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Issue 5/2012 May 12, 2012

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- **HAWKSWORTH v CHIEF CONSTABLE OF STAFFORDSHIRE** [2012] EWCA Civ 293, February 16, 2012, CA, unrep. (Sir Andrew Morritt C., Toulson & Tomlinson L.JJ.)

Statement of case – whether evidence irrelevant – departure from pleaded defence

CPR r.17.3. Employee (C) bringing claim against employers (D) for personal injury sustained in course of employment. C alleging that, in using communications equipment, she was briefly exposed to burst of sound of sufficient intensity to give rise to a foreseeable risk of auditory injury. Parties' expert witnesses preparing joint statement, but remaining of different opinions on particular matters. At trial, in reserved judgment county court judge dismissing C's claim. Single lord justice granting C permission to appeal on ground that judge had erred by allowing particular evidence of D's expert to inform his findings, even though D had not specifically stated in their amended defence that they were relying upon that aspect of the expert's evidence. **Held**, dismissing C's appeal, (1) the judge concluded that C's evidence, including that of her expert, had simply been insufficient to satisfy him that she could make good an essential part of her case, (2) that was a freestanding conclusion uninformed by the evidence which, on appeal, C submitted was irrelevant because it fell outside D's pleaded case, (3) there was some ambiguity in the pleaded defence, and room for doubt as to whether the issue to which the disputed evidence was relevant fell within matters disavowed therein, (4) nevertheless, the disputed evidence "was plainly in play" and treated as such by judge and counsel, (5) had C at trial challenged D's reliance on the evidence it is doubtful that the judge would have required D to apply to amend their defence, (6) on appeal it was too late for C to complain about the course taken by the judge in this respect. Court explaining that where, at trial, a party is concerned that his opponent is adducing evidence and seeking to rely upon it in a manner which is arguably departing from his pleaded case, it is incumbent on the party to invite the judge to rule on his objection then and for the opponent to apply to amend their pleadings if that is thought necessary. ***Rolled Steel Products (Holdings) Ltd v British Steel Corp*** [1986] Ch. 246, CA, ref'd to. (See ***Civil Procedure 2012*** Vol.1 para.17.3.8.)

- **HAYER v HAYER** [2012] EWCA Civ 257, January 12, 2012, CA, unrep. (Arden, Richards & Patten L.JJ.)

Amendments to statements of case – application to amend in course of trial

CPR r.17.3. Son (C) bringing claim against his father (D) for an order for sale of property transferred to D by C's grandfather (X) in 1996. C alleging that the property was subject to a trust, created by a deed executed by X and D at the same time as the transfer, under which the property was held in equal shares for D and C. D denying that he was a party to the trust deed and averring that the signature on the deed purporting to be his was a forgery. Towards the end of the trial, after being given encouragement to do so by the judge, D applying for permission to amend his defence to raise, without withdrawing the forgery defence, a defence that the trust deed had been procured by undue influence of D by X. Judge granting application (which had been opposed by C) and refusing C's application for an adjournment to adduce further evidence to deal with the new case. In giving judgment, judge finding that D did sign the trust deed, but holding (rejecting in part evidence of X) that it should be set aside on the ground that it had been procured by undue influence. **Held**, allowing C's appeal, (1) D's application for permission to amend would not have been made if the judge had not (in the light of the evidence he had heard) indicated his concerns as to X's influence over D, (2) D's decision to make the application was wholly tactical, (3) there was no satisfactory explanation as to why it had not previously been made, (4) the judge's exercise of his discretion to permit the amendment did not take into account all the relevant considerations and should be set aside, (5) in the circumstances the judge was wrong in not giving C the opportunity of testing the evidence of the witnesses who had already given such evidence such as to whether there had been any undue influence, (6) although it was understandable that the judge, in refusing C's application for an adjournment, believed that there was no likelihood that there would be any further evidence of any value to him in addition to that which had been adduced, that was not a matter which the judge was entitled to determine, as the question was whether there could be any fair trial of D's plea of undue influence without C having the opportunity to call evidence to rebut it. Court observing that, although a trial judge is entitled to comment on the manner in which a party has pleaded his case, he would go beyond his function if he suggested in any way that a particular case ought to be pleaded. ***Swain-Mason v Mills & Reeve (Practice Note)*** [2011] EWCA Civ 14, [2011] 1 W.L.R. 2735, CA, ref'd to. (See ***Civil Procedure 2012*** Vol.1 para.17.3.7.)

- **OLLIVIERRE v CHIEF CONSTABLE OF THAMES VALLEY** [2011] EWCA Civ 1733, December 1, 2011, CA, unrep. (Pill, Arden & Toulson L.JJ.)

Appeal from a county court – transfer from High Court to Court of Appeal

CPR r.26.5, 52.3 & 52.14, PD 52 para.2A.1, County Courts Act 1984 s.77, Access to Justice (Destination of Appeals) Order 2000 arts 3 & 4. Individuals (C) commencing county court claim against police (D) for wrongful arrest and

false imprisonment. Court giving directions but failing to allocate claim to any case management track under r.26.5. Trial judge (sitting without a jury) giving judgment for D and refusing C permission to appeal. On basis that, as claim had not been allocated to the multi-track, appeal lay to the High Court, C applying to that Court for permission to appeal. On that application, judge finding that the appeal would raise an important point of principle on issue of reasonable suspicion and ordering that the application be transferred to the Court of Appeal under r.52.14. Upon Master of Court of Appeal declining to have the application considered on ground that, because the claim had not been allocated to the multi-track, the Court had no jurisdiction, C making further application to High Court. On that application, judge granting permission to appeal and ordering that the application be transferred to the Court of Appeal under r.52.14. On question of Court's jurisdiction, **held**, (1) an appeal lies to the Court of Appeal from a decision of a county court where the decision to be appealed is a final decision in a claim made under Pt 7 and allocated to the multi-track (art.4), (2) under r.52.14, a High Court judge, having granted permission to appeal, has power to transfer an appeal to the Court of Appeal where there is a "compelling reason" for the Court to hear it, (3) under that rule, only an appeal, and not an application for permission to appeal, may be transferred, (4) in the instant case, the county court's administrative error, in the form of the court's failure to allocate a case which plainly should have been allocated to the multi-track (and which the parties had assumed had been allocated there), was a compelling reason, (5) had the case been allocated as it should have been, there would have been a right to apply to the Court of Appeal for permission to appeal. ***Clark v Perks*** [2000] 1 W.L.R. 17, CA, ***7E Communications Ltd v Vertex Antennentechnik GmbH*** [2007] EWCA Civ 140, [2007 1 W.L.R. 2175, CA, ref'd to. (See ***Civil Procedure 2012***, Vol.1 paras 26.5.1, 52.14.1 & 52PD.3.1, and Vol.2 paras 9A-570 & 9A-900.)

- **REDDY v GENERAL MEDICAL COUNCIL** [2012] EWCA Civ 310, March 14, 2012, CA, unrep. (Mummery, Moore-Bick & Black L.JJ.)

Route of appeal from a county court – whether appeal "second" appeal

CPR rr.3.1(2)(a) & 52.13, County Courts Act 1984 s.77, Access to Justice Act 1999 s.55, Access to Justice Act 1999 (Destination of Appeals) Order 2000 arts 3 & 5, Medical Act 1983 Sch.3A, para.5. Doctor (C) applying to GMC (D) for certificate of eligibility for specialist registration. Decision to reject application upheld by Registration Appeals Panel (RAP). D applying to a county court for an extension of the 28-day time limit fixed by para.5(1) for an appeal to the court against the RAP's determination. At hearing of issues preliminary to D's substantive appeal, county court judge holding that the court (1) had no power to extend time, and (2) had no jurisdiction to entertain an appeal lodged out of time. Judge dismissing D's appeal accordingly and noting in his order that an appeal against his decisions would lie, not to the High Court under art.3, but to the Court of Appeal under art.5, and would constitute a "second" appeal to that Court within r.52.13. Upon D's filing a Notice of Appeal and applying for permission to appeal to the Court of Appeal, Vice-President directing that the question of the Court's jurisdiction be determined before D's application for permission to appeal was considered. D contending (amongst other things) that the proper route for appeal was to the High Court. **Held**, refusing D permission to appeal, (1) the decisions made by the county court judge, though made in relation to issues preliminary to D's substantive appeal, were made in exercise of the court's statutory jurisdiction to hear appeals under the 1983 Act, (2) they were therefore decisions made on the hearing of an appeal made to a county court within art.5, (3) it followed that any appeal by D lay to the Court of Appeal and the more onerous test for granting permission to appeal imposed by r.52.13 applied, (4) on the merits, D's appeal was bound to fail. ***Mucelli v Albania*** [2009] UKHL 2, [2009]1 W.L.R. 276, HL, ***Chantrey Vellacott v Convergence Group Plc*** [2005] EWCA Civ 290, *The Times* April 25, 2005, CA, ***Massan v Secretary of State for the Home Department*** [2011] EWCA Civ 686, CA, ref'd to. (See ***Civil Procedure 2012*** Vol.1 paras 3.1.2, 40.2.7, 52.4.1.1, 52.6.4, 52.13.1 & 52.13.2, and Vol.2 paras 9A-843, 9A-902 & 9A-570.)

- **SECRETARY OF STATE FOR THE HOME DEPARTMENT v CB** [2012] EWCA Civ 418, April 3, 2012, CA, unrep. (Lord Neuberger M.R., Hallett & Stanley Burnton L.JJ.)

Case management – effect on CPR of statutory provisions

CPR rr.1.1(2)(c), 1.4(2)(c), 3.2, 3.3, 76.21 & 76.31, Prevention of Terrorism Act 2005 s.3. Administrative Court judge, on his own initiative and with the overriding objective in mind, exercising case management powers under r.3.2 to stay the hearing of control order proceedings brought under s.3(10), being proceedings which, in the judge's opinion, no longer served a useful purpose and whose continuation would be wholly disproportionate (the control orders having been revoked and the respondents (D) having left the country but remaining represented) ([2011] EWHC1990 (Admin)). **Held**, allowing D's appeal, (1) the judge did not have power to make an order staying the proceedings, (2) the general powers of case management conferred on the court by the CPR are subject to any applicable statutory provision, (3) the judge's decision was in effect an order discontinuing the proceedings in a manner not permitted by s.3, (4) r.76.21 must be interpreted in the light of relevant statutory provisions and "determined" in that rule means "decided". (See ***Civil Procedure 2012*** Vol.1 paras 3.1.7 & 76.2, and Vol.2 paras 9A-178, 9A-194, 11-10 & 11-12.)

TIBBLES v SIG PLC [2012] EWCA Civ 518, April 26, 2012, CA, unrep. (Rix, Etherton & Lewison L.JJ.)

Re-allocation order – court's power to vary – pre-re-allocation costs

CPR rr.3.1(7), 26.10, 44.9 & 44.11, PD 26 para.11, Costs Practice Direction Sect.16. With benefit of CFA, employee (C) bringing claim against employers (D) claiming damages in excess of £1,000 for injury suffered at work. Without a hearing district judge allocating the claim to the small claims track. On December 11, 2008, on C's application district judge ordering that claim should be re-allocated to the fast track (the re-allocation order). At trial on April 28, 2009, judge awarding C damages of £750, being £1,500 less 50 per cent reduction for contributory negligence and making order for costs. In detailed assessment proceedings, where C claimed total costs of £30,000, D contending that the costs prior to re-allocation were to be assessed subject to the restrictive special rules relating to the small claims track. In particular, D submitting that none of the costs of £20,000 (inclusive of success fee, disbursements and VAT) claimed by C as pre-re-allocation costs was recoverable. On October 23, 2009, C making application to the district judge under r.3.1(7) requesting a variation of the re-allocation order by the addition of a term stating that costs prior to that order "are to be treated as costs in the fast track". District judge acceding to C's request. On ground that district judge lacked jurisdiction under r.3.1(7), circuit judge allowing D's appeal. Single lord justice granting C permission for "second appeal". **Held**, dismissing C's appeal, (1) where a claim is re-allocated to a different track, any special rules about costs applying to the former track apply to the claim up to the date of re-allocation unless the court orders otherwise (r.44.11(2)), (2) when the application for re-allocation was made, no submission that he should order otherwise was made to the district judge, (3) the authorities on r.3.1(7) indicate that the apparently open discretion given by that rule is curtailed, but in a principled way, and that successful invocations of the rule are rare, (4) normally it may be exercised only (a) where there has been a material change of circumstances since the order was made, or (b) where the facts on which the original decision was made were (innocently or otherwise) misstated, (5) in the circumstances of this case, nearly all of the relevant considerations militated against the exercise of the discretion in C's favour. Observations on question whether r.3.1(7) would have given district judge power to vary re-allocation order upon request being promptly made on basis that both he and the parties had overlooked implications of r.44.11. ***Lloyds Investment (Scandinavia) Ltd v Ager-Hanssen*** [2003] EWHC 1740 (Ch), ***Collier v Williams*** [2006] EWCA Civ 20, [2006] 1 W.L.R. 1945, CA, ***Roult v North West Strategic Health Authority*** [2009] EWCA Civ 444, [2010] 1 W.L.R. 487, CA, ***Edwards v Golding*** [2007] EWCA Civ 416, *The Times*, May 22, 2007, CA, ref'd to. (See further "In Detail" section of this issue of CP News.) (See ***Civil Procedure 2012*** Vol.1 paras 3.1.9, 26.10.1, 26PD.11, 40.9.3, 44.9.1, 44.11.1, 44PD.10 & 52.13.3.)

WESTON v BATES [2012] EWHC 590 (QB), March 15, 2012, unrep. (Tugendhat J.)

Service of claim form out of UK – method permitted

CPR r.6.40(3)(c). On the last day of the relevant limitation period, individual (C) issuing claim form for libel against a football club (D2) and another individual (D1). Court office dating and sealing two "first generation" copies of the claim form as issued. Master granting C permission to serve claim form on D1 out of the jurisdiction (in Monaco). C taking steps to serve the claim form on D1 in Monaco through local agents in accordance with a procedure permitted by local law. These steps consisting of service on D1, not of a first generation copy of the claim form, but only of a printout of a scan of a photocopy of it. On ground that Master's order permitted service of the claim form and not a copy of it, D1 making application under r.11 for order that court had no jurisdiction to try the claim. Amongst other things, D1 submitting that the law of Monaco was relevant only to the method of service, not to what had to be served. Master dismissing this application but granting permission to appeal. **Held**, dismissing D1's appeal, (1) where a party wishes to serve a claim form out of the United Kingdom it may be served by any of the particular methods provided for by r.6.40(3)(a) & (b), or by any other method "permitted by the law of the country in which it is to be served" (r.6.40(3)(c)), (2) the Pt 6 requirements for valid service within the jurisdiction are not to be imported into r.6.40, but are aids to construction only, (3) in this case there was no dispute that what was done by way of service of the claim form in Monaco was by a service method permitted by the law of that state, (4) if steps taken by a claimant are (as here) successful in bringing the claim form to the attention of a defendant by any method permitted by the law of the country in which it is to be served, there is no additional requirement that a particular hard copy of the claim form be used, (5) nevertheless, for the purpose of avoiding doubt, when relying on r.6.40(3)(c) claimants would be well advised to serve a copy of the claim form which bears a seal affixed by the court office. ***Phillips v Nussberger*** [2006] EWCA Civ 654, [2006] 1 W.L.R. 2598, CA, [2008] UKHL 1, [2008] 1 W.L.R. 180, HL, ref'd to. (See ***Civil Procedure 2012*** Vol.1 para 6.40.5.)

In Detail

PERMISSION TO SUBSTITUTE EXPERT

CPR r.35.4(1) states that no party may call an expert or put in evidence an expert's report without the court's permission (r.35.4(1)). When it allocates a case to a case management track the court will give directions for the management of the case and these will include directions as to expert evidence, in particular as to the number of expert witnesses and their areas of expertise. As a practical matter, the compliance by the parties and their experts with the court's directions and with the exacting requirements of the provisions of Pt 35 and Practice Direction 35, does not always go smoothly. Hold-ups in producing and exchanging such evidence are a common cause for case management time-tables becoming unrealistic. Parties are not always alert to their duty to seek further directions when such delays threaten trial dates or trial windows.

Generally, the rules and practice directions assume that, before case management directions are sought from the court, the parties will have decided whom they want to rely upon as their expert witnesses. It is to be expected that, during the pre-trial process, parties may decide that they need additional expert evidence in areas of expertise not covered by the witnesses already subject to case management directions, and will seek further directions from the court accordingly to permit them to rely upon that evidence. It may also be expected that cases will arise where a party will come to the conclusion that it is in his interests to abandon reliance on the evidence of one expert and to rely on the evidence of another expert. Where the expert has been named in case management directions given by the court, the court's permission to the change will be required. For obvious reasons the relevant provisions in the CPR do not encourage "expert shopping" (see *Edwards-Tubb v J D Wetherspoon Plc* [2011] EWCA Civ 136, [2011] 1 W.L.R. 1373, C.A.). One would not expect that such further permission could be obtained as a matter of course, just by the asking.

The matter was considered by the Court of Appeal in the recent case of *Guntrip v Cheney Coaches Ltd* [2012] EWCA Civ 392, March 14, 2012, CA, unrep., a personal injuries case brought by an employee against his employer in which, upon the parties' named experts preparing a joint statement as directed (see r.35.12), the claimant, having concluded that if that statement stood his claim could not succeed, sought permission to rely on the evidence of another expert. (For summary of this case, see "In Brief" section of this issue of CP News.)

In giving the lead judgment in the Court of Appeal, Lewison L.J. (with whom Ward and Elias L.JJ. agreed) noted that r.35.12 (Discussions between experts) contemplates that as a result of their discussions experts may modify or change the opinions they had previously expressed in their individual reports to the parties who had instructed them and said that the expert's overriding duty to the court (r.35.3) applies not only to the preparation of an initial report, but also to the preparation and agreement of a joint statement. His lordship added (para.17):

"If at any time the expert can no longer support the case of the person who instructed him, it is his duty to say so. Indeed, if the expert forms that view it is far better that he says so sooner rather than later before the litigation costs escalate. It is partly because an expert's overriding duty is to the court that the court discourages expert shopping, particularly where a party has had a free choice of expert and has put forward an expert report as part of his case. He must adduce good reason for changing expert. The mere fact that his chosen expert has modified or even changed his views is not enough. The expert may have had good reason for changing his views."

Lewison L.J. further explained that, although it is not possible to lay down hard and fast rules, it can be said that a judge hearing an application to change experts must exercise his discretion in accordance with the overriding objective, (r.1.1) and added (para.18):

"This means that a court must deal with cases justly. Justice involves justice to the defendant as well as justice to the claimant. It also involves saving expense, dealing with the case proportionately and ensuring that it is dealt with expeditiously. Necessarily, this means that decisions are fact sensitive and case specific."

One question of interest arising in this appeal was whether the district judge, in refusing the claimant's application for permission to substitute for the evidence of one expert the evidence of another, overstepped the ambit of his discretion by considering the content and value of the evidence of the latter expert. The claimant submitted that he had and that the only two questions that the district judge should have considered were, first, whether the latter expert was appropriately qualified and, secondly, whether his conclusions "went to something material in issue in the case". Lewison L.J. rejected that submission. His lordship said (para.23) that, amongst other things, a judge has to evaluate the effect on an applicant of a refusal of permission and necessarily in part that involved (without conducting a mini-trial) the comparison of the difference between the old case and the new case that the applicant wished to

advance. In the instant case the district judge was entitled to take into account, as he did, the fact that the first report of the claimant's expert had been falsified by subsequent events and that the different cause of the claimant's physical problems (identified in the report which the claimant wished to have substituted) was "tentatively expressed and sparsely reasoned". The possibilities that, if permission were granted, those reasons might be elaborated in further evidence or in answers to questions put in cross-examination at trial did not avail the claimant. Where an application to change an expert is made at a late stage in proceedings, the applicant should put forward all the new expert material on which he wishes to rely and not leave it to be elicited by further questioning.

Clearly, in this case, the lateness of the claimant's application was an important consideration. Lewison L.J. drew a comparison with late applications to amend pleadings. His lordship said (para.25) that, nowadays, the courts should be less ready to allow a very late amendment than it used to be in former times; a heavy onus lies on a party seeking to make a late amendment to justify it as regards his own position, that of the other party to the litigation and that of other litigants in other cases before the court. Although these principles have been applied to amendments to statements of case, they apply equally to a late change of expert.

COURT'S POWER TO VARY ORDER

In Volume 1 of White Book 2012, in para.3.1.9, it is explained that in the Rules of the Supreme Court and in the County Court Rules, where particular rules granted the courts powers to make certain procedural orders, further rules were included which enabled the courts (as an alternative to a remedy by way of appeal) to vary or revoke any orders made in exercise of those powers and examples of such "bespoke" rules as formerly found in the RSC and the CCR are given. It is also explained that, in the CPR there are no such bespoke varying and revoking rules, but instead there is an "omnibus" provision found in r.3.1(7) which states that "a power of the court under these Rules to make an order includes a power to vary or revoke the order". It may be that r.3.1(7) was intended simply as a single replacement for the former bespoke rules, but in terms, it is wider than the former rules were in combination. Questions relating to the jurisdiction conferred on the court by the rule and the manner in which the broad discretion granted by it should be exercised have been considered by the courts in a number of cases, both at first instance and on appeal (see, in addition to paras 3.1.9, paras 3.1.9.1, 3.1.9.2 and 40.9.3).

Paragraph 3.1.9 of the White Book and the relevant authorities, which begin with the judgment of Patten J. in *Lloyds Investment (Scandinavia) Ltd v Ager-Hanssen*, [2003] EWHC 1740 (Ch), July 15, 2003, unrep., were extensively examined by the Court of Appeal (Rix, Etherton & Lewison L.JJ.) in the recent case of *Tibbles v SIG Plc* [2012] EWCA Civ 518, April 26, 2012, CA, unrep. (For summary of this case, see "In Brief" section of this issue of CP News.) In giving the lead judgment in this appeal, Rix L.J. examined the authorities in detail and concluded that the following conclusions may be drawn (para.39):

"(i) Despite occasional references to a possible distinction between jurisdiction and discretion in the operation of r.3.1(7), there is in all probability no line to be drawn between the two. The rule is apparently broad and unfettered, but considerations of finality, the undesirability of allowing litigants to have two bites at the cherry, and the need to avoid undermining the concept of appeal, all push towards a principled curtailment of an otherwise apparently open discretion. Whether that curtailment goes even further in the case of a final order does not arise in this appeal.

(ii) The cases all warn against an attempt at an exhaustive definition of the circumstances in which a principled exercise of the discretion may arise. Subject to that, however, the jurisprudence has laid down firm guidance as to the primary circumstances in which the discretion may, as a matter of principle, be appropriately exercised, namely normally only (a) where there has been a material change of circumstances since the order was made, or (b) where the facts on which the original decision was made were (innocently or otherwise) misstated.

(iii) It would be dangerous to treat the statement of these primary circumstances, originating with Patten J. and approved in this court, as though it were a statute. That is not how jurisprudence operates, especially where there is a warning against the attempt at exhaustive definition.

(iv) Thus there is room for debate in any particular case as to whether and to what extent, in the context of principle (b) in (ii) above, misstatement may include omission as well as positive misstatement, or concern argument as distinct from facts. In my judgment, this debate is likely ultimately to be a matter for the exercise of discretion in the circumstances of each case.

(v) Similarly, questions may arise as to whether the misstatement (or omission) is conscious or unconscious; and whether the facts (or arguments) were known or unknown, knowable or unknowable. These, as it seems to me, are also factors going to discretion: but where the facts or arguments are known or ought to have been known as at the time of the original order, it is unlikely that the order can be revisited, and that must be still more strongly the case where the decision not to mention them is conscious or deliberate.

(vi) *Edwards v Golding*, [2007] EWCA Civ 416, is an example of the operation of the rule in a rather different circumstance, namely that of a manifest mistake on the part of the judge in the formulation of his order. It was plain in that case from the master's judgment itself that he was seeking a disposition which would preserve the limitation point for future debate, but he did not realise that the form which his order took would not permit the realisation of his adjudicated and manifest intention.

(vii) The cases considered above suggest that the successful invocation of the rule is rare. Exceptional is a dangerous and sometimes misleading word: however, such is the interest of justice in the finality of a court's orders that it ought normally to take something out of the ordinary to lead to variation or revocation of an order, especially in the absence of a change of circumstances in an interlocutory situation."

Rix L.J. conceded that it is possible that r.3.1(7) could be invoked "for prompt recourse back to a court" to deal with a matter which ought to have been dealt with in an order but which, in genuine error, was overlooked (by parties and the court) and which the purposes behind the overriding objective, above all the interests of justice and the efficient management of litigation, would favour giving proper consideration to on the materials already before the court. His lordship explained (para.41):

"This would not be a *second* consideration of something which had already been considered once (as would typically arise in a change of circumstances situation), but would be giving consideration to something for the *first time*. On that basis, the power within the rule would not be invoked in order to give a party a second bite of the cherry, or to avoid the need for an appeal, but to deal with something which, once the question is raised, is more or less obvious, on the materials already before the court."

On this point his lordship added (para.42):

"I emphasise however the word "prompt" which I have used above. The court would be unlikely to be prepared to assist an applicant once much time had gone by. With the passing of time is likely to come prejudice for a respondent who is entitled to go forward in reliance on the order that the court has made. Promptness in application is inherent in many of the rules of court: for instance in applying for an appeal, or in seeking relief against sanctions (see r.3.9(1)(b)). Indeed, the checklist within r.3.9(1) must be of general relevance, mutatis mutandis, as factors going to the exercise of any discretion to vary or revoke an order."

CITATION OF AUTHORITIES

Practice Direction (Citation of Authorities) [2012] 1 W.L.R. 780, Sen Cts, was issued on March 23, 2012, by Lord Judge C.J. with the agreement of the Master of the Rolls and the President, for the purpose of clarifying the practice and procedure governing the citation of authorities (whether in written or oral submissions) and applies to proceedings in the Court of Appeal, the High Court, the Crown Court, county courts and in magistrate's courts.

Paragraph 6 states that, where a cited authority consists of a judgment reported in the Official Law Reports published by the Incorporated Council of Law Reporting for England and Wales, that report must be cited. It is explained that these are the most authoritative reports; they contain a summary of the arguments. Judgments found in other series of reports and official transcripts may only be used when a case is not reported in the official Law Reports, and then only as provided by paras 7 to 13.

Practice Direction 52 (Appeals) sub-para.(2) of para.15.11 (Bundles of authorities) is varied to incorporate by reference the requirements of this new practice direction (see Vol.1 para.52PD.66, p.1781).

As consequences, para.8 of *Practice Statement (Supreme Court: Judgments)* [1998] 1 W.L.R. 825 (see White Book 2012 Vol.1 para.B1-001, p.2533), and para.3 of *Practice Direction (Judgments : Form and Citation)* [2001] 1 W.L.R. 194 (ibid at para.B5-002[+]) are revoked (para.2).

Many congratulations to Tamsin Cox of Falcon Chambers, the winner of the 2011 White Book survey prize draw, who wins an iPad.

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Published by Sweet & Maxwell Ltd, 100 Avenue Road, London NW3 3PF.
ISSN 0958-9821

Typeset by EMS Print Design
Printed by St Austell Printing Company, St Austell, Cornwall