
CIVIL PROCEDURE NEWS

Issue 8/2010 September 13, 2010

CONTENTS

Additions and amendments to CPR

Additions and amendments to Practice Directions

Pre-action protocol for resolution of clinical disputes

Substituting party after end of limitation period

False statements—proceedings for contempt

McKenzie friends and rights of audience

Recent cases



In Brief

Cases

- **ACCIDENT EXCHANGE LTD v AUTOFOCUS LTD** [2010] EWC Civ 788, July 14, 2010, CA, unrep. (Maurice Kay, Sullivan & Patten L.JJ.)

Witness immunity rule — effect of failed striking out application — declaration

CPR rr.3.4, 32.2 and 35.10. Credit hire company (C) bringing claim against insurance service company (D) for interference with business by unlawful means and deceit. C providing hire cars to drivers (X) whose vehicles have been damaged in accidents through negligence of other drivers (Y). D providing for insurers (Z) of Y evidence as to market hire rates for purpose of defending claims brought against Y by C in name of X to recover hire charges. Such evidence provided in form of witness statements of surveyors (W) employed by D to which detailed information of research claimed to have been undertaken by them exhibited. C alleging that by these means D knowingly provided Z with false information (understating market rates). Judge dismissing D's application to strike out claim and for reverse summary judgment. In doing so, judge rejecting D's submission that the exhibits in W's witness statements would be protected by the witness immunity rule from being the basis of any claim brought against D. Judge granting D permission to appeal. On appeal, in light of judge subsequently granting C permission to amend their particulars of claim, D no longer contending that C's claim should be struck out, but seeking declaration endorsing the witness immunity submission rejected by the judge. **Held**, declining to make the declaration and dismissing the appeal, (1) in dismissing D's application the judge was not determining a preliminary point of law, (2) the witness immunity issue was dealt with by the judge on an arguable basis, (3) the issue remained at large, and would have to be determined in the light of the relevant facts at trial. Modern law as to scope of witness immunity rule explained. **Darker v Chief Constable of the West Midlands** [2001] 1 A.C. 435, HL, ref'd to. (See **Civil Procedure 2010** Vol.1 paras 35.12.4 and 40.20.3.)

- **BARNES v SEABROOK** [2010] EWHC 1849 (Admin), July 23, 2010, D.C., unrep. (Hooper L.J. and Kenneth Parker J.)

False verification of documents — proceedings for contempt — venue

CPR rr.31.23, 32.14 and Sch.1 RSC Ord.52, r.1, Practice Direction 32 (Evidence) para.28. In unrelated county court proceedings, claimants (C) applying to a Divisional Court for permission to commence contempt proceedings against defendants (D). C alleging that D had made false statements in documents verified by statements of truth. **Held**, granting applications in part, C were entitled to come to a Divisional Court under Ord.52 and to obtain from such Court an order of committal, and were not obliged to refer their allegations to the courts dealing with the claims in which the statements by D were made. (See further, "In Detail" section of this issue of *CP News*.) (See **Civil Procedure 2010** Vol.1 paras 31.23.1, 32.14.1, 32PD.28 and sc52.1.1.)

- **LAND SECURITIES PLC v FLADGATE FIELDER** [2009] EWCA Civ 1402; [2010] 2 W.L.R. 1265, CA (Mummery, Moore-Bick and Etherton L.JJ.)

Judicial review claims brought predominantly for collateral purpose — whether actionable abuse of process

CPR rr.3.4(2), 24.2 and 54.4. Under lease for a term expiring in March 2013, professional firm (D) occupying office premises. D instructing property agents to arrange disposal of the residue and to find new and larger premises. Property company (C) making sequential applications to planning authority (X) for permission to develop two properties (properties A and B), one of which (property B) was adjacent to D's premises. D concerned that the development of property B would adversely affect the marketability and disposal of the residue of their lease. After C had obtained planning permission for development of property A and had applied for permission for development of B, D obtaining court's permission to proceed with a claim for judicial review of X's planning consent for property A. Claim made principally on grounds (1) that the consent had been given on a basis as to provision of a high proportion of affordable housing which C might rely upon to their advantage in their plans for the development of property B, (2) that in giving consent on this basis X acted unlawfully. After X had considered and granted a revised planning application made by C in relation to property B, D withdrawing their judicial review claim. Subsequently, D commencing and obtaining permission to continue a new claim for judicial review of decisions made by X in relation to C's revised and further revised applications for the development of property B. Judge dismissing this claim on the merits. C bringing proceedings against D claiming substantial damages for the tort of abuse of civil process.

C alleging (1) that D brought the judicial review claims for the predominant purpose of obtaining some collateral advantage to themselves beyond the proper scope of the proceedings, and (2) that as a result of the delays caused by their pursuit of those claims had caused C substantial loss. Judge (1) refusing D's application to strike out C's statement of case under r.3.4(2), but (2) on ground that C's claim had no real prospect of succeeding, granting D summary judgment under r.24.2 (see [2009] EWHC 577 (Ch), March 25, 2009, unrep.). Judge granting C permission to appeal. **Held**, dismissing appeal, (1) it has been recognised for over 150 years that, in some circumstances abuse of process is actionable as a tort at common law, however (2) there was no reasonably arguable basis for extending this tort beyond the particular heads of damage which must exist for invocation of the tort of malicious prosecution (viz. injury to person, damage to person and damage to reputation) to include (as C contended) consequential economic loss, (3) the authorities provide no basis for extending of the tort of abuse of process to proceedings for judicial review, (4) there was no pressing need to supplement procedural law (in particular that governing judicial review claims) by expansive substantive tortious liability in order to protect parties in civil proceedings from malicious or abusive claims. *Grainger v Hill* (1838) 4 Bing NC 212; *Gilding v Eyre* (1861) 10 CBNS 592; *Quartz Hill Consolidated Mining Co v Eyre* (1888) 11 Q.B.D. 674, CA; *Gregory v Portsmouth City Council* [2000] 1 A.C. 419, HL, ref'd to. (See *Civil Procedure 2010* Vol.1 para.3.4.3.)

■ **HOSPIRA INC v AMGEN INC** [2010] EWHC 176 (Pat), January 27, 2010, unrep. (Floyd J.)

Disclosure of documents — patent action — duty of parties

CPR rr.31.6, 31.7, 63.8 and 63.9, Practice Direction 63 (Intellectual Property Claims) para.6. In patent action about a pharmaceutical in which allegations of obviousness made, claimant company (C) seeking revocation of two patents in the name of the defendant company (D). D applying to court for an order that standard disclosure by them be dispensed with altogether without prejudice to right of C to apply to court for specific disclosure of particular categories of documents which they maintain might be relevant. **Held**, dismissing application and ordering standard disclosure, (1) the likely consequence of granting the application would be that C would make an application for specific disclosure of a class of documents which both parties already knew how to identify, (2) the exchange of witnesses statements for, and the submissions on, D's application had at least to some extent identified the documents which C would require, (3) D would know that the documents falling within r.31.6(a) and (b) would include those which threw light on the alleged advance made by the patent over the prior art. Judge adding (1) that both parties had a duty to focus the disclosure exercise in so far as it was within their power to do so, and (2) that C should identify any further areas in addition to those already apparent in which D should concentrate in that exercise. Observations on value of disclosure of documents in determining questions of obviousness. *Nichia Corp v Argos Ltd (Practice Note)* [2007] EWCA Civ 741; [2007] Bus. L.R. 1753, CA, ref'd to. (See *Civil Procedure 2010* Vol.1 para.31.6.4 and Vol.2 2F-10.3.)

■ **LOCKHEED MARTIN CORPORATION v WILLIS GROUP LTD** [2010] EWCA Civ 927, July 30, 2010, CA, unrep. (Waller, Rix and Wilson L.JJ.)

Substitution of defendant after expiry of limitation period — effect of mistake

CPR r.19.5, Limitation Act 1980 s.35. Claimants (C) bringing claim against Bermudan holding company (D). On ground that D had been named in claim form by mistake for UK subsidiary of D (X), Master giving C permission under r.19.5(3)(a) to substitute X as defendant. Judge granting X's application to set aside Master's order ([2009] EWHC 1436 (QB)). C applying to Court of Appeal for permission to appeal. **Held**, refusing permission, C's claim against X had no prospect of success. Court stating (obiter) that it is not an implied requirement of r.19.5(3) that the mistake was not misleading to the other party or that the identity of the person to be sued must have been apparent. (See further, "In Detail" section of this issue of *CP News*.) (See *Civil Procedure 2010* Vol.1 paras 19.5.6, 19.5.7 and 19.5.11 and Vol.2 para.8-112.)

■ **KINSLEY v COMMISSIONER OF POLICE FOR THE METROPOLIS** [2010] EWCA Civ 953, June 9, 2010, CA, unrep. (Ward, Thomas and Pitchford L.JJ.)

Unless order — claim struck out — relief from sanction

CPR rr.3.1(3), 3.4(2)(c), 3.8 and 3.9. Claimant (C) commencing proceedings against police (D) seeking injunction. At directions hearing on December 14, 2007, judge making unless order requiring C to disclose specific documents by January 28, 2008. On January 14, 2008, another judge refusing C's without notice application for adjournment of proceedings generally. By effect of unless order, C's claim standing struck out on January 29, 2008. On February 8, 2008, at hearing of a fresh on notice application by C for an adjournment, a third judge refusing C's application, and (on own motion) refusing C relief from the striking out sanction. C making renewed application for permission to appeal. **Held**, granting permission and allowing C's appeal (Thomas L.J. dissenting), (1) C was a litigant in person in a claim that raised serious issues to be tried, (2) before the making of the unless order, the court had made no explicit

order requiring C to give specific disclosure of the documents referred to in that order, (3) there was a real possibility that, as a result of the January 14 hearing, C believed that the effect of the unless order was suspended pending the hearing of his on notice application for an adjournment. *Marcan Shipping (London) Ltd v Kefalas* [2007] EWCA Civ 463; [2007] 1 W.L.R. 1864, C.A., ref'd to. (See *Civil Procedure 2010* Vol.1 paras 3.4.4.1, 3.8.1 and 3.9.1.)

Statutory Instruments

■ CIVIL PROCEDURE (AMENDMENT NO.2) RULES 2010 (SI 2010/1953)

Amend CPR. Principal amendments and additions make provision for patents county court procedure with fixed costs regime (Pts 45 and 63), for injunctions under the Policing and Crime Act 2009 Pt 4 (Pt 65), for proceedings for possession of mortgaged property and warrants where “unauthorised” tenant (Pt 55 and CCR Ord.26), for applications to quash “tainted” acquittals (Pt 77) (replacing RSC Ord.116). Also amend RSC Ord.115 as consequence of amendments to Terrorism Act 2000 Sch.4, and CPR r.31.22 (use of Electronic Documents Questionnaire). Make consequential amendments to Pts 30 and 52. In force (with exceptions) October 1, 2010. (See further “CPR Update” section of this issue of *CP News*.) (See *Civil Procedure 2010* Vol.1 paras 45.40, 52.4, 55.10, 65.41, 77.5, sc115.0.1 and cc26.17 and Vol.2 para.2F–17.9.)

■ DWELLING HOUSE (EXECUTION OF POSSESSION ORDERS BY MORTGAGEES) REGULATIONS 2010 (SI 2010/1809)

Mortgage Repossessions (Protection of Tenants etc) Act 2010. Notice of execution of possession order where unauthorised tenant of mortgaged property. Schedule contains form of order to be given at the property by mortgagee. Notice prerequisite to mortgagee’s application for warrant. For consequential amendments to CPR, see SI 2010/1853 and amended Form N325. In force October 1, 2010. (See further “CPR Update” section of this issue of *CP News*.) (See *Civil Procedure 2010* Vol.1 paras 55.10 and cc26.17.)

Practice Directions

■ PRACTICE NOTE (MCKENZIE FRIENDS : CIVIL AND FAMILY COURTS) [2010] 1 W.L.R. 1881, Sen Cts (Master of the Rolls & President)

Legal Services Act 2007 Sch.3. Gives guidance as to unrepresented litigant’s right to reasonable assistance from lay person. Proper approach to court’s discretion to refuse to permit assistance, and to grant lay person rights of audience or right to conduct litigation. Remuneration of lay person providing assistance. Applies to civil and family proceedings. Issued for purpose of reminding courts and litigants of principles set out in authorities. Contact information for personal support units and CABs. Supersedes previous guidance. In effect July 12, 2010. (See further, “In Detail” section of this issue of *CP News*.) (See *Civil Procedure 2010* Vol.1 para.39APD.5 and Vol.2 paras 9B–594 and 13–19.)

■ PRACTICE DIRECTION—PROCEEDINGS UNDER ENACTMENTS RELATING TO EQUALITY TSO CPR Update 53 (September 2010)

Equality Acts 2006 and 2010. Applies to certain county court proceedings under the 2006 and 2010 Acts. Applies to conduct on or after October 1, 2010. Contains provisions similar to those in Practice Direction—Proceedings Under Enactments Relating to Discrimination (which continues to apply to conduct before October 1, 2010). This is a freestanding CPR Practice Direction, in terms not expressly supplementing a particular CPR Part. In force October 1, 2010. (See further “CPR Update” section of this issue of *CP News*.) (See *Civil Procedure* Vol.2 Sect.31.)

■ PRACTICE DIRECTION 31B—DISCLOSURE OF ELECTRONIC DOCUMENTS TSO CPR Update 53 (September 2010)

CPR Pt 31. Contains provisions designed to assist parties in multi-track proceedings to reach agreement for disclosure of Electronic Documents by pre-CFM discussions, by exchange of questionnaire and other means. Contains directions as to: preservation of documents, reasonable search, keyword and automated searches, provision of electronic copies of disclosed documents. In force October 1, 2010. (See further “CPR Update” section of this issue of *CP News*.) (See *Civil Procedure 2010* Vol.1 para.31PD.1.)

■ PRACTICE DIRECTION 51E—COUNTY COURT PROVISIONAL ASSESSMENT PILOT SCHEME TSO CPR Update 53 (September 2010)

CPR Pts 47 and 51. Introduces pilot scheme for “provisional” detailed assessment of costs where base costs claimed are £25,000 or less. Scheme to operate initially from October 1, 2010, to September 30, 2011, in the Leeds, York and Scarborough county courts. Applies Pt 47 with substantial modifications. Carries into effect recommendation made by Lord Justice Jackson in *Review of Civil Litigation Costs: Final Report (December 2009)* Ch.45 para.6.1. (See *Civil Procedure 2010* Vol.1 para.51.2.4.)

In Detail

SUBSTITUTING PARTY AFTER END OF LIMITATION PERIOD

CPR r.17.4 (Amendments to statements of case after the end of a relevant limitation period) and r.19.5 (Special provisions about adding and substituting parties after the end of a relevant limitation period) are rules made for the purpose of carrying into effect the Limitation Act 1980 s.35 (New claims in pending actions: rules of court).

It is important to note that there is a significant textual difference between para.(3) of r.17.4 and para.(3)(a) of r.19.5(3). Rule 17.4(3) states that, after the end of a relevant limitation period, the court may allow an amendment to correct a mistake as to the name of a party, but adds the rider (following former RSC Ord.20 r.5(3)) that this may be permitted only where the mistake was genuine “and not one which would cause reasonable doubt as to the identity of the party in question”. The “reasonable doubt” rider does not appear in r.19.5(3)(a) which states, simply (not following former RSC Ord.20 r.5(3) in this respect, but remaining faithful to s. 35(6)(a) of the 1980 Act), that, after the end of a relevant limitation period, the substitution of a party in the proceedings by a new party may be regarded as “necessary” where the former was “named in the claim form in mistake for” the latter.

The significance of this textual difference (in particular, the absence of the rider from r.19.5(3)(a)) was explained in the recent case of *Lockheed Martin Corp v Willis Group Ltd* [2010] EWCA Civ 927, July 30, 2010, CA, unrep. (For reference to first instance judgment in this case, see *Civil Procedure 2010* Vol.1 para.19.5.7.)

In this case the claimants (C) intended to bring a claim for professional negligence against the principal holding company in the United Kingdom of an insurance broking group (X), but by mistake named in the claim form the group’s ultimate holding company, a Bermudan company divorced from the UK operations (Y). The judge was prepared to hold that C’s mistake was as to name rather than as to identity, but rejected C’s application to substitute X for Y as defendant on the ground that it is an implied requirement of r.19.5(3) that the mistake was not misleading to the other party or that the identity of the person to be sued must have been apparent.

The Court of Appeal (Waller, Rix and Wilson L.JJ.) refused C permission to appeal, finding that it had no prospect of success as C were unable to formulate a proper cause of action against X. In giving the lead judgment, Rix L.J. explained that, ultimately, the Court’s decision was not explicitly concerned with the jurisdictional requirements of r.19.5. However, his lordship gave detailed consideration to the effect of the rule and stated (obiter) that, although the position may have been different under the pre-CPR provisions, it is not necessary for the court when considering applications based on r.19.5(3) to be satisfied that the mistake was not misleading to the other party or did not cause reasonable doubt as to the party intended to be sued (though, possibly, these matters may be relevant to the court’s exercise of its underlying discretion). In this respect the judge had erred.

MCKENZIE FRIENDS AND RIGHTS OF AUDIENCE

In Section 13 of Vol.2 of *Civil Procedure 2010*, there is extended coverage of the law as to rights of audience. The statutory framework for the granting and obtaining of such rights, formerly found in the Courts and Legal Services Act 1990 (as amended), is now found in Pt 3 of the Legal Services Act 2007. (The account given in Section 13 attempts to cover both the old and the new legislation recently brought into effect.)

In para.13–3 it is explained that the exercise of a right of audience is one of several “reserved legal activities” and that as such may be carried on only by “authorised persons” and “exempt persons”. In this context, an “authorised person” is a person able to exercise rights of audience (whether limited to particular courts and proceedings or unlimited) in accordance with regulations of an authorised body under the statutory scheme. An “exempt person” is a person determined as such by para.1 of Sch.3 to the 2007 Act (see para.9B–594).

Paragraph 1(2)(b) states that the categories of persons who are “exempt” for the purpose of exercising a right of audience before a court in relation to any proceedings include a person who has “a right of audience granted by that court in relation to those proceedings”. That provision does not grant the court power to accord a right of audience to a lay person, but it acknowledges that such power exists. As a practical matter, where a court is asked to exercise this power it is likely that the lay person concerned will be a person from whom the party has the right to have “reasonable assistance”, that is to say, a “McKenzie friend” (see para.13–19).

In *Practice Note (McKenzie Friends: Civil and Family Courts)* [2010] 1 W.L.R. 1881, Sen Cts, issued by the Master of the Rolls and the President on July 12, 2010 (replacing the Practice Note referred to in para.13–19) detailed guidance

is given on the scope of the right to reasonable assistance. It is explained that McKenzie friends (MFs) have no right to act as advocates or to carry out the conduct of litigation, but it is acknowledged that the court's power to grant a right of audience on a case-by-case basis to lay persons (on the "exempt person" basis explained above) includes granting such right to an MF.

Paragraph 23 of the Practice Note states that the grant of a right of audience or a right to conduct litigation "to lay persons who hold themselves out as professional advocates or professional MFs or who seek to exercise such rights on a regular basis, whether for reward or not" will be granted only in exceptional circumstances as to do otherwise would tend to subvert the statutory scheme for "authorised" and "exempt" persons enacted by Parliament.

Paragraphs 27 to 30 of the Practice Note deal with the remuneration of MFs. Obviously, the questions whether fees incurred by an MF (whether a "professional" MF or not) may be recovered and, if so, from whom are important (if only for the reason that it would be expected that their answers would tend to put a brake on the growth of a "professional" MF industry). These paragraphs state as follows:

"27. Litigants can enter into lawful agreements to pay fees to MFs for the provision of reasonable assistance in court or out of court by, for instance, carrying out clerical or mechanical activities, such as photocopying documents, preparing bundles, delivering documents to opposing parties or the court, or the provision of legal advice in connection with court proceedings. Such fees cannot be lawfully recovered from the opposing party.

28. Fees said to be incurred by MFs for carrying out the conduct of litigation, where the court has not granted such a right, cannot lawfully be recovered from either the litigant for whom they carry out such work or the opposing party.

29. Fees said to be incurred by MFs for carrying out the conduct of litigation after the court has granted such a right are in principle recoverable from the litigant for whom the work is carried out. Such fees cannot be lawfully recovered from the opposing party.

30. Fees said to be incurred by MFs for exercising a right of audience following the grant of such a right by the court are in principle recoverable from the litigant on whose behalf the right is exercised. Such fees are also recoverable, in principle, from the opposing party as a recoverable disbursement: CPR rr.48.6(2)(3)(a)(ii)."

FALSE STATEMENTS—PROCEEDINGS FOR CONTEMPT

Rules of court relating to the jurisdiction of the High Court to punish for contempt of court by an order of committal for contempt committed in connection with proceedings, including proceedings in an inferior court, are found in CPR Sch.1 RSC Ord.52. Those rules provide that any such order may be made only by a Divisional Court of the Queen's Bench Division (r.1), and that a party wishing to apply for an order must first obtain the permission of the Court (r.2) (see *Civil Procedure 2010* Vol.1 paras sc52.1 and sc52.2).

CPR r.31.23(1) states that proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false disclosure statement, without an honest belief in its truth. Rule 31.23(2) states that proceedings under this rule may be brought only (a) by the Attorney General or (b) with the permission of the court. CPR r.32.14 is in similar terms but is cast more widely so as to include false statements made in any document verified by a statement of truth.

These rules are supplemented by Practice Direction 32 (Evidence) para.28 (see *Civil Procedure 2010* Vol.1 para.32PD.28). Paragraph 28(1) states that, where a party alleges that a statement of truth or a disclosure statement is false, "the party *must refer that allegation*" (emphasis added) to the court dealing with the claim in which it has been made.

In *Barnes v Seabrook* [2010] EWHC 1849 (Admin), July 23, 2010, D.C., unrep., in conjoined applications, three claimants sought to invoke the court's jurisdiction by following the rules in CPR Sch.1 RSC Ord.52 and applying to a Divisional Court for permission to commence proceedings for the punishment (by imprisonment) of the defendants for contempt of court for having made, during the course of county court proceedings, false statements in documents verified by a statement of truth and (in one case) in a false disclosure statement.

In opposing these applications, the defendants submitted that the effect of para.28(1) of Practice Direction 32, which is expressed in mandatory terms, was that RSC Ord.52 did not apply to the contempts alleged, and that the applicants were required by para.28(1) to refer them to the county courts dealing with the claims in which the statements of truth or the disclosure statement had been made. The Court rejected this submission, holding that, notwithstanding the language of r.32.14 and r.31.23 and, in particular, the language of para.28(1), a party in county court proceedings is entitled to come to a Divisional Court under RSC Ord.52 and obtain from that Court an order of committal to prison or other penalty, and is not obliged to follow the procedure in para.28.

CPR Update

ADDITIONS AND AMENDMENTS TO CPR RULES AND PRACTICE DIRECTIONS

By the Civil Procedure (Amendment No.2) Rules 2010 (SI 2010/1953) (issued on August 3, 2010) additions and amendments are made to the CPR and, by TSO CPR Update 53 (likely to be published during September), to certain CPR practice directions. To an extent the changes made by Update 53 complement the rule amendments made by the statutory instrument.

Generally, these alterations come into effect on October 1, 2010. Exceptions to this are (1) the new Section, Section VII—Injunctions under the Policing and Crime Act 2009 (rr.65.42 to 65.49), added to Pt 65 (Anti-Social Behaviour and Harassment), (2) the complementary amendments made to Practice Direction 65, and (3) the consequential amendments made (a) to Practice Direction 2B (Allocation of Cases to Levels of Judiciary), and (b) to Pt 52 (Appeals) and Practice Direction 52. These provisions will come into force on the date on which Pt 4 of the 2009 Act comes into force.

All of the changes made by the statutory instrument and by Update 53 will be incorporated in Supplement 2 of *Civil Procedure 2010* (due to be published September 27, 2010).

The changes coming into effect on October 1, 2010, are outlined below.

PART 31—DISCLOSURE AND INSPECTION OF DOCUMENTS

In TSO CPR Update 53, a new practice direction supplementing Pt 31, that is Practice Direction 31B—Disclosure of Electronic Documents, is published. It comes into effect on October 1, 2010. The other practice direction supplementing this Part is renumbered as PD 31A.

Unless the court orders otherwise, the new practice direction only applies to proceedings started on or after that date (paras 2A.2 to 2A.5 of PD 31A continue to apply to proceedings started before), and only applies to proceedings that are (or are likely to be) allocated to the multi-track (see PD 31B paras 3 and 4).

The purpose of PD 31B “is to encourage and assist the parties to reach agreement in relation to the disclosure of Electronic Documents in a proportionate and cost-effective manner” (para.2).

Paragraph 5(3) of PD 31B states:

“‘Electronic Document’ means any document held in electronic form. It includes, for example, e-mail and other electronic communications such as text messages and voicemail, word-processed documents and databases, and documents stored on portable devices such as memory sticks and mobile phones. In addition to documents that are readily accessible from computer systems and other electronic devices and media, it includes documents that are stored on servers and back-up systems and documents that have been deleted. It also includes Metadata and other embedded data which is not typically visible on screen or a print out.”

The parties and their legal representatives must, before the first case management conference, discuss the use of technology in the management of Electronic Documents and the conduct of proceedings (para.8). Further, before the first CMC (or earlier where this is appropriate in heavy and complex cases) they should discuss the disclosure of such documents (para.9).

An Electronic Documents Questionnaire (EDQ) is set out in a Schedule to PD 31B. It is recommended that this questionnaire should be exchanged by parties for the purpose of enabling them to provide information to each other in relation to the scope, extent and most suitable format for disclosure of Electronic Documents in the proceedings (para.10). The answers to an EDQ must be verified by a statement of truth. By the Civil Procedure (Amendment No.2) Rules 2010, r.31.22 (Subsequent use of disclosed documents) is amended so as to provide that, for the purposes of that rule, an EDQ that has been completed and served by another party pursuant to PD 31B “is to be treated as if it is a document which has been disclosed”.

Rule 31.7 states that, when giving standard disclosure, a party is required “to make a reasonable search” for documents falling with r.31.6. In any circumstances, it is not difficult for parties to disagree as to what is and what is not “reasonable”; in circumstances where Electronic Documents exist the margin for disagreement is widened. A number of the provisions in PD 31B, and in the Questionnaire scheduled to it, are directed at managing this problem. On this matter, the judgment of the Senior Master in *Goodale v Ministry of Justice* [2009] EWHC B40 (QB), November 5, 2009, unrep. (anticipating PD 31B) should be noted (see *CP News* Issue 6/2010).

An addition has been made to Section D (Case management information) of Form N150 (Allocation questionnaire) (see CPR r.26.3) under which the party completing the form is required to provide the court with information about progress (if any) towards agreement about the scope and extent of disclosure of Electronic Documents. The Form, as amended, is to be re-issued in TSO CPR Update 53.

PART 55—POSSESSION CLAIMS

The Dwelling Houses (Execution of Possession Orders by Mortgagees) Regulations 2010 (SI 2010/1809) were made by the Secretary of State (and with the consent of the Lord Chancellor) in exercise of powers conferred by the Mortgage Repossession (Protection of Tenants etc) Act 2010 s.2.

As the long title of the Act states, the objective of this legislation is “to protect persons whose tenancies are not binding on mortgagees and to require mortgagees to give notice of the proposed execution of possession orders”. A tenancy not binding on a mortgagee is “an unauthorised tenancy”. Section 1 states (1) that, when making an order for delivery of possession, the court may, on the application of the tenant, postpone the date of delivery of possession for a period not exceeding two months, and (2) that, where an order for delivery of possession has been made but not executed, the court may suspend execution of the order for a similar period. Section 1 makes further provision for the matters to be taken into account by the court and conditions that the court may impose.

Section 2 is amplified by the Regulations so as to provide that, where an order for possession has been made but not executed, the order may not be executed unless certain conditions are fulfilled; in particular, the mortgagees must give the tenant notice in the form set out in the Schedule to the Regulations, and in the manner stated in reg.5, that they have applied, or will apply, to the court for a warrant for possession.

By the Civil Procedure (Amendment No.2) Rules 2010, two adjustments are made to the CPR to accommodate the rights (briefly outlined above) that an “unauthorised tenant” now enjoys where the mortgagee brings an action claiming possession or (having obtained an order for possession) applies for a warrant for possession. Both come into effect on October 1, 2010.

First, in r.55.10 (Possession claims relating to mortgaged residential property) (see *Civil Procedure 2010* Vol.1 para.55.10), para.(4A) is added after para.(4) and states: “An unauthorised tenant of residential property may apply to the court for the order for possession to be suspended”.

Secondly, in CPR Sch.2 CCR Ord.26 r.17 (Warrant of possession) (see *Civil Procedure 2010* Vol.1 para.cc26.17), para.(2A) is added after para.(2) and states: “When applying for a warrant of possession of a dwelling-house subject to a mortgage, the claimant must certify that notice has been given in accordance with the Dwelling Houses (Execution of Possession Orders by Mortgagees) Regulations 2010”. A person desiring a warrant of possession to be issued proceeds by making a request in Form N325 (Request for Warrant of Possession of Land). That form has been amended so as to include the certification now required by para.(2A) of r.17 (in addition to that required by para.(2)). The amended form will be published in TSO CPR Update 53.

PART 62—ARBITRATION CLAIMS

This Part is supplemented by Practice Direction 62 (Arbitration). Under Pt 63, an “arbitration claim” includes an application for permission to appeal to the court under the Arbitration Act 1996 s.69. Heretofore, provisions as to practice for such applications have been found in paras 12.1 to 12.6 of Practice Direction 62 (see *Civil Procedure 2010* Vol.2 para.2E–50). By TSO CPR Update 53, those paragraphs are substituted by paras 12.1 to 12.5.

The new provisions are much more prescriptive than the former, in particular in relation to the material that may be submitted to the court by the parties to applications for permission to appeal (including skeleton arguments). New paras 12.12, 12.13 and 12.14 largely if not exactly accord with, respectively, existing paras 12.4, 12.6 and 12.5. New paras 12.1 to 12.11 are much more elaborate than existing paras 12.1 to 12.3, but vestiges of the latter can be found in the former. The objective is said to be to ensure, as far as possible, that applications are presented in a manner which allows for speedy determination. Amongst other things, the new paragraphs stipulate (1) that the skeleton arguments should not exceed 15 pages in length, (2) that written evidence should be filed only if it is necessary to demonstrate certain matters, (3) that any such evidence must be filed and served with the arbitration claim form, and (4) that, generally, documents adduced in or produced for the purposes of the arbitration should not be put before the court, other than the award and any document which is referred to in the award and which the court needs to read to determine a question of law arising out of the award.

These new Practice Direction 62 provisions come into effect on October 1, 2010.

PART 63—INTELLECTUAL PROPERTY CLAIMS

In a number of respects, the provisions in Pt 63 modify what could be called the “normal” CPR rules in claims to which that Part applies. By the Civil Procedure (Amendment No.2) Rules 2010 (SI 2010/1953) r.8 and Sch.2 further modifications are made. By that statutory instrument another Section, that is Section IV—Patents County Court (rr.63.17 to 63.26), is added (see *Civil Procedure 2010* Vol.2 para.2F–1). This new Section makes special provision for claims started in, or transferred to, a patents county court. CPR provisions relating to statements of case, defence and reply, disclosure and inspection, and applications, which would normally apply, are modified in significant respects. In addition, by r.5 and Sch.1 of the statutory instrument, a further Section, that is Section VII —Scale Costs for Claims in a Patents County Court (rr.45.41 to 45.43), is added to Pt 45 (Fixed Costs) (see *Civil Procedure 2010* Vol.1 para.45.0.1) for the purpose of providing a special regime for the summary assessment of costs according to a scale in proceedings to which the new Section IV of Pt 63 applies.

These changes to rules are accompanied by the addition of a further Section to Practice Direction 63 (Intellectual Property Claims) (see *Civil Procedure* Vol.2 para.2F–18), that is Section IV—Provisions About Proceedings in a Patents County Court (paras 27 to 31), and by the addition of a further Section, that is Section 25C—Scale Costs for Proceedings in a Patents County Court, to the Costs Practice Direction (see *Civil Procedure 2010* Vol.1 para.45PD.10). Also, Practice Direction 30 (Transfer) (see *ibid.* para.30PD.10) is amended by the addition of a paragraph (para.9) dealing with the transfer of proceedings to or from a patents county court (supplementing r.63.18). These additions and amendments will be made by TSO CPR Update 53.

These new rule and practice direction provisions come into effect on October 1, 2010, and reflect proposals made in the Final Report of the Intellectual Property Court Users’ Committee’s Working Group on Proposals for Reform of the Patents County Court (July 31, 2009), and endorsed by Lord Justice Jackson in the *Review of Civil Litigation Costs: Final Report* (December 2009) (Ch.24). They are designed to provide a “streamlined process” for claims handled in county courts. They provide a good example of what may be a trend towards reinventing summary justice for the purpose of alleviating the harmful consequences of the process of “procedural compaction”; that is, the process by which procedures designed for the administration of summary justice at the lower levels of court structures have been emasculated for the purpose of bringing them into line (in uniform procedural codes) with procedures designed for the administration of justice at the higher levels (see Scott, “Trial Court Integration in England” in *Canada’s Trial Courts: Two Tiers or One?* (Russell ed.) (2007) (Ch.12)).

PART 70—GENERAL RULES ABOUT ENFORCEMENT OF JUDGMENTS AND ORDERS

Rule 70.5 applies (subject to some exceptions) where an enactment provides (a) that a decision of a court, tribunal, body or person other than the High Court or a county court, or (b) a compromise, may be enforced as if it were a court order, or that any sum of money payable under that decision or compromise may be recoverable as if payable under a court order (see *Civil Procedure 2010* Vol.1 para.70.5). A party wishing to enforce a decision or compromise in these circumstances applies by application notice. The notice is to be in the form, and contain the information required by, Practice Direction 70.

This leads to para.4 of PD 70 which states that, where the decision to be enforced is a decision of an employment tribunal in England and Wales, and the party seeking to enforce the decision wishes to enforce by a writ of *fiery facias*, then practice form N471 is to be used. By TSO CPR Update 53, this paragraph is now amended to cater for the situation where the application is for the recovery by writ of *fiery facias* of a compromise sum brokered by ACAS under the Employment Tribunals Act 1996 s.19A(3)). In these circumstances, the application to enforce is to be made in a new form (to be published in Update 53), Form N471A (Application to enforce an ACAS settlement (Form COT3) and request for a Writ of Fieri Facias).

PART 77—MISCELLANEOUS PROVISIONS IN SUPPORT OF CRIMINAL JUSTICE

CPR Sch.1 RSC Ord.116 was inserted in the CPR in 1999 for the purpose of providing rules for the procedure to be followed where applications are made to the High Court under the Criminal Procedure and Investigations Act 1996 s.54 (for orders to quash “tainted” acquittals).

Part 77 was added to the CPR in 2007 for the purpose of providing rules about applications for serious crime prevention orders under the Serious Crime Act 2007 s.8, and for related applications under other sections of that Act.

By the Civil Procedure (Amendment No.2) Rules 2010, with effect from October 1, 2010, the provisions of RSC Ord.116 are transferred to Pt 77 as Section 2 of that Part, with the rules as to applications under the 2007 Act forming Section 1. RSC Ord.116 is now omitted from the CPR. The provisions so transferred have been modified in certain

respects, but are largely to the same effect as those that they replace. A consequential amendment is made to the table following para.9.4 in Practice Direction 8 (Alternative Procedure for Claims).

SCHEDULE 1 RSC ORDER 115—CONFISCATION AND FORFEITURE IN CONNECTION WITH CRIMINAL PROCEEDINGS

The rules in Pt III of RSC Ord.115 in Sch.1 to the CPR deal with applications for restraint orders made under the Terrorism Act 2000 Sch.4 (as amended) and the registration of such orders. These rules (and other rules in RSC Ord.115) are supplemented by provisions in Practice Direction RSC 115 (see *Civil Procedure 2010* Vol.1 para.scpd115.1).

By the Civil Procedure (Amendment No.2) Rules 2010 and by TSO CPR Update 53, amendments are now made to RSC Order 115 and to the Practice Direction to provide for applications for domestic freezing order certificates in relation to property outside the United Kingdom, and for the registration of overseas freezing orders, in relation to property in the United Kingdom. These changes follow upon the coming into effect of amendments to Sch.4 of the 2000 Act made by the Crime (International Co-operation) Act 2003 Sch.4.

PRACTICE DIRECTION—PROCEEDINGS UNDER ENACTMENTS RELATING TO EQUALITY

Under the Equality Act 2010 s.114(1), a county court has jurisdiction to determine a claim relating to (a) a contravention of Pt 3 (services and public functions), (b) a contravention of Pt 4 (premises), (c) a contravention of Pt 6 (education), (d) a contravention of Pt 7 (associations), (e) a contravention of ss.108, 111 or 112 that relates to Pt 3, 4, 6 or 7. The 2010 Act replaces most of the statutory provisions relating to discrimination to which Practice Direction—Proceedings Under Enactments Relating to Discrimination applies (see *Civil Procedure 2010* Vol.2 para.31–1).

Accordingly, a new freestanding practice direction (i.e. not supplementing any particular CPR Part), that is Practice Direction—Proceedings Under Enactments Relating to Equality, has been made giving directions for county court proceedings under the various enactments repealed by and consolidated into the 2010 Act and listed in s.114. It comes into effect on October 1, 2010, and will be published in TSO CPR Update 53. The existing (discrimination) Practice Direction is not withdrawn, as it will continue to apply to proceedings brought in relation to conduct before October 1, 2010. The new (equality) Practice Direction applies to proceedings brought in relation to conduct on or after that date.

The new practice direction is in similar terms to the existing practice direction (though there is no provision in the former to para.4 in the latter (Admissibility of Evidence)). Paragraph 3 (Assessors) reflects s.114(7) of the 2010 Act, and para.4 (Exclusion of persons from certain proceedings) is based on rule-making power granted by s.117.

AMENDMENT TO PRE-ACTION PROTOCOL

PRE-ACTION PROTOCOL FOR RESOLUTION OF CLINICAL DISPUTES

By TSO CPR Update 53, this Protocol is amended in two respects. In para.3.15 (see *Civil Procedure 2010* Vol.1 para. C3–015, p.2416) the following is added: “Any letter of claim sent to an NHS Trust or Independent Sector Treatment Centre should be copied to the National Health Service Litigation Authority”. And in para.3.25 (see para.C3–016, p.2417), “four months” is substituted for “three months” as the time in which a defendant must respond to a letter of claim. These changes implement recommendations made by Lord Justice Jackson in his *Review of Civil Litigation Costs: Final Report* (December 2009) (Ch.23 para.4.10) and are aimed at encouraging parties to settle a clinical dispute before the issue of proceedings.

CUMULATIVE INDEX to CIVIL PROCEDURE NEWS

issues Jan to Jul 2010 [1 to 7]

[references are to [year] issue/page]

The selection of headings in this index has been informed by Sweet & Maxwell's Legal Taxonomy. Subject headings in the index conform to keywords provided by the Legal Taxonomy. These keywords provide a means of identifying similar concepts in other Sweet & Maxwell publications and online services to which keywords from the Legal Taxonomy has been applied. Suggestions to taxonomy@sweetandmaxwell.co.uk.

Abuse of process

- re-litigation
 - acquiescence where failure to apply to strike out, [2010] 4/2
 - possession claim followed by disrepair claim, [2010] 4/3—[2010] 4/4
 - procedure for determining issue, [2010] 5/6—[2010] 5/7

Acquiescence

- re-litigation
 - failure to apply to strike out, [2010] 4/2

Addition of parties

- lump sum awards or periodical payments
 - local authority providing care, [2010] 7/2

Additional claims

- defendants
 - application to intervene in main trial, [2010] 2/3

Adjournment

- quantum trial
 - matters to be considered on late application, [2010] 3/2

Anonymity (parties)

- open justice
 - non-party access to court documents, [2010] 3/3

Anti-suit injunctions

- arbitration
 - general approach, [2010] 5/3

“Appeal hearings”

- Supreme Court
 - amendments to practice direction, [2010] 5/12

Appeals

- amendments to Part
 - summaries, [2010] 2/9
- amendments to practice direction
 - summaries, [2010] 2/10—[2010] 2/11, [2010] 3/12
- fresh evidence
 - probative of judgment obtained by fraud, [2010] 4/4

Applications

- amendments to practice direction
 - summaries, [2010] 3/8
 - Supreme Court, [2010] 5/12
- Supreme Court
 - amendments to practice direction, [2010] 5/12

Arbitration

- anti-suit injunctions
 - general approach, [2010] 5/3

“ATE policy”

- disclosure
 - jurisdiction of court, [2010] 7/4—[2010] 7/5

Bias

- judgments and orders
 - reasons in order, [2010] 2/2

Cause of action

- limitation periods
 - objective test as to knowledge, [2010] 5/8

Change of circumstances

- general note
 - after grant of permission to appeal, [2010] 6/7—[2010] 6/8
- permission to appeal
 - case summary, [2010] 6/4
 - general note, [2010] 6/7—[2010] 6/8

Change of solicitor

- amendments to practice direction
 - summaries, [2010] 3/8—[2010] 3/9

Civil Courts Order 1983

- amendments, [2010] 2/5

Civil evidence

- amendments to practice direction
 - summaries, [2010] 2/10

Civil Jurisdiction and Judgments**Regulations 2009**

- amendments, [2010] 1/6

Civil Procedure Rules

- amendments
 - general, [2010] 2/5, [2010] 4/5
 - Parts, to, [2010] 1/9—[2010]

- 1/11, [2010] 2/9, [2010] 3/6—[2010] 3/7

- practice directions, to, [2010] 1/11—[2010] 1/12, [2010] 2/10—[2010] 2/12, [2010] 3/7—[2010] 3/12

application

- amendments to Part, [2010] 2/9, [2010] 3/6

interpretation

- amendments to Part, [2010] 2/9, [2010] 3/6

practice directions

- amendments, [2010] 1/11—[2010] 1/12, [2010] 2/10—[2010] 2/12, [2010] 3/7—[2010] 3/12
- electronic working, [2010] 3/13—[2010] 3/15
- publication and reporting, [2010] 2/8

pre-action protocols

- amendments, [2010] 3/13

Claim forms

- service
 - ‘usual residence’, at, [2010] 6/4—[2010] 6/5

Co-defendants

- general note
 - particulars of claim, [2010] 2/7—[2010] 2/8
- particulars of claim
 - case summary, [2010] 2/4—[2010] 2/5
 - general note, [2010] 2/7—[2010] 2/8

Commencement of proceedings

- amendments to Part
 - summaries, [2010] 3/7

Committal for contempt

- procedure
 - formalities to be observed, [2010] 6/5

Community Legal Service (Funding) Order 2007

- amendments, [2010] 5/7

Contempt of court

committal procedure
formalities to be observed,
[2010] 6/5

Contingency fee agreements

damages-based agreements,
[2010] 5/7

Contribution

'damage in question'
meaning, [2010] 5/5

Costs

amendments to Part
summaries, [2010] 2/9
amendments to practice direction
summaries, [2010] 3/9—
[2010] 3/12
Supreme Court, [2010] 5/13—
5/15

assessment

consent order before
allocation, [2010] 3/3
costs judge not entitled to
rescind trial judge's order and
order assessment on different
basis, [2010] 3/2

exaggeration of claims

successful party, by, [2010] 1/6
expense of providing security
whether recoverable as costs
incidental to proceedings,
[2010] 5/5

hourly rates

guidelines for 2010, [2010]
5/10

misconduct of parties

order depriving successful
party of part of costs, [2010]
1/2

judicial review

respondent's entitlement,
[2010] 3/4—[2010] 3/5

payments on account

exercise of discretion prior to
detailed assessment, [2010]
6/2

set-off

expiry of paying party's
security guarantee before final
certificate, [2010] 2/2

Supreme Court

amendments to practice
direction, [2010] 5/13—5/15

Costs out of LSC fund

time limits
no discretion to extend, [2010]
5/3

Court documents

non-party access
anonymity of parties, [2010]
3/3

Court Funds Rules 1987

amendments
generally, [2010] 3/15—[2010]
3/16
summaries, [2010] 3/5

Courts and Legal Services Act 1990

amendments, [2010] 5/7

Cross-appeals

Supreme Court
amendments to practice
direction, [2010] 5/12

Crown proceedings

amendments to practice direction
summaries, [2010] 3/12

Damages-Based Agreements Regulations 2010

amendments to statutory
instruments, [2010] 5/7

Date of trial

See Trial dates

Death (parties)

possession claims
appointment of representative,
[2010] 7/2
Supreme Court
amendments to practice
direction, [2010] 5/13

Default judgments

amendments to Part
summaries, [2010] 1/9—
[2010] 1/10
amendments to practice direction
summaries, [2010] 1/11
general note
setting aside, [2010] 1/7—
[2010] 1/8
setting aside
case summary, [2010] 1/3—
[2010] 1/4
general note, [2010] 1/7—
[2010] 1/8

Defective products

substitution of parties
expiry of limitation period,
after, [2010] 6/3

Derivative claims

addition after expiry of limitation
period
case summary, [2010] 6/5
general note, [2010] 6/6—
[2010] 6/7
general note
addition after expiry of
limitation period, [2010] 6/6—
[2010] 6/7

Disapplication

limitation periods
case summary, [2010] 2/2—
[2010] 2/3
forensic prejudice to
defendant, [2010] 2/6—[2010]
2/7

general note, [2010] 2/6—
[2010] 2/7

Disclosure

duty of search
electronically stored
information, [2010] 6/2—
[2010] 6/3
freezing injunctions
without prejudice
communications not divulged
to judge, [2010] 4/4

"Draft judgments"

revision
publication of unrevised
version, [2010] 4/4—[2010]
4/5

Electronic working

practice direction
general note, [2010] 3/13—
[2010] 3/15
introduction, [2010] 3/5
summaries, [2010] 3/7—
[2010] 3/8

"Electronically stored information"

standard disclosure
duty of search, [2010] 6/2—
[2010] 6/3

"Employment tribunal proceedings"

damages-based agreements,
[2010] 5/7
procedural sanctions
sanction, [2010] 1/4

Enforcement

amendments to practice direction
summaries, [2010] 3/12
foreign judgments, of
public policy, [2010] 2/3—
[2010] 2/4
judgments in different
jurisdictions, of
amendments to Part, [2010]
1/10—[2010] 1/11, [2010] 3/7
amendments to practice
direction, [2010] 1/11—[2010]
1/12

Enforcement officers

order restraining claim against
officer
grounds for refusal, [2010] 6/3

Evidence

amendments to practice direction
summaries, [2010] 2/10

"Family Advocacy Scheme"

amendments to statutory
instruments, [2010] 5/7

Foreign judgments

enforcement
public policy, [2010] 2/3—
[2010] 2/4

Forms

Supreme Court

- amendments to practice direction, [2010] 5/12
- Fraud**
- fresh evidence
 - probative of judgment obtained by fraud, [2010] 4/4
 - general note
 - new trial of quantum where fraud on court alleged, [2010] 4/6—[2010] 4/8
- Freezing injunctions**
- full and frank disclosure without prejudice
 - communications not divulged to judge, [2010] 4/4
 - general note
 - liberty to deal with foreign assets, [2010] 1/8
 - liberty to deal with foreign assets
 - case summary, [2010] 1/3
 - general note, [2010] 1/8
 - setting aside
 - Chabra order in support of foreign proceedings, [2010] 1/2—[2010] 1/3
 - worldwide orders
 - setting aside order, [2010] 1/2—[2010] 1/3
 - variation of standard wording, [2010] 1/3
- Fresh evidence**
- appeals
 - probative of judgment obtained by fraud, [2010] 4/4
- Full and frank disclosure**
- freezing injunctions without prejudice
 - communications not divulged to judge, [2010] 4/4
- Further information**
- duties of parties in procedural disputes
 - case summary, [2010] 7/4
 - general note, [2010] 7/8
 - general note
 - duties of parties in procedural disputes, [2010] 7/8
 - necessary and proportionate
 - case summary, [2010] 7/4
 - general note, [2010] 7/8
- Handing down judgments**
- redaction
 - application to reopen judgment, [2010] 1/5
- Hearing dates**
- postponement orders
 - principles to be applied, [2010] 4/3
- Hourly fees**
- guidelines for 2010, [2010] 5/10
- Human rights**
- Supreme Court
 - amendments to practice direction, [2010] 5/13
- Information from judgment debtors**
- stay of execution
 - effect on entitlement of ‘judgment creditor’ to order, [2010] 3/5
- Intellectual property claims**
- amendments to Part
 - summaries, [2010] 3/7
- Interest**
- lump sum and periodical payments awarded
 - sum to which enhanced interest should attach, [2010] 5/2
- Interim payments**
- lump sum awards
 - particular not required to be established, [2010] 4/2—[2010] 4/3
- Interim remedies**
- amendments to Part
 - summaries, [2010] 1/10
- Interpleader proceedings**
- enforcement officers
 - refusal of order restraining claim against officer, [2010] 6/3
- “Intervention in proceedings”**
- defendants
 - application by defendant to additional claim to appear in main trial, [2010] 2/3
- Investigatory Powers Tribunal**
- jurisdiction
 - breach of Convention right claim appropriate for IPT proceedings, [2010] 5/4—[2010] 5/5
- Joinder**
- defendant’s applications
 - representation of applicant by others, [2010] 1/5
- Judgment creditors**
- meaning
 - entitlement to order where stay of execution in force, [2010] 3/5
- Judgments and orders**
- amendments to practice direction
 - summaries, [2010] 3/8
 - handing down judgments
 - redaction, [2010] 1/5
 - reasons
 - apparent bias, [2010] 2/2
 - redaction in public interest, [2010] 1/6
 - revision of draft
 - publication of unrevised version, [2010] 4/4—[2010] 4/5
- Judicial review**
- amendments to Part
 - summaries, [2010] 2/9
 - amendments to practice direction
 - summaries, [2010] 2/11—[2010] 2/12
 - costs
 - respondent’s entitlement, [2010] 3/4—[2010] 3/5
 - permission to apply
 - procedure for dealing with similar points in different cases, [2010] 6/4
- Knowledge**
- limitation periods
 - objective test, [2010] 5/8
- Legal costs insurance**
- disclosure
 - jurisdiction of court, [2010] 7/4—[2010] 7/5
- Legal representatives**
- definition
 - amendment, [2010] 1/10
- Libel**
- trial by judge alone
 - applications, [2010] 7/2
- Limitation periods**
- addition of derivative claims after expiry
 - case summary, [2010] 6/5
 - general note, [2010] 6/6—[2010] 6/7
 - cause of action
 - objective test as to knowledge, [2010] 5/8
 - derivative claims
 - addition after expiry of period, [2010] 6/6—[2010] 6/7
 - case summary, [2010] 6/5
 - general note, [2010] 6/6—[2010] 6/7
 - disapplication
 - case summary, [2010] 2/2—[2010] 2/3
 - forensic prejudice to defendant, [2010] 2/6—[2010] 2/7
 - general note, [2010] 2/6—[2010] 2/7
 - general note
 - addition of derivative claim after expiry of period, [2010] 6/6—[2010] 6/7
 - forensic prejudice to defendant in disapplication, [2010] 2/6—[2010] 2/7
 - knowledge
 - objective test, [2010] 5/8

substitution of parties after expiry
 manufacturer of vaccine,
 [2010] 6/3
 whether change of claimant
 necessary, [2010] 2/4

Low value personal injury claims (road traffic accidents)

amendments to practice direction
 general, [2010] 3/5, [2010] 4/5
 general note
 generally, [2010] 4/10—[2010]
 4/11

Lump sum awards

addition of parties
 local authority providing care,
 [2010] 7/2
 interest
 sum to which enhanced
 interest should attach, [2010]
 5/2
 interim payments
 particular not required to be
 established, [2010] 4/2—
 [2010] 4/3

Matrimonial home

order for sale
 right to respect for private and
 family life, [2010] 5/3—[2010]
 5/4

Measure of damages

general note
 new trial of quantum where
 fraud on court alleged, [2010]
 4/6—[2010] 4/8

Misconduct

costs
 effect on winning party's
 entitlement to recover, [2010]
 1/2

Multiple defendants

See Co-defendants

Non-parties

access to court documents
 anonymity of parties, [2010] 3/3

Norwich Pharmacal orders

general principles
 application, [2010] 1/4

Notices of appeal

Supreme Court
 amendments to practice
 direction, [2010] 5/11

Open justice

anonymity of parties
 non-party access to court
 documents, [2010] 3/3

Oral examination

See Information from judgment
 debtors

Orders

amendments to practice
 directions

summaries, [2010] 3/8
 Supreme Court, [2010] 5/12
 Supreme Court
 amendments to practice
 direction, [2010] 5/12

Part 20 claims

defendants
 application to intervene in
 main trial, [2010] 2/3

Part 36 offers

acceptance
 offer previously rejected, of,
 [2010] 7/4
 general note
 withdrawal, [2010] 7/7—
 [2010] 7/8
 withdrawal
 case summary, [2010] 7/3—
 [2010] 7/4
 general note, [2010] 7/7—
 [2010] 7/8

Particulars of claim

amendments to Part
 summaries, [2010] 3/7
 co-defendants
 case summary, [2010] 2/4—
 [2010] 2/5
 general note, [2010] 2/7—
 [2010] 2/8
 general note
 multiple defendants, [2010]
 2/7—[2010] 2/8
 multiple defendants
 case summary, [2010] 2/4—
 [2010] 2/5
 general note, [2010] 2/7—
 [2010] 2/8
 responses
 amendments to Part, [2010]
 3/7

Payments on account

costs subject to detailed
 assessment
 exercise of discretion, [2010]
 6/2

Periodical payments

addition of parties
 local authority providing care,
 [2010] 7/2
 amendments to practice direction
 summaries, [2010] 3/8
 interest
 sum to which enhanced
 interest should attach, [2010]
 5/2
 interim payments
 particular not required to be
 established, [2010] 4/2—
 [2010] 4/3

Permission to appeal

change of circumstances
 case summary, [2010] 6/4
 general note, [2010] 6/7—
 [2010] 6/8
 general note
 change of circumstances after
 grant, [2010] 6/7—[2010] 6/8
 Supreme Court
 amendments to practice
 direction, [2010] 5/11

Possession claims

amendments to pre-action
 protocol
 mortgage or home purchase
 plan arrears for residential
 property, [2010] 3/13
 death of party
 appointment of representative,
 [2010] 7/2
 re-litigation
 abuse of process alleged where
 possession claim followed by
 disrepair claim, [2010] 4/3—
 [2010] 4/4

Postponement orders

general note
 as order of last resort, [2010]
 4/8—[2010] 4/9
 trial dates
 principles to be applied,
 [2010] 4/3

Practice directions

amendments
 general, [2010] 3/5, [2010] 4/5
 summaries, [2010] 1/11—
 [2010] 1/12, [2010] 2/10—
 [2010] 2/12, [2010] 3/7—
 [2010] 3/12
 Supreme Court, [2010] 5/11—
 [2010] 5/15

Pre-action protocols

amendments
 summaries, [2010] 3/13
 amendments to practice
 directions
 low value personal injury
 claims in RTAs, [2010] 3/5,
 [2010] 4/5
 low value personal injury claims
 in RTAs
 amendments to practice
 direction, [2010] 3/5, [2010]
 4/5
 possession claims
 amendments, [2010] 3/13
**“Private Family Law Representation
 Scheme”**
 amendments to statutory
 instruments, [2010] 5/7

Product liability

substitution of parties
expiry of limitation period,
after, [2010] 6/3

“Quantum trial”

adjournment
matters to be considered on
late application, [2010] 3/2

Reciprocal enforcement

amendments to Part
summaries, [2010] 1/10—
[2010] 1/11, [2010] 3/7
amendments to practice direction
summaries, [2010] 1/11—
[2010] 1/12
judgments in different
jurisdictions, of
amendments to Part, [2010]
1/10—[2010] 1/11, [2010] 3/7
amendments to practice
direction, [2010] 1/11—[2010]
1/12

Redaction

handing down judgments
application to reopen
judgment, [2010] 1/5
judgments, of
public interest, in, [2010] 5/6

References to European Court

Supreme Court
amendments to practice
direction, [2010] 5/13

“Re-litigation”

abuse of process
acquiescence where failure to
apply to strike out, [2010] 4/2
possession claim followed by
disrepair claim, [2010] 4/3—
[2010] 4/4
procedure for determining
issue, [2010] 5/6—[2010] 5/7

Reopening judgments

handing down judgments
application in case of redacted
open judgment, [2010] 1/5

Right to fair trial

unless orders
conditions imposed, [2010]
5/2

Right to respect for private and family life

order for sale
matrimonial home, [2010]
5/3—[2010] 5/4

Road traffic accidents (low value personal injury claims)

amendments to practice direction
general, [2010] 3/5, [2010] 4/5
general note
generally, [2010] 4/10—[2010]
4/11

Sale of property

order for sale of matrimonial
home
right to respect for private and
family life, [2010] 5/3—[2010]
5/4

Security for costs

amendments to Part
summaries, [2010] 1/10

Service

amendments to Part
summaries, [2010] 1/9, [2010]
2/9, [2010] 3/6—[2010] 3/7
claim forms
‘usual residence’, at, [2010]
6/4—[2010] 6/5

Service out of jurisdiction

amendments to practice direction
summaries, [2010] 3/8
state immunity
defendant state’s non-
immunity, [2010] 5/4

Set-off

costs
expiry of paying party’s
security guarantee before final
certificate, [2010] 2/2

Setting aside

default judgments
case summary, [2010] 1/3—
[2010] 1/4
general note, [2010] 1/7—
[2010] 1/8
general note
default judgments, [2010]
1/7—[2010] 1/8

Settlement

construction of settlement
agreements
evidence of without prejudice
communications, [2010] 3/4

Skeleton arguments

general note
length and complexity, [2010]
5/8—[2010] 5/10
length
general note, [2010] 5/8—
[2010] 5/10

Small claims track

amendments to practice direction
summaries, [2010] 3/8

Solicitors

amendments to Part
summaries, [2010] 3/7
amendments to practice direction
summaries, [2010] 3/12

Standard disclosure

duty of search
electronically stored
information, [2010] 6/2—
[2010] 6/3

State immunity

service out of jurisdiction
defendant state’s non-
immunity, [2010] 5/4

Statutory instruments

amendments, [2010] 1/6, [2010]
2/5, [2010] 4/5, [2010] 5/7

Statutory review

amendments to Part
summaries, [2010] 2/9
amendments to practice direction
summaries, [2010] 2/12

Stay of execution

oral examination
entitlement of ‘judgment
creditor’ to order, [2010] 3/5

Striking out

general note
relief from sanction, [2010]
7/6—[2010] 7/7
relief
case summary, [2010] 7/5
general note, [2010] 7/6—
[2010] 7/7

Substitution of parties

expiry of limitation period, after
claimants, [2010] 2/4
defendants, [2010] 6/3

Supreme Court

appeal hearings
amendments to practice
direction, [2010] 5/12
applications
amendments to practice
direction, [2010] 5/12
costs
amendments to practice
direction, [2010] 5/13—5/15
cross-appeals
amendments to practice
direction, [2010] 5/12
death of party
amendments to practice
direction, [2010] 5/13
forms
amendments to practice
direction, [2010] 5/12
human rights
amendments to practice
direction, [2010] 5/13
notices of appeal
amendments to practice
direction, [2010] 5/11
orders
amendments to practice
direction, [2010] 5/12
permission to appeal
amendments to practice
direction, [2010] 5/11
practice directions
amendments, [2010] 5/11—

- [2010] 5/15
references to European Court
amendments to practice
direction, [2010] 5/13
- Supreme Court Rules 2009**
amendments to practice
directions
summaries, [2010] 5/11—
[2010] 5/15
- Time limits**
costs out of LSC fund
no discretion to extend, [2010]
5/3
- Tomlin orders**
variation
principles to be applied,
[2010] 7/2—[2010] 7/3
- “Trial dates”**
postponement orders
principles to be applied,
[2010] 4/3
- Trials**
general note
postponement as order of last
resort, [2010] 4/8—[2010] 4/9
- Unless orders**
enforcement
principles to be applied,
[2010] 6/2
relief
conditions imposed not in
breach of right to fair trial,
[2010] 5/2
striking out
- case summary, [2010] 7/5
general note, [2010] 7/6—
[2010] 7/7
- Without prejudice communications**
settlement agreements
construction of, [2010] 3/4

EDITOR: **Professor I. R. Scott**, University of Birmingham.
Published by Sweet & Maxwell Ltd, 100 Avenue Road, London NW3 3PF.
ISSN 0958-9821
© Thomson Reuters (Legal) Ltd 2010
All rights reserved
Typeset by EMS Print Design
Printed by St Austell Printing Company, St Austell, Cornwall

