

PART 3 : PARTIES

CHAPTER 1: GENERAL

3.1 Description of parties

- (1) Subject to Schedule 3.1, in any proceedings in the court —
 - (a) a party at whose request a claim form is issued shall be referred to as a 'claimant';
 - (b) any other party shall be referred to as a 'defendant'.
- (2) Schedule 3.1 has effect with respect to the description of parties in any document used in proceedings in the court.

3.2 Number of parties (19.1)

Any number of claimants or defendants may be joined as parties to a claim.

3.3 Claims by and against firms within jurisdiction (RHC 36.1)

- (1) Subject to any statutory provision, any 2 or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action and carrying on business within the jurisdiction may sue, or be sued, in the name of the firm (if any) of which they were partners at the time when the cause of action accrued.
- (2) In proceedings in which partners sue or are sued in the name of a firm, they must be referred to in the title as '*A & Co (a firm)*'.

3.4 Disclosure of partners' names (RHC 36.1, 2)

- (1) Any defendant to a claim brought by partners in the name of a firm may serve on the claimants or their advocate a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued.
- (2) If a notice under paragraph (1) is not complied with, the court may —
 - (a) order the claimants or their advocate to provide the defendant with such a statement and to verify it on oath or otherwise as may be specified in the order, or
 - (b) order that further proceedings in the claim be stayed on such terms as the court may direct.
- (3) When the names of the partners have been declared in compliance with a notice under paragraph (1) or an order under paragraph (2)(a), the proceedings shall continue in the name of the firm but with the same consequences as would have ensued if the persons whose names have been so declared had been named as claimants in the claim form.
- (4) Paragraphs (1) and (2) apply in relation to a claim brought against partners in the name of a firm as they apply in relation to a claim brought by partners in the name of a firm but —
 - (a) with the substitution, for references to the defendant and the claimants, of references to the claimant and the defendants respectively, and
 - (b) with the omission of paragraph (2)(b).

3.5 Persons carrying on business in another name (RHC 36.10)

- (1) An individual carrying on business within the jurisdiction in a name or style other than his own name may (whether or not he is within the jurisdiction) be sued in that name or style as if it were the name of a firm, and rule 3.4 shall, so far as applicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

(2) In proceedings in which an individual is sued in another name or style as mentioned in paragraph (1), he must be referred to in the title as either —

- (a) '*AB (trading as C & Co)*', or
- (b) '*C & Co (a trading name)*'.

CHAPTER 2: ADDITION AND SUBSTITUTION OF PARTIES

3.6 Change of parties — general (19.2)

(1) This rule applies where a party is to be added or substituted except where the case falls within rule 3.10 (changing parties after the end of a relevant limitation period).

(2) The court may order a person to be added as a new party if —

- (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or
- (b) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue.

(3) The court may order any person to cease to be a party if it is not desirable for that person to be a party to the proceedings.

(4) The court may order a new party to be substituted for an existing one if —

- (a) the existing party's interest or liability has passed to the new party; and
- (b) it is desirable to substitute the new party so that the court can resolve the matters in dispute in the proceedings.

3.7 Two or more persons jointly entitled to remedy (19.3)

(1) Where a claimant claims a remedy to which some other person is jointly entitled with him, all persons jointly entitled to the remedy must be parties unless the court orders otherwise.

(2) If any person does not agree to be a claimant, he must be made a defendant, unless the court orders otherwise.

(3) This rule does not apply in probate proceedings.

3.8 Procedure for adding and substituting parties (19.4)

(1) The court's permission is required to remove, add or substitute a party, unless the claim form has not been served.

(2) An application for permission under paragraph (1) may be made by —

- (a) an existing party; or
- (b) a person who wishes to become a party.

(3) An application for an order under rule 3.6(4) —

- (a) may be made without notice; and
- (b) must be supported by evidence.

(4) No-one may be added or substituted as a claimant unless —

- (a) he has given his consent in writing; and
- (b) that consent has been filed with the court.

(5) An order for the removal, addition or substitution of a party must be served on —

- (a) all parties to the proceedings; and
- (b) any other person affected by the order.

(6) When the court makes an order for the removal, addition or substitution of a party, it may give consequential directions about —

- (a) filing and serving the claim form on any new defendant;
- (b) serving relevant documents on the new party; and
- (c) the management of the proceedings.

3.9 Human rights — notice to Attorney General (RHC 37A.2)

(1) The court may not make a declaration of incompatibility in accordance with section 4 of the Human Rights Act 2001 unless 21 days' notice, or such other period of notice as the court directs, has been given to the Attorney General.

(2) Where notice has been given to the Attorney General he, or a person nominated by him, shall be joined as a party on his giving notice to the court.

(3) Where a claim is made under that Act for damages in respect of a judicial act, the party by whom the claim is made must give notice to the Attorney General.

(4) Where paragraph (3) applies and the Attorney General, or a person nominated by him, has not applied to be joined as a party within 21 days, or such other period as the court directs, after the notice is served, the court may join the Attorney General as a party.

(5) A notice to the Attorney General under this rule must include any directions given by the court and be accompanied by copies of all the pleadings.

(6) A copy of every notice under this rule must be served on all the parties.

3.10 Adding or substituting parties after end of limitation period (19.5)

(1) This rule applies to a change of parties after the end of a period of limitation under —

- (a) the Limitation Act 1984;
- (b) any other statutory provision which allows such a change, or under which such a change is allowed.

(2) The court may add or substitute a party only if —

- (a) the relevant limitation period was current when the proceedings were started; and
- (b) the addition or substitution is necessary.

(3) The addition or substitution of a party is necessary only if the court is satisfied that —

- (a) the new party is to be substituted for a party who was named in the claim form in mistake for the new party;
- (b) the claim cannot properly be carried on by or against the original party unless the new party is added or substituted as claimant or defendant; or
- (c) the original party has died or had an order of adjudication in bankruptcy made against him and his interest or liability has passed to the new party.

(4) In addition, in a claim for personal injuries the court may add or substitute a party where it directs that —

- (a) section 11 (personal injuries) or section 12 (fatal accident claim) of the Limitation Act 1984 shall not apply to the claim by or against the new party; or
- (b) the issue of whether those sections apply shall be determined at trial.

3.11 Claims for wrongful interference with goods (19.5A)

(1) A claimant in a claim for wrongful interference with goods must, in the particulars of claim, state the name and address of every person who, to his knowledge, has or claims an interest in the goods and who is not a party to the claim.

(2) A defendant to a claim for wrongful interference with goods may apply for a direction that another person be made a party to the claim to establish whether the other person —

- (a) has a better right to the goods than the claimant; or
- (b) has a claim which might render the defendant doubly liable under section 7 of the Torts (Interference with Goods) Act 1981.

(3) Where the person referred to in paragraph (2) fails to attend the hearing of the application, or comply with any directions, the court may order that he is deprived of any claim against the defendant in respect of the goods.

(4) The application notice must be served on all parties and on the person referred to in paragraph (2).

CHAPTER 3: DEATH OF PARTY

3.12 Death of party (19.8)

(1) Where a person who had an interest in a claim has died and that person has no personal representative the court may order —

- (a) the claim to proceed in the absence of a person representing the estate of the deceased; or
- (b) a person to be appointed to represent the estate of the deceased.

(2) Where —

- (a) a defendant against whom a claim could have been brought has died, and
- (b) a grant of probate or administration has been made,

the claim must be brought against the persons who are the personal representatives of the deceased.

(3) Where —

- (a) a defendant against whom a claim could have been brought has died, and
- (b) a grant of probate or administration has not been made,

then —

- (i) the claim must be brought against '*the Estate of* [name of deceased]'; and
- (ii) the claimant must apply to the court for an order appointing a person to represent the estate of the deceased in the claim.

(4) A claim shall be treated as having been brought against '*the Estate of*' the deceased in accordance with paragraph (3)(b)(i) where —

- (a) the claim is brought against '*the Personal Representatives of* [name of deceased]' but a grant of probate or administration has not been made; or
- (b) the person against whom the claim was brought was dead when the claim was started.

(5) Before making an order under this rule, the court may direct notice of the application to be given to any other person with an interest in the claim.

(6) Where an order has been made under paragraph (1) or (3)(b)(ii) any judgment or order made or given in the claim is binding on the estate of the deceased.

CHAPTER 4: MINORS AND PATIENTS

3.13 Minors and patients: requirement for litigation friend (21.2)

- (1) A patient must have a litigation friend to conduct proceedings on his behalf.
- (2) A minor must have a litigation friend to conduct proceedings on his behalf unless the court makes an order under paragraph (3).
- (3) The court may make an order permitting the minor to conduct proceedings without a litigation friend.
- (4) An application for an order under paragraph (3) —
 - (a) may be made by the minor;
 - (b) if the minor already has a litigation friend, must be made on notice to the litigation friend; and
 - (c) if the minor has no litigation friend, may be made without notice.
- (5) Where —
 - (a) the court has made an order under paragraph (3); and
 - (b) it subsequently appears to the court that it is desirable for a litigation friend to conduct the proceedings on behalf of the minor,

the court may appoint a person to be the minor's litigation friend.

3.14 Title of proceedings (PD 21)

- (1) In proceedings to which a patient is a party the patient must be referred to in the title as '*AB (by CD his litigation friend)*'.
- (2) Where a minor has a litigation friend, the minor must be referred to in the title to proceedings as '*AB (a minor by CD his litigation friend)*'.
- (3) Where a minor is conducting proceedings on his own behalf, the minor must be referred to in the title as '*AB (a minor)*'.
- (4) If a notice under rule 3.21(4) states that a minor intends to carry on with or continue to defend the proceedings he shall subsequently be described in the proceedings as '*AB (formerly a minor but now of full age)*'.

3.15 Stage of proceedings at which a litigation friend becomes necessary (21.3)

- (1) This rule does not apply where the court has made an order under rule 3.13(3).
- (2) A person may not, without the permission of the court —
 - (a) make an application against a minor or patient before proceedings have started; or
 - (b) take any step in proceedings except —
 - (i) issuing and serving a claim form; or
 - (ii) applying for the appointment of a litigation friend under rule 3.20,

until the minor or patient has a litigation friend.

(3) If a party becomes a patient during proceedings, no party may take any step in the proceedings without the permission of the court until the patient has a litigation friend.

(4) Any step taken before a minor or patient has a litigation friend shall be of no effect unless the court otherwise orders.

3.16 Who may be a litigation friend without a court order (21.4)

- (1) This rule does not apply if the court has appointed a person to be a litigation friend.

(2) A person authorised under Part 7 of the Mental Health Act 1998 to conduct legal proceedings in the name of a patient or on his behalf is entitled to be the litigation friend of the patient in any proceedings to which his authority extends.

(3) If nobody has been appointed by the court or, in the case of a patient, authorised under the said Part 7, a person may act as a litigation friend if he —

- (a) can fairly and competently conduct proceedings on behalf of the minor or patient;
- (b) has no interest adverse to that of the minor or patient; and
- (c) where the minor or patient is a claimant, undertakes to pay any costs which the minor or patient may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the minor or patient.

3.17 Becoming litigation friend without court order (21.5)

(1) If the court has not appointed a litigation friend, a person who wishes to act as a litigation friend must follow the procedure set out in this rule.

(2) A person authorised under Part 7 of the Mental Health Act 1998 must file an official copy of the order or other document which constitutes his authorisation to act.

(3) Any other person must file a certificate of suitability stating —

- (a) that he consents to act,
- (b) that he knows or believes that the party concerned is a minor or a patient, as the case may be,
- (c) in the case of a patient, the grounds of his belief (and, if his belief is based upon medical opinion, attaching any relevant document to the certificate),
- (d) that he can fairly and competently conduct proceedings on behalf of the minor or patient.
- (e) that he has no interest adverse to that of the minor or patient, and
- (f) where the minor or patient is a claimant, that he undertakes to pay any costs which the minor or patient may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the minor or patient,

and signed by him in verification of its contents.

(4) A person who is to act as a litigation friend for a claimant must file —

- (a) the authorisation; or
- (b) the certificate of suitability,

at the time when the claim is made.

(5) A person who is to act as a litigation friend for a defendant must file —

- (a) the authorisation; or
- (b) the certificate of suitability,

at the time when he first takes a step in the proceedings on behalf of the defendant.

(6) The litigation friend must —

- (a) serve the certificate of suitability on every person on whom, in accordance with rule 2.28 (service on parent, guardian etc.), the claim form should be served; and
- (b) file a certificate of service when he files the certificate of suitability.

3.18 Becoming litigation friend by court order (21.6)

(1) The court may make an order appointing a litigation friend.

- (2) An application for an order appointing a litigation friend may be made by —
 - (a) a person who wishes to be the litigation friend; or
 - (b) a party.
- (3) Where —
 - (a) a person makes a claim against a minor or patient;
 - (b) the minor or patient has no litigation friend;
 - (c) the court has not made an order under rule 3.13(3); and
 - (d) either —
 - (i) someone who is not entitled to be a litigation friend files a defence; or
 - (ii) the claimant wishes to take some step in the proceedings,

the claimant must apply to the court for an order appointing a litigation friend for the minor or patient.

- (4) An application for an order appointing a litigation friend must be supported by evidence that the proposed litigation friend —
 - (a) consents to act,
 - (b) can fairly and competently conduct proceedings on behalf of the minor or patient,
 - (c) has no interest adverse to that of the minor or patient, and
 - (d) where the minor or patient is a claimant, undertakes to pay any costs which the minor or patient may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the minor or patient.
- (5) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 3.16(3).

3.19 Court's power to change litigation friend etc. (21.7)

- (1) The court may —
 - (a) direct that a person may not act as a litigation friend;
 - (b) terminate a litigation friend's appointment;
 - (c) appoint a new litigation friend in substitution for an existing one.
- (2) An application for an order under paragraph (1) must set out the reasons for seeking it and be supported by evidence (including, if the order sought is the substitution of a new litigation friend for an existing one, evidence of the matters set out in rule 3.18(4)).
- (3) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 3.16(3).

3.20 Appointment of litigation friend by court order — supplementary (21.8)

- (1) An application for an order under rule 3.18 or 3.19 must be served on every person on whom, in accordance with rule 2.28 (service on parent, guardian etc.), the claim form should be served.
- (2) Where an application for an order under rule 3.18 is in respect of a patient, the application must also be served on the patient unless the court orders otherwise.
- (3) An application for an order under rule 3.19 must also be served on —
 - (a) the person who is the litigation friend, or who is purporting to act as the litigation friend, when the application is made; and

(b) the person who it is proposed should be the litigation friend, if he is not the applicant.

(4) On an application for an order under rule 3.18 or 3.19, the court may appoint the person proposed or any other person who complies with the conditions specified in rule 3.16(3).

3.21 Procedure where appointment of litigation friend ceases (21.9)

(1) When a minor who is not a patient reaches the age of 18 —

(a) a litigation friend's appointment ceases;

(b) the litigation friend must forthwith serve on the minor a notice —

(i) stating that the minor is a party to proceedings in the court, and that his appointment to act has ceased,

(ii) specifying the stage which the proceedings have reached, and

(iii) accompanied by copies of all statements of case; and

(c) file a copy of the notice and a certificate of service.

(2) When a party ceases to be a patient, the litigation friend's appointment continues until it is ended by a court order.

(3) An application for an order under paragraph (2) may be made by —

(a) the former patient;

(b) the litigation friend; or

(c) a party;

and must be supported by the following evidence —

(i) a medical report indicating that the patient has recovered and that he is capable of managing and administering his property and affairs, and

(ii) where a receiver was appointed for the patient, a copy of the order or notice discharging the receiver.

(4) The minor or patient in respect of whom the appointment to act has ceased must file and serve on the other parties a notice —

(a) in the case of a minor, stating that he has reached full age;

(b) stating that the appointment of his litigation friend to act has ceased;

(c) giving his address for service; and

(d) stating whether or not he intends to carry on with or continue to defend the proceedings.

(5) If the minor or patient does not do so within 28 days after the day on which the appointment of the litigation friend ceases the court may, on application, strike out any claim or defence brought by him.

(6) The liability of a litigation friend for costs continues until —

(a) the person in respect of whom his appointment to act has ceased serves the notice referred to in paragraph (4); or

(b) the litigation friend serves notice on the parties that his appointment to act has ceased.

3.22 Compromise etc. by or on behalf of minor or patient (21.10)

(1) Where a claim is made —

(a) by or on behalf of a minor or patient; or

(b) against a minor or patient,

no settlement, compromise or payment and no acceptance of money paid into court shall be valid, so far as it relates to the claim by, on behalf of or against the minor or patient, without the approval of the court.

(2) Where an application for the approval of the court under paragraph (1) is made, the application notice or, in a case falling within paragraph (3), the claim form must have attached to it a draft consent order.

(3) Where —

(a) before proceedings in which a claim is made by or on behalf of, or against a minor or patient (whether alone or with any other person) are begun, an agreement is reached for the settlement of the claim; and

(b) the sole purpose of proceedings on that claim is to obtain the approval of the court to a settlement or compromise of the claim,

the claim must —

(i) be allocated to the chancery procedure; and

(ii) include a request to the court for approval of the settlement or compromise.

3.23 Control of money recovered by or on behalf of minor or patient (21.11)

(1) Where in any proceedings —

(a) money is recovered by or on behalf of or for the benefit of a minor or patient; or

(b) money paid into court is accepted by or on behalf of a minor or patient,

the money shall be dealt with in accordance with directions given by the court under this rule and not otherwise.

(2) Directions given under this rule may provide that the money shall be wholly or partly paid into court and invested or otherwise dealt with.

3.24 Expenses incurred by litigation friend (21.11A)

(1) In proceedings to which rule 3.23 applies, a litigation friend who incurs expenses on behalf of a minor or patient in any proceedings is entitled to recover the amount paid or payable out of any money recovered, paid into court or otherwise dealt with under rule 3.23(2), to the extent that it —

(a) has been reasonably incurred; and

(b) is reasonable in amount.

(2) Expenses may include all or part of interest on a loan taken out to pay a recoverable disbursement.

(3) No application may be made under this rule for expenses which —

(a) are of a type that may be recoverable on an assessment of costs payable by or out of money belonging to a minor or patient; but

(b) are disallowed in whole or in part on such an assessment.

(4) In deciding whether the expense was reasonably incurred and reasonable in amount, the court must have regard to all the circumstances of the case including the factors set out in rule 11.5(3).

(5) When the court is considering the factors to be taken into account in assessing the reasonableness of expenses incurred by the litigation friend on behalf of a minor or patient, it shall have regard to the facts and circumstances as they reasonably appeared to the litigation friend or minor's or patient's advocate when the expense was incurred.

(6) Where the claim is settled or compromised, or judgment is given, on terms that an amount not exceeding £5,000 is paid to the minor or patient, the total amount the litigation friend may recover under paragraph (1) shall not exceed —

- (a) unless the court directs otherwise, 25% of the sum so agreed or awarded;
- (b) in any event, 50% of the sum so agreed or awarded.

3.25 Appointment of guardian of minor's estate (21.12)

(1) The court may appoint the Attorney General to be a guardian of a minor's estate where —

- (a) money is paid into court on behalf of the minor in accordance with directions given under rule 3.23;
- (b) the Criminal Injuries Compensation Panel notifies the court that it has made or intends to make an award to the minor;
- (c) a court or tribunal outside the Island notifies the court that it has ordered or intends to order that money be paid to the minor;
- (d) the minor is absolutely entitled to the proceeds of a pension fund; or
- (e) in any other case, such an appointment seems desirable to the court.

(2) The court may not appoint the Attorney General under this rule unless —

- (a) the persons with parental responsibility agree; or
- (b) the court considers that their agreement can be dispensed with.

(3) The Attorney General's appointment may continue only until the minor reaches the age of 18.

3.26 Further provision as to minors and patients

Schedule 3.2 makes further provision as to minors and patients.

CHAPTER 5: NOTICE TO NON-PARTIES

3.27 Notice of proceedings to non-parties (19.8A)

(1) This rule applies to any claim relating to —

- (a) the estate of a deceased person, or
- (b) property subject to a trust.

(2) The court may at any time direct that notice of —

- (a) the claim; or
- (b) any judgment or order given in the claim,

be served on any person who is not a party but who is or may be affected by it.

(3) An application under this rule —

- (a) may be made without notice; and
- (b) must be supported by written evidence which includes the reasons why the person to be served should be bound by the judgment in the claim.

(4) Unless the court orders otherwise —

- (a) a notice of a claim or of a judgment or order under this rule must be —
 - (i) issued by the court; and
 - (ii) accompanied by a form of acknowledgment of service with any necessary modifications;
- (b) a notice of a claim must also be accompanied by —
 - (i) a copy of the claim form; and

- (ii) such other statements of case, witness statements or affidavits as the court may direct; and
- (c) a notice of a judgment or order must also be accompanied by a copy of the judgment or order.
- (5) If a person served with notice of a claim files an acknowledgment of service of the notice —
 - (a) within such period after service as the court may specify, or
 - (b) if no such period is so specified, within 14 days after service,
 he becomes a party to the claim.
- (6) If a person served with notice of a claim does not acknowledge service of the notice he shall be bound by any judgment given in the claim as if he were a party.
- (7) On receipt of an acknowledgment of service under paragraph (5), the court office shall —
 - (a) enter the date of receipt on each copy of the acknowledgment of service, and
 - (b) retain one copy and return the other to the claimant at his address for service;
 and the claimant must serve a copy of that copy on each other party to the claim.
- (8) An acknowledgment of service under paragraph (5) must —
 - (a) be signed by the person served or his advocate; and
 - (b) include that person's address for service.
- (9) If, after service of a notice of a claim on a person, the claim form is amended so as substantially to alter the relief claimed, the court may direct that a judgment shall not bind that person unless a further notice, together with a copy of the amended claim form, is served on him.
- (10) Any person served with a notice of a judgment or order under this rule —
 - (a) shall be bound by the judgment or order as if he had been a party to the claim; but
 - (b) may, provided he acknowledges service —
 - (i) within 28 days after the notice is served on him, apply to the court to set aside or vary the judgment or order; and
 - (ii) take part in any proceedings relating to the judgment or order.
- (11) A notice under this rule is issued on the date entered on the notice by the court.

CHAPTER 6: REPRESENTATIVE ACTIONS

3.28 Representative parties with same interest (19.6)

- (1) Where more than one person has the same interest in a claim —
 - (a) the claim may be started; or
 - (b) the court may order that the claim be continued,
 by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest.
- (2) The court may direct that a person may not act as a representative.
- (3) Any party may apply to the court for an order under paragraph (2).
- (4) Unless the court otherwise directs any judgment or order given in a claim in which a party is acting as a representative under this rule —
 - (a) is binding on all persons represented in the claim; but

- (b) may only be enforced by or against a person who is not a party to the claim with the permission of the court.
- (5) This rule does not apply to a claim to which rule 3.29 applies.

3.29 Representation of interested persons who cannot be ascertained etc. (19.7)

- (1) This rule applies to claims about —
 - (a) the estate of a deceased person;
 - (b) property subject to a trust; or
 - (c) the meaning of a document, including a statutory provision.
- (2) The court may make an order appointing a person to represent any other person or persons in the claim where the person or persons to be represented —
 - (a) are unborn;
 - (b) cannot be found;
 - (c) cannot easily be ascertained; or
 - (d) are a class of persons who have the same interest in a claim and —
 - (i) one or more members of that class are within sub-paragraph (a), (b) or (c); or
 - (ii) to appoint a representative would further the overriding objective.
- (3) An application for an order under paragraph (2) —
 - (a) may be made by —
 - (i) any person who seeks to be appointed under the order; or
 - (ii) any party to the claim; and
 - (b) may be made at any time before or after the claim has started.
- (4) An application notice for an order under paragraph (2) must be served on —
 - (a) all parties to the claim, if the claim has started;
 - (b) the person sought to be appointed, if that person is not the applicant or a party to the claim; and
 - (c) any other person as directed by the court.
- (5) The court's approval is required to settle a claim in which a party is acting as a representative under this rule.
- (6) The court may approve a settlement where it is satisfied that the settlement is for the benefit of all the represented persons.
- (7) Unless the court otherwise directs, any judgment or order given in a claim in which a party is acting as a representative under this rule —
 - (a) is binding on all persons represented in the claim; but
 - (b) may only be enforced by or against a person who is not a party to the claim with the permission of the court.

3.30 Representation of beneficiaries by trustees etc. (19.7A)

- (1) A claim may be brought by or against trustees, executors or administrators in that capacity without adding as parties any persons who have a beneficial interest in the trust or estate ('the beneficiaries').
- (2) Any judgment or order given or made in the claim is binding on the beneficiaries unless the court orders otherwise in the same or other proceedings.

3.31 Derivative claims (19.9)

(1) This rule applies where a company, other incorporated body or trade union is alleged to be entitled to claim a remedy and a claim is made by one or more members of the company, body or trade union for it to be given that remedy (a ‘derivative claim’).

(2) The company, body or trade union for whose benefit a remedy is sought must be a defendant to the claim.

(3) After the claim form has been issued the claimant must apply to the court for permission to continue the claim and may not take any other step in the proceedings except —

- (a) as provided by paragraph (5); or
 - (b) where the court gives permission.
- (4) An application under paragraph (3) must be supported by written evidence.

(5) The following documents —

- (a) the claim form;
- (b) the application notice; and
- (c) the written evidence in support of the application,

must be served on the defendant within the period within which the claim form must be served and, in any event, at least 14 days before the court is to deal with the application.

(6) If the court gives the claimant permission to continue the claim, the time within which the defence must be filed is 14 days after the date on which the permission is given or such period as the court may specify.

(7) The court may order the company, body or trade union to indemnify the claimant against any liability in respect of costs incurred in the claim.

CHAPTER 7: GROUP LITIGATION

3.32 Definition (19.10)

In this Chapter —

‘group issues’, in relation to a number of claims, means common or related issues of fact or law;

‘group litigation order’ means an order made under rule 3.33 to provide for the case management of claims which give rise to group issues;

‘group register’ means a register established under rule 3.33(2)(a).

3.33 Group litigation order (19.11)

(1) The court may make a group litigation order where there are or are likely to be a number of claims giving rise to group issues.

(2) A group litigation order must —

- (a) contain directions about the establishment of a register on which the claims managed under the group litigation order will be entered, and
- (b) specify the group issues which will identify the claims to be managed as a group under the group litigation order

(3) A group litigation order may —

- (a) in relation to claims which raise one or more of the group issues —
 - (i) order their stay until further order; and
 - (ii) direct their entry on the group register;
- (b) direct that from a specified date claims which raise one or more of the group issues should be entered on the group register; and

(c) give directions for publicising the group litigation order.

(4) A group litigation order may not be made except by or with the consent of the First Deemster.

3.34 Effect of the group litigation order (19.12)

(1) Where a judgment or order is given or made in a claim on the group register in relation to one or more group issues —

(a) that judgment or order is binding on the parties to all other claims that are on the group register at the time the judgment is given or the order is made unless the court orders otherwise; and

(b) the court may give directions as to the extent to which that judgment or order is binding on the parties to any claim which is subsequently entered on the group register.

(2) Unless paragraph (3) applies, any party who is adversely affected by a judgment or order which is binding on him may seek permission to appeal the order.

(3) A party to a claim which was entered on the group register after a judgment or order which is binding on him was given or made may not —

(a) apply for the judgment or order to be set aside, varied or stayed; or

(b) appeal the judgment or order,

but may apply to the court for an order that the judgment or order is not binding on him.

(4) Unless the court orders otherwise, disclosure of any document relating to the group issues by a party to a claim on the group register is disclosure of that document to all parties to claims —

(a) on the group register; and

(b) which are subsequently entered on the group register.

3.35 Case management (19.13)

(1) Unless the court otherwise directs, a claim on the group register shall be allocated to the ordinary procedure.

(2) Directions given by the court may include directions —

(a) varying the group issues;

(b) providing for one or more claims on the group register to proceed as test claims;

(c) appointing the advocate of one or more parties to be the lead advocate for the claimants or defendants;

(d) specifying the details to be included in a statement of case in order to show that the criteria for entry of the claim on the group register have been met;

(e) specifying a date after which no claim may be added to the group register unless the court gives permission; and

(f) for the entry of any particular claim which meets one or more of the group issues on the group register.

3.36 Removal from the register (19.14)

(1) A party to a claim entered on the group register may apply to the court for the claim to be removed from the register.

(2) If the court orders the claim to be removed from the register it may give directions about the future management of the claim.

3.37 Test claims (19.15)

(1) Where a direction has been given for a claim on the group register to proceed as a test claim and that claim is settled, the court may order that another claim on the group register be substituted as the test claim.

(2) Where an order is made under paragraph (1), any order made in the test claim before the date of substitution is binding on the substituted claim unless the court orders otherwise.

SCHEDULE 3.1 — DESCRIPTION OF PARTIES

Rule 3.1

1. Where there is one claimant and one defendant, the parties must be described in the title as follows:

AB *Claimant*
and
CD *Defendant*

2. Where there is more than one claimant or more than one defendant (or both), the parties must be described in the title as follows:

(1) *AB*
(2) *CD*
(3) *EF* *Claimants*
and
(1) *GH*
(2) *IJ*
(3) *KL* *Defendants*

3. The title of an additional claim must describe the status in the proceedings of every party (e.g. claimant, defendant, additional claimant, additional defendant etc.). For example:

AB *Claimant*
CD *Defendant/Additional Claimant*
EF *Additional Defendant*

4. Where a defendant makes a counterclaim not only against the claimant but also against a non-party, the title should state this as follows:

AB *Claimant/Additional Defendant*
CD *Defendant/Additional Claimant*
and
XY *Additional Defendant*

5. Where there is more than one additional claim —

- (a) the parties to the first additional claim should be described as ‘Additional Claimant (1st additional claim)’ and ‘Additional Defendant (1st additional claim)’,
- (b) the parties to the second additional claim should be described as ‘Additional Claimant (2nd additional claim)’ and ‘Additional Defendant (2nd additional claim)’, and so on.

For example:

AB *Claimant and Additional Defendant (2nd additional claim)*
CD *Defendant and Additional Claimant (1st additional claim)*
EF *Additional Defendant (1st claim) and Additional Claimant (2nd additional claim)*
GH *Additional Defendant (2nd additional claim)*

6. (1) Where the full name of a party is lengthy it must appear in the title but thereafter in a statement of case it may be identified by an abbreviation such as initials or a recognised shortened name.

(2) Where a party to proceedings has more than one status, e.g. *Claimant and Additional Defendant (2nd claim)*, or *Additional Defendant (1st claim) and Additional*

Claimant (2nd claim), the combined status must appear in the title but thereafter it may be convenient to refer to the party by name, e.g. 'Mr Smith' or, if sub-paragraph (1) applies, by initials or a shortened name.

SCHEDULE 3.2 — MINORS AND PATIENTS (PD21)

Rule 3.26

1. *Settlement or compromise by or on behalf of a minor or patient before the start of proceedings*

(1) This paragraph applies to a settlement or compromise to which rule 3.22(1) applies.

(2) In order to approve the settlement or compromise, the court must be provided with the following information concerning the claim —

- (a) whether and to what extent the defendant admits liability,
- (b) the age and occupation (if any) of the minor or patient,
- (c) the litigation friend's approval of the proposed settlement or compromise, and
- (d) in a claim for personal injuries arising from an accident —
 - (i) the circumstances of the accident,
 - (ii) any medical reports,
 - (iii) where appropriate, a schedule of any past and future expenses and losses claimed and any other relevant information relating to the personal injuries as set out in rule 6.13, and
 - (iv) where considerations of liability are raised, any evidence or police reports in any criminal proceedings or in an inquest, and details of any prosecution brought.

(3) An opinion on the merits of the settlement or compromise given by an advocate acting for the minor or patient must, except in very clear cases, be obtained.

(4) A copy of the opinion and, unless the instructions on which it was given are sufficiently set out in it, a copy of the instructions, must also be supplied to the court.

(5) The court must be satisfied that the parties have considered whether the damages should wholly or partly take the form of periodical payments.

(6) Where the settlement includes provision for periodical payments, the claim must —

- (a) set out the terms of the settlement or compromise; or
- (b) have attached to it a draft consent order,

which must satisfy the requirements of paragraph (7).

(7) The terms or order must specify —

- (a) the annual amount awarded, how each payment is to be made during the year and at what intervals;
- (b) the amount awarded for future —
 - (i) loss of earnings and other income; and
 - (ii) care and medical costs and other recurring or capital costs;
- (c) the duration of the payments;
- (d) if the amount of the payments are to vary annually, the method by which the variation is to be calculated;
- (e) where the terms or order provide for any part of the award to continue after the claimant's death, for the benefit of the claimant's dependants, the relevant amount and duration of the payments and how each payment is to be made during the year and at what intervals;

- (f) where an amount awarded under (b) is to increase or decrease on a certain date —
 - (i) the date on which the increase or decrease will take effect; and
 - (ii) the amount of the increase or decrease at current value;
- (g) where damages for substantial capital purchases are awarded under (b)(ii) —
 - (i) the amount of the payments at current value;
 - (ii) when the payments are to be made; and
 - (iii) if the amount of the payments are to vary, the method by which the variation is to be calculated; and
- (h) how the award is to be funded.

2. *Apportionment under the Fatal Accidents Act 1981*

(1) A judgment on or settlement in respect of a claim under the Fatal Accidents Act 1981 must be apportioned between the persons by or on whose behalf the claim has been brought.

(2) Where a claim is brought on behalf of a dependent minor or minors, the money apportioned to any minor must be invested on his behalf in accordance with paragraphs 3 and 4, unless the court otherwise directs under rule 3.23(2).

(3) In order to approve an apportionment of money to a minor, the court will require the following information:

- (a) the matters set out in paragraph 1(2)(a), (b) and (c), and
- (b) in respect of the deceased —
 - (i) where death was caused by an accident, the matters set out in paragraph 1(2)(d), and
 - (ii) his future loss of earnings, and
- (c) the extent and nature of the dependency.

3. *Control of money recovered by or on behalf of a minor or patient*

(1) In directing under rule 3.23 how money recovered or paid into court on behalf of or for the benefit of a minor or patient shall be dealt with, the court —

- (a) may direct the money to be paid into court for investment, and
- (b) may direct that part or all of the money be paid direct to the minor or patient, his litigation friend or his advocate for the immediate benefit of the minor or patient or for expenses incurred on his behalf.

(2) The judge shall consider the general aims to be achieved for the money in court ('the fund') by investment and will give directions as to the type of investment.

(3) Where a minor is also a patient, and likely to remain so on reaching full age, the fund shall be administered in accordance with Part 7 of the Mental Health Act 1998.

4. *Payment out of funds in court*

(1) Applications to a judge for payment out of money from a fund for the benefit of the minor may be dealt with without a hearing unless the court directs otherwise.

- (2) When the minor reaches full age, his fund in court —
 - (a) where it is a sum of money, shall be paid out to him, and
 - (b) where it is in the form of investments other than money (eg. shares or unit trusts), shall be transferred into his name.

(3) An application for payment out of money from a fund for the benefit of a patient must be made in accordance with the Mental Health Rules 1998.