

## **PART 5 : CHOICE OF PROCEDURES**

### **CHAPTER 1: GENERAL**

#### **5.1 The procedures: introduction**

(1) Every claim shall be allocated to one of the following case management procedures (referred to in these Rules as ‘procedures’) —

- (a) the small claims procedure (see Chapter 2);
- (b) the summary procedure (see Chapter 3);
- (c) the chancery procedure (see Chapter 4);
- (d) the ordinary procedure (see Chapter 5).

(2) In this Part —

‘small claim’ means a claim allocated to the small claims procedure;

‘the small claims limit’ is —

- (a) £5,000, in the case of a claim for personal injuries;
- (b) £10,000, in any other case;

‘summary claim’ means a claim allocated to the summary procedure;

‘the summary limit’ is £100,000.

(3) Subject to paragraph (4), in assessing the financial value of a claim or counterclaim for the purposes of this Part the following matters shall be disregarded —

- (a) any amount not in dispute;
- (b) any claim for interest;
- (c) costs; and
- (d) any contributory negligence.

(4) Where —

- (a) 2 or more claimants have started a claim against the same defendant using the same claim form; and
- (b) each claimant has a claim against the defendant separate from the other claimants,

the claim of each claimant shall be considered separately for the purpose of assessing the financial value.

(5) For the purpose of this Part, where a claim for an unspecified amount of money is expressed to be limited to a specified amount which does not exceed the small claims limit or the summary limit, the financial value of the claim shall be treated as not exceeding the small claims limit or the summary limit, as the case may be.

#### **5.2 Normal procedures for claims (26.6)**

(1) Where any rule requires a claim to be allocated to a particular procedure, that procedure is the normal procedure for that claim; and the following provisions of this rule have effect subject to this paragraph.

(2) The chancery procedure is the normal procedure for —

- (a) a claim by or against a minor or patient which has been settled before the commencement of proceedings and the sole purpose of the claim is to obtain the approval of the court to the settlement,
- (b) a claim for provisional damages which has been settled before the commencement of proceedings and the sole purpose of the claim is to obtain a consent judgment, and

- (c) a claim for a summary order for possession against named or unnamed defendants occupying land or premises without the licence or consent of the person claiming possession, provided there is unlikely to be a substantial dispute of fact; and
  - (d) claims specified in Schedule 5.1.
- (3) The small claims procedure is the normal procedure where the financial value of the claim does not exceed the small claims limit, except where —
- (a) there is a counterclaim whose financial value exceeds the small claims limit; or
  - (b) the chancery procedure is the normal procedure under paragraph (2).
- (4) The chancery procedure is the normal procedure where —
- (a) the claimant seeks the court’s decision on a question which is unlikely to involve a substantial dispute of fact, and
  - (b) the small claims procedure is not the normal procedure under paragraph (3).
- (5) The summary procedure is the normal procedure where the financial value of the claim does not exceed the summary limit, except where —
- (a) there is a counterclaim whose financial value exceeds the summary limit; or
  - (b) the small claims procedure or the chancery procedure is the normal procedure under paragraph (2), (3) or (4).
- (5A) The summary procedure is the normal procedure for a claim for possession of land or premises, except where —
- (a) it is combined with a money claim whose financial value exceeds the summary limit, or
  - (b) the chancery procedure is the normal procedure under paragraph (2)
- [subs (5A) added by SD954/11]
- (6) The ordinary procedure is the normal procedure for any claim for which the small claims procedure, the chancery procedure or the summary procedure is not the normal procedure.

### **5.3 Preliminary allocation of claims to procedures**

(1) A claim shall in the first instance be allocated to whichever of the procedures is specified in the claim form filed by the claimant.

(2) If, before the claim form is issued, it appears to a court officer that the claim to which it relates ought to be allocated to a procedure other than that specified in the claim form, the officer may amend the form by substituting whichever procedure —

- (a) is the normal procedure for the claim, or
- (b) appears to him to be suitable in accordance with rule 5.5;

and shall notify the claimant of the amendment.

(3) Before amending a claim form under paragraph (2) a court officer —

- (a) may consult a judge, and
- (b) shall do so in the cases specified in paragraphs (4) and (5).

(4) The court officer shall consult a judge where —

- (a) the specified procedure is not the normal procedure for the claim because its financial value exceeds the small claims limit or the summary limit, and
- (b) the claimant files with the claim form the defendant’s consent in writing to the allocation of the claim to the specified procedure.

(5) The court officer shall also consult a judge where the claimant files with the claim form a request in writing, with reasons, that the claim be allocated to the specified procedure.

(6) Where —

- (a) a claim form is amended under paragraph (2) by substituting one procedure for another, and
- (b) a higher fee would have been payable on the filing of the claim form, had the substituted procedure been specified by the claimant,

the notification under that paragraph shall specify the additional fee payable (being the difference between the fee paid and the higher fee).

(7) Where paragraph (6) applies, the claim shall be stayed until the additional fee is paid, unless —

- (a) arrangements between the Chief Registrar and the claimant or the advocate acting for the claimant are in force for the payment of prescribed fees on credit, or
- (b) the court orders that the claim be allocated to the procedure originally specified.

#### **5.4 Transfer of claim to another procedure**

(1) After a claim form is issued, the claim to which it relates shall continue to be allocated to the procedure specified under rule 5.3(1) or (2) unless and until the court orders it to be transferred to another procedure.

(2) An order under paragraph (1) may be made at any stage —

- (a) on the court's own initiative, or
- (b) on an application by any party.

(3) Where the court makes an order transferring a claim from one procedure to another, it shall serve notice of the transfer on every party.

#### **5.5 General rules for allocation (26.7, 26.8)**

(1) This rule applies to the allocation of claims to procedures by the court under rule 5.3(2) or 5.4

(2) A claim shall not be allocated —

- (a) to the small claims procedure, if the financial value of the claim exceeds the small claim limit, or
- (b) to the summary procedure, if the financial value of the claim exceeds the summary limit,

unless all the parties consent to the allocation of the claim to the small claims procedure or the summary procedure, as the case may be.

(3) Subject to paragraph (2), a claim shall be allocated to the normal procedure under rule 5.2 unless the court considers that another procedure would be more suitable, having regard to the matters mentioned in paragraphs (4) and (5).

(4) When deciding the procedure for a claim, the matters to which the court shall have regard include —

- (a) the financial value, if any, of the claim as assessed by the court in accordance with rule 5.1(3);
- (b) the nature of the remedy sought;
- (c) the likely complexity of the facts, law or evidence;
- (d) the number of parties or likely parties;

- (e) the value of any counterclaim or other additional claim and the complexity of any matters relating to it;
  - (f) the amount of oral evidence which may be required;
  - (g) the importance of the claim to persons who are not parties to the proceedings;
  - (h) the views expressed by the parties; and
  - (i) the circumstances of the parties.
- (5) The court shall not normally allocate a claim to the summary procedure unless —
- (a) the trial is likely to last for no longer than 2 days; and
  - (b) oral expert evidence at trial will be limited to —
    - (i) one expert per party in relation to any expert field; and
    - (ii) expert evidence in 2 expert fields.

## **CHAPTER 2: SMALL CLAIMS PROCEDURE**

### **5.6 Characteristics of small claims procedure**

Where a claim is allocated to the small claims procedure —

- (a) if contested, the claim shall stand referred to adjudication in accordance with rule 5.7;
- (b) the adjudication shall be conducted informally;
- (c) the award shall be entered as a judgment and execution shall issue without the need for an application;
- (d) the advocate's costs which may be recovered by any party are limited.

### **5.7 Reference to adjudication (RHC 26A.2)**

(1) This rule applies to a small claim where —

- (a) a defence to the claim is filed, or
- (b) no acknowledgment of service or defence is filed and an application is made for the assessment of damages or the determination of any other matter in dispute.

(2) A court officer shall, without any order of the court, refer the claim to adjudication by a judicial officer.

(3) Where any proceedings are referred for adjudication under paragraph (2), the court may make an order rescinding the reference if it is satisfied —

- (a) that a difficult question of law or a question of fact of exceptional complexity is involved; or
- (b) that a charge of fraud is in issue; or
- (c) that the parties are agreed that the dispute should be tried in court; or
- (d) that it would be unreasonable for the claim to proceed to adjudication having regard to its subject matter, the circumstances of the parties or the interests of any other person likely to be affected by the award.

(4) An order under paragraph (3) may be made by the court —

- (a) on its own initiative, or
- (b) on the application of any party.

(5) Where the court makes an order under paragraph (3) it shall also make an order transferring the claim to such other procedure as it considers suitable, having regard to the matters mentioned in rule 5.5(4).

## **5.8 Conduct of reference (RHC 26A.4)**

(1) Any claim referred to adjudication under rule 5.7 shall be referred on the following terms unless the court otherwise directs —

- (a) The judicial officer may appoint a date for the preliminary consideration of the claim and ways of resolving it, if he considers that the size or nature of the claim or other circumstances make such a course desirable or necessary.
- (b) At or after the preliminary appointment, if there is one, the judicial officer shall fix a date for the claim to be heard (unless the parties consent to his deciding it on the statements and documents submitted to him) and shall give such directions regarding the steps to be taken before and at the hearing as may appear to him to be necessary or desirable.
- (c) Any hearing shall be informal and the strict rules of evidence shall not apply.
- (d) The hearing shall be held at such time and place as the judicial officer thinks convenient, and may be adjourned to any time or place. The judicial officer may carry out any view or inspection he thinks appropriate.
- (e) At the hearing the judicial officer may adopt any method of procedure which he may consider to be convenient and to afford a fair and equal opportunity to each party to present his case.
- (f) If any party does not appear at the adjudication, the judicial officer may make an award on hearing any other party to the proceedings who may be present.
- (g) Where an award has been given in the absence of a party, the judicial officer may, on that party's application, set the award aside and order a fresh hearing.
- (h) With the consent of the parties and at any time before giving his decision, and either before or after the hearing, the judicial officer may consult any expert or call for an expert report on any matter in dispute or invite an expert to attend the hearing as assessor.
- (i) Subject to rule 11.21, the costs of the action up to and including the filing of the award shall be in the discretion of the judicial officer, to be exercised in the same manner as the discretion of the court.
- (j) The judicial officer shall, within 7 days of making an award, file the award and send a copy to each party, but where the judicial officer sets an award aside under sub-paragraph (g), he shall forthwith notify the court office and each party in writing.

(2) For the avoidance of doubt, on a reference under rule 5.7 the judicial officer shall have the same powers as a judge —

- (a) to summon witnesses,
- (b) to administer oaths, and
- (c) to require the production and disclosure of documents.

(3) Nothing in this Chapter authorises a judicial officer to commit any person to prison or to enforce an order by attachment or otherwise.

## **5.9 Time-limit for application to set aside award (RHC 26A.7)**

(1) This rule applies to an application to the court under section 16(4) of the High Court Act 1991 to set aside the award of a judicial officer on a reference under rule 5.7.

(2) The application must be made within 14 days after the day on which the award was entered as a judgment of the court.

## **5.10 Representation of corporation (SD 599/06)**

(1) A nominated individual may, on behalf of a company or other corporation, —

- (a) take such steps and sign such statements of case and other documents on behalf of the corporation as are necessary for, or relate to, the commencement of relevant proceedings by the corporation;
- (b) represent the corporation in any relevant proceedings;
- (c) appear and be heard in any relevant proceedings; and
- (d) sign all statements of case and other documents relating to relevant proceedings or any matter arising out of or connected with those proceedings.

(2) In this rule —

‘relevant proceedings’ means proceedings in the court by or against a company or other corporation —

- (a) for which the small claims procedure is the normal procedure under rule 5.2, where the claim form has not yet been issued; or
- (b) which are for the time being allocated to the small claims procedure, in any other case;

‘nominated individual’, in relation to a company or other corporation, means an individual who is —

- (a) an officer or member of the corporation, and
- (b) authorised (either generally or specially) by a resolution of the corporation, or of the directors or other person or persons managing the affairs of the corporation, to do anything specified in paragraph (1) on behalf of the corporation (the ‘authorising resolution’).

(3) An individual shall not be taken to be a nominated individual in relation to any relevant proceedings unless a copy of the authorising resolution, certified by an officer of the corporation to be a true copy, has been filed.

(4) A copy of the authorising resolution, certified as mentioned in paragraph (3), must be served with every document signed by the nominated individual which is served on any party, unless such a copy has previously been served on that party in the relevant proceedings.

(5) A document purporting to be a copy of an authorising resolution and to be certified by an officer of the corporation to be a true copy shall be evidence of such a resolution and shall be treated as such a copy, unless it is proved not to be.

(6) This rule is without prejudice to any other rule under which anything may be done on behalf of a company or other corporation by a person holding a senior position in the corporation.

### **CHAPTER 3: SUMMARY PROCEDURE**

#### **5.11 Characteristics of summary procedure etc. (28.1)**

- (1) Where a claim is allocated to the summary procedure —
  - (a) the case management rules in this Chapter shall apply; and
  - (b) normally standard directions shall be given and a timetable (including a trial date) fixed without application and without the parties needing to attend.

(2) In this Chapter —

‘standard directions’ means the directions set out in Schedule 5.2;

‘standard disclosure’ has the meaning given by rule 7.35.

#### **5.12 Directions to be given without application (28.2-6)**

- (1) This rule applies where a claim is allocated to the summary procedure and —
  - (a) either —

- (i) a defence is filed, or
  - (ii) no acknowledgment of service or defence is filed and an application is made for the assessment of damages or the determination of any other matter in dispute; and
- (b) no application for directions is made under rule 5.13 before the expiry of 28 days beginning with the date on which the defence is filed or the application referred to in sub-paragraph (a)(ii) is made.

[Subs (b) amended by SD 686/09]

- (2) If the claimant has, before the expiry of the period referred to in paragraph (1)(b), filed a completed directions questionnaire, the court shall without any application —

- (a) give standard directions;
- (b) fix the trial date;
- (c) set a timetable for the steps to be taken between the giving of the directions and the trial;
- (d) give any other directions which it considers appropriate; and

[subs (d) amended by SD 686/09]

- (e) serve on each party a notice setting out the standard directions and the matters referred to in sub-paragraphs (b), (c) and (d).

[Subs (e) added by SD 686/09]

- (3) The claimant must serve a copy of the completed directions questionnaire on each other party to the claim.

[Subs (3) added by SD 686/09]

- (4) If the claimant has not filed a completed directions questionnaire before the expiry of the period referred to in paragraph (1)(b), the court shall fix a date for a hearing at which it shall take the steps referred to in paragraph (2)(a) to (e); and subject to rule 2.59, the defendant shall be entitled to the costs of that hearing in any event.

[Subs (4) added by SD 686/09]

### **5.13 Application for directions (28.1-3)**

- (1) Where —
- (a) a claim is allocated to the summary procedure, and
  - (b) a defence to the claim is filed, any party may apply to the court for directions.
- (2) A party making an application under paragraph (1) must —
- (a) specify in the application notice the directions, including any standard directions, which he requests the court to make;
  - (b) include in, or file with, the application notice a completed directions questionnaire, unless such a questionnaire has already been filed and the replies previously given were complete and are still correct; and
  - (c) serve a copy of the notice and questionnaire on each other party to the claim.

[Subs (2) amended by SD686/09]

- (3) Where —

- (a) no acknowledgment of service or defence is filed, and
- (b) an application is made for the assessment of damages or the determination of any other matter in dispute,

the application may include an application for directions (in which case it must specify the directions, including any standard directions, which the applicant requests the court to make).

(4) Where directions other than standard directions are given on an application under this rule, they shall —

- (a) where appropriate, deal with —
  - (i) disclosure of documents,
  - (ii) service of witness statements, and
  - (iii) expert evidence;
  - (iv) the return of a pre-trial checklist;
- (b) set a timetable for the steps to be taken between the giving of the directions and the trial; and
- (c) unless the court considers it inappropriate, fix the trial date.

(5) Directions for disclosure of documents may be —

- (a) that standard disclosure take place,
- (b) that no disclosure take place; or
- (c) that specified documents or specified classes of documents be disclosed.

(6) Directions under this rule shall be given without a hearing, unless the court thinks it necessary in the special circumstances of the case to hold a hearing.

(7) In giving directions under this rule the court's first concern shall be to ensure that —

- (a) the issues between the parties are identified and
- (b) the necessary evidence is prepared and disclosed.

#### **5.14 Variation of directions (28.4)**

(1) The court may, on an application by any party or on its own initiative, —

- (a) vary any directions given under rule 5.12 or 5.13 or this paragraph, and
- (b) give additional directions.

(2) None of the following may be varied by the parties without the permission of the court —

- (a) a date fixed by the court for —
  - (i) the return of a pre-trial check list,
  - (ii) the filing of a trial bundle, or
  - (iii) the trial,
- (b) a date set by the court or these Rules for doing any act if the variation would make it necessary to vary any of the dates mentioned in sub-paragraph (a).
- (3) Paragraphs (6) and (7) of rule 5.13 apply to this rule.

#### **5.15 Agreed directions**

(1) Where —

- (a) a claim is allocated to the summary procedure,
- (b) the parties have filed agreed directions, and
- (c) the court considers that the directions are suitable,

it may approve them and give directions in the terms proposed.

(2) To obtain the court's approval the agreed directions must —

- (a) set out a timetable by reference to calendar dates for the taking of steps for the preparation of the case,
  - (b) include a date when it is proposed that the trial shall take place,
  - (c) include provision about disclosure of documents, and
  - (d) include provision about both factual and expert evidence.
- (3) If the court does not approve the agreed directions filed by the parties but decides that it shall give directions on its own initiative without a hearing, it shall take them into account in deciding what directions to give.

#### **5.16 Pre-trial check list (28.5)**

(1) The court shall send the parties a pre-trial check list for completion and return by the date specified in directions under rule 5.12, 5.13, 5.14 or 5.15, unless it considers that the claim can proceed to trial without the need for a pre-trial check list.

(2) The date specified for filing a pre-trial check list shall not be more than 8 weeks before the trial date.

(3) If no party files the completed pre-trial checklist by the date specified, the court shall order that unless a completed pre-trial checklist is filed within 7 days from service of that order, the claim, defence and any counterclaim shall be struck out without further order of the court.

(4) If —

- (a) a party files a completed pre-trial checklist but another party does not;
- (b) a party has failed to give all the information requested by the pre-trial checklist; or
- (c) the court considers that a hearing is necessary to enable it to decide what directions to give in order to complete preparation of the case for trial,

the court may give such directions as it thinks appropriate.

(5) Where a party files a pre-trial checklist, he must also send a copy to every other party.

#### **5.17 Directions for trial (28.6, 39.4)**

(1) As soon as practicable after the date specified for filing a completed pre-trial check list under rule 5.16, the court shall —

- (a) fix the date for the trial, if none has been previously fixed;
- (b) confirm or vary the date for the trial, if a date has been previously fixed; and
- (c) specify any further steps that need to be taken before trial.

(2) Directions under this rule shall be given without a hearing, unless the court thinks it necessary in the special circumstances of the case to hold a hearing.

(3) The court shall give the parties at least 21 days' notice of the date of the trial unless —

- (a) they agree to accept shorter notice, or
- (b) in exceptional circumstances, the court directs that shorter notice be given.

(4) When confirming or fixing a trial date, the court shall give directions as to such of the following as are appropriate —

- (a) evidence,
- (b) a trial timetable and time estimate, and
- (c) any other matter needed to prepare the case for trial.

(5) The directions may be in terms agreed by the parties (which should be filed as a draft order), or in different terms.

- (6) A direction giving permission to use expert evidence —
  - (a) shall say whether it gives permission for oral evidence or reports or both,
  - (b) shall name the expert concerned; and
  - (c) shall not permit an expert to give oral evidence unless the court believes it is necessary in the interests of justice to do so.
- (7) Where the court sets a trial timetable, it shall do so in consultation with the parties.

- (8) Where —
  - (a) the parties have filed agreed directions for the trial, and
  - (b) the court considers that the proposals are suitable,it may approve them and give directions in the terms proposed.

(9) If the court does not approve the agreed directions filed by the parties but decides that it shall give directions on its own initiative without a hearing, it shall take them into account in deciding what directions to give.

#### **5.18 Failure to comply with directions (PD 28)**

(1) Where a party has failed to comply with a direction under this Chapter, any other party may apply for an order to enforce compliance or for a sanction to be imposed, or for both.

(2) The court shall not allow a failure to comply with directions to lead to the postponement of the trial unless —

- (a) the circumstances of the case are exceptional, or
- (b) it is necessary in order to avoid real injustice.

(3) If it is practicable to do so, the court shall exercise its powers so as to enable the claim to be tried on the date previously set.

### **CHAPTER 4: *CHANCERY PROCEDURE***

#### **5.19 Characteristics of chancery procedure**

Where a claim is allocated to the chancery procedure —

- (a) the legal basis for the claim is to be set out in the claim form;
- (b) no statements of case, apart from the claim form, are to be filed or served;
- (c) unless the court requires or permits oral evidence to be given, only written evidence is to be given;
- (d) all written evidence is to be filed and served;
- (e) default judgment may not be given under Chapter 2 of Part 10.

#### **5.20 Issue of claim form without naming defendants (8.2A)**

(1) With the permission of the court a claim form may be issued under the chancery procedure without naming a defendant.

(2) The application notice for permission —

- (a) need not be served on any other person; and
- (b) must be accompanied by a copy of the claim form that the applicant proposes to issue.

(3) Where the court gives permission it shall give directions about the future management of the claim.

### **5.21 Objection to use of the chancery procedure (8.8)**

(1) Where the defendant contends that the chancery procedure should not be used because —

- (a) there is a substantial dispute of fact; and
- (b) the use of the chancery procedure is not required by these Rules,

he must apply for the transfer of the claim under rule 5.4, stating the reasons for his contention, when he files his acknowledgment of service.

(2) If the reasons include matters of evidence, they must be verified by a statement of truth.

### **5.22 Directions (PD8)**

(1) The court may give directions immediately when, or at any time after, a claim form is issued, either on the application of a party or on its own initiative.

- (2) Unless otherwise directed, the claimant must —
  - (a) within 7 days after the acknowledgment of service is sent to him in accordance with rule 4.13(b), or
  - (b) if no acknowledgment of service is filed within the period referred to in rule 4.12(2), within 7 days after the expiry of that period, file a completed directions questionnaire and serve a copy on each other party to the claim.

[Subs (2) amended by SD 686/09]

- (2A) A party making an application under paragraph (1) must —
  - (a) specify in the application notice the directions which he requests the court to make;
  - (b) include in, or file with, the application notice a completed directions questionnaire, unless such a questionnaire has already been filed and the replies previously given were complete and are still correct; and
  - (c) serve a copy of the notice and questionnaire on each other party to the claim.

[Subs (2A) added by SD 686/09]

- (3) The directions may include fixing a hearing date where —
  - (a) there is no dispute; or
  - (b) there may be a dispute, but a hearing date could conveniently be given.
- (4) Where the court does not fix a hearing date when the claim form is issued, it shall give directions for the disposal of the claim as soon as practicable after the defendant has acknowledged service of the claim form or, as the case may be, after the period for acknowledging service has expired.
- (5) None of the following may be varied by the parties without the permission of the court —
  - (a) a date fixed by the court for —
    - (i) the return of a pre-trial check list,
    - (ii) the filing of a trial bundle, or
    - (iii) the trial,
  - (b) a date set by the court or these Rules for doing any act if the variation would make it necessary to vary any of the dates mentioned in sub-paragraph (a).

## **CHAPTER 5:      *ORDINARY PROCEDURE***

### **5.23    Characteristics of ordinary procedure (29.2)**

Where a claim is allocated to the ordinary procedure —

- (a)    the case management rules in this Chapter shall apply;
- (b)    subject to that, the rules in Parts 6 to 11 apply without any modification.

### **5.24    Directions**

- (1)    Any party may apply to the court for directions —
  - (a)    where a defence to the claim is filed, or
  - (b)    where —
    - (i)    no acknowledgment of service or defence is filed, and
    - (ii)   an application is made for the assessment of damages or the determination of any other matter in dispute.
- (2)    The application notice must specify the directions which the applicant requests the court to make and include or be accompanied by a completed directions questionnaire (unless such a questionnaire has previously been filed and the replies previously given were complete and are still correct).

[Subs (2) amended by SD 686/09]

- (3)    Directions made on an application under paragraph (1) shall —
  - (a)    set a timetable for —
    - (i)    the steps to be taken between the giving of directions and the trial, or
    - (ii)   such of those steps as the court thinks appropriate; or
  - (b)    unless the court thinks it unnecessary to do so, fix —
    - (i)    a case management conference; or
    - (ii)   a pre-trial review,or both, and
  - (c)    make such other provision for the management of the case as the court sees fit.
- (4)    The court shall fix the trial date as soon as practicable.
- (5)    When the court fixes the trial date under paragraph (4), it shall —
  - (a)    give notice to the parties of the date; and
  - (b)    specify the date by which the parties must file a pre-trial check list.
- (6)    In giving directions under this rule the court's first concern shall be to ensure that —
  - (a)    the issues between the parties are identified and
  - (b)    the necessary evidence is prepared and disclosed.

### **5.25    Agreed directions (29.4)**

If —

- (a)    the parties agree proposals for the management of the proceedings (including a proposed trial date or period in which the trial is to take place); and
- (b)    the court considers that the proposals are suitable,  
it may approve them without a hearing and give directions in the terms proposed.

### **5.26 Case management conference and pre-trial review (29.3, 29.7)**

(1) Apart from its duty under rule 5.24(3)(b), the court may at any time, on application by any party or on its own initiative, fix —

- (a) a case management conference; or
  - (b) a pre-trial review.
- (2) If the court decides —
- (a) to fix a case management conference or pre-trial review; or
  - (b) to cancel a case management conference or pre-trial review which has already been fixed,

it shall serve notice of its decision at least 7 days before the date fixed for the hearing or, as the case may be, the cancelled hearing.

- (3) The court shall at a case management conference or pre-trial review —
- (a) review the steps which the parties have taken in the preparation of the case, and in particular their compliance with any directions that the court may have given,
  - (b) decide and give directions about the steps which are to be taken to secure the progress of the claim in accordance with the overriding objective, and
  - (c) ensure as far as it can that all agreements that can be reached between the parties about the matters in issue and the conduct of the claim are made and recorded.

(4) In appropriate cases, the matters which the court shall consider at a case management conference include —

- (a) whether the claimant has made clear the claim he is bringing, in particular the amount or the relief he is claiming, so that the other party can understand the case he has to meet,
- (b) whether any amendments are required to the claim, a statement of case or any other document,
- (c) what disclosure of documents, if any, is necessary,
- (d) what expert evidence is reasonably required in accordance with rule 8.51 (restriction on expert evidence) and how and when that evidence should be obtained and disclosed,
- (e) what factual evidence should be disclosed,
- (f) what arrangements should be made about the giving of clarification or further information and the putting of questions to experts, and
- (g) whether it will be just and will save costs to order a split trial or the trial of one or more preliminary issues.

### **5.27 Variation of timetable (29.5)**

(1) A party must apply to the court if he wishes to vary the date which the court has fixed for —

- (a) a case management conference;
- (b) a pre-trial review;
- (c) the return of a pre-trial check list under rule 5.28;
- (d) filing a trial bundle; or
- (e) the trial.

(2) Any date set by the court or these Rules for doing any act may not be varied by the parties if the variation would make it necessary to vary any of the dates mentioned in paragraph (1).

**5.28 Pre-trial check list (29.6)**

(1) The court shall send the parties a pre-trial check list for completion and return by the date specified in directions given under rule 5.25 or 5.26 or varied under rule 5.27 unless it considers that the claim can proceed to trial without the need for a pre-trial check list.

(2) Each party must file the completed pre-trial check list by the date specified by the court.

(3) If no party files the completed pre-trial checklist by the date specified, the court shall order that unless a completed pre-trial checklist is filed within 7 days from service of that order, the claim, defence and any counterclaim shall be struck out without further order of the court.

(4) If —

- (a) a party files a completed pre-trial checklist but another party does not;
- (b) a party has failed to give all the information requested by the pre-trial checklist; or
- (c) the court considers that a hearing is necessary to enable it to decide what directions to give in order to complete preparation of the case for trial,

the court may give such directions as it thinks appropriate.

(5) Where a party files a pre-trial checklist, he must also send a copy to every other party.

**5.29 Setting a trial timetable etc. (29.8, 39.4)**

(1) This rule applies where —

- (a) each party has filed a completed pre-trial check list; or
- (b) the court has held —
  - (i) a hearing under rule 5.28(4)(c), or
  - (ii) a pre-trial review under rule 5.26.

(2) The court shall as soon as practicable —

- (a) fix the date for the trial, if none has been previously fixed;
- (b) confirm or vary the date for the trial, if a date has been previously fixed;
- (c) set a timetable for the trial, unless a timetable has already been fixed, or the court considers that it would be inappropriate to do so;
- (d) give directions as to evidence and the preparation and filing of a trial bundle; and
- (e) specify any further steps that need to be taken before trial.

(3) Where the court sets a trial timetable, it shall do so in consultation with the parties.

## SCHEDULE 5.1 — CLAIMS FOR WHICH CHANCERY PROCEDURE IS NORMAL PROCEDURE

### Rule 5.2

#### 1. *Commercial*

- (a) Applications under Companies Acts 1931 to 1992, Companies Act 2006 or Limited Liability Companies Act 1996
- (b) Proceedings (except claims for damages for breach of statutory duty) under —
  - (i) Industrial and Building Societies Act 1892
  - (ii) Moneylenders Act 1991
  - (iii) Financial Services Act 2008
  - (iv) Insurance Act 2008
- (c) Proceedings under Consumer Protection Act 1991 Part V (consumer contracts) or Part VI (misleading advertisements)
- (d) Proceedings relating to —
  - (i) copyright;
  - (ii) rights in performances;
  - (iii) design right;
  - (iv) plant varieties;
  - (v) moral rights;
  - (vi) database rights;
  - (vii) unauthorised decryption rights;
  - (viii) technical trade secrets;
  - (ix) passing off;
  - (x) trade marks; and
  - (xi) Community trade marks.

#### 2. *Administrative*

- (a) Application under a statutory provision giving the court jurisdiction to quash a plan or public document, a revision or repeal of a plan, a decision of a Department or any action on the part of a Department
- (b) Application under Local Elections Act 1986 section 20 (disqualification)
- (c) Application under Local Government Act 1985 section 5 (default powers)
- (d) Application under Highways Act 1986 section 95 or 97 (making up of unadopted road)
- (e) Application for rectification of a register or making, amendment or cancellation of an entry in a register
- (f) Application for leave to amend definitive map and statement under Highways Act 1986 section 92
- (g) Application for leave to serve enforcement notice under Data Protection Act 2002 section 42

#### 3. *Land*

- (a) Application for appointment of representative under Tourist Premises (Provision and Improvement) Act 1977 section 4
- (b) Application for consent to appointment of representative under Acquisition of Land Act 1984 section 2

- (c) Application under —
  - (i) Settled Land Act 1891
  - (ii) Partition Act 1931
- (d) Application under —
  - (i) Land Drainage and Boundaries Act 1851 section 4
  - (ii) Land Drainage Act 1934 section 27 or 34
  - (iii) Landlord and Tenant Act 1954 section 11
  - (iv) Recovery of Rent Act 1954 section 7
  - (v) Minerals Act 1986 Schedule 2 paragraph 11
- (e) Application under —
  - (i) Registration of Deeds Act 1961
  - (ii) Land Registration Act 1982
- (f) Application for charging order under Property Service Charges Act 1989 section 11A
- (g) Application under Access to Neighbouring Land Act 1993

4. *Injunctions*

Application for injunction under —

- (a) Town and Country Planning Act 1999 section 37
- (b) Tree Preservation Act 1993 section 6
- (c) Local Government (Singing Rooms) Act 1928 section 3
- (d) Heath Burning Act 2003 section 6
- (e) Non-Resident Traders Act 1983 Schedule 1A paragraph 1
- (f) Employment (Sex Discrimination) Act 2000 section 40 or 41
- (g) Race Relations Act 2004 section 14

5. *Criminal*

- (a) Application for confiscation, forfeiture etc. of property in connection with criminal proceedings
- (b) Application for bail or forfeiture of recognizance

6. *Miscellaneous*

- (a) Application to which Chapter 2 of Part 14 applies (review of lawfulness of decision etc.)
- (b) Application for an order under section 34(1) of the High Court Act 1991 (inspection etc. of property before start of claim)
- (c) Application before a claim has been made for an order under section 33A of the High Court Act 1991 (preservation of evidence etc.)
- (d) Application for a declaration of incompatibility under Human Rights Act 2001 section 4 (otherwise than in an existing claim)
- (e) Proceedings under Representation of the People Act 1995
- (f) Application under Mental Health Act 1998 Part 2
- (g) Proceedings by way of interpleader (otherwise than in an existing claim)
- (h) Application under Advocates Act 1976
- (i) Claim under Inheritance (Provision for Family and Dependents) Act 1982
- (j) Application relating to a trust or a deceased person's estate within rule 13.35

## SCHEDULE 5.2 — STANDARD DIRECTIONS (SUMMARY PROCEDURE)

### Rule 5.11

THE COURT DIRECTS as follows:

1. Each party must deliver to every other party not later than *[date]* —
  - (a) copies of all documents on which he intends to rely at the trial, and
  - (b) if he intends to rely on expert evidence, a copy of the expert's report.
2. The original documents must be brought to the hearing.
3. The trial shall take place on *[date]*. [One day is][Two days are] allowed.
4. Each party must not later than *[date]* deliver to every other party and to the court office a pre-trial checklist in the enclosed form.
5. The claimant must not later than *[date]* deliver to the court office a lever-arch file or ring-binder containing copies of all the following documents —
  - (a) the claim form and all statements of case,
  - (b) a case summary or chronology (or both), where appropriate,
  - (c) if the party intends to make submissions on any point of law, a list of any statutory provisions and decided cases to be relied on;
  - (d) requests for further information and responses to the requests,
  - (e) all witness statements to be relied on as evidence,
  - (f) any witness summaries,
  - (g) any notices of intention to rely on hearsay evidence under rule 8.24,
  - (h) any notices of intention to rely on evidence (such as a plan, photograph etc.) under rule 8.28 which is not —
    - (i) contained in a witness statement, affidavit or expert's report,
    - (ii) to be given orally at the trial,
    - (iii) hearsay evidence under rule 8.24,
  - (i) any medical reports and responses to them,
  - (j) any experts' reports and responses to them,
  - (k) any order giving directions as to the conduct of the trial,
  - (l) any document required to be included by a direction or court order; and
  - (m) any other necessary documents.
6. The claimant must not later than *[date]*, and each other party must within 14 days after that date, deliver to every other party and to the court office a skeleton argument identifying by a numbered list —
  - (a) any legal points to be argued, and
  - (b) any statutory provision, decided case or other authority (identified by section, page or paragraph reference) to be relied on in support of each point,and having annexed to it a paginated bundle containing a copy of each such authority.
7. The parties are encouraged to contact each other with a view to trying to settle the case or narrow the issues. However the court must be informed immediately if the case is settled by agreement before the hearing date.
8. No party may rely at the hearing on any report from an expert unless express permission has been granted by the court beforehand. Anyone wishing to rely on an

expert must write to the court immediately on receipt of this order and seek permission, giving an explanation why the assistance of an expert is necessary.

NOTE: Failure to comply with the directions may result in the case being adjourned and in the party at fault having to pay costs.