Act 1997 s.7, Civil Evidence Act 1968 s.14, Theft Act 1968 s.31, Supreme Court Act 1981 s.72, Human Rights Act 1998 Sched.1 Pt 1 art. 6—company (C) bringing claim against individual (D) for breach of confidence and copyright infringement and obtaining search order—amongst other things, order requiring D to permit C to image information stored electronically on his premises so that any information belonging to C could be identified—D permitting search to take place, but (on legal advice) asserting privilege against self-incrimination in respect of any material which the search disclosed—independent computer expert (W) (authorised in the order to assist in its execution) uncovering highly objectionable images of children—W applying to court for directions as to what he should do with this offending material which, in his view, constituted evidence of the committing of offences by D—for purpose of determining whether he should order that the material be passed to police, judge directing a full hearing of the application on notice to D and with particular intervenors—D asserting that he was at all times unaware of the material—held, directing that W pass the material to the police, but staying the order pending appeal and granting permission to appeal, (1) the common law privilege extends to oral statements made by, and written material brought into existence by, a suspect under compulsion and which tend to incriminate him, (2) since the coming into effect of the 1998 Act, it was open to the court to modify the privilege to provide that it does not extend to material which (a) constitutes freestanding evidence, (b) was not brought into existence by him under compulsion, and (c) could have come to public notice otherwise than as the result of the exercise of some statutory power enforceable by the court, (3) despite authority to the contrary, such modification was appropriate and does not infringe the art. 6 rights of a potential defendant in criminal proceedings, (4) C and W should be released from their implied undertaking to keep confidential to the proceedings any material obtained as a result of the search (see ***Civil Procedure 2006*** Vol. 1 para. 25.1.29, and Vol. 2 paras. 9A–337 & 9B–240)

■ **FLORA v. WAKON (HEATHROW) LTD**. [2006] EWCA Civ 1103, 156 New L.J. 1289 (2006) CA (Sir Mark Potter P., Brooke & Moore-Bick L.JJ.)

Periodical payments order—variation

CPR r.41.8, Damages Act 1996 s.2—employee (C) bringing personal injury claim against employers (D)—D admitting liability—in statement of case, C claiming that, as mechanism for varying the sum payable under any periodical payments order which the court may make under s.2 for C's future pecuniary loss, a wage-related index would be more suitable than the RPI—judge dismissing D's application to strike out this plea and refusing permission to appeal—Court of Appeal granting permission to appeal—held, dismissing appeal, (1) in principle, a victim of a tort is entitled to be compensated as nearly as possible in full for all pecuniary losses, (2) in providing for an order to be varied in accordance with the RPI, s.2(8) states the default position, however (3) a court may make the orders identified in s.2(9), stipulating variation by some other measure, whenever it appears just to do so in furtherance of this principle, (4) it is not the law that s.2(9) may only be triggered in exceptional circumstances—observations on use of experts to assist court in determining suitable indexes—use of Hansard and Explanatory Notes as aids to statutory interpretation discussed (see ***Civil Procedure 2006*** Vol. 1 para. 41.8.6, and Vol. 2 para. 3F–47)

■ **HABIB BANK LTD. v. CENTRAL BANK OF SUDAN** [2006] EWHC 1767 (Comm), July 18, 2006, unrep. (Field J.)

Service out of jurisdiction—service by alternative method

CPR rr.6.8, 6.24 & 6.25—in June 2003, bank incorporated in Pakistan (C) (confirming bank) issuing claim form against national bank of Sudan (D) (issuing bank) for balance owing under letters of credit issued in 1982—C granted permission (1) for service out of the jurisdiction, and subsequently, (2) for service out of the juris-

diction by an alternative method—D failing to acknowledge service—instead of obtaining default judgment, in February 2006, C applying for directions for trial on the merits in the absence of D—judge granting application—in giving judgment for C at trial, judge holding that the proceedings were valid and the court had jurisdiction, because (1) Sudan is not a signatory of the Hague Service Convention, (2) therefore, the only method of service provided for under the Rules was that adopted by C (i.e. service through diplomatic channels), (3) the alternative method of service attempted by C (i.e. service on named officials of D at Khartoum address), though not expressly permitted by Sudanese law, was not expressly excluded by it, (4) therefore, the order for such service was valid and would not have been susceptible to any challenge by D (see ***Civil Procedure 2006*** Vol. 1 para. 6.8.1)

■ **HANDS v. MORRISON CONSTRUCTION SERVICES LTD**. [2006] EWHC 2018 (Ch), June 16, 2006, unrep. (Mr. Michael Briggs Q.C.)

Pre-action disclosure—conditions

CPR r.31.16—former majority shareholder (C) in company (X) sending letter before action to construction company (D) carrying out building project for X—C alleging (1) that he had invested in X in reliance upon written assurances given by D, (2) that those assurances necessarily implied representations that D had taken reasonable care before giving them, (3) that the representations were negligent, (4) that the commercial failure of the project resulted, causing C to dispose of his shareholding at an almost total loss—C applying for pre-action disclosure of documents—held, making an order for standard disclosure but subject to a condition limiting search to hard documents already in the hands of D's in-house legal team or their solicitors, (1) pre-action disclosure is more likely to be appropriate in some cases (e.g. personal injury claims where medical records are sought) than in others (e.g. speculative commercial claims where broad disclosure is sought), (2) among the desiderata in r.31.16 is the question whether early disclosure will add fairness, (3) that may be achieved, not merely to give the applicant an opportunity to plead an otherwise unpleadable case, but also where (as was the case here) it enables the statement of case to be better focussed, so avoiding the costs, delay and disruption which may otherwise be caused by amendment after normal disclosure, (4) in this case there was a real prospect that pre-action disclosure would enable C better to focus his case as to two of the four issues identified by the parties as critical, (5) however, D's compliance with an order as sought by C would pose serious costs and fairness obstacles, (6) further, given the imminence of the expiry of the limitation period, it was unlikely that pre-action disclosure would assist the dispute to be resolved without proceedings—principles derived from authorities on r.31.16 and exercise of discretion summarised (see ***Civil Procedure 2006*** Vol. 1 para. 31.16.3)

■ **NOLAN v. DEVONPORT** [2006] EWHC 2025 (QB), July 21, 2006, unrep. (Judge Grenfell)

Application to strike out—delaying in applying—abuse of process

CPR rr.1.3, 3.1(2)(m), & 13.3(2), Practice Direction (Applications) para. 2.7—in 1995, claimant (C) obtaining money judgment against husband (D1) (subsequently made bankrupt and now deceased) and wife (D2)—in October 2002, without a hearing court granting C permission to execute the sum due (over £1m) by way of charging order—on December 17, 2002, D2 issuing application to set judgment aside and claiming that she was unaware of the judgment until May 2001—in August 2003, that application adjourned and transferred to D2's home court—upon receipt of transfer, home court not fixing date for hearing—on March 7, 2006, C issuing application (1) to strike out D2's application as an abuse of process, and (2) to obtain a final charging order—on May 31, 2006, designated civil judge directing that D2's application should be further adjourned (this time to a fixed date) pending the determining of C's application—held, granting C's application, (1) the court had jurisdiction to strike out D2's application should it be just to do so in furthering the overriding objective, (2) without pre-judging the matter, the court was entitled to consider (a) the prospect of D2's application succeeding and (b) the reason for it, (3) D2's delay in issuing her application (a) would be fatal to her prospects of success, and (b) the real reason for her application was to frustrate enforcement of the judgment, and that reason was capable of being an abuse of process, (4) it was a matter of concern that, following transfer to D2's home court in August 2003, until C's application of March 7, 2006 (for part of which period D2 was unrepresented), the court failed actively to manage the application, (5) but in these circumstances the parties remained under a duty to assist the court further the overriding objective, in particular, to prompt the court for the purpose of ensuring that the application was dealt with expeditiously, (6) in the circumstances of this case, D2's failure in this respect was far greater than C's, as it would have been unrealistic to expect C to prompt the court earlier than he did (by his application of March 7) (see ***Civil Procedure 2006*** Vol. 1 paras. 1.3.8 & 13.3.1)

■ **PETROMEC INC. v. PETROLEO BRASILEIRO S.A. PTEROBRAS** [2006] EWCA Civ 1038, July 19, 2006, CA, unrep. (Ward, Laws & Longmore L.JJ.)

Non-party costs—no proof of actual funding

CPR r.48.2, Supreme Court Act 1981 s.51—claimant company (C) failing at trial of claim against defendant company (D)—substantial order for costs made by trial judge against C and in favour of D never discharged—a third company (X) had a long and successful history of trading with C—X owned as to 60% by individual (Y) and as to 40% by a fourth company (owned by Y)—on

D's application, Y added as party to proceedings and made jointly and severally liable for costs which C had been ordered to pay D—held, dismissing C's appeal, (1) the judge was correct in finding that Y (a) controlled and funded the proceedings brought by C, and (b) would have benefited from them if they had been successful, (2) the fact that C had been ordered to provide security for D's costs, which in the event proved to be inadequate, was not a reason inhibiting the judge from making the order—Court stating (1) proof of actual funding by a non-party himself (as distinct from his organising funding) acting in good faith is not a prerequisite to the exercise of the court's jurisdiction to order him to pay costs, but the extent to which he has done so is very relevant to the exercise of discretion, (2) there is a danger of the exercise of the jurisdiction becoming over-complicated by reference to authority (see ***Civil Procedure 2006*** Vol. 1 paras. 48.2.1 & 48.7.6 and Vol. 2 paras. 9A–44.1 & 9A–265)

■ **PRIFTI v. MUSINI SOCIEDAD ANONIMA DE SEGUROS Y REASEGUROS** [2006] EWHC 832 (Comm), May 6, 2006, unrep. (Christopher Clarke J.)

Application to stay proceedings—appeal in foreign proceedings pending

CPR r.3.1(2)(f), Supreme Court Act 1981 s.49(3)—policy taken out by football club (X) with Spanish insurers (D1) providing cover for injured players—D1 reinsuring risk with London reinsurers (C)—following injury to player (P), X bringing claim against D1 in Spain, and C bringing claim against D1 in England—in latter proceedings, C claiming declarations that they were entitled to avoid the reinsurance and that they were not liable—brokers (D2) and others joined as Pt 20 defendants—issues arising as to whether P's disability caused by a pre-existing condition and whether clause excluding liability in those circumstances validly incorporated in policy—in the Spanish proceedings, D satisfying judgment obtained against them by X on September 17, 2004, and on November 22, D serving notice of appeal—in the English proceedings, on September 27, 2004, by consent claim fixed to be heard in July 11, 2005 with 8 day estimate, and on April 6, 2005, D2 filing application for a stay pending the final determination of the Spanish proceedings—this application supported by C but opposed by D1—C applying to re-amend their claim to add additional avoidance claim (to take account of possibility that D1 would not succeed in their Spanish appeal)—held, granting both applications, but restricting the stay to the outcome of a first appeal in the Spanish proceedings, (1) the court's jurisdiction to stay proceedings may be exercised so as to stay an action pending the determination of other proceedings even on what are essentially case management grounds, (2) but exceptional circumstances are required to order a stay where (a) the proceedings have been validly commenced, and (b) the party resisting the stay (i) has been brought into the jurisdiction against his will, (ii) has failed in his attempt to have the proceedings dismissed or stayed, and (iii) seeks their continuance against the opposition of the party who brought them in the first place, (3) it would be inherently inappropriate for the English court to proceed to determine questions of Spanish law bearing on the validity of the first instance Spanish judgment during the pendency of an appeal against that judgment, (4) if C's application to amend were granted, necessarily the trial date would have to be vacated, (5) in the circumstances, the lateness of C's application to amend was understandable and it would be unjust not to allow it (see ***Civil Procedure 2006*** Vol. 1 para. 3.1.7, and Vol. 2 para. 9A–161)

■ **R + V VERSICHERUNG A.G. v. RISK INSURANCE AND REINSURANCE SOLUTIONS S.A.** [2006] EWCA Civ 314, March 8, 2006, CA, unrep. (Chadwick L.J. & Lawrence Collins J.)

Non-party costs order—warning of risk

CPR rr.48.2 & 52.8, Supreme Court Act 1981 s. 51(3)—after 29 day trial (see [2004] EWHC 2682 (Comm)), claimants (C) applying for order that sixth defendant (D), an individual not originally a party but now joined, be jointly and severally liable with the first to fourth defendants for costs orders in favour of C—on grounds that (1) D exercised a high degree of control over the principal defendant's (a corporation) defence of the proceedings, and that (2) that defendant's case rested very substantially on evidence of D which he found to be dishonest, judge granting application ([2005] EWHC 2586 (Comm))—judge and single lord justice refusing D permission to appeal—held, dismissing D's renewed application for permission to appeal, (1) there was no real prospect that an appeal could succeed, (2) the court will not make an order for costs against a non-party (a) who has not had a fair hearing on the question whether he should bear the costs, or (b) if, by reason of some inaction on the part of the other party, there has been a risk of prejudice (at least, of that risk can be seen to be real), (3) in the circumstances, it was not unfair to D to make him liable in costs, even though he had not been a party from the outset and had not been warned that he might face a non-party costs application, (4) if it was D's intention to deceive the court in the proceedings as they were constituted, it was fanciful to suggest that his intention would have been any different if he had been a party to them and been warned of the risk of a non-party costs application—Court stating (para. 20) that a last minute application to amend an appellant's notice of appeal introducing matters not covered in original grounds will not be permitted where it is a disguised attempt to file a notice well out of time (see ***Civil Procedure 2006*** Vol. 1 paras. 48.2.1 & 48.7.6, and Vol. 2 paras. 9A–44.1 & 9A–265)

■ **REGENT LEISURETIME LTD. v. SKERRETT** [2006] EWCA Civ 1032, July 4, 2006, CA, unrep. (Mummery & Lloyd L.JJ.)

Wasted costs order—solicitor acting without instructions

CPR r.48.7, Practice Direction (Costs) Sect. 53, Supreme Court Act 1981 s.51(6)—solicitor (D1) acting for company (C) in claim against bank—D1's practice subject to intervention by Law Society and transferred to another solicitor (D2)—claim against bank becoming statute barred and D1 becoming bankrupt—C bringing claim in High Court for professional negligence against D1 and D2 and serving claim form on D2—insurers instructing firm of solicitors (X) to defend claim—X acknowledging service on behalf of both defendants and filing defence—D1 (acting in person) applying for C's claim against him to be struck out—on grounds (1) that C had not obtained permission to bring proceedings against D1 as an undischarged bankrupt, and (2) that the claim form had not been served on him, judge granting application—thereupon, D1 and C making oral application for wasted costs order against X—judge (1) expressing himself as satisfied (a) that the court had evidence which, if unanswered, would be likely to lead to a wasted costs order being made, and (b) that the wasted costs proceedings were justified notwithstanding the likely costs involved (para. 53.6(1)), and (2) giving directions for hearing of this application—single lord justice granting X permission to appeal—held, allowing appeal, (1) the judge's approach was wrong and outside the scope of the admittedly flexible discretion given to him as to how to proceed, (2) though X acted without instructions in acknowledging service on behalf of D1, X (being instructed by the insurers) were not officious inter-meddlers in things of no concern to them, and in the circumstances it was not plain that they had acted improperly, unreasonably or negligently, (3) further (a) it was far from plain that X's conduct had caused either C or D1 to incur any significant amount of costs which they would not have incurred in any event, and (b) the scope and nature of the costs claimed by them were far from clear, (4) in the circumstances, the judge ought not to have granted the oral application but should have told the applicants to issue a Pt 23 application supported by evidence as required by para. 53.8 (see ***Civil Procedure 2006*** Vol. 1 paras. 48.7.3 & 48.7.14, and Vol. 2 para. 9A–266)

■ **ROGERS v. MERTHYR TYDFIL COUNTY BOROUGH COUNCIL** [2006] EWCA Civ 1134, July 31, 2006, CA, unrep. (Brooke, Laws & Smith L.JJ.)

Conditional fee agreement—reasonableness of ATE premium

CPR rr.1.1(2), 43.2, 44.4 & 44.5, Practice Direction (Costs) Sects. 11 & 19, Access to Justice Act 1999 s. 29—infant (C) entering into CFA (with 100% success fee) and bringing claim for personal injuries against local authority (D)—subsequently, C taking out ATE policy with step premiums—by time of trial on liability, total premium paid £5,103—at trial before district judge, C succeeding on liability and in order for costs against D (summarily assessed) recovering total premium subsequently, parties agreeing quantum at £3,000—on D's appeal against costs order, circuit judge reducing premium recovery to £900—on second appeal, held, allowing C's appeal, (1) it was impossible to say that the total premium was unreasonable, (2) in principle, there is no difference between a two-staged success fee and a staged ATE premium, (3) if an issue arises about the size of the second or third stage of a premium, it will ordinarily be sufficient for a claimant's solicitor to write a brief note for the costs assessment, explaining why he chose the particular ATE product and the basis on which the premium is rated—Smith L.J. adding Annex to Court's single judgment making critical observations as to how new funding arrangements are working out in personal injury cases (see ***Civil Procedure 2006*** Vol. 1 para. 44.3A.3)

■ **RICHMOND UPON THAMES LONDON BOROUGH COUNCIL v. SECRETARY OF STATE FOR TRANSPORT** [2006] EWCA Civ 193, January 25, 2006, CA, unrep. (Sir Anthony Clarke M.R., Tuckey & Jonathan Parker L.JJ.)

Judicial review—change in law—appeal against costs order

CPR rr.3.1(2)(a), 44.3(2)(a), 52.6 & 52.17, Human Rights Act 1998 Sched.1 Pt 1 art. 13—during 1993 and 1994, council (C) succeeding in two judicial review proceedings challenging decisions made by the Secretary of State (D), but awarded only, respectively, 25% and 75% of their cost (see [1994] 1 All E.R. 579 and [1995] Env. L.R. 390)—in 1996, C failing in judicial review claim against D and (on March 8, 1996) Court of Appeal dismissing C's appeal with costs there and in the court below, and House of Lords refusing permission to appeal—following proceedings in ECHR, which C contended had changed the law applied in the domestic proceedings (all of which involved controls on night flying over London) by engaging art. 13, C applying (1) to extend time for purpose of appeals against the costs orders made in the judicial review proceedings in which they succeeded (r.52.6), and (2) for permission to re-open the costs order against them made on the appeal to the Court of Appeal in the proceedings in which they failed (r.52.17) —held, refusing the applications, (1) C were penalised in costs for pursuing a merits challenge at common law which was unarguable as the law stood, (2) the applications to extend time were made long out of time, (3) there was no injustice in allowing the orders for costs to stand, (4) it could not be said that "a significant injustice has probably occurred" as a result of the Court of Appeal's decision dismissing C's appeal—law relating to allowing appeals to be brought out of time following a change in the law explained (see ***Civil Procedure 2006*** Vol. 1 paras 3.1.2, 52.6.2 & 52.17.2)

■ **TENNERO LTD. v. ARNOLD** [2006] EWHC 1530 (QB), July 6, 2006, unrep. (Jack J.)

Non-attendance of party—proceeding in absence—appeal

CPR r.39.3(3), Practice Direction (Miscellaneous Provisions Relating to Hearings) para. 2.2(1)—on instructions of individual (D), company (C) acquired for purpose of purchasing flats "off plan" from property development company (X)—C commencing proceedings against D to recover commissions paid to D by X in connection with C's purchases—trial fixed for May 17, 2004—by letter faxed to court on May 12, D stating that for reasons of ill-health he was unable to travel from abroad to attend trial in a county court—trial judge deciding not to adjourn trial and giving judgment for C—on June 18, D filing notice of appeal to Court of Appeal—after receiving advice from Civil Appeals Office, D applying to a county court under r.39.3(3) to have the judgment set aside—on December 9, county court judge dismissing this application—on July 29, 2005, D filing notice of appeal to High Court against trial judge's order and applying for permission to appeal—held, dismissing application, (1) where a party does not attend, and the court refuses an adjournment and gives judgment or makes an order against him, it is an abuse of process for the party who failed to attend to appeal against the refusal of an adjournment where he also has the opportunity to apply to have the judgment or order set aside under r.39.3(3), (2) in this case, D's appeal against the judge's order refusing his application under r.39.3(3) would have no prospect of success (see ***Civil Procedure 2006*** Vol. 1 para. 39.3.6)

■ **TOTH v. JARMAN** [2006] EWCA Civ 1028, The Times August 17, 2006, CA (Sir Mark Potter P., Arden & Wall L.JJ.)

Expert witness—potential conflict of interest—disclosure

CPR rr.1.3, 32.5, 35.3 & 35.10, Practice Direction (Experts and Assessors) paras. 2.2 & 2.4. Code of Guidance on Expert Evidence Pt 1—father (C) bringing claim against medical practitioner (D) for damages for nervous shock and psychiatric injury suffered as result of death of his son treated by D—at trial, judge not persuaded that, had D administered intravenous glucose injection as emergency treatment, son would have survived, and giving judgment for D—on this key question of causation, at trial experts X and Y called, respectively, for C and D, and judge preferring evidence of Y to X—C appealing against judgment—on the appeal, C (1) applying for permission (a) to add an additional ground of appeal based on the non-disclosure by Y of a conflict of interest in the form of his connections in various capacities with the Medical Defence Union, and (b) to adduce new evidence as to those connections in support of that ground, and (2) contending that, on this ground, the trial judge's decision should be set aside—in dismissing C's appeal against the judgment, held, refusing permission, (1) a party who is in the position of wanting to call an expert with a potential conflict of interest (other than of an obviously immaterial kind), should draw the attention of the court to the existence of the conflict at the earliest possible opportunity, (2) an expert should produce his CV when he provides his report, and that CV should give details of any employment or activity which raises a possible conflict of interest, (3) in this case, Y's connections with the MDU should have been disclosed in, or at the time of, his report as they plainly raised a question of conflict of interest, however (4) that interest did not automatically disqualify him from acting as an expert, (5) the new evidence could easily have been obtained by C before trial but, given the basis on which the additional ground of appeal was put, it would not have been in the interests of justice to decline to admit it for that reason alone—Court suggesting that standard form for expert's declaration at end of his report should be amended to include disclosure of any conflict of interest; in meantime, guidance given in this case to be followed—after Court had reserved judgment in this case, Court refusing C's request to restore appeal for further hearing, contending (amongst other things) that his counsel had presented aspects of the appeal incompetently—observations on power of Court to recall matter for further argument (see ***Civil Procedure 2006*** Vol. 1 paras. 35.5.1, 35.10.5, 35PD.2 & 52.11.2)

■ **WALLEY v. STOKE-ON-TRENT CITY COUNCIL** [2006] EWCA Civ 1137, The Times August 25, 2006, CA (Brooke, Smith & Wall L.JJ.)

Judgment on pre-action admission—withdrawal of admission

CPR rr.3.4(2) & 14.1(5) —following employee's (C) accident at work, employers (D) admitting liability for C's injury—D subsequently rescinding admission—C commencing personal injury claim in a county court—D denying liability—after case allocated to multi-track, (a) C applying under r.3.4(2) to strike out D's defence, and (b) D applying for permission to resile from their admission—in granting C's application, district judge striking out main part of D's defence and entering judgment for C—circuit judge dismissing D's appeal—held, allowing D's (second) appeal and remitting case, (1) for a claimant to show (within r.3.4(2)) that the withdrawal of an admission would amount to an abuse of process, or was likely to obstruct the just disposal of the case, it will usually be necessary to show, respectively, that the defendant has acted in bad faith, or that he will suffer some kind of prejudice which will affect the fairness of the trial, (2) the status of a pre-action admission is evidential only, (3) r.14.1(5) applies only to admissions made in the course of proceedings and not to pre-action admissions, (4) the court has no general discretion under that provision to hold a defendant to a pre-action admission or to allow him to withdraw it—Court suggesting that rules be revised to restrict circumstances in which defendant may resile from pre-action admissions [Ed.: see further ***CP News***

01/2006]—***Sowerby v. Charlton*** [2005] EWCA Civ 1610, [2006] 1 W.L.R. 568, CA, ref'd to (see ***Civil Procedure 2006*** Vol. 1 paras. 3.4.3, 14.1.1, 14.1.8 & C2A–005, ***The Supreme Court Practice*** 1999 Vol. 1 para. 27/3/4)

Practice Directions

PRACTICE DIRECTION (APPLICATION FOR A WARRANT UNDER THE ENTERPRISE ACT 2002) TSO CPR Update 42, July 2006

stipulates procedure to be followed on application by Office of Fair trading for warrant under s.194 of the 2002 Act—contents of claim form, etc.—listing—hearing—contents of warrant and execution—applications to vary or discharge—form of warrant (with notice of powers to search premises attached) annexed—does not supplement any particular CPR Part (see ***Civil Procedure 2006*** Vol. 1, Section B)

PRACTICE DIRECTION (APPLICATIONS UNDER PARTICULAR STATUTES)

TSO CPR Update 42, July 2006

CPR Pt 23—applications under Family Law Reform Act 1969 for use of scientific tests to determine parentage—replaces CPR Sched.1 RSC O.112 and Sched.2 CCR O.47 (see ***Civil Procedure 2006*** Vol. 1 para. 23B.14)

PRACTICE DIRECTION (PROCEEDINGS UNDER ENACTMENTS RELATING TO DISCRIMINATION) TSO CPR Update 42, July 2006

applies to certain proceedings under enactments providing for discrimination proceedings in designated county courts—assessors—admissibility of evidence—exclusion of persons from certain proceedings on national security grounds—replaces CPR Sched.2 CCR O.49, r.17, but does not supplement any particular CPR Part (see ***Civil Procedure 2006*** Vol. 1 paras. cc49.17 & Section B)

PRACTICE DIRECTION (REFERENCES BY THE LEGAL SERVICES COMMISSION) TSO CPR Update 42, July 2006

CPR Pt 54—applies where LSC refers to High Court question arising on a review of a decision about an individual's financial eligibility for a representation order under the Criminal Defence Service (Financial Eligibility) Regulations 2006 (see ***Civil Procedure 2006*** Vol. 1 para. 54BPD)

PRACTICE NOTE (COURT OF APPEAL: ASYLUM-SEEKER ANONYMISATION)

The Times August 24, 2006, CA (Sir Anthony Clarke M.R., Brooke & Neuberger L.JJ.)

CPR Pt 52, Practice Direction (Appeals) para. 21.7—provides (1) all applications and appeals lodged in Court of Appeal on or after October 2, 2006, raising asylum or immigration issues, to be anonymised in court's internal records, (2) in judgments (a) in asylum cases anonymity will be preserved unless the court directs otherwise, and (b) in immigration cases the court may direct anonymity—method by which such cases are to be named and cited explained—follows on from ***YD (Turkey) v. Secretary of State for the Home Department*** [2006] EWCA Civ 52 (see ***Civil Procedure 2006*** Vol. 1 Sect. B)

Statutory Instruments

CIVIL PROCEDURE ACT 1997 (AMENDMENT) ORDER 2006 (S.I. 2006 No. 1847)

amends s.2 (Rule Committee) of the 1997 Act—enables Lord Chief Justice to appoint either one or two district judges to the Civil Procedure Rule Committee—in force September 1, 2006 (see ***Civil Procedure 2006*** Vol. 2 para. 9A–834)

CIVIL PROCEDURE (AMENDMENT) RULES 2006 (S.I. 2006 No. 1689)

CPR Pts. 5, 7, 27, 52 & 54—amends rules dealing with supply of court documents to non-parties (r.5.4) and makes consequential amendment (to r.76.34)—introduces new rules (rr.7.2A & 73.22) relating to claims by and against partnerships, and for procedure to be followed when applying for an order under the Partnership Act 1890 23—makes provision for the costs of appeals from small claims (r.27.14)—enables Court of Appeal to make order that person refused permission to appeal may not request the decision to be reconsidered at a hearing (rr.52.3(4A) & 52.3(4B))—introduces procedure for notifying High Court that an appellant wishes to continue with an appeal which would otherwise be deemed to be abandoned, in accordance with the Immigration, Asylum and Nationality Act 2006 s.9 (r.54.36), and new provision specifying documents to be filed with a notice to the High Court under r.54.31 (r.54.31)—makes minor amendments to rr.52.7, 54.28B(2) & 59.1(3) and revokes certain provisions in Sched.1 & Sched.2—in force October 2, 2006 (see ***Civil Procedure 2006*** Vol. 1 paras. 5.4, 7.2, 27.14, 52.3, 54.28B, 54.31, 54.35, 73.21 & 76.34, and Vol. 2 para. 2B.2)

IN DETAIL

CLAIMANTS ("COCKY") AND DEFENCES ("RUBBISHY")

Nowadays, where the conditions of CPR r.24.4 are satisfied, a claimant's application for summary judgment follows service of his claim form as surely as night follows day. If one is looking for an example of habitual procedural abuse within the modern English system of civil procedure one need look no further. One longs for some examples of cases in which the judge (confident that he will be backed up by the appeal court), without giving elaborate reasons, simply says to the claimant: "This application is disproportionate, go away".

In ***Celador Productions Ltd. v. Melville*** [2004] EWHC 2362 (Ch), October 21, 2004, unrep., Sir Andrew Morritt V.C. examined the test to be applied where an application is made under this r.24.2. His lordship referred to three leading authorities; they were, ***Swain v. Hillman*** [2001] 1 All E.R. 91, C.A., ***Three Rivers District Council v. Bank of England*** [2001] UKHL 16, [2003] 2 A.C. 1, H.L., and ***E.D. & F. Mann Liquid Products Ltd. v. Patel*** [2003] EWCA Civ 472, *The Times* April 18, 2003, C.A., and to commentary found in the ***White Book***. From these sources his lordship derived (what he called) the following "elementary propositions":

(a) it is for the applicant for summary judgment to demonstrate that the respondent has no real prospect of success in his claim or defence as the case may be;

(b) a "real" prospect of success is one which is more than fanciful or merely arguable;

(c) if it is clear beyond question that the respondent will not be able at trial to establish the facts on which he relies then his prospects of success are not real; but

(d) the court is not entitled on an application for summary judgment to conduct a trial on documents without disclosure or cross-examination.

Subsequently, these propositions (though elementary) have been repeated in numerous first instance and appellate judgments dealing with summary judgment applications. A recent illustration is the judgment of Mummery L.J. in ***The Bolton Pharmaceutical Company 100 Ltd. v. Doncaster Pharmaceuticals Group Ltd***. [2006] EWCA Civ 661, May 26, 2006, C.A., unrep. In this case, the claimants (C) brought a claim for a permanent injunction to restrain the infringement of a trade mark. The judge granted C's applications for summary judgments in two sets of similar proceedings brought by C against different defendants. The judgments were for infringements of the C's trade mark in connection with repackaged and re-labelled pharmaceutical products imported by the defendants (D) from Spain and marketed in the United Kingdom.

The Court of Appeal (Mummery & Longmore L.JJ. & Lewison J.) allowed the defendant's (D) appeal. The main question raised by the appeal was whether it is appropriate to grant final judgment without a trial on liability and remedies in respect of imports of branded pharmaceutical products. This question involved consideration of (1) the practice and procedure for obtaining summary judgment, and of (2) substantive EU competition law, the EU doctrine of the exhaustion of rights and UK trademark law, as applied to the particular facts, some of which are disputed. It is the first of these matters that is of interest here.

In giving the principal judgment of the Court, Mummery L.J. made some interesting general remarks about applications for summary judgment, and it is obvious that his lordship hoped that they would be noticed by the legal profession. One will look in vain in the Glossary attached to the CPR for definitions of two expressions used by his lordship; they are, "cocky claimants" and "rubbishy defences". That is not surprising, because those terms are not actually used in the CPR, though in places they are to be inferred. And, in any event, they are expressions that (as his lordship doubtless expected) experienced litigators will immediately understand.

Before stating the propositions relating to the test for summary judgment set forth by Sir Andrew Morritt in the ***Celador Productions Ltd***. case, Mummery L.J. said the procedure is designed for the swift disposal of straight forward cases without trial. His lordship then said (para. 5):

"Although the test can be stated simply, its application in practice can be difficult. In my experience there can be more difficulties in applying the 'no real prospect of success' test on an application for summary judgment (or on an application for permission to appeal, where a similar test is applicable) than in trying the case in its entirety (or, in the case of an appeal, hearing the substantive appeal). The decision-maker at trial will usually have a better grasp of the case as a whole, because of the added benefits of hearing the evidence tested, of receiving more developed submissions and of having more time in which to digest and reflect on the materials."

His lordship added (para. 6):

"The outcome of a summary judgment application is more unpredictable than a trial. The result of the application can be influenced more than that of the trial by the degree of professional skill with which it is presented to the court and by the instinctive reaction of the tribunal to the pressured circumstances in which such applications are often made."

Mummery L.J. made some interesting remarks about the litigation expectations and tactics of claimants and defendants in summary judgment applications. In this respect his lordship said (paras. 9 to 12):

"9. Claimants start civil proceedings (including intellectual property actions) in the expectation that they will win and often in the belief that the defendant has no real prospect of success. So the defence put forward may be seen as a misconceived, costly and time-wasting ploy designed to dodge an inevitable judgment for as long as possible. There is also a natural inclination on the part of optimistic claimants to go for a quick judgment, if possible, thereby avoiding the trouble, expense and delay involved in preparing for and having a trial.

10. Everyone would agree that the summary disposal of rubbishy defences is in the interests of justice. The court has to be alert to the defendant, who seeks to avoid summary judgment by making a case look more complicated or difficult than it really

11. The court also has to guard against the cocky claimant, who, having decided to go for summary judgment, confidently presents the factual and legal issues as simpler and easier than they really are and urges the court to be 'efficient', i.e. produce a rapid result in the claimant's favour.

12. In handling all applications for summary judgment the court's duty is to keep considerations of procedural justice in proper perspective. Appropriate procedures must be used for the disposal of cases. Otherwise there is a serious risk of injustice."

Mummery L.J. also referred to the matter of "general" and "specialist" judges in the context of the question whether an application for summary judgment should be granted or whether the case should go to trial. His lordship said (paras. 7 and 8):

"7. I doubt, however, whether the decision to have or not to have a trial of the action is much affected by the fact that it is heard by a specialist judge. I see no objection, for example, to the use of judges or deputy judges, who are not intellectual property specialists, to hear and decide applications for summary judgment in this field. I mention this topic and wish to say a little more about it for two reasons. First, as a result of hearing some recent appeals against the grant of summary judgments in a variety of areas of law, I have some general concerns about the use of the summary judgment procedure. Secondly, I am aware of views recently aired in the profession questioning the 'efficiency' of using non-specialist judges for summary judgment applications in intellectual property cases.

8. In my opinion, the decision whether or not an action should go to trial is more a matter of general procedural law than of knowledge and experience of a specialised area of substantive law. All judges, specialist and non-specialist, are experienced in procedure and practice. Procedural justice is *the* judicial specialisation *par excellence*. It may take a little longer for the application to be opened to a non-specialist judge, but that may be no bad thing. I am confident that all judges to whom such applications are likely to be made will have the necessary procedural expertise to sort out those cases that can properly be disposed of without a trial."

In concluding on this last point Mummery L.J. noted that the leading practitioners' text book on trade mark law contains no discussion of summary judgment procedure in infringement actions. His lordship took this as an indication "that the decision whether or not to grant summary judgment is more one of general procedure and practice than specialist expertise in substantive trade mark law".

Civil Restraint Orders

As is explained in para. 3.11.1 of the ***White Book***, by the Civil Procedure (Amendment No. 2) Rules (S.I. 2004 No. 2072), the jurisdiction of the court to make civil restraint orders was incorporated in the CPR. The jurisdiction had been developed by the Court of Appeal in a series of cases from within the inherent jurisdiction of the courts (certainly of superior courts) to prevent abuse of process. With effect from October 1, 2004, that statutory instrument inserted in the CPR r.3.11 (Power of the court to make civil restraint orders) (supplemented by Practice Direction (Civil Restraint Orders)) and various other provisions. Some of those provisions require the court to consider whether a CRO should be made against a party, notably where that party has made a claim or application that is, in the opinion of the court, "totally without merit".

A CRO may be one of three varieties. In r.2.3 (Interpretation) it is stated that "civil restraint order" means an order restraining a party (a) from making any further applications in current proceedings (a "limited civil restraint order"), (b) from issuing any further applications or making certain applications in specified courts (an "extended civil

restraint order"), or (c) from issuing any claim or making any application in specified courts (a "general civil restraint order"), without the permission of the court (or perhaps, of a particular judge). This three-fold classification mirrors what was said in the Court of Appeal decisions based on the inherent jurisdiction and on which the statutory jurisdiction is based (see ***White Book*** para. 3.11.1). The circumstances in which a limited, an extended, and a general CRO may be made, and the nature of the restraints which an order of each variety imposes, and the level of judge by whom these orders may be made, are set out in, respectively, paras. 2, 3 and 4 of Practice Direction (Civil Restraint Orders). Put briefly, a limited CRO restrains the party from issuing fresh applications within the four corners of the proceedings in which the order is made. An extended CRO is broader and may restrain him from issuing claims or making applications in the court in which it was made or other courts "concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made". A general CRO is broader still and may restrain him from issuing any claim or making any application in the court in which it was made or other courts.

As brought into effect on October 1, 2004, para. 4.1 of Practice Direction (Civil Restraint Orders) provided that a general CRO may be made by a judge "where, despite the existence of an extended civil restraint order, the party against whom the order is made persists in issuing claims or making applications which are totally without merit". Later on, with effect from October 1, 2005 (when various changes were made to the rules as well as to the practice direction), the words "in circumstances where an extended civil restraint order would not be sufficient or appropriate" were added at the end of this paragraph. In the recent case of ***R. (Kumar) v. Secretary of State for Constitutional Affairs*** [2006] EWCA Civ 990, July 13, 2006, C.A., unrep., the Court (Brooke, Dyson & Lloyd L.JJ.) explained (para. 60) that this addition was made "to cover the situation in which one of these litigants adopts a scattergun approach to litigation on a number of different grievances without necessarily exhibiting such an obsessive approach to a single topic that an extended CRO can appropriately be made against him/her".

In the ***Kumar*** case, the claimant (C) issued proceedings for judicial review in the Administrative Court. On October 22, 2004, a judge refused permission, but C immediately renewed his application and it was listed for hearing before another High Court judge on November 8, 2004. Before that hearing the defendants (D) indicated that, on the basis of this claim and previous claims made by C they would be applying for an extended or a general CRO. At that hearing (at which C was not represented), the judge found that there was no merit in C's application and refused permission. The judge then went on to make a general CRO against C prohibiting C, for a period not exceeding two years, from instituting any proceedings or applications in the High Court or in any county court without permission. It should be noted that the hearing took place (on November 8, 2004) after the jurisdiction of the courts to impose CROs had been incorporated in the CPR (with effect from October 1, 2004). The judge's attention was not drawn to this. Also it should be noted that para. 5.1 of Practice Direction (Civil Restraint Orders) states that where a party applies for any CRO against an opponent such application should be made in accordance with the provisions of Pt 23. At no stage had D filed any application for a CRO with the Administrative Court, and C certainly did not obtain the three days' clear notice required by CPR r.23.7.

C appealed against the judge's decision. On May 19, 2005, a single lord justice granted him permission to appeal against the general CRO, but refused permission to appeal on other grounds, stating that the appeal in that respect was totally without merit. Under the Court of Appeal decisions upon which the jurisdiction to make CROs was based before October 1, 2004, it was not envisaged that a general CRO could be made until after an extended CRO had been tried and failed. And, as has been indicated above, para. 4.1 of Practice Direction (Civil Restraint Orders) is to the same effect. It was clear therefore that, because no extended CRO had ever been made against C, the judge had no power under the CPR to grant a general CRO. The appeal raised the threshold question whether the inherent jurisdiction of the court gives the judge such a power notwithstanding the existence of a comprehensive rule-based regime in the CPR for making CROs. In dealing with this question, the Court did not give a categorical "yes" or "no" answer. The Court was content to say (para. 63) that it would have been quite inappropriate for the judge to rely on a power not identified in the cases now codified in the new rule-based regime and not contained in that regime itself.

The crucial questions on the appeal were: (1) would it have been open to the judge to grant an extended CRO on the evidence before him, and (2) should the appeal court substitute such an order on the appeal pursuant to its powers under CPR r.52.10(1) and (2)(a)? The Court concluded (para. 71) that there was ample material before the judge to justify the making of an extended CRO. However, it would have been quite wrong for him to have done so at the hearing at which he made the order against C. In the circumstances of the case (which were quite complicated), and given (as explained above) that D had not filed a proper application giving C the appropriate notice, the judge ought to have adjourned the matter. However, the situation in the Court of Appeal was quite different. Certain matters had been clarified and procedural fairness concerns were satisfied. The Court allowed C's appeal against the judge's general CRO and substituted for it an extended CRO, effective for a period of two years.

In the course of its judgment in this case, the Court of Appeal explained the development of the CRO jurisdiction and laid to rest certain misconceptions. The case is an important authority on the jurisdiction. Only the barebones of the decision have been explained above.

CPR UPDATE

Amendments to the CPR are made by the Civil Procedure (Amendment) Rules 2006 (S.I. 2006 No. 1689); nine separate CPR Parts are affected. These amendments come into effect on October 2, 2006.

In TSO CPR Update 42, four new practice directions and changes to 26 existing practice directions have been published. In the same Update, a new pre-action protocol and changes to one existing protocol are also published. With two exceptions (both of which are indicated) the additions and changes come into effect on October 2, 2006.

These matters are dealt with below under four headings, Amendments to Rules, Amendments to Practice Directions, New Practice Directions and Protocols.

Paragraph and page references are to volume 1 of the *White Book* except where otherwise indicated.

AMENDMENTS TO RULES

Part 5—Court Documents

paras. 5.4 & 5.4A, pp.139 & 149

CPR r.5.4 (Supply of documents from court records—general) is now divided into three discrete rules; rules 5.4, 5.4B and 5.4C. Rule 5.4A (Supply of court documents to Attorney General from court records) is not affected and remains as it was. The three provisions are set out below. Paragraphs (1) and (2) of the former r.5.4 constitute the new r.5.4, re-titled as "Register or claims", paras. (3) and (4) of that rule constitute paras. (1) and (2) of new rule r.5.4B, entitled "Supply of documents to a party from court records", and paras. (8) to (10) of former r.5.4 constitute new r.5.4D (Supply of documents from court records—general). In the process of this recasting some minor amendments are made. The substance of paras. (5) to (7) of former r.5.4 are now found in r.5.4C (Supply of documents to a non-party from court records), and it is in relation to these provisions that some substantial changes are now made. (It may be noted that, as enacted, the word "or" is missing in r.5.4C(3)(b).)

For r.5.4 substitute:

"Register of claims

5.4—(1) A court or court office may keep a publicly accessible register of claims which have been issued out of that court or court office.

(2) Any person who pays the prescribed fee may, during office hours, search any available register of claims.

(The practice direction contains details of available registers)."

After para. 5.4A.1, insert:

"Supply of documents to a party from court records

5.4B—(1) A party to proceedings may, unless the court orders otherwise, obtain from the records of the court a copy of any document listed in paragraph 4.2A of the Practice Direction.

(2) A party to proceedings may, if the court gives permission, obtain from the records of the court a copy of any other document filed by a party or communication between the court and a party or another person.

Supply of documents to a non-party from court records

5.4C—(1) The general rule is that a person who is not a party to proceedings may obtain from the court records a copy of—

(a) a statement of case, but not any documents filed with or attached to the statement of case, or intended by the party whose statement it is to be served with it;
(b) a judgment or order given or made in public (whether made at a hearing or without a hearing).

(2) A non-party may, if the court gives permission, obtain from the records of the court a copy of any other document filed by a party, or communication between the court and a party or another person.

(3) A non-party may obtain a copy of a statement of case or judgment or order under paragraph (1) only if—

(a) where there is one defendant, the defendant has filed an acknowledgment of service or a defence;
(b) where there is more than one defendant, either—
  (i) all the defendants have filed an acknowledgment of service or a defence;
  (ii) at least one defendant has filed an acknowledgment of service or a defence, and the court gives permission;
(c) the claim has been listed for a hearing; or
(d) judgment has been entered in the claim.

(4) The court may, on the application of a party or of any person identified in a statement of case—

(a) order that a non-party may not obtain a copy of that statement of case under paragraph (1);
(b) restrict the persons or classes of persons who may obtain a copy of that statement of case;
(c) order that persons or classes of persons may only obtain a copy of that statement of case if it is edited in accordance with the directions of the court; or
(d) make such other order as it thinks fit.

(5) A person wishing to apply for an order under paragraph (4) must file an application notice in accordance with Part 23.

(6) Where the court makes an order under paragraph (4), a non-party who wishes to obtain a copy of the statement of case, or to obtain an unedited copy of the statement of case, may apply on notice to the party or person identified in the statement of case who requested the order, for permission.

Supply of documents from court records—general

5.4D—(1) A person wishing to obtain a copy of a document under rule 5.4B or rule 5.4C must pay any prescribed fee and—

(a) if the court's permission is required, file an application notice in accordance with Part 23; or
(b) if permission is not required, file a written request for the document.

(2) An application for an order under rule 5.4C(4) or for permission to obtain a copy of a document under rule 5.4B or rule 5.4C (except an application for permission under rule 5.4C(6)) may be made without notice, but the court may direct notice to be given to any person who would be affected by its decision.

(3) Rules 5.4, 5.4B and 5.4C do not apply in relation to any proceedings in respect of which a rule or practice direction makes different provision."

Part 7—How to Start Proceedings—The Claim Form

Para. 7.2, p.267

After r.7.2, insert:

"7.2A The practice direction supplementing this Part makes provision for procedures to be followed when claims are brought by or against a partnership within the jurisdiction."

Part 27—The Small Claims Track

Para. 27.14, p.696

Various amendments are made to r.27.14. In its entirety, the rule now reads as follows:

"Costs on the small claims track

27.14—(1) This rule applies to any case which has been allocated to the small claims track unless paragraph (5) applies.

(Rules 44.9 and 44.11 make provision in relation to orders for costs made before a claim has been allocated to the small claims track.)

(2) The court may not order a party to pay a sum to another party in respect of that other party's costs, fees and expenses, including those relating to an appeal, except—

(a) the fixed costs attributable to issuing the claim which—
  (i) are payable under Part 45; or
  (ii) would be payable under Part 45 if that Part applied to the claim.
(b) in proceedings which included a claim for an injunction(GL) or an order for specific performance a sum not exceeding the amount specified in the relevant practice direction for legal advice and assistance relating to that claim;
(c) any court fees paid by that other party;
(d) expenses which a party or witness has reasonably incurred in travelling to and from a hearing or in staying away from home for the purposes of attending a hearing;
(e) a sum not exceeding the amount specified in the relevant practice direction for any for any loss of earnings or loss of leave by a party or witness due to attending a hearing or to staying away from home for the purpose of attending a hearing;
(f) a sum not exceeding the amount specified in the relevant practice direction for an expert's fees; and
(g) such further costs as the court may assess by the summary procedure and order to be paid by a party who has behaved unreasonably.

(3) A party's rejection of an offer in settlement will not of itself constitute unreasonable behaviour under paragraph (2)(g) but the court may take it into consideration when it is applying the unreasonableness test.

(4) The limits on costs imposed by this rule also apply to any fee or reward for acting on behalf of a party to the proceedings charged by a person exercising a right of audience by virtue of an order under section 11 of the Courts and Legal Services Act 1990 (a lay representative).

(5) Where—

(a) the financial value of a claim exceeds the limit for the small c]aims track; but
(b) the claim has been allocated to the small claims track in accordance with rule 26.7(3),

the small claims track costs provisions will apply unless he parties agree that the fast track costs provisions are to apply.

(6) Where the parties agree that the fast track costs provisions are to apply, the claim and any appeal will be treated for the purposes of costs as if it were proceeding on the fast track except that trial costs will be in the discretion of the court and will not exceed the amount set out for the value of the claim in rule 46.2 (amount of fast track trial costs).

(Rule 26.7(3) allows the parties to consent to a claim being allocated to a track where the financial value of the claim exceeds the limit for that track.)"

Part 39—Miscellaneous Provisions Relating to Hearings

Para. 39.8, p.1030

Rule 39.8 (Claims under the Race Relations Act 1976) is now omitted. This rule and Practice Direction (Claims Under the Race Relations Act 1976 (National Security)) are replaced by a new practice direction (see further below).

Part 52—Appeals

Para. 52.3, p.1514

In para. (4) of r.52.3, for "Where the appeal court" substitute "Subject to paragraph (4A), where the appeal court"

After para. (4) of r.52.3, insert:

"(4A) Where the Court of Appeal refuses permission to appeal without a hearing, it may,if it considers that the application is totally without merit, make an order that the person seeking permission may not request the decision to be reconsidered at a hearing. The court may not make such an order in family proceedings.

("Family proceedings" is defined by section 32 of the Matrimonial and Family Proceedings Act 1984.)

(4B) Rule 3.3(5) will not apply to an order that the person seeking permission may not request the decision to be reconsidered at a hearing made under paragraph (4A)."

Para. 52.7, p.1528

In r.52.7, for "Immigration appeal Tribunal" substitute "Asylum and Immigration Tribunal".

Part 54—Judicial Review And Statutory Review

Para. 54.28B, p.1659

In para. (2) of r.54.28B, after "by first class post" insert "(or an alternative service which provides for delivery on the next working day)"

Para. 54.31, p.1661

In r.54.31, after para. (2) insert:

"(2A) The applicant must file with the notice—

(a) a copy of the Tribunal's notification that it does not propose to make an order for reconsideration or does not propose to grant permission for the application to be made outside the relevant time limit (referred to in CPR rule 54.31(2));
(b) any other document which was served on the applicant by the Tribunal giving reasons for its decision in paragraph (a);
(c) written evidence in support of any application by the applicant seeking permission to make the application outside the relevant time limit, if applicable;
(d) a copy of the application for reconsideration under section 103A of the 2002 Act (Form AIT/103A), as submitted to the Tribunal (referred to in Rule 54.29(1)(a))."

Para. 54.35, p.1663

After rule 54.35, insert:

"Continuing an application in circumstances in which it would otherwise be treated as abandoned

54.36—(1) This rule applies to an application under section 103A of the 2002 Act which—

(a) would otherwise be treated as abandoned under section 104(4A) of the 2002 Act; but
(b) meets the conditions set out in section 104(4B) or section 104(4C) of the 2002 Act.

(2) Where section 104(4A) of the 2002 Act applies and the applicant wishes to pursue the application, the applicant must file a notice at the Administrative Court Office—

(a) where section 104(4B) of the 2002 Act applies, within 28 days of the date on which the applicant received notice of the grant of leave to enter or remain in the United Kingdom for a period exceeding 12 months; or
(b) where section 104(4C) of the 2002 Act applies, within 28 days of the date on which the applicant received notice of the grant of leave to enter or remain in the United Kingdom.

(3) Where the applicant does not comply with the time limits specified in paragraph (2), the application will be treated as abandoned in accordance with section 104(4) of the 2002 Act.

(4) The applicant must serve the notice filed under paragraph (2) on the other party to the appeal.

(5) Where section 104(4B) of the 2002 Act applies, the notice filed under paragraph (2) must state—

(a) the applicant's full name and date of birth;
(b) the Administrative Court reference number;
(c) the Home Office reference number, if applicable;
(d) the date on which the applicant was granted leave to enter or remain in the United Kingdom for a period exceeding 12 months; and
(e) that the applicant wishes to pursue the application insofar as it is brought on grounds relating to the Refugee Convention specified in section 84(1)(g) of the 2002 Act.

(6) Where section 104(4C) of the 2002 Act applies, the notice filed under paragraph (2) must state—

(a) the applicant's full name and date of birth;
(b) the Administrative Court reference number;
(c) the Home Office reference number, if applicable;
(d) the date on which the applicant was granted leave to enter or remain in the United Kingdom; and
(e) that the applicant wishes to pursue the application insofar as it is brought on grounds relating to section 19B of the Race Relations Act 1976 specified in section 84(1)(b) of the 2002 Act.

(7) Where an applicant has filed a notice under paragraph (2) the court will notify the applicant of the date on which it received the notice.

(8) The court will send a copy of the notice issued under paragraph (7) to the other party to the appeal."

Part 59—Mercantile Courts

Vol. 2, para. 2B.2, p.271

In rule 59.1(3), for sub-paragraph (a), substitute:

"(a) 'Mercantile Court' means a specialist list established within the courts listed in the Practice Direction;"

Part 73—Charging Orders, Stop Orders and Stop Notices

Para. 73.21, p.1871

After rule 73.21, insert:

"73.22 The practice direction supplementing this Part makes provision for the procedure to be followed when applying for an order under section 23 of the Partnership Act 1890."

Part 76—Provisions under the Prevention of Terrorism Act 2005

Para. 76.34, p.1945

In rule 76.34, for "rule 5.4 (supply of court documents—general) does", substitute "rule 5.4 (Register of Claims), rule 5.4B (Supply of documents from court records—a party) and rule 5.4C (Supply of documents from court records—a non-party) do"

SCHEDULE 1

Para. sc81.0.1, p.2060

RSC O.81 (Partners) is revoked.

Para. sc93.1, p.2066

RSC O.93 r.1 (Notice of petition under s.55 of the National Debt Act 1870) is revoked.

Para. sc112.0.1, p.2095

RSC O.112 (Applications for use of scientific tests in determining parentage) is revoked.

SCHEDULE 2

Paras. cc5.9 & cc5.10, pp.2155 & 2156

Rules 9 and 10 of CCR O.5 (Causes of action and parties), the sole surviving provisions in that Order, are revoked.

Paras. cc25.9 & cc25.10, pp.2166 & 2167

Rules 9 and 10 of CCR O.25 (Enforcement of judgments and orders—general) are revoked.

Para. cc47.0.1, p.2230

CCR Order 47 (Domestic and Matrimonial Proceedings) is revoked.

Para. cc49.17, p.2234

Rule 17 of CCR O.49 is revoked.

PRACTICE DIRECTIONS

Changes have been made to several practice directions supplementing 21 particular CPR Parts, and to four of the free-standing CPR practice directions.

Practice Direction (Allocation of Cases to Levels of Judiciary) (PD2)

Para. 2B–2, p.75

In para. 2.3(d), for "RSC Order 77, rule 16 (order restraining person from receiving sum due from the Crown)", substitute "rule 66.7 (order restraining person

from receiving sum due from the Crown)".

Practice Direction (Forms) (PD4)

Para. 4PD.3.1, p.133

In Table 1, after Form N28 Order for possession (rented premises)(suspended), insert "Form N28A Order for possession (rented premises)(postponed)". This amendment came into effect on July 3, 2006.

Practice Direction (Court Documents) (PD5)

Para. 5PD.4, p.152

In paragraph 4.3, for "rule 5.4(4), 5.4(5)(b) or 5.4(6)(b)(ii)" substitute "rule 5.4B(2), 5.4C(2) or 5.4C(3)(b)(ii)".

In paragraph 4.4, for "rule 5.4(7)" substitute "5.4C(4)".

After para. 4.4, insert the following new paragraph:

"4.5 Rule 5.4B allows a person who is a party to proceedings to obtain copies of documents from court records. A person is a party to proceedings who has been named as a party on a statement of case irrespective of whether they have been served with that statement of case."

Practice Direction (Electronic Communication and Filing of Documents) (PD5B)

Para. 5BPD.5, p.160

After paragraph 5.2, insert the following cross-reference:

"(Paragraph 15.1B of the Practice Direction which supplements CPR Part 52 provides for certain notices to be filed electronically at the Court of Appeal, Civil Division using the online forms service on the Court of Appeal, Civil Division website)".

Practice Direction (How to Start Proceedings—The Claim Form) (PD7)

Para. 7PD5, p.282

After paragraph 5, insert new paragraphs:

"Claims by and against partnerships within the jurisdiction

5A.1 Paragraphs 5A and 5B apply to claims that are brought by or against two or more persons who—

(1) were partners; and
(2) carried on that partnership business within the jurisdiction,

at the time when the cause of action accrued.

5A.2 For the purposes of this paragraph, "partners" includes persons claiming to be entitled as partners and persons alleged to be partners.

5A.3 Where that partnership has a name, unless it is inappropriate to do so, claims must be brought in or against the name under which that partnership carried on business at the time the cause of action accrued.

Partnership membership statements

5B.1 In this paragraph a "partnership membership statement" is a written statement of the names and last known places of residence of all the persons who were partners in the partnership at the time when the cause of action accrued, being the date specified for this purpose in accordance with paragraph 5B.3.

5B.2 If the partners are requested to provide a copy of a partnership membership statement by any party to a claim, the partners shall do so within 14 days of receipt of the request.

5B.3 In that request the party seeking a copy of a partnership membership statement must specify the date when the relevant cause of action accrued.

(Signing of the acknowledgment of service in the case of a partnership is dealt with in Paragraph 4.4 of the Practice Direction supplementing Part 10)

Persons carrying on business in another name

5C.1 This paragraph applies where—

(1) a claim is brought against an individual;
(2) that individual carries on a business within the jurisdiction (but need not himself be within the jurisdiction); and
(3) that business is carried on in a name other than his own name ("the business name").

5C.2 The claim may be brought against the business name as if it were the name of a partnership."

Practice Direction (Acknowledgment of Service) (PD10)

Para. 10PD.4, p.326

For para. 4.4, substitute:

"4.4 Where a claim is brought against a partnership—

(1) service must be acknowledged in the name of the partnership on behalf of all persons who were partners at the time when the cause of action accrued; and

(2) the acknowledgment of service may be signed by any of those partners, or by any person authorised by any of those partners to sign it."

Practice Direction (Group Litigation) (PD19B)

Para. 19BPD.14, p.460

In para. 6.6(1) for "Rule 5.4 (supply of documents from court records) applies" substitute "Rules 5.4 (Register of Claims), 5.4B (Supply of documents from court records—a party) and 5.4C (supply of documents from

court records—a non-party) apply". And for "rule 5.4(1)" substitute "rule 5.4".

Practice Direction (Applications) (PD23)

Para. 23PD.6, p.538

In para. 6.5 omit sub-para. (5) and for sub-para. (1), substitute:

"(1) The applicant's legal representative is responsible for arranging the telephone conference for precisely the time fixed by the court. The telecommunications provider used must be one on the approved panel of service providers (see Her Majesty's Courts Service website at www.hmcourts-service.gov.uk)."

Practice Direction (Pilot Scheme for Telephone Hearings) (PD23B)

Para. 23BPD.1 & 23BPD.4, pp.542 & 543

In para. 1.1, after the second sentence insert:

"In the county courts specified, the Telephone Hearings Pilot Scheme will apply to hearings before a district judge or circuit judge in civil proceedings. In the District Registries specified, the scheme will only apply to hearings before a district judge".

In the Appendix, in relation to the Newcastle Combined Court Centre substitute the dates 1st September 2003—5th April 2007, and in relation to Bedford County Courtand Luton County Court substitute the dates 15th February 2004—5th April 2007. And for the dates 1st April 2006—1st October 2006 substitute 1st April—5th April 2007.

As is explained below, a new practice supplementing Part 23 has been made (Practice Direction (Applications Under Particular Statutes)) and is inserted as PD23B. As a result existing PD23B will become PD23C.

Practice Direction (Interim Injunctions) (PD25)

Para. 25PD.5, p.637

For para. 5.1(1), substitute "an undertaking by the applicant to the court to pay any damages which the respondent sustains which the court considers the applicant should pay."

After para. 5.1, insert:

"5.1A When the court makes an order for an injunction, it should consider whether to require an undertaking by the applicant to pay any damages sustained by a person other than the respondent, including another party to the proceedings or any other person who may suffer loss as a consequence of the order."

Paras. 25PD.10, pp.645 & 651

In the standard forms of freezing injunction and search order annexed to this Practice Direction, in each of the sections headed "Communications with the Court" under "Where the order is made in the Queen's Bench Division", for "Room WG304" substitute "Room WG08", and for the telephone number substitute "020 7947 6010"; and under "Where the order is made in the Commercial Court" for "Room E201" substitute "Room EB09".

Practice Direction (Small Claims Track) (PD27)

Para. 27PD.10, p.705

In the Note at the end of Appendix B, for "negotiating which each other" substitute "negotiating with each other."

Practice Direction (Claims Under the Race Relations Act 1976 (National Security) (PD39C)

Para. 39CPD.1, p.1041

This practice direction is omitted. It is replaced by a new practice direction, see further below. (As explained above, CPR r.39.8 (Claims Under the Race Relations Act 1976) has also been omitted.)

Practice Direction (Appeals) (PD52)

Para. 52PD.22, p.1560

After para. 5.10(6), insert:

"(7) A skeleton argument filed in the Court of Appeal, Civil Division on behalf of the appellant should contain in paragraph 1 the advocate's time estimate for the hearing of the appeal."

Para. 52PD.33, p.1562

For para. 5.19, substitute:

"5.19 Rule 52.4 sets out the procedure and time limits for filing and serving an appellant's notice. The appellant must file the appellant's notice at the appeal court within such period as may be directed by the lower court which should not normally exceed 35 days or, where the lower court directs no such period, within 21 days of the date of the decision that the appellant wishes to appeal.

(Rule 52.15 sets out the time limit for filing an application for permission to appeal against the refusal of the High Court to grant permission to apply for judicial review)".

Para. 52PD.57, p.1571

After para. 15.1A, insert:

"15.1B (1) A party to an appeal in the Court of Appeal, Civil Division may file—

(a) an appellant's notice;
(b) a respondent's notice; or
(c) an application notice,

electronically using the online forms service on the Court of Appeal, Civil Division website at www.civilappeals.gov.uk.

(2) A party may only file a notice in accordance with paragraph (1) where he is permitted to so do by the 'Guidelines for filing electronically'. The Guidelines for filing electronically may be found on the Court of Appeal, Civil Division website.

(3) The online forms service will assist the user in completing a document accurately but the user is responsible for ensuring that the rules and practice directions relating to the document have been complied with. Transmission by the service does not guarantee that the document will be accepted by the Court of Appeal, Civil Division.

(4) A party using the online forms service in accordance with this paragraph is responsible for ensuring that the transmission or any document attached to it is filed within any relevant time limits.

(5) Parties are advised not to transmit electronically any correspondence or documents of a confidential or sensitive nature, as security cannot be guaranteed.

(6) Where a party wishes to file a document containing a statement of truth electronically, that party should retain the document containing the original signature and file with the court a version of the document on which the name of the person who has signed the statement of truth is typed underneath the statement."

Para. 52PD.96, p.1582

In the table following para. 20.3 (Appeals to the Court of Appeal) for "the Immigration Appeal Tribunal" substitute "the Asylum and Immigration Tribunal".

Para. 52PD.107, p.1588

After para. 21.7A, insert a new paragraph 21.7B as follows:

"21.7B (1) This paragraph applies to appeals from the Asylum and Immigration Tribunal which—

(a) would otherwise be treated as abandoned under section 104(4A) of the Nationality, Immigration and Asylum Act 2002 (the "2002 Act"); but
(b) meet the conditions set out in section 104(4B) or section 104(4C) of the 2002 Act.

(2) Where section 104(4A) of the 2002 Act applies and the appellant wishes to pursue his appeal, the appellant must file a notice at the Court of Appeal—

(a) where section 104(4B) of the 2002 Act applies, within 28 days of the date on which the appellant received notice of the grant of leave to enter or remain in the United Kingdom for a period exceeding 12 months; or
(b) where section 104(4C) of the 2002 Act applies, within 28 days of the date on which the appellant received notice of the grant of leave to enter or remain in the United Kingdom.

(3) Where the appellant does not comply with the time limits specified in paragraph (2) the appeal will be treated as abandoned in accordance with section 104(4) of the 2002 Act.

(4) The appellant must serve the notice filed under paragraph (2) on the respondent.

(5) Where section 104(4B) of the 2002 Act applies, the notice filed under paragraph (2) must state—

(a) the appellant's full name and date of birth;
(b) the Court of Appeal reference number;
(c) the Home Office reference number, if applicable;
(d) the date on which the appellant was granted leave to enter or remain in the United Kingdom for a period exceeding 12 months; and
(e) that the appellant wishes to pursue the appeal in so far as it is brought on the ground relating to the Refugee Convention specified in section 84(1)(g) of the 2002 Act.

(6) Where section 104(4C) of the 2002 Act applies, the notice filed under paragraph (2) must state—

(a) the appellant's full name and date of birth;
(b) the Court of Appeal reference number;
(c) the Home Office reference number, if applicable;
(d) the date on which the appellant was granted leave to enter or remain in the United Kingdom; and
(e) that the appellant wishes to pursue the appeal in so far as it is brought on the ground relating to section 19B of the Race Relations Act 1976 specified in section 84(1)(b) of the 2002 Act.

(7) Where an appellant has filed a notice under paragraph (2) the Court of Appeal will notify the appellant of the date on which it received the notice.

(8) The Court of Appeal will send a copy of the notice issued under paragraph (7) to the respondent."

Practice Direction (Possession Claims) (PD55)

Para. 55PD.12, p.1700

A new Section (paras. 10.1 to 10.9) is added after para. 9 as follows (this addition took effect on July 3, 2006):

"*Section IV Orders fixing a date for possession*

10.1 This paragraph applies where the court has made an order postponing the date for possession under section 85(2)(b) of the Housing Act 1985 (secure tenancies).

10.2 If the defendant fails to comply with any of the terms of the order which relate to payment, the claimant, after following the procedure set out in paragraph 10.3, may apply for an order fixing the date upon which the defendant has to give up possession of the property. Unless the court further postpones the date for possession, the defendant will be required to give up possession on that date.

10.3 At least 14 days and not more than 3 months before applying for an order under paragraph 10.2, the claimant must give written notice to the defendant in accordance with paragraph 10.4.

10.4 The notice referred to in paragraph 10.3 must:

(1) state that the claimant intends to apply for an order fixing the date upon which the defendant is to give up possession of the property;
(2) record the current arrears and state how the defendant has failed to comply with the order referred to in paragraph 10.1 (by reference to a statement of the rent account enclosed with the notice);
(3) request that the defendant reply to the claimant within 7 days, agreeing or disputing the stated arrears; and
(4) inform the defendant of his right to apply to the court:
  (a) for a further postponement of the date for possession; or
  (b) to stay or suspend enforcement.

10.5 In his reply to the notice, the defendant must:

(1) where he disputes the stated arrears, provide details of payments or credits made;
(2) where he agrees the stated arrears, explain why payments have not been made.

10.6 An application for an order under paragraph 10.2 must be made by filing an application notice in accordance with Part 23. The application notice must state whether or not there is any outstanding claim by the defendant for housing benefit.

10.7 The claimant must file the following documents with the application notice:

(1) a copy of the notice referred to in paragraph 10.3;
(2) a copy of the defendant's reply, if any, to the notice and any relevant subsequent correspondence between the claimant and the defendant;
(3) a statement of the rent account showing:
  (a) the arrears that have accrued since the first failure to pay in accordance with the order referred to in paragraph 10.2; or
  (b) the arrears that have accrued during the period of two years immediately preceding the date of the application notice, where the first such failure to pay occurs more than two years before that date.

10.8 Rules 23.2.3, 23.2.4 and 23.2.5 (dealing with applications without a hearing), 23.7 (service of a copy of an application notice), and 23.10 (right to set aside or vary an order made without service of the application notice) do not apply to an application under this section.

10.9 On being filed, the application will be referred to the District Judge who:

(1) will normally determine the application without a hearing by fixing the date for possession as the next working day; but
(2) if he considers that a hearing is necessary:
  (a) will fix a date for the application to be heard; and
  (b) direct service of the application notice and supporting evidence on the defendant.

10.10 The court does not have jurisdiction to review a decision that it was reasonable to make an order for possession."

Practice Direction (Mercantile Courts) (PD59)

Vol. 2, para. 2B–14, p.275

Paras. 2.3 and 2.4 are omitted and the following amendments are made to paras. 1.2 and 2.2.

For para. 1.2(2), substitute:

"(2) the Commercial Court of the Queen's Bench Division at the Royal Courts of Justice (called 'The London Mercantile Court')."

In para. 2.2, for "Central London County Court, Mercantile List" substitute "Queen's Bench Division, The London Mercantile Court".

Practice Direction (Admiralty Claims) (PD61)

Vol. 2, para. 2D–112, p.397

For para. 11, substitute the following:

"Proceeding against or concerning the International Oil Pollution Compensation Fund 1992 and the International Oil Pollution Supplementary Fund

11.1 For the purposes of section 177 of the Merchant Shipping Act 1995 ('the Act'), the Fund may be given notice of proceedings by any party to a claim against an owner or guarantor in respect of liability under section 153 of the Act by that person serving a notice in writing on the Fund together with copies of the claim form and any statements of case

served in the claim.

11.2 Notice given to the Fund under paragraph 11.1 shall be deemed to have been given to the Supplementary Fund.

11.3 The Fund or the Supplementary Fund may intervene in any claim to which paragraph 11.1 applies, (whether or not served with the notice), by serving notice of intervention on the—

(1) owner;
(2) guarantor; and
(3) court.

11.4 Where a judgment is given against—

(1) the Fund in any claim under section 175 of the Act;
(2) the Supplementary Fund in any claim under section 176A of the Act,

the Registrar will arrange for a stamped copy of the judgment to be sent by post to—

(a) the Fund (where paragraph (1) applies);
(b) the Supplementary Fund (where paragraph (2) applies.

11.5 Notice to the Registrar of the matters set out in—

(1) section 176(3)(b) of the Act in proceedings under section 175; or
(2) section 176B(2)(b) of the Act in proceedings under section 176A,

must be given in writing and sent to the court by—

(a) the Fund (where paragraph (1) applies);
(b) the Supplementary Fund (where paragraph (2) applies)."

Practice Direction (Arbitration) (PD62)

Vol. 2, para. 2E–41, p.458

In the table following para. 2, the final row, which reads "Central London County Court Mercantile List", is deleted.

Practice Direction (Estates, Trusts and Charities) (PD64)

Para. 64PD.8, p.1755

In para. 8, for "RSC Order 77, rule 4(2)" substitute "paragraph 2.1 of the Practice Direction supplementing Part 66".

Practice Direction (Enforcement of Judgments and Orders) (PD70)

Para. 70PD.6, p.1828

After para. 6, insert:

"Enforcing a judgment or order against a partnership

6A.1 A judgment or order made against a partnership may be enforced against any property of the partnership within the jurisdiction.

6A.2 Subject to paragraph 6A.3, a judgment or order made against a partnership may be enforced against any person who is not a limited partner and who—

(1) acknowledged service of the claim form as a partner;
(2) having been served as a partner with the claim form, failed to acknowledge service of it;
(3) admitted in his statement of case that he is or was a partner at a material time; or
(4) was found by the court to have been a partner at a material time.

6A.3 A judgment or order made against a partnership may not be enforced against a limited partner or a member of the partnership who was ordinarily resident outside the jurisdiction when the claim form was issued unless he—

(1) acknowledged service of the claim form as a partner;
(2) was served within the jurisdiction with the claim form as a partner; or
(3) was served out of the jurisdiction with the claim form, as a partner, with the permission of the court given under Section III of Part 6.

6A.4 A judgment creditor wishing to enforce a judgment or order against a person in circumstances not set out in paragraphs 6A.2 or 6A.3 must apply to the court for permission to enforce the judgment or order."

Practice Direction (Third Party Debt Orders) (PD72)

Para. 72PD.3, p.1852

After para. 3, insert:

"Attachment of debts owed by a partnership

3A.1 This paragraph relates to debts due or accruing due to a judgment creditor from a partnership.

3A.2 An interim third party debt order under rule 72.4(2) relating to such debts must be served on—

(1) a member of the partnership within the jurisdiction;
(2) a person authorised by a partner; or
(3) some other person having the control or management of the partnership business.

3A.3 Where an order made under rule 72.4(2) requires a partnership to appear before the court, it will be sufficient for a partner to appear before the court."

Practice Direction (Charging Orders, Stop Orders and Stop Notices) (PD73)

Paras. 73PD.4 & 73PD.5, p.1873

In Section I, after para. 4, insert:

"4A.1 A charging order or interim charging order may be made against any property, within the jurisdiction, belonging to a judgment debtor that is a partnership.

4A.2 For the purposes of rule 73.5(1)(a) (service of the interim order), the specified documents must be served on—

(1) a member of the partnership within the jurisdiction;
(2) a person authorised by a partner; or
(3) some other person having the control or management of the partnership business.

4A.3Where an order requires a partnership to appear before the court, it will be sufficient for a partner to appear before the court."

In Section II, after para. 5, insert:

"Section III—Applications for orders made under section 23 of the Partnership Act 1890

6.1 This paragraph relates to orders made under section 23 of the Partnership Act 1890 ("Section 23").

6.2 The following applications must be made in accordance with Part 23—

(1) an application for an order under Section 23 of the 1890 Act made by a judgment creditor of a partner;
(2) an application for any order by a partner of the judgment debtor in consequence of any application made by the judgment creditor under Section 23.

6.3 The powers conferred on a judge by Section 23 may be exercised by—

(1) a Master;
(2) the Admiralty Registrar; or
(3) a district judge.

6.4 Every application notice filed under this paragraph by a judgment creditor, and every order made following such an application, must be served on the judgment debtor and on any of the other partners that are within the jurisdiction.

6.5 Every application notice filed under this paragraph by a partner of a judgment debtor, and every order made following such an application, must be served—

(1) on the judgment creditor and the judgment debtor; and
(2) on the other partners of the judgment debtor who are not joined in the application and who are within the jurisdiction.

6.6 An application notice or order served under this paragraph on one or more, but not all, of the partners of a partnership shall be deemed to have been served on all the partners of that partnership."

Practice Direction (Insolvency Proceedings)

Vol. 2, para. 3E–18, pp.1193 & 1194

For para. 17.6 substitute:

"17.6 A first appeal is subject to the permission requirement in CPR Part 52, rule 3."

In para. 17.11(2)(b), for "14" substitute "21".

Practice Direction (Application for a Warrant under the Competition Act 1998)

Para. B3–003, p.2294

In para. 3.2 [by mistake, CPR Update 42 says para. 9.1], for "CPR rule 5.4 does" substitute "CPR rules 5.4, 5.4B and 5.4C do".

Practice Direction (Civil Recovery Proceedings)

Para. B11–009, p.2332

In para. 9.1 [by mistake, CPR Update 42 says para. 3.2] for "CPR rule 5.4 does" substitute "CPR rules 5.4, 5.4B and 5.4C do"

Practice Direction (Protocols)

Para. C1–003, p.2354

In para. 4.7, for the fourth sentence, substitute "Parties are warned that if this paragraph is not followed then the court must have regard to such conduct when determining costs; and for the fifth sentence, substitute "It is not practicable in this Practice Direction to address in detail how the parties might decide which method to adopt to resolve their particular dispute."

Para. C1–005, p.2355

In para. 5.1, insert a final row in the table as follows:

Possession Claims based on rent arrears / 2 October 2006 / September 2006

NEW PRACTICE DIRECTIONS

As is explained below, in TSO CPR Update 42, four new CPR practice directions are published. Two of them supplementing existing CPR Parts (Pts. 23 and 54), and two are free-standing.

Practice Direction (Applications Under Particular Statutes) (PD23B)

Para. 23PD.14, p.541

This new practice direction supplements Part 23 (General Rules About Applications for Court Orders). It is added after Practice Direction (Applications)

(PD23) and before Practice Direction (Pilot Scheme for Telephone Hearings) (23BPD). (As a result, the latter becomes 23CPD.)

For text of the new Practice Direction, see below.

Practice Direction (References by the Legal Services Commission) (PD54C)

Para. 54BPD.4, p.1669

This new practice direction is added as a third practice direction supplementing Part 54 (Judicial Review and Statutory Review) and states as follows:

"References by the Legal Services Commission

1.1 This Practice Direction applies where the Legal Services Commission ("the Commission") refers to the High Court a question that arises on a review of a decision about an individual's financial eligibility for a representation order in criminal proceedings under the Criminal Defence Service (Financial Eligibility) Regulations 2006.

1.2 A reference of a question by the Legal Services Commission must be made to the Administrative Court.

1.3 Part 52 does not apply to a review under this paragraph.

1.4 The Commission must—

(a) file at the court—
  (i) the individual's applications for a representation order and for a review, and any supporting documents;
  (ii) a copy of the question on which the court's decision is sought; and
  (iii) a statement of the Commission's observations on the question; and
(b) serve a copy of the question and the statement on the individual.

1.5 The individual may file representations on the question at the court within 7 days after service on him of the copy of the question and the statement.

1.6 The question will be decided without a hearing unless the court directs otherwise."

Practice Direction (Proceedings Under Enactments Relating to Discrimination)

Para. B12–007, p.2340

This new CPR practice direction does not supplement a particular CPR Part and is free-standing. It replaces CPR r.39.8 (Claims Under the Race Relations Act 1976) and Practice Direction (Claims Under the Race Relations Act 1976 (National Security)) (PD39C), which are omitted.

For text of the new practice direction, see below.

Practice Direction (Application for a Warrant Under the Enterprise Act 2002)

Para. B12–007, p.2340

This new CPR practice direction does not supplement a particular CPR Part and is free-standing.

As the text of the new practice direction is rather long (and includes a draft warrant and a notice of the powers to search and the rights of occupiers) it is not included in this issue of CP News. It will appear in Supplement 2 of ***Civil Procedure 2006***.

Note on Practice Directions

Vol. 2, para. 9A–845

In CPR Update 23 (May 2001), what was described as a "Note on Practice Directions" was published, explaining the manner in which practice directions (of various varieties are made). That Note is now replaced with the following:

"NOTE ON PRACTICE DIRECTIONS

1. The practice directions to the Civil Procedure Rules apply to civil litigation in the Queen's Bench Division and the Chancery Division of the High Court and to litigation in the county courts other than family proceedings. Where relevant they also apply to appeals to the Civil Division of the Court of Appeal.

2. Since the coming into force of the Constitutional Reform Act 2005 in April 2006, the power to make practice directions for the civil courts falls to the Lord Chief Justice (with the approval of the Lord Chancellor in most instances). This power is governed by Section 5 of the Civil Procedure Act (as amended).

3. The Lord Chief Justice has power under the Part 1 of Schedule 2 of the Constitutional Reform Act to nominate a judicial office holder to perform his functions with regards making designated directions. He has therefore nominated the Master of the Rolls to make practice directions for the civil courts.

Historical Making Powers

4. Until the inception of the Constitutional Reform Act, practice directions were made –

(1) for the Queen's Bench Division by the Lord Chief Justice as president of that Division;
(2) for the Civil Division of the Court of Appeal by the Master of the Rolls as president of that Division;
(3) for the Chancery Division by the Vice-Chancellor as vice-president of that Division; and
(4) for the county courts by the Lord Chancellor or a person authorised to act on his behalf under section 74A of the County Courts Act 1984.

5.From April 1999 to July 2000 the Lord Chancellor

authorised the Vice-Chancellor, Sir Richard Scott (as he then was) under section 74A of the 1984 Act. The Vice-Chancellor made all practice directions for county courts during that time.

6.From July 2000 to September 2003, the Lord Chancellor authorised Lord Justice May to make these practice directions. Lord Justice May made all practice directions for county courts during that time.

7.From September 2003 until April 2006 the Lord Chancellor authorised Lord Justice Dyson to make practice directions for the county courts."

PROTOCOLS

As is explained below, by TSO CPR Update 42, some amendments are made to Pre-action Protocol for Judicial Review, and a new protocol, Pre-action Protocol for Rent Arrears, is added.

Pre-action Protocol for Judicial Review

Para. C8–001, p.2426

In para. 6, for "the Immigration Appellate Authority" substitute "the Asylum and Immigration Tribunal".

Para. C8–002, pp.2429 & 2430

In Section 2 of Annex A, in the section headed "Where the claim concerns a decision by a department or body for whom Treasury Solicitor acts...", for the address of The Treasury Solicitor substitute—

"The Treasury Solicitor,
One Kemble Street,
London,
WC2B 4TS".

In section 3 of Annex A, for "the Immigration Appellate Authority" substitute "the Asylum and Immigration Tribunal".

Pre-action Protocol for Rent Arrears

Para. C10–002, p.2479

This protocol applies to residential possession claims by social landlords which are based solely on claims for rent arrears. It does not apply to claims in respect of long leases or to claims for possession where there is no security of tenure.

For text of the new practice direction, see below.

Practice Direction (Applications Under Particular Statutes)

Applications under Part III of the Family Law Reform Act 1969 for use of scientific tests to determine parentage

1.1 In this section—

(1) 'the Act' means the Family Law Reform Act 1969;
(2) 'direction' means a direction under section 20(1) of the Act made in any proceedings in which a person's parentage falls to be determined;
(3) 'responsible adult' means a person having care and control of a person to whom paragraph 1.2 of this Practice Direction applies;
(4) 'samples' means bodily samples within the meaning of section 25 of the Act; and
(5) 'tests' means scientific tests within the meaning of section 25 of the Act.

1.2 Where an application is made for a direction in respect of a person who is either—

(a) under 16; or
(b) suffering from a mental disorder within the meaning of the Mental Heath Act 1983 and is incapable of understanding the nature and process of the tests,

the application notice must state the name and address of the responsible adult.

1.3 Unless the court orders otherwise—

(1) the court will serve a copy of the application notice on every party to the proceedings other than the applicant; and
(2) the applicant must serve a copy of the application notice personally on any other person who would be directed to give samples and, where paragraph 1.2 applies, on the responsible adult.

1.4 Unless the court orders otherwise, where the court gives a direction—

(1) the court will serve a copy of the direction on every party to the proceedings;
(2) the applicant must serve a copy of the direction personally on any other person directed to give samples and, where paragraph 1.2 applies, on the responsible adult; and
(3) further consideration of the proceedings shall be adjourned until the court receives a report of the tests carried out or samples taken.

1.5 When the court receives the report of the tests carried out or samples taken, the court officer shall send a copy of the report to—

(1) every party to the proceedings;
(2) the responsible adult where paragraph 1.2 applies; and
(3) every other person directed to give samples.

Applications in proceedings under section 55 of the National Debt Act 1870

2.1 Where a claim is brought under section 55 of the National Debt Act 1870, the claimant must apply to the court for directions about giving notice of the claim.

2.2 The court may—

(a) direct that notice of the proceedings shall be

given by advertisement or by such other method as appropriate; or
(b) dispense with notice.

Practice Direction (Proceedings under Enactments Relating to Discrimination)

Scope and Interpretation

1.1 This Practice Direction applies to certain county court proceedings under the enactments defined in paragraph 1.2.

1.2 In this Practice Direction—

(a) 'the 1975 Act' means the Sex Discrimination Act 1975;
(b) 'the 1976 Act' means the Race Relations Act 1976;
(c) 'the 1995 Act' means the Disability Discrimination Act 1995;
(d) 'the 1999 Act' means the Disability Rights Commission Act 1999;
(e) 'the 2006 Act' means the Equality Act 2006;
(f) 'the Age Regulations' means the Employment Equality (Age) Regulations 2006;
(g) 'the Religion or Belief Regulations' means the Employment Equality (Religion or Belief) Regulations 2003;
(h) 'the Sexual Orientation Regulations' means the Employment Equality (Sexual Orientation) Regulations 2003.

1.3 In this Practice Direction—

(a) a reference to 'the Commission', in relation to proceedings under a particular Act is a reference to the Commission as defined in that Act;
(b) where it applies to proceedings under the 1976 Act, 'court' means a designated county court under section 67(1) of that Act.

Commission to be given notice of claims

2.1 This paragraph applies to claims under—

(a) section 66 of the 1975 Act;
(b) section 57 of the 1976 Act; or
(c) section 25 of the 1995 Act.

2.2 When a claim to which this paragraph applies is commenced, the claimant must—

(a) give notice of the commencement of the proceedings to the Commission;
(b) file a copy of that notice.

Assessors

3. Rule 35.15 shall have effect in relation to an assessor who is to be appointed in proceedings under section 66 (1) of the Act of 1975.

Admissibility of Evidence

4.1 This paragraph applies where a claimant in a claim alleging discrimination has questioned the defendant under—

(a) section 74 of the 1975 Act;
(b) section 65 of the 1976 Act;
(c) section 56 of the 1995 Act;
(d) regulation 41 of the Age Regulations;
(e) regulation 33 of the Religion or Belief Regulations; or
(f) regulation 33 of the Sexual Orientation Regulations.

4.2 Either party may apply to the court to determine whether the question or any reply is admissible under that section.

(Part 23 contains general rules about making applications).

4.3 Rule 3.4 (power to strike out a statement of case) applies to the question and any answer as it applies to a statement of case.

Exclusion of persons from certain proceedings

5.1 In a claim—

(1) brought under section 66(1) of the 1975 Act;
(2) brought under section 57(1) of the 1976 Act;
(3) alleging discrimination under the 1995 Act; or
(4) brought under section 66 of the 2006 Act,

the court may, where it considers it expedient in the interests of national security—

(a) exclude from all or part of the proceedings—
(i) the claimant;
(ii) the claimant's representatives; or
(iii) any assessors

(Section 67(4) of the Race Relations Act 1975 allows an assessor to be appointed in proceedings under that Act);
(b) permit a claimant or representative to make a statement to the court before the start of the proceedings (or the part of the proceedings) from which he is excluded; or
(c) take steps to keep secret all or part of the reasons for its decision in the claim.

5.2 In this paragraph, a 'special advocate' means a person appointed under—

(1) section 66B(2) of the 1975 Act;
(2) section 67A(2) of the 1976 Act;
(3) section 59A(2) of the 1995 Act; or
(4) section 71 (2) of the 2006 Act

to represent the claimant.

5.3 In proceedings to which this paragraph refers, where the claimant or his representatives have been excluded from all or part of the proceedings—

(a) the court will inform the Attorney-General of the proceedings; and
(b) the Attorney-General may appoint a special advocate to represent the claimant in respect of those parts of the proceedings from which he or his representative have been excluded.

5.4 In exercise of its powers under paragraph 5.1(c), the court may order the special advocate not to communicate (directly or indirectly) with any persons

(including the excluded claimant)—

(a) on any matter discussed or referred to; or
(b) with regard to any material disclosed,

during or with reference to any part of the proceedings from which the claimant or his representative are excluded.

5.5 Where the court makes an order referred to in paragraph 5.4 (or any similar order), the special advocate may apply to the court for directions enabling him to seek instructions from, or otherwise to communicate with an excluded person.

Expenses of Commission

6.1 This paragraph applies where the Commission have, in respect of a claim, provided a claimant with assistance under—

(a) section 75 of the 1975 Act;
(b) section 66 of the 1976 Act; or
(c) section 7 of the 1999 Act.

6.2 If the Commission claim a charge for expenses incurred by it in providing such assistance, it shall give notice of the claim to—

(a) the court; and
(b) the claimant,

within 14 days of determination of the proceedings.

6.3 If notice is given to the court under paragraph 6.2—

(a) money paid into court for the benefit of the claimant that relates to costs and expenses shall not be paid out unless this is permitted by an order of the court; and
(b) the court may order the expenses incurred by the Commission to be assessed as if they were costs payable by the claimant to his own solicitor for work done in connection with the proceedings.

6.4 The court may either—

(a) make a summary assessment of the expenses; or
(b) order detailed assessment of the expenses by a costs officer.

Applications to vary terms of certain agreements

7.1 This paragraph applies to an application to remove or modify a term of a contract to which any of the following apply—

(a) section 77(2) of the 1975 Act;
(b) section 72(2) of the 1976 Act;
(c) section 26 of or Schedule 3A to the 1995 Act;
(d) section 72(5) of the 2006 Act;
(e) paragraph 1 (1) or (2) of Schedule 5 to the Age Regulations;
(f) paragraph 1 (1) or (2) of Schedule 4 to the Religion or Belief Regulations;
(g) paragraph 1(1) or (2) of Schedule 4 to the Sexual Orientation Regulations.

7.2 A person affected by the proposed variation must be made a respondent to the application unless the court orders otherwise.

PROTOCOL FOR POSSESSION CLAIMS BASED ON RENT ARREARS

Aims and scope of the protocol

This protocol applies to residential possession claims by social landlords (such as local authorities, Registered Social Landlords and Housing Action Trusts) which are based solely on claims for rent arrears. The protocol does not apply to claims in respect of long leases or to claims for possession where there is no security of tenure.

The protocol reflects the guidance on good practice given to social landlords in the collection of rent arrears. It recognises that it is in the interests of both landlords and tenants to ensure that rent is paid promptly and to ensure that difficulties are resolved wherever possible without court proceedings.

Its aim is to encourage more pre-action contact between landlords and tenants and to enable court time to be used more effectively.

Courts should take into account whether this protocol has been followed when considering what orders to make. Registered Social Landlords and local authorities should also comply with guidance issued from time to time by the Housing Corporation and the Department for Communities and Local Government.

Initial contact

1. The landlord should contact the tenant as soon as reasonably possible if the tenant falls into arrears to discuss the cause of the arrears, the tenant's financial circumstances, the tenant's entitlement to benefits and repayment of the arrears. Where contact is by letter, the landlord should write separately to each named tenant.

2. The landlord and tenant should try to agree affordable sums for the tenant to pay towards arrears, based upon the tenant's income and expenditure (where such information has been supplied in response to the landlord's enquiries). The landlord should clearly set out in pre-action correspondence any time limits with which the tenant should comply.

3. The landlord should provide, on a quarterly basis, rent statements in a comprehensible format showing rent due and sums received for the past 13 weeks. The landlord should, upon request, provide the tenant with copies of rent statements in a comprehensible format from the date when arrears first arose showing all amounts of rent due, the dates and amounts of all payments made, whether through housing benefit or by the tenant, and a running total of the arrears.

4 (a) If the landlord is aware that the tenant has difficulty in reading or understanding information given, the landlord should take reasonable steps to ensure that the tenant understands any information given. The landlord should be able to demonstrate that reasonable

steps have been taken to ensure that the information has been appropriately communicated in ways that the tenant can understand.

(b) If the landlord is aware that the tenant is under 18 or is particularly vulnerable, the landlord should consider at an early stage—

(i) whether or not the tenant has the mental capacity to defend possession proceedings and, if not, make an application for the appointment of a litigation friend in accordance with CPR 21;
(ii) whether or not any issues arise under Disability Discrimination Act 1995; and
(iii) in the case of a local authority landlord, whether or not there is a need for a community care assessment in accordance with National Health Service and Community Care Act 1990.

5. If the tenant meets the appropriate criteria, the landlord should arrange for arrears to be paid by the Department for Work and Pensions from the tenant's benefit.

6. The landlord should offer to assist the tenant in any claim the tenant may have for housing benefit.

7. Possession proceedings for rent arrears should not be started against a tenant who can demonstrate that he has—

(a) provided the local authority with all the evidence required to process a housing benefit claim;
(b) a reasonable expectation of eligibility for housing benefit; and
(c) paid other sums due not covered by housing benefit.

The landlord should make every effort to establish effective ongoing liaison with housing benefit departments and, with the tenant's consent, make direct contact with the relevant housing benefit department before taking enforcement action.

The landlord and tenant should work together to resolve any housing benefit problems.

8. Bearing in mind that rent arrears may be part of a general debt problem, the landlord should advise the tenant to seek assistance from CAB, debt advice agencies or other appropriate agencies as soon as possible.

After service of statutory notices

9. After service of a statutory notice but before the issue of proceedings, the landlord should make reasonable attempts to contact the tenant, to discuss the amount of the arrears, the cause of the arrears, repayment of the arrears and the housing benefit position.

10. If the tenant complies with an agreement to pay the current rent and a reasonable amount towards arrears, the landlord should agree to postpone court proceedings so long as the tenant keeps to such agreement. If the tenant ceases to comply with such agreement, the landlord should warn the tenant of the intention to bring proceedings and give the tenant clear time limits within which to comply.

Alternative dispute resolution

11. The parties should consider whether it is possible to resolve the issues between them by discussion and negotiation without recourse to litigation. The parties may be required by the court to provide evidence that alternative means of resolving the dispute were considered. Courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still actively being explored.

The Legal Services Commission has published a booklet on "Alternatives to Court", CLS Direct Information Leaflet 23 (www.clsdirect.org.uk/legalhelp/leaflet23.jsp), which lists a number of organisations that provide alternative dispute resolution services.

Court proceedings

12. Not later than ten days before the date set for the hearing, the landlord should—

(a) provide the tenant with up to date rent statements;
(b) disclose what knowledge he possesses of the tenant's housing benefit position to the tenant.

13. (a) The landlord should inform the tenant of the date and time of any court hearing and the order applied for. The landlord should advise the tenant to attend the hearing as the tenant's home is at risk. Records of such advice should be kept.

(b) If the tenant complies with an agreement made after the issue of proceedings to pay the current rent and a reasonable amount towards arrears, the landlord should agree to postpone court proceedings so long as the tenant keeps to such agreement.

(c) If the tenant ceases to comply with such agreement, the landlord should warn the tenant of the intention to restore the proceedings and give the tenant clear time limits within which to comply.

14. If the landlord unreasonably fails to comply with the terms of the protocol, the court may impose one or more of the following sanctions—

(a) an order for costs;
(b) in cases other than those brought solely on mandatory grounds, adjourn, strike out or dismiss claims.

15. If the tenant unreasonably fails to comply with the terms of the protocol, the court may take such failure into account when considering whether it is reasonable to make possession orders.

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