

PART 7 : CASE MANAGEMENT

CHAPTER 1: GENERAL

7.1 Court's duty to manage cases (1.4)

(1) The court shall further the overriding objective (set out in rule 1.2) by actively managing cases.

(2) Active case management includes —

- (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
- (b) identifying the issues at an early stage;
- (c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
- (d) deciding the order in which issues are to be resolved;
- (e) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure;
- (f) helping the parties to settle the whole or part of the case;
- (g) fixing timetables or otherwise controlling the progress of the case;
- (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;
- (i) dealing with as many aspects of the case as it can on the same occasion;
- (j) dealing with the case or any aspect of it without the parties needing to attend at court;
- (k) making use of technology; and
- (l) giving directions to ensure that the trial of a case proceeds quickly and efficiently.

(3) The court may give directions for the management of a claim at any stage —

- (a) on an application by any party, or
- (b) on its own initiative.

(4) As respects a claim of any description, the rules in this Part have effect subject to —

- (a) any special rules contained in Part 5 and applicable to the procedure to which the claim is allocated;
- (b) any other express provision of these Rules applying to claims of that description.

7.2 Court's general powers of management (3.1)

(1) The powers in this rule are in addition to any powers given to the court by any other rule or by any other statutory provision or rule of law.

(2) Except where these Rules provide otherwise, the court may —

- (a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired);
- (b) adjourn or bring forward a hearing;
- (c) require a party or a party's advocate to attend the court;
- (d) hold a hearing and receive evidence by telephone or video link or by using any other method of direct oral communication;

- (e) direct that part of any proceedings (such as a counterclaim) be dealt with as separate proceedings;
- (f) stay the whole or part of any proceedings or judgment either generally or until a specified date or event;
- (g) consolidate proceedings;
- (h) try 2 or more claims on the same occasion;
- (i) direct a separate trial of any issue;
- (j) decide the order in which issues are to be tried;
- (k) exclude an issue from consideration;
- (l) dismiss or give judgment on a claim after a decision on a preliminary issue;
- (m) order any party to file and serve an estimate of costs;
- (n) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective in rule 1.2.
- (3) When the court makes an order, it may —
 - (a) make it subject to conditions, including a condition to pay a sum of money into court; and
 - (b) specify the consequence of failure to comply with the order or a condition.
- (4) The court may order a party to pay a sum of money into court if that party has, without good reason, failed to comply with a rule or any practice direction in force at the material time.

(5) When exercising its power under paragraph (4) the court must have regard to

- (a) the amount in dispute; and
- (b) the costs which the parties have incurred or which they may incur.

(6) Where a party pays money into court following an order under paragraph (3) or (4), the money shall be security for any sum payable by that party to any other party in the proceedings.

(7) A power of the court under these Rules to make an order includes a power to vary or revoke the order.

7.3 Power to strike out statement of case (3.4)

(1) In this rule a reference to a statement of case includes a reference to part of a statement of case.

(2) The court may strike out a statement of case if it appears to the court —

- (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
- (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
- (c) that there has been a failure to comply with a rule, practice direction or court order.

(3) When the court strikes out a statement of case it may make any consequential order it considers appropriate.

(4) Where —

- (a) the court has struck out a claimant's statement of case;
- (b) the claimant has been ordered to pay costs to the defendant; and

- (c) before the claimant pays those costs, he starts another claim against the same defendant, arising out of facts which are the same or substantially the same as those relating to the claim in which the statement of case was struck out;

the court may, on the application of the defendant, stay that other claim until the costs of the first claim have been paid.

(5) Paragraph (2) does not limit any other power of the court to strike out a statement of case.

(6) If the court strikes out a claimant's statement of case and it considers that the claim is totally without merit —

- (a) the court's order shall record that fact; and
- (b) the court shall at the same time consider whether it is appropriate to make a civil restraint order.

CHAPTER 2: APPLICATIONS FOR COURT ORDERS

7.4 Scope and interpretation (23.1)

- (1) This Chapter applies to an application which is made —
 - (a) where a claim has already been started; or
 - (b) where no claim has been started, if it is permitted by a rule to be made by an application notice.
- (2) In this Chapter 'respondent' means —
 - (a) the person against whom the order is sought; and
 - (b) such other person as the court may direct.

7.5 Application notice to be filed (23.3)

- (1) Subject to paragraph (2), an application is made by filing an application notice.
- (2) An applicant may make an application without filing an application notice if —
 - (a) this is permitted by a rule; or
 - (b) the court dispenses with the requirement for an application notice.
- (3) Any statutory requirement that an application in proceedings be made by petition or motion shall be construed as a requirement that it be made in accordance with paragraph (1) or (2).

7.6 Notice of application (23.4)

- (1) Subject to paragraph (2), a copy of the application notice must be served on each respondent.
- (2) An application may be made without serving a copy of the application notice only —
 - (a) where there is exceptional urgency,
 - (b) where the overriding objective is best furthered by doing so,
 - (c) with the consent of all parties,
 - (d) where a date for a hearing has been fixed and a party wishes to make an application at that hearing but does not have sufficient time to serve an application notice,
 - (e) where this is permitted by another rule, or
 - (f) where the court so directs.
- (3) Where paragraph (2)(d) applies, the applicant —

- (a) must inform the other party and the court (if possible in writing) as soon as he can of the nature of the application and the reason for it; and
- (b) may then make the application orally at the hearing.
- (4) An application for a direction under paragraph (2)(f) may be made by letter without notice to the respondent.

7.7 Time when application is made (23.5)

Where an application must be made within a specified time, it is so made if the application notice is received by the court within that time.

7.8 Contents of application notice (23.6, PD 23)

- (1) An application notice must state —
 - (a) what order the applicant is seeking; and
 - (b) briefly, why the applicant is seeking the order.
- (2) The notice must in addition be signed and include —
 - (a) the title of the claim,
 - (b) the number of the claim,
 - (c) the full name of the applicant,
 - (d) where the applicant is not already a party, his address for service, including a postcode; and
 - (e) either a request for a hearing or a request that the application be dealt with without a hearing.
- (3) A draft of the order applied for must be attached to the application notice.
- (4) Where an application is made in accordance with this Chapter before a claim has been started, paragraph (2)(a) and (b) does not apply, and rule 4.1 applies with any necessary modifications as if the application notice were a claim form.

7.9 Service of copy of application notice (23.7, PD 23)

- (1) Except where another rule otherwise provides, the applicant must serve a copy of the application notice on each respondent —
 - (a) as soon as practicable after it is filed; and
 - (b) in any event at least 3 days before the court is to deal with the application.
- (2) If a copy of the application notice is to be served by the court, the applicant must, when he files the application notice, file a copy of any written evidence in support.
- (3) When a copy of an application notice is served it must be accompanied by —
 - (a) a copy of any written evidence in support; and
 - (b) a copy of any draft order which the applicant has attached to his application.
- (4) If —
 - (a) an application notice is served; but
 - (b) the period of notice is shorter than the period required by these Rules,the court may direct that, in the circumstances of the case, sufficient notice has been given and hear the application.
- (5) This rule does not require written evidence —
 - (a) to be filed if it has already been filed; or
 - (b) to be served on a party on whom it has already been served.

7.10 Applications which may be dealt with without hearing (23.8, PD 23)

- (1) The court may deal with an application without a hearing if —

- (a) the parties agree as to the terms of the order sought;
- (b) the parties agree that the court should dispose of the application without a hearing, or
- (c) the court does not consider that a hearing would be appropriate.

(2) Where paragraph (1)(b) applies the parties must so inform the court in writing, and each must confirm that all evidence and other material on which he relies has been disclosed to the other parties to the application.

(3) Where paragraph (1)(c) applies the court shall treat the application as if it were proposing to make an order on its own initiative.

(4) This rule is without prejudice to any other rule allowing or requiring the court to deal with an application without a hearing.

7.11 Service where application made without notice (23.9)

(1) This rule applies where the court has disposed of an application which it permitted to be made without service of a copy of the application notice.

(2) Where the court makes an order, whether granting or dismissing the application, a copy of the application notice and any evidence in support must, unless the court orders otherwise, be served with the order on any party or other person —

- (a) against whom the order was made; and
- (b) against whom the order was sought.

(3) The order must contain a statement of the right to make an application to set aside or vary the order under rule 7.12.

7.12 Application to set aside or vary order made without notice (23.10)

(1) A person who was not served with a copy of the application notice before an order was made under rule 7.11 may apply to have the order set aside or varied.

(2) An application under this rule must be made within 7 days after the date on which the order was served on the person making the application.

7.13 Power to proceed in party's absence (23.11, PD 23)

(1) Where the applicant or any respondent fails to attend the hearing of an application, the court may proceed in his absence.

(2) Where —

- (a) the applicant or any respondent fails to attend the hearing of an application; and
- (b) the court makes an order at the hearing,

the court may, on application or of its own initiative, re-list the application.

(3) The power to re-list the application is in addition to any other powers of the court with regard to the order (for example to set aside, vary, discharge or suspend the order).

7.14 Dismissal of applications totally without merit (23.12)

If the court dismisses an application (including an application for permission to appeal) and it considers that the application is totally without merit —

- (a) the court's order must record that fact; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

7.15 Further provision as to applications

Schedule 7.1 makes further provisions as to applications under this Chapter.

CHAPTER 3: INTERIM REMEDIES

7.16 Orders for interim remedies (25.1)

- (1) The court may grant the following interim remedies —
 - (a) an interim injunction ;
 - (b) an interim declaration;
 - (c) an order —
 - (i) for the detention, custody or preservation of relevant property;
 - (ii) for the inspection of relevant property;
 - (iii) for the taking of a sample of relevant property;
 - (iv) for the carrying out of an experiment on or with relevant property;
 - (v) for the sale of relevant property which is of a perishable nature or which for any other good reason it is desirable to sell quickly; and
 - (vi) for the payment of income from relevant property until a claim is decided;
 - (d) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-paragraph (c);
 - (e) an order under section 4 of the Torts (Interference with Goods) Act 1981 to deliver up goods;
 - (f) an order (a ‘freezing injunction’) —
 - (i) restraining a party from removing from the jurisdiction assets located there; or
 - (ii) restraining a party from dealing with any assets whether located within the jurisdiction or not;
 - (g) an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing injunction ;
 - (h) an order (a ‘search order’) under section 33A of the High Court Act 1991 requiring a party to admit another party to premises for the purpose of preserving evidence etc.;
 - (i) an order under section 34 of the High Court Act 1991 (order for disclosure of documents or inspection of property before a claim has been made);
 - (j) an order under section 35 of the High Court Act 1991 (order in certain proceedings for disclosure of documents or inspection of property against a non-party);
 - (k) an order (an ‘order for an interim payment’) under rule 7.20 for payment by a defendant on account of any damages, debt or other sum (except costs) which the court may hold the defendant liable to pay;
 - (l) an order for a specified fund to be paid into court or otherwise secured, where there is a dispute over a party’s right to the fund;
 - (m) an order permitting a party seeking to recover personal property to pay money into court pending the outcome of the proceedings and directing that, if he does so, the property shall be given up to him;
 - (n) an order directing a party to prepare and file accounts relating to the dispute;

- (o) an order directing any account to be taken or inquiry to be made by the court;
- (p) an order for the restoration of the status quo;
- (q) an order that a trespass jury be summoned and sworn;
- (r) an order for the arrest of a person or assets under section 1 or 3 of the Action of Arrest Act 1953;
- (s) an order for the arrest of goods under section 7 of the Recovery of Rent 1954.

(2) In paragraph (1)(c) and (g), 'relevant property' means property (including land) which is the subject of a claim or as to which any question may arise on a claim.

(3) The fact that a particular kind of interim remedy is not listed in paragraph (1) does not affect any power that the court may have to grant that remedy.

(4) The court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind.

(5) An application for an interim remedy, except —

- (a) an order under section 33A of the High Court Act 1991 (preservation of evidence etc.),
- (b) an order under section 34(1) of the High Court Act 1991 (inspection etc. of property before start of claim),
- (c) an order for the arrest of goods under section 7 of the Recovery of Rent Act 1954, or
- (d) a property freezing order or interim receiving order under section 6 or 13 of the Proceeds of Crime Act 2008,

may not be made before a claim form is filed unless a judge gives permission.

(6) A judge shall not give permission under paragraph (5) unless he is satisfied that the matter is urgent; and such permission shall be granted subject to such conditions as the judge thinks fit

(7) On an application for an order for the restoration of the status quo, the court may refuse the order if it is not satisfied that the applicant has a real prospect of succeeding on the claim or issue.

7.17 Time when order for interim remedy may be made (25.2)

- (1) An order for an interim remedy may be made at any time, including —
 - (a) before proceedings are started; and
 - (b) after judgment has been given.
- (2) However —
 - (a) paragraph (1) is subject to any rule or other statutory provision which provides otherwise;
 - (b) the court may grant an interim remedy before a claim has been made only if —
 - (i) the matter is urgent; or
 - (ii) it is otherwise desirable to do so in the interests of justice;
 - (c) unless the court otherwise orders, a defendant may not apply for any of the orders listed in rule 7.16(1) before he has filed either an acknowledgment of service or a defence.

(3) Where the court grants an interim remedy before a claim has been started, it may give directions requiring a claim to be started.

(4) In particular, the court need not direct that a claim be started where the application is made under section 34 of the High Court Act 1991 (order for disclosure, inspection etc. before commencement of a claim).

7.18 How to apply for interim remedy (25.3)

(1) The court may grant an interim remedy on an application made without notice if it appears to the court that there are good reasons for not giving notice.

(2) An application for an interim remedy must be supported by evidence, unless the court orders otherwise.

(3) If the applicant makes an application without giving notice, the evidence in support of the application must state the reasons why notice has not been given.

7.19 Inspection of property before commencement or against a non-party (25.5)

(1) This rule applies where a person makes an application under —

(a) section 34(1) of the High Court Act 1991 (inspection etc. of property before start of claim), or

(b) section 35(3) of that Act (inspection etc. of property against a non-party).

(2) The evidence in support of such an application must show, if practicable by reference to any statement of case prepared in relation to the proceedings or anticipated proceedings, that the property —

(a) is or may become the subject matter of such proceedings; or

(b) is relevant to the issues that will arise in relation to such proceedings.

(3) A copy of the application notice and a copy of the evidence in support must be served on —

(a) the person against whom the order is sought; and

(b) in the case of an application under section 35(3) of the High Court Act 1991, every party to the proceedings other than the applicant.

7.20 Interim payments — general procedure (25.6)

(1) The claimant may not apply for an order for an interim payment before the end of the period for filing an acknowledgment of service applicable to the defendant against whom the application is made.

(2) The claimant may make more than one application for an order for an interim payment.

(3) A copy of an application notice for an order for an interim payment must —

(a) be served at least 14 days before the hearing of the application; and

(b) be supported by evidence.

(4) If the respondent to an application for an order for an interim payment wishes to rely on written evidence at the hearing, he must —

(a) file the written evidence; and

(b) serve copies on every other party to the application,

at least 7 days before the hearing of the application.

(5) If the applicant wishes to rely on written evidence in reply, he must —

(a) file the written evidence; and

(b) serve a copy on the respondent,

at least 3 days before the hearing of the application.

(6) This rule does not require written evidence —

(a) to be filed if it has already been filed; or

- (b) to be served on a party on whom it has already been served.
- (7) The court may order an interim payment in one sum or in instalments.

7.21 Interim payments — conditions to be satisfied and matters to be taken into account (25.7)

(1) The court may only make an order for an interim payment where one or more of the following conditions is satisfied —

- (a) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant;
- (b) the claimant has obtained judgment against that defendant for damages to be assessed or for a sum of money (other than costs) to be assessed;
- (c) it is satisfied that, if the claim went to trial, the claimant would obtain judgment for a substantial amount of money (other than costs) against the defendant from whom he is seeking an order for an interim payment whether or not that defendant is the only defendant or one of a number of defendants to the claim;
- (d) the following conditions are satisfied —
 - (i) the claimant is seeking an order for possession of land (whether or not any other order is also sought); and
 - (ii) the court is satisfied that, if the case went to trial, the defendant would be held liable (even if the claim for possession fails) to pay the claimant a sum of money for the defendant's occupation and use of the land while the claim for possession was pending; or
- (e) in a claim in which there are 2 or more defendants and the order is sought against any one or more of those defendants, the following conditions are satisfied —
 - (i) the court is satisfied that, if the claim went to trial, the claimant would obtain judgment for a substantial amount of money (other than costs) against at least one of the defendants (but the court cannot determine which); and
 - (ii) each of the defendants is either —
 - (a) a defendant who is insured in respect of the claim;
 - (b) a defendant whose liability will be met by an insurer under paragraph 7 of Schedule 5 to the Road Traffic Act 1985 or an insurer acting under the Motor Insurers Bureau Agreement, or the Motor Insurers Bureau where it is acting itself; or
 - (c) a public body.

(2) The court shall not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.

- (3) The court must take into account —
 - (a) contributory negligence; and
 - (b) any relevant set-off or counterclaim.

7.22 Powers of court where it has made order for interim payment (25.8)

(1) Where a defendant has been ordered to make an interim payment, or has in fact made an interim payment (whether voluntarily or under an order), the court may make an order to adjust the interim payment.

- (2) The court may in particular —
 - (a) order all or part of the interim payment to be repaid;

- (b) vary or discharge the order for the interim payment;
- (c) order a defendant to reimburse, either wholly or partly, another defendant who has made an interim payment.
- (3) The court may make an order under paragraph (2)(c) only if —
 - (a) the defendant to be reimbursed made the interim payment in relation to a claim in respect of which he has made a claim against the other defendant for a contribution, indemnity or other remedy; and
 - (b) where the claim or part to which the interim payment relates has not been discontinued or disposed of, the circumstances are such that the court could make an order for interim payment under rule 7.21.
- (4) The court may make an order under this rule without an application by any party if it makes the order when it disposes of the claim or any part of it.
 - (5) Where —
 - (a) a defendant has made an interim payment; and
 - (b) the amount of the payment is more than his total liability under the final judgment or order,

the court may award him interest on the overpaid amount from the date when he made the interim payment.

7.23 Restriction on disclosure of interim payment (25.9)

The fact that a defendant has made an interim payment, whether voluntarily or by court order, shall not be disclosed to the trial judge until all questions of liability and the amount of money to be awarded have been decided, unless the defendant agrees.

7.24 Interim injunction to cease if claim is stayed (25.10)

If —

- (a) the court has granted an interim injunction other than a freezing injunction; and
- (b) the claim is stayed otherwise than by agreement between the parties,

the interim injunction shall be set aside unless the court orders that it should continue to have effect even though the claim is stayed.

7.25 Interim injunction to cease after 14 days if claim struck out (25.11)

(1) If —

- (a) the court has granted an interim injunction ; and
- (b) the claim is struck out under rule 2.60 (sanctions for non-payment of certain fees),

the interim injunction shall cease to have effect 14 days after the date that the claim is struck out unless paragraph (2) applies.

(2) If the claimant applies to reinstate the claim before the interim injunction ceases to have effect under paragraph (1), the injunction shall continue until the hearing of the application unless the court orders otherwise.

7.26 Further provision as to interim orders

(1) Schedule 7.2 makes further provision as to interim injunctions, search orders and similar interim orders.

(2) Schedule 7.3 makes further provision as to interim payments.

CHAPTER 4: SECURITY FOR COSTS

7.27 Security for costs (25.12)

- (1) A defendant to any claim may apply under this Chapter for security for his costs of the proceedings.
- (2) An application for security for costs must be supported by written evidence.
- (3) Where the court makes an order for security for costs, it shall —
 - (a) determine the amount of security; and
 - (b) direct the manner in which; and the time within which the security must be given.

7.28 Conditions to be satisfied (25.13)

- (1) The court may make an order for security for costs under rule 7.27 if —
 - (a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
 - (b) either —
 - (i) one or more of the conditions in paragraph (2) applies, or
 - (ii) an enactment permits the court to require security for costs.
- (2) The conditions are —
 - (a) the claimant is ordinarily resident out of the jurisdiction;
 - (b) the claimant is a company or other body (whether incorporated in or outside the Island) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;
 - (c) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;
 - (d) the claimant failed to give his address in the claim form, or gave an incorrect address in that form;
 - (e) the claimant is acting as a nominal claimant, other than as a representative claimant under Chapter 6 of Part 3, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;
 - (f) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.

7.29 Security for costs other than from claimant (25.14)

- (1) The defendant may seek an order for security for costs under rule 7.27 against someone other than the claimant.
- (2) The court may make an order for security for costs against that person if —
 - (a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
 - (b) that person —
 - (i) has assigned the right to the claim to the claimant with a view to avoiding the possibility of a costs order being made against him;
 - (ii) has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover in the proceedings; or
 - (iii) where the claimant is a company or other corporation, is a person in accordance with whose directions or instructions the directors or other persons holding a senior position in the company or corporation are accustomed to act; and

- (c) that person is a person against whom a costs order may be made.

7.30 Security for costs of appeal (25.15)

- (1) The court may order security for costs of an appeal against —
 - (a) an appellant;
 - (b) a respondent who also appeals,

on the same grounds as it may order security for costs against a claimant under this Chapter.

(2) The court may also make an order under paragraph (1) where the appellant, or the respondent who also appeals, is a limited company and there is reason to believe it will be unable to pay the costs of the other parties to the appeal should its appeal be unsuccessful.

CHAPTER 5: DISCLOSURE AND INSPECTION OF DOCUMENTS

7.31 Application and interpretation (31.1, 31.4)

(1) This Chapter applies to all claims except a claim allocated to the small claims procedure.

- (2) In this Chapter —

‘disclosure statement’ means a statement under rule 7.39(5).

‘document’ means anything in which information of any description is recorded; and ‘copy’, in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.

7.32 Meaning of disclosure (31.2)

A party discloses a document by stating that the document exists or has existed.

7.33 Right of inspection of a disclosed document (31.3)

(1) A party to whom a document has been disclosed has a right to inspect that document except where —

- (a) the document is no longer in the control of the party who disclosed it;
- (b) the party disclosing the document has a right or a duty to withhold inspection of it; or
- (c) paragraph (2) applies.

(2) Where a party considers that it would be disproportionate to the issues in the case to permit inspection of documents within a category or class of document disclosed under rule 7.35(b) —

- (a) he is not required to permit inspection of documents within that category or class; but
- (b) he must state in his disclosure statement that inspection of those documents will not be permitted on the grounds that to do so would be disproportionate.

7.34 Disclosure limited to standard disclosure (31.5)

(1) An order to give disclosure is an order to give standard disclosure unless the court directs otherwise.

(2) The court may dispense with or limit standard disclosure.

(3) The parties may agree in writing to dispense with or to limit standard disclosure.

7.35 Standard disclosure — what documents are to be disclosed (31.6)

Standard disclosure requires a party to disclose only documents —

- (a) on which he relies; or
- (b) which adversely affect his own case or another party’s case; or

- (c) support another party's case.

7.36 Duty of search (31.7)

(1) When giving standard disclosure, a party is required to make a reasonable search for documents falling within rule 7.35(b) or (c).

(2) The factors relevant in deciding the reasonableness of a search include the following —

- (a) the number of documents involved;
- (b) the nature and complexity of the proceedings;
- (c) the ease and expense of retrieval of any particular document; and
- (d) the significance of any document which is likely to be located during the search.

(3) Where a party has not searched for a category or class of document on the grounds that to do so would be unreasonable, he must state this in his disclosure statement and identify the category or class of document.

7.37 Limits of party's duty of disclosure (31.8)

(1) A party's duty to disclose documents is limited to documents which are or have been in his control.

(2) For this purpose a party has or has had a document in his control if —

- (a) it is or was in his physical possession;
- (b) he has or has had a right to possession of it; or
- (c) he has or has had a right to inspect or take copies of it.

7.38 Disclosure of copies (31.9)

(1) A party need not disclose more than one copy of a document.

(2) A copy of a document which contains a modification, obliteration or other marking or feature —

- (a) on which a party intends to rely; or
- (b) which adversely affects his own case or another party's case or supports another party's case;

shall be treated as a separate document.

7.39 Procedure for standard disclosure (31.10)

(1) The procedure for standard disclosure is as follows.

(2) Each party must make and serve on every other party a list of documents.

(3) The list must identify the documents in a convenient order and manner and as concisely as possible.

(4) The list must indicate —

- (a) those documents in respect of which the party claims a right or duty to withhold inspection; and
- (b) those documents which are no longer in the party's control; and
- (c) in the case of documents mentioned in paragraph (b), what has happened to those documents.

(5) The list must include a statement (a 'disclosure statement') made by the party disclosing the documents —

- (a) setting out the extent of the search that has been made to locate documents which he is required to disclose;

- (b) certifying that he understands the duty to disclose documents; and
- (c) certifying that to the best of his knowledge he has carried out that duty.
- (6) Where the party making the disclosure statement is a company, firm, association or other organisation, the statement must also —
 - (a) identify the person making the statement; and
 - (b) explain why he is considered an appropriate person to make the statement.
- (7) The parties may agree in writing —
 - (a) to disclose documents without making a list; and
 - (b) to disclose documents without the disclosing party making a disclosure statement.

7.40 Duty of disclosure continues during proceedings (31.11)

- (1) Any duty of disclosure continues until the proceedings are concluded.
- (2) If documents to which that duty extends come to a party's notice at any time during the proceedings, he must immediately notify every other party.

7.41 Specific disclosure or inspection (31.12)

- (1) The court may make an order for specific disclosure or specific inspection.
- (2) An order for specific disclosure is an order that a party must do one or more of the following things —
 - (a) disclose documents or classes of documents specified in the order;
 - (b) carry out a search to the extent stated in the order;
 - (c) disclose any documents located as a result of that search.
- (3) An order for specific inspection is an order that a party permit inspection of a document referred to in rule 7.33(2).

7.42 Disclosure in stages (31.13)

The parties may agree in writing, or the court may direct, that disclosure or inspection or both shall take place in stages.

7.43 Documents referred to in statements of case etc. (31.14)

- (1) A party may inspect a document mentioned in —
 - (a) a statement of case;
 - (b) a witness statement;
 - (c) a witness summary; or
 - (d) an affidavit.
- (2) Subject to rule 8.61 (restriction on disclosure of instructions), a party may apply for an order for inspection of any document mentioned in an expert's report which has not already been disclosed in the proceedings.

7.44 Inspection and copying of documents (31.15)

Where a party has a right to inspect a document —

- (a) that party must give the party who disclosed the document written notice of his wish to inspect it;
- (b) the party who disclosed the document must permit inspection not more than 7 days after the date on which he received the notice; and
- (c) that party may request a copy of the document and, if he also undertakes to pay reasonable copying costs, the party who disclosed the document must

supply him with a copy not more than 7 days after the date on which he received the request.

7.45 Disclosure before proceedings start (31.16)

- (1) This rule applies where an application is made to the court under any statutory provision for disclosure before proceedings have started.
- (2) The application must be supported by evidence.
- (3) The court may make an order under this rule only where —
 - (a) the respondent is likely to be a party to subsequent proceedings;
 - (b) the applicant is also likely to be a party to those proceedings;
 - (c) if proceedings had started, the respondent's duty by way of standard disclosure under rule 7.35 would extend to the documents or classes of documents of which the applicant seeks disclosure; and
 - (d) disclosure before proceedings have started is desirable in order —
 - (i) to dispose fairly of the anticipated proceedings;
 - (ii) to assist the dispute to be resolved without proceedings; or
 - (iii) to save costs.
- (4) An order under this rule must —
 - (a) specify the documents or the classes of documents which the respondent must disclose; and
 - (b) require him, when making disclosure, to specify any of those documents —
 - (i) which are no longer in his control; or
 - (ii) in respect of which he claims a right or duty to withhold inspection.
- (5) Such an order may —
 - (a) require the respondent to indicate what has happened to any documents which are no longer in his control; and
 - (b) specify the time and place for disclosure and inspection.

7.46 Orders for disclosure against a person not a party (31.17)

- (1) This rule applies where an application is made to the court under any statutory provision for disclosure by a person who is not a party to the proceedings.
- (2) The application must be supported by evidence.
- (3) The court may make an order under this rule only where —
 - (a) the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and
 - (b) disclosure is necessary in order to dispose fairly of the claim or to save costs.
- (4) An order under this rule must —
 - (a) specify the documents or the classes of documents which the respondent must disclose; and
 - (b) require the respondent, when making disclosure, to specify any of those documents —
 - (i) which are no longer in his control; or
 - (ii) in respect of which he claims a right or duty to withhold inspection.
- (5) Such an order may —

- (a) require the respondent to indicate what has happened to any documents which are no longer in his control;
- (b) specify the time and place for disclosure and inspection; and
- (c) require security to be given for the costs incurred by the respondent in complying with the order.

7.47 Saving for other powers as to disclosure (31.18)

Rules 7.45 and 7.46 do not limit any other power which the court may have to order

- (a) disclosure before proceedings have started; and
- (b) disclosure against a person who is not a party to proceedings.

7.48 Claim to withhold inspection or disclosure of document (31.19)

(1) A person may apply, without notice, for an order permitting him to withhold disclosure of a document on the ground that disclosure would damage the public interest.

(2) Unless the court orders otherwise, an order of the court under paragraph (1)

- (a) must not be served on any other person; and
- (b) must not be open to inspection by any person.

(3) A person who wishes to claim that he has a right or a duty to withhold inspection of a document, or part of a document, must state in writing —

- (a) that he has such a right or duty; and
- (b) the grounds on which he claims that right or duty.

(4) The statement referred to in paragraph (3) must be made —

- (a) in the list in which the document is disclosed; or
- (b) if there is no list, to the person wishing to inspect the document.

(5) A party may apply to the court to decide whether a claim made under paragraph (3) should be upheld.

(6) For the purpose of deciding an application under paragraph (1) (application to withhold disclosure) or paragraph (3) (claim to withhold inspection) the court may —

- (a) require the person seeking to withhold disclosure or inspection of a document to produce that document to the court; and
- (b) invite any person, whether or not a party, to make representations.

(7) An application under paragraph (1) or (5) must be supported by evidence.

(8) This Part does not affect any rule of law which permits or requires a document to be withheld from disclosure or inspection on the ground that its disclosure or inspection would damage the public interest.

7.49 Restriction on use of privileged document (31.20)

Where a party inadvertently allows a privileged document to be inspected, the party who has inspected the document may use it or its contents only with the permission of the court.

7.50 Consequence of failure to disclose documents or permit inspection (31.21)

A party may not rely on any document which he fails to disclose or in respect of which he fails to permit inspection unless the court gives permission.

7.51 Subsequent use of disclosed documents (31.22)

(1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where —

- (a) the document has been read to or by the court, or referred to, at a hearing which has been held in public;
- (b) the court gives permission; or
- (c) the party who disclosed the document and the person to whom the document belongs agree.

(2) The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to, at a hearing which has been held in public.

- (3) An application for such an order may be made —
 - (a) by a party; or
 - (b) by any person to whom the document belongs.

7.52 False disclosure statements (31.23)

- (1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false disclosure statement without an honest belief in its truth.
- (2) Proceedings under this rule may be brought only —
 - (a) by the Attorney General; or
 - (b) with the permission of the court.

CHAPTER 6: OFFERS TO SETTLE

7.53 Scope of this Chapter (36.1)

- (1) This Chapter contains rules about —
 - (a) offers to settle proceedings; and
 - (b) the consequences where an offer to settle proceedings is made in accordance with this Chapter.
- (2) Nothing in this Chapter prevents a party making an offer to settle proceedings in whatever way he chooses, but if the offer is not made in accordance with rule 7.54, it will not have the consequences specified in rules 7.61, 7.62 and 7.65.

7.54 Form and content of offer to settle (36.2)

- (1) An offer to settle proceedings which is made in accordance with this rule is called an ‘offer to settle’.
- (2) An offer to settle must—
 - (a) be in writing;
 - (b) state on its face that it is intended to have the consequences of this Chapter;
 - (c) specify a period of not less than 21 days within which the defendant will be liable for the claimant’s costs in accordance with rule 7.61 if the offer is accepted;
 - (d) state whether it relates to the whole of the claim or to part of it or to an issue that arises in it and if so to which part or issue; and
 - (e) state whether it takes into account any counterclaim.
- (3) Paragraph (2)(c) does not apply if the offer is made less than 21 days before the start of the trial.
- (4) In appropriate cases, an offer to settle must contain such further information as is required by rules 7.57 and 7.66.
- (5) An offeror may make an offer to settle solely in relation to liability.

7.55 Offers to settle — general provisions (36.3)

- (1) In this Part—
 - (a) the party who makes an offer to settle is the ‘offeror’;
 - (b) the party to whom an offer to settle is made is the ‘offeree’; and
 - (c) ‘the relevant period’ means—
 - (i) in the case of an offer made not less than 21 days before trial, the period stated under rule 7.54(2)(c) or such longer period as the parties agree;
 - (ii) otherwise, the period up to end of the trial or such other period as the court has determined.
- (2) An offer to settle—
 - (a) may be made at any time, including before the commencement of proceedings; and
 - (b) may be made in appeal proceedings.
- (3) An offer to settle which offers to pay or offers to accept a sum of money shall be treated as inclusive of all interest until—
 - (a) the date on which the period stated under rule 7.54(2)(c) expires; or
 - (b) if rule 7.54(3) applies, a date 21 days after the date the offer was made.
- (4) An offer to settle shall have the consequences set out in this Chapter only in relation to the costs of the proceedings in respect of which it is made, and not in relation to the costs of any appeal from the final decision in those proceedings.
- (5) Before expiry of the relevant period, an offer to settle may be withdrawn or its terms changed to be less advantageous to the offeree, only if the court gives permission.
- (6) After expiry of the relevant period and provided that the offeree has not previously served notice of acceptance, the offeror may withdraw the offer or change its terms to be less advantageous to the offeree without the permission of the court.
- (7) The offeror does so by serving written notice of the withdrawal or change of terms on the offeree.

7.56 Offers to settle — defendants’ offers (36.4)

- (1) Subject to rule 7.57(1), an offer to settle by a defendant to pay a sum of money in settlement of a claim must be an offer to pay a single sum of money.
- (2) But an offer that includes an offer to pay all or part of the sum, if accepted, at a date later than 14 days following the date of acceptance shall not be treated as an offer to settle unless the offeree accepts the offer.

7.57 Offer to settle a claim for provisional damages (36.6)

- (1) An offeror may make an offer to settle in respect of a claim which includes a claim for provisional damages.
- (2) Where he does so, the offer to settle must specify whether or not the offeror is proposing that the settlement shall include an award of provisional damages.
- (3) Where the offeror is offering to agree to the making of an award of provisional damages the offer to settle must also state—
 - (a) that the sum offered is in satisfaction of the claim for damages on the assumption that the injured person will not develop the disease or suffer the type of deterioration specified in the offer;
 - (b) that the offer is subject to the condition that the claimant must make any claim for further damages within a limited period; and

(c) what that period is.

(4) Rule 7.56 applies to the extent that an offer to settle by a defendant includes an offer to agree to the making of an award of provisional damages.

(5) If the offeree accepts the offer to settle, the claimant must, within 7 days of the date of acceptance, apply to the court for an order for an award of provisional damages under rule 10.59.

7.58 Time when an offer to settle is made (36.7)

(1) An offer to settle is made when it is served on the offeree.

(2) A change in the terms of an offer to settle is effective when notice of the change is served on the offeree.

7.59 Clarification of an offer to settle (36.8)

(1) The offeree may, within 7 days of an offer to settle being made, request the offeror to clarify the offer.

(2) If the offeror does not give the clarification requested under paragraph (1) within 7 days of receiving the request, the offeree may, unless the trial has started, apply for an order that he do so.

(3) If the court makes an order under paragraph (2), it must specify the date when the offer to settle is to be treated as having been made.

7.60 Acceptance of an offer to settle (36.9)

(1) An offer to settle is accepted by serving written notice of the acceptance on the offeror.

(2) Subject to paragraph (3), an offer to settle may be accepted at any time (whether or not the offeree has subsequently made a different offer) unless the offeror serves notice of withdrawal on the offeree.

(3) The court's permission is required to accept an offer to settle where—

(a) rule 7.63(4) applies;

(b) rule 7.66(3)(b) applies, the relevant period has expired and further deductible benefits have been paid to the claimant since the date of the offer;

(c) an apportionment is required under rule 10.61; or

(d) the trial has started.

(4) Where the court gives permission under paragraph (3), unless all the parties have agreed costs, the court shall make an order dealing with costs, and may order that the costs consequences set out in rule 7.61 will apply.

(5) Unless the parties agree, an offer to settle may not be accepted after the end of the trial but before judgment is handed down.

7.61 Costs consequences of acceptance of offer to settle (36.10)

(1) Subject to paragraphs (2) and (4)(a), where an offer to settle is accepted within the relevant period the claimant is entitled to his costs of the proceedings up to the date on which notice of acceptance was served on the offeror.

(2) Where —

(a) a defendant's offer to settle relates to part only of the claim; and

(b) at the time of serving notice of acceptance within the relevant period the claimant abandons the balance of the claim,

the claimant is entitled to his costs of the proceedings up to the date of serving notice of acceptance unless the court orders otherwise.

(3) Costs under paragraphs (1) and (2) shall be assessed on the standard basis if the amount of costs is not agreed.

(4) Where —

(a) an offer to settle was made less than 21 days before the start of trial and is accepted; or

(b) an offer to settle is accepted after expiry of the relevant period,

if the parties do not agree the liability for costs, the court shall make an order as to costs.

(5) Where paragraph (4)(b) applies, unless the court orders otherwise—

(a) the claimant is entitled to his costs of the proceedings up to the date on which the relevant period expired; and

(b) the offeree will be liable for the offeror's costs for the period from the date of expiry of the relevant period to the date of acceptance.

(6) The claimant's costs include any costs incurred in dealing with the defendant's counterclaim if the offer to settle states that it takes into account the counterclaim.

7.62 Effect of acceptance of an offer to settle (36.11)

(1) If an offer to settle is accepted, the claim shall be stayed.

(2) In the case of acceptance of an offer to settle which relates to the whole claim the stay shall be upon the terms of the offer.

(3) If an offer to settle which relates to part only of the claim is accepted—

(a) the claim shall be stayed as to that part upon the terms of the offer; and

(b) subject to rule 7.61(2), unless the parties have agreed costs, the liability for costs shall be decided by the court.

(4) If the approval of the court is required before a settlement can be binding, any stay which would otherwise arise on the acceptance of an offer to settle shall take effect only when that approval has been given.

(5) Any stay arising under this rule does not affect the power of the court—

(a) to enforce the terms of an offer to settle;

(b) to deal with any question of costs (including interest on costs) relating to the proceedings.

(6) Unless the parties agree otherwise in writing, where an offer to settle by a defendant which is or includes an offer to pay a single sum of money is accepted, that sum must be paid to the offeree within 14 days of the date of—

(a) acceptance; or

(b) the order, when the court makes an order under rule 10.59 (provisional damages),

unless the court orders otherwise.

(7) If the accepted sum is not paid within 14 days or such other period as has been agreed, the offeree may enter judgment for the unpaid sum.

(8) Where—

(a) an offer to settle (or part of an offer to settle) which is not an offer to which paragraph (6) applies is accepted; and

(b) a party alleges that the other party has not honoured the terms of the offer,

that party may apply to enforce the terms of the offer without the need for a new claim.

7.63 Acceptance of offer to settle made by one or more, but not all, defendants (36.12)

(1) This rule applies where the claimant wishes to accept an offer to settle made by one or more, but not all, of a number of defendants.

(2) If the defendants are sued jointly or in the alternative, the claimant may accept the offer if—

(a) he discontinues his claim against those defendants who have not made the offer; and

(b) those defendants give written consent to the acceptance of the offer.

(3) If the claimant alleges that the defendants have a several liability to him, the claimant may—

(a) accept the offer; and

(b) continue with his claims against the other defendants if he is entitled to do so.

(4) In all other cases the claimant must apply to the court for an order permitting him to accept the offer to settle.

7.64 Restriction on disclosure of an offer to settle (36.13)

(1) An offer to settle shall be treated as ‘without prejudice except as to costs’.

(2) The fact that an offer to settle has been made must not be communicated to the trial judge or to the judge (if any) allocated in advance to conduct the trial until the case has been decided.

(3) Paragraph (2) does not apply—

(a) where the defence of tender before claim has been raised;

(b) where the proceedings have been stayed under rule 7.62 following acceptance of an offer to settle; or

(c) where the offeror and the offeree agree in writing that it should not apply.

7.65 Costs consequences following judgment (36.14)

(1) This rule applies where upon judgment being entered—

(a) a claimant fails to obtain a judgment more advantageous than a defendant’s offer to settle; or

(b) judgment against the defendant is at least as advantageous to the claimant as the proposals contained in a claimant’s offer to settle.

(2) Subject to paragraph (6), where paragraph (1)(a) applies, the court will, unless it considers it unjust to do so, order that the defendant is entitled to—

(a) his costs from the date on which the relevant period expired; and

(b) interest on those costs.

(3) Subject to paragraph (6), where paragraph (1)(b) applies, the court shall, unless it considers it unjust to do so, order that the claimant is entitled to—

(a) interest on the whole or part of any sum of money (excluding interest) awarded at a rate not exceeding 10% above base rate for some or all of the period starting with the date on which the relevant period expired;

(b) his costs on the indemnity basis from the date on which the relevant period expired; and

(c) interest on those costs at a rate not exceeding 10% above base rate.

(4) In considering whether it would be unjust to make the orders referred to in paragraphs (2) and (3), the court shall take into account all the circumstances of the case including—

(a) the terms of any offer to settle;

- (b) the stage in the proceedings when any offer to settle was made, including in particular how long before the trial started the offer was made;
 - (c) the information available to the parties at the time when the offer to settle was made; and
 - (d) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the offer to be made or evaluated.
- (5) Where the court awards interest under this rule and also awards interest on the same sum and for the same period under any other power, the total rate of interest may not exceed 10% above base rate.
- (6) Paragraphs (2) and (3) of this rule do not apply to an offer to settle—
 - (a) that has been withdrawn;
 - (b) that has been changed so that its terms are less advantageous to the offeree, and the offeree has beaten the less advantageous offer;
 - (c) made less than 21 days before trial, unless the court has abridged the relevant period.

7.66 Deduction of benefits (36.15)

- (1) This rule applies where a payment to a claimant following acceptance of an offer to settle would be a compensation payment as defined in section 1 of the Social Security (Recovery of Benefits) Act 1997 (an Act of Parliament) ('the 1997 Act').
- (2) In this rule and rule 7.60—
- (a) 'recoverable benefits' means any of the benefits referred to in section 1(1)(b) of the 1997 Act; and
 - (b) 'deductible benefits' means any benefits by the amount of which damages are to be reduced in accordance with section 8 and Schedule 2 to the 1997 Act.
- (3) A defendant who makes an offer to settle should state either—
- (a) that the offer is made without regard to any liability for recoverable benefits; or
 - (b) that it is intended to include any deductible benefits.

CHAPTER 7: PAYMENTS INTO COURT

7.67 Interpretation

In this Chapter 'money' includes securities.

7.68 Money paid into court under a court order (37.1)

A party who makes a payment into court under a court order must—

- (a) serve notice of the payment on every other party; and
- (b) in relation to each such notice, file a certificate of service.

7.69 Money paid into court where defendant wishes to rely on a defence of tender before claim (37.2)

(1) Where a defendant wishes to rely on a defence of tender before claim he must make a payment into court of the amount he says was tendered.

(2) If the defendant does not make a payment in accordance with paragraph (1), the defence of tender before claim is not available to him until he does so.

7.70 Payment into court under Trustee Act 1961 (PD37.6)

(1) A trustee wishing to make a payment into court under section 62 of the Trustee Act 1961 must file a witness statement or affidavit setting out —

- (a) a short description of —

- (i) the trust; and
 - (ii) the instrument creating the trust, or the circumstances in which the trust arose;
 - (b) the names of the persons interested in or entitled to the money to be paid into court, with their address so far as known to him;
 - (c) a statement that he agrees to answer any inquiries which the court may make or direct relating to the application of the money; and
 - (d) his address for service.
- (2) If a trustee pays money into court, unless the court orders otherwise he must immediately serve notice of the payment into court on every person interested in or entitled to the money.

7.71 Payment out of money paid into court (37.3, PD37.3)

(1) Money paid into court under a court order or in support of a defence of tender before claim may not be paid out without the court's permission except where—

- (a) an offer to settle is accepted without needing the permission of the court; and
- (b) the defendant agrees that a sum paid into court by him should be used to satisfy the offer (in whole or in part).

(2) On an application for permission, the application notice must state the grounds on which the order for payment out is sought.

(3) Where the court gives permission, it shall include a direction for the payment out of any money in court, including any interest accrued.

(4) Where permission is not required to take money out of court, the requesting party must file a request for payment containing the following details —

- (a) where the party receiving the payment is legally represented —
 - (i) the name, business address and reference of his advocate,
 - (ii) the name of the bank and the sort code number, the title of the account and the account number where the payment is to be transmitted;
- (b) where the party is acting in person—
 - (i) his name and address; and
 - (ii) either his bank account details as in (a)(ii) above, or a request that the payment be made by cheque.

(5) Where a party seeking payment out of court is legally represented, payment must be made to his advocate.

(6) An application for the payment out of any money paid into court under section 62 of the Trustee Act 1961 may be made without notice, but the court may direct notice to be served on any person.

7.72 Other applications relating to money paid into court (PD37.2)

An application relating to money paid into court, other than an application for the payment out of the money (for example, an application for money to be invested, or for payment of interest to any person), may be made without notice, but the court may direct notice to be served on any person.

CHAPTER 8: DISCONTINUANCE

7.73 Scope of this Part (38.1)

(1) The rules in this Chapter set out the procedure by which a claimant may discontinue all or part of a claim.

- (2) A claimant who —
 - (a) claims more than one remedy; and
 - (b) subsequently abandons his claim to one or more of the remedies but continues with his claim for the other remedies,

is not treated as discontinuing all or part of a claim for the purposes of this Chapter.

7.74 Right to discontinue claim (38.2)

- (1) A claimant may discontinue all or part of a claim at any time.
- (2) However —
 - (a) a claimant must obtain the permission of the court if he wishes to discontinue all or part of a claim in relation to which —
 - (i) the court has granted an interim injunction ; or
 - (ii) any party has given an undertaking to the court;
 - (b) where the claimant has received an interim payment in relation to a claim (whether voluntarily or pursuant to an order under Chapter 6 of Part 10 (summary judgment)), he may discontinue that claim only if —
 - (i) the defendant who made the interim payment consents in writing; or
 - (ii) the court gives permission;
 - (c) where there is more than one claimant, a claimant may not discontinue unless —
 - (i) every other claimant consents in writing; or
 - (ii) the court gives permission.
- (3) Where there is more than one defendant, the claimant may discontinue all or part of a claim against all or any of the defendants.

7.75 Procedure for discontinuing (38.3)

- (1) To discontinue a claim or part of a claim, a claimant must —
 - (a) file a notice of discontinuance; and
 - (b) serve a copy of it on every other party to the proceedings.
- (2) The claimant must state in the notice of discontinuance which he files that he has served notice of discontinuance on every other party to the proceedings.
- (3) Where the claimant needs the consent of some other party, a copy of the necessary consent must be attached to the notice of discontinuance.
- (4) Where there is more than one defendant, the notice of discontinuance must specify against which defendants the claim is discontinued.

7.76 Right to apply to have notice of discontinuance set aside (38.4)

- (1) Where the claimant discontinues under rule 7.74(1) the defendant may apply to have the notice of discontinuance set aside.
- (2) The defendant may not make an application under this rule more than 28 days after the date when the notice of discontinuance was served on him.

7.77 When discontinuance takes effect where permission of the court is not needed (38.5)

- (1) Discontinuance against any defendant takes effect on the date when notice of discontinuance is served on him under rule 7.75(1).
- (2) Subject to rule 7.76, the proceedings are brought to an end as against him on that date.
- (3) However, this does not affect proceedings to deal with any question of costs.

7.78 Liability for costs (38.6)

(1) Unless the court orders otherwise, a claimant who discontinues is liable for the costs which a defendant against whom he discontinues incurred on or before the date on which notice of discontinuance was served on him.

(2) If proceedings are only partly discontinued —

(a) the claimant is liable under paragraph (1) for costs relating only to the part of the proceedings which he is discontinuing; and

(b) unless the court orders otherwise, the costs which the claimant is liable to pay must not be assessed until the conclusion of the rest of the proceedings.

(3) This rule does not apply to claims allocated to the small claims procedure.

7.79 Discontinuance and subsequent proceedings (38.7)

A claimant who discontinues a claim needs the permission of the court to make another claim against the same defendant if —

(a) he discontinued the claim after the defendant filed a defence; and

(b) the other claim arises out of facts which are the same or substantially the same as those relating to the discontinued claim.

7.80 Stay of remainder of partly discontinued proceedings where costs not paid (38.8)

(1) This rule applies where —

(a) proceedings are partly discontinued;

(b) a claimant is liable to pay costs under rule 7.78; and

(c) the claimant fails to pay those costs within 14 days of —

(i) the date on which the parties agreed the sum payable by the claimant;
or

(ii) the date on which the court ordered the costs to be paid.

(2) Where this rule applies, the court may stay the remainder of the proceedings until the claimant pays the whole of the costs which he is liable to pay under rule 7.78.

CHAPTER 9: MEDIATION

7.81 Application (RHC 26C.1)

This Chapter does not apply to a claim allocated to the small claims procedure.

7.82 Object of mediation (RHC 26C.2)

Mediation is a process the object of which is to enable the mediator to assist the parties by encouraging and facilitating discussion between them in order to promote a resolution of their dispute by agreement.

7.83 Application for referral to mediation (RHC 26C.3)

(1) At any time after a defence is filed, any party may make an application for the claim or any matter arising out of the claim to be referred to mediation.

(2) The application shall —

(a) state the name and address of the mediator agreed by the parties; and

(b) state the date on which it is proposed that the mediation will take place; and

(c) identify the documents which the parties will give direct to the mediator for the purposes of the mediation.

(3) The application shall be accompanied by the written consent of all parties.

7.84 Mediation directions (RHC 26C.4)

(1) When an application is made under rule 7.83 the court shall, unless any party has withdrawn his consent, direct that the claim or matter be referred to mediation (in this Order referred to as a 'mediation direction').

(2) A direction under paragraph (1) (a 'mediation direction') shall specify the date by which the mediator must report on progress in the mediation.

(3) Mediation shall be conducted in such manner as the parties agree is best suited to achieving the object of mediation set out in rule 7.82.

(4) A mediation direction may be rescinded by the court at any stage of mediation on the application of any party to the claim.

7.85 Stay of proceedings (RHC 26C.5)

(1) If a mediation direction has been made in relation to any claim, the claim shall be stayed until either —

- (a) the mediator makes a report under rule 7.86; or
- (b) the date specified in the mediation direction as the date by which the mediator must report on progress in the mediation,

whichever is the sooner.

(2) For the purposes of any claim which is the subject of a mediation direction, the period during which the claim is stayed under paragraph (1) shall not be reckoned in the computation of time allowed by these Rules, or by any order extending or reducing time, for doing any act or taking any step.

7.86 Conclusion and termination of mediation (RHC 26C.6)

(1) When an agreement is reached between the parties—

- (a) the mediator shall report the agreement to the court in terms agreed between the parties; and
- (b) the parties may take such steps as are necessary to cause the agreement to be included in a consent order.

(2) If the mediator considers that a mediation should not continue, the mediator shall —

- (a) terminate the mediation; and
- (b) report that fact to the court.

7.87 Court may terminate mediation (RHC 26C.7)

(1) The court may direct —

- (a) the termination of a mediation at any time if it is satisfied that it is unreasonable or inappropriate for the mediation to continue; or
- (b) the termination of the appointment of a mediator; or
- (c) the appointment of a new mediator to replace a mediator who has died, or ceased to hold office, or whose appointment has been terminated.

(2) If the court directs the appointment of a new mediator it may, with the consent of the parties, order that the mediation continue on whatever basis the parties have agreed.

7.88 Costs of mediation (RHC 26C.8)

The costs of the parties relating to mediation shall, unless the parties otherwise agree, be in the discretion of the court in accordance with rule 11.3.

CHAPTER 10: CHANGE OF ADVOCATE

7.89 Advocate acting for a party (42.1)

Where the address for service of a party is the business address of his advocate, the advocate shall be considered to be acting for that party until the provisions of this Chapter have been complied with.

7.90 Change of advocate — duty to give notice (42.2)

- (1) This rule applies where —
 - (a) a party for whom an advocate is acting wants to change his advocate;
 - (b) a party, after having conducted the claim in person, appoints an advocate to act on his behalf (except where the advocate is appointed only to act as an advocate for a hearing); or
 - (c) a party, after having conducted the claim by an advocate, intends to act in person.
- (2) Where this rule applies, the party or his advocate (where one is acting or intends to act) must —
 - (a) file notice of the change; and
 - (b) serve notice of the change on every other party and, where paragraph (1)(a) or (c) applies, on the former advocate.
 - (3) The notice must state the party's new address for service.
 - (4) The notice filed in the court must state that notice has been served as required by paragraph (2)(b).
 - (5) Subject to paragraph (6), where a party has changed his advocate or intends to act in person, the former advocate will be considered to be the party's advocate unless and until —
 - (a) notice is filed and served in accordance with paragraph (2); or
 - (b) the court makes an order under rule 7.91 and the order is served as required by paragraph (3) of that rule.
 - (6) Where the legal aid certificate of an assisted person is revoked or discharged —
 - (a) the advocate who acted for that person shall cease to be the advocate acting in the case as soon as his retainer is determined in accordance with the Legal Aid (General) Regulations 1997; and
 - (b) if that person wishes to continue —
 - (i) where he appoints an advocate to act on his behalf, paragraph (2) shall apply as if he had previously conducted the claim in person; and
 - (ii) where he wishes to act in person, he must give an address for service.

7.91 Order that advocate has ceased to act (42.3)

- (1) An advocate may apply for an order declaring that he has ceased to be the advocate acting for a party.
- (2) Where an application is made under this rule —
 - (a) notice of the application must be given to the party for whom the advocate is acting, unless the court directs otherwise; and
 - (b) the application must be supported by evidence.
- (3) Where the court makes an order that an advocate has ceased to act —
 - (a) a copy of the order must be served on every party to the proceedings; and

- (b) if it is served by a party or the advocate, the party or the advocate (as the case may be) must file a certificate of service.

7.92 Removal of advocate who has ceased to act on application of another party (42.4)

- (1) Where —
 - (a) an advocate who has acted for a party —
 - (i) has died;
 - (ii) has become bankrupt;
 - (iii) has ceased to practise; or
 - (iv) cannot be found; and
 - (b) the party has not given notice of a change of advocate or notice of intention to act in person as required by rule 7.90(2),

any other party may apply for an order declaring that the advocate has ceased to be the advocate acting for the other party in the case.

(2) Where an application is made under this rule, notice of the application must be given to the party to whose advocate the application relates unless the court directs otherwise.

- (3) Where the court makes an order made under this rule —
 - (a) a copy of the order must be served on every other party to the proceedings; and
 - (b) where it is served by a party, that party must file a certificate of service.

SCHEDULE 7.1 — APPLICATIONS FOR COURT ORDERS

Rule 7.15

1. *Handling of application (PD23)*

(1) On receipt of an application notice containing a request that the application be dealt with without a hearing, the court office shall refer it to a judge, who shall decide whether the application is suitable for consideration without a hearing, and may give directions as to the filing of evidence.

(2) Where either —

- (a) an application notice containing a request for a hearing is filed, or
- (b) the judge decides that an application is not suitable for consideration without a hearing,

the court office shall notify the applicant of the time and place of the hearing of the application.

(3) The applicant must notify the respondents of the time and place of the hearing, and of any directions as to the filing of evidence.

(4) If the application is intended to be made to a Deemster, the application notice must so state.

(5) Every application must be made as soon as it becomes apparent that it is necessary or desirable to make it.

(6) Applications must wherever possible be made so that they can be considered at a hearing for which a date has already been fixed or for which a date is about to be fixed.

(7) At any hearing the court may review the conduct of the case as a whole and give any necessary directions. The parties must be ready to assist the court in doing so and to answer questions the court may ask for this purpose.

(8) Where —

- (a) a date for a hearing has been fixed, and
- (b) a party wishes to make an application at that hearing but
- (c) he does not have sufficient time to serve an application notice,

he must inform the other party and the court (if possible in writing) as soon as he can of the nature of the application and the reason for it, and then make the application orally at the hearing.

2. *Telephone hearings*

(1) The court may order that an application or part of an application be dealt with by a telephone hearing.

(2) A request for an order under sub-paragraph (1) may be included in the application notice.

(3) An order under sub-paragraph (1) shall not normally be made unless every party entitled to be given notice of the application and to be heard at the hearing has consented to the order.

(4) Where a party entitled to be heard at the hearing of the application is acting in person, the court —

- (a) may not make an order under sub-paragraph (1) except on condition that arrangements will be made for the party acting in person to be attended at the telephone hearing by a responsible person to whom the party acting in person is known and who can confirm to the court the identity of the party; and

(b) may not give effect to an order under sub-paragraph (1) unless the party acting in person is accompanied by a responsible person who at the commencement of the hearing confirms to the court the identity of the party.

(5) The responsible person may be an advocate, barrister, solicitor, legal executive, doctor, clergyman, civil servant, police officer, prison officer or other person of comparable status.

(6) If the court makes an order under sub-paragraph (1) it shall give any directions necessary for the telephone hearing.

(7) No representative of a party to an application being heard by telephone may attend the judge in person while the application is being heard unless the other party to the application has agreed that he may do so.

(8) If an application is to be heard by telephone the following directions shall apply, subject to any direction to the contrary:—

(a) The applicant's advocate must arrange the telephone conference for precisely the time fixed by the court. The telecommunications provider must be capable of connecting the parties and the court.

(b) He must tell the operator the telephone numbers of all those participating in the conference call and the sequence in which they are to be called.

(c) The sequence in which they are to be called shall be —

- (i) the applicant's advocate,
- (ii) the advocates for all other parties, and
- (iii) the judge.

(d) The applicant's advocate must arrange for the conference to be recorded on audio tape, or in such digital electronic format as the Chief Registrar may approve, and must send the tape or a copy of the recording, as the case may be, to the court

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

(e) Each speaker is to remain on the line after being called by the operator setting up the conference call. The call may be up to 3 minutes before the time fixed for the application.

(f) When the judge has been connected the applicant's advocate shall introduce the parties in the usual way.

(g) If the use of a speakerphone by any party causes the judge or any other party any difficulty in hearing what is said the judge may require that party to use a hand-held telephone.

(h) The telephone charges debited to the account of the party initiating the conference call shall be treated as part of the costs of the application.

3. *Video conferencing*

Where —

- (a) the parties to a matter wish to use video conferencing facilities, and
- (b) those facilities are available in the court,

they must apply to a judge for directions.

4. *Note of proceedings*

The judge shall keep, either by way of a note or an audio recording, brief details of all proceedings before him, including the dates of the proceedings and a short statement of the decision taken at each hearing.

5. *Evidence*

(1) The court may give directions for the filing of evidence in support of or opposing a particular application. The court may also give directions for the filing of evidence in relation to any hearing that it fixes on its own initiative. The directions may specify the form that evidence is to take and when it is to be served.

(2) Where it is intended to rely on evidence which is not contained in the application itself, the evidence, if it has not already been served, must be served with the application.

(3) Where a respondent to an application wishes to rely on evidence which has not yet been served he should serve it as soon as possible and in any event in accordance with any directions the court may have given.

(4) If it is necessary for the applicant to serve any evidence in reply it should be filed and served as soon as possible and in any event in accordance with any directions the court may have given.

(5) Evidence must be filed with the court as well as served on the parties. Exhibits must not be filed unless the court otherwise directs.

(6) The contents of an application notice may be used as evidence (otherwise than at trial) provided the contents have been verified by a statement of truth.

6. *Consent orders*

(1) Where all parties affected by an order have written to the court consenting to the making of the order a draft of which has been filed with the court, the court shall treat the draft as having been signed in accordance with rule 10.7.

(2) The parties to an application for a consent order must ensure that they provide the court with any material it needs to be satisfied that it is appropriate to make the order. Subject to any rule a letter will generally be acceptable for this purpose.

(3) Where a judgment or order has been agreed in respect of an application or claim where a hearing date has been fixed, the parties must inform the court immediately.

7. *Application to stay claim where related criminal proceedings are pending*

(1) An application for the stay of civil proceedings pending the determination of related criminal proceedings may be made by —

- (a) any party to the civil proceedings or
- (b) the prosecutor or any defendant in the criminal proceedings.

(2) Every party to the civil proceedings must, unless he is the applicant, be made a respondent to the application.

(3) The evidence in support of the application must contain an estimate of the expected duration of the stay and must identify the respects in which the continuance of the civil proceedings may prejudice the criminal trial.

(4) In order to make an application under sub-paragraph (1) it is not necessary for the prosecutor or defendant in the criminal proceedings to be joined as a party to the civil proceedings.

8. *Draft order*

Except in the most simple applications the applicant must bring to any hearing a draft of the order sought. If the order is unusually long or complex it must also be supplied on disk, or sent to the court office by e-mail, in MS Word format for use by the court office.

SCHEDULE 7.2 — INTERIM ORDERS (PD25)

Rule 7.26(1)

9. *Making an application*

(1) Where the application notice is to be served, it must be served, with the evidence in support, as soon as practicable after issue and in any event not less than 3 days before the court is due to hear the application.

(2) Where the court is to serve, sufficient copies of the application notice and evidence in support for the court and for each respondent must be filed for issue and service.

(3) Whenever possible a draft of the order sought must be filed with the application notice. The draft should also be available to the court in electronic form in MS Word format.

10. *Injunctions*

(1) In the case of an application for an interim injunction, the application notice must state —

- (a) the order sought, and
- (b) the date, time and place of the hearing.

(2) Except as provided by sub-paragraphs (3) and (4), an interim injunction may be granted, varied or discharged only by —

- (a) a Deemster, or
- (b) a judicial officer authorised for the purpose by the First Deemster.

(3) Any judicial officer may grant injunctions —

- (a) by consent,
- (b) in connection with charging orders and appointments of receivers, or
- (c) in aid of execution of judgments.

(4) Any judicial officer may, with the consent of all the parties, vary or discharge an injunction granted by a Deemster.

11. *Evidence*

(1) Applications for search orders and freezing injunctions must be supported by affidavit evidence.

(2) Applications for other interim injunctions must be supported by evidence set out in either —

- (a) a witness statement, or
- (b) a statement of case verified by a statement of truth, or
- (c) the application notice, provided that it is verified by a statement of truth,

unless a rule or other statutory provision, or the court, requires evidence by affidavit.

(3) The evidence must set out the facts on which the applicant relies for the claim being made against the respondent, including all material facts of which the court should be made aware.

(4) Where an application is made without notice to the respondent, the evidence must also set out why notice was not given.

12. *Urgent application without notice*

(1) Where a claim form has already been issued, an application in an urgent case may be made without notice as follows —

- (a) the application notice, evidence in support and a draft order (as in paragraph 1(3)) must be filed with the court not less than 3 hours before the hearing wherever possible,

- (b) if an application is made before the application notice has been issued, a draft order (as in paragraph 1(3)) must be provided at the hearing, and the application notice and evidence in support must be filed with the court on the same or next working day or as ordered by the court, and
 - (c) except in cases where secrecy is essential, the applicant must take steps to notify the respondent informally of the application.
- (2) Where a claim form has not been issued, paragraph (1) applies, and in addition —
- (a) unless the court orders otherwise, either the applicant must undertake to the court to issue a claim form immediately or the court shall give directions for the commencement of the claim;
 - (b) where possible the claim form must be served with the order for the injunction; and
 - (c) an order made before the issue of a claim form must state in the title after the names of the applicant and respondent ‘*the Claimant and Defendant in an Intended Action*’.

13. *Injunctions*

- (1) Any order for an injunction, unless the court orders otherwise, must contain —
- (a) an undertaking by the applicant to the court to pay any damages which the respondent (or any other party served with or notified of the order) sustains and which the court considers the applicant should pay,
 - (b) if made without notice to any other party, an undertaking by the applicant to the court to serve on the respondent the application notice, evidence in support and any order made as soon as practicable,
 - (c) if made without notice to any other party, a return date for a further hearing at which the other party can be present,
 - (d) if made before filing the application notice, an undertaking to file and pay the appropriate fee on the same or next working day, and
 - (e) if made before issue of a claim form —
 - (i) an undertaking to issue and pay the appropriate fee on the same or next working day, or
 - (ii) directions for starting the claim.
- (2) An order for an injunction made in the presence of all parties to be bound by it or made at a hearing of which they have had notice, may state that it is effective until trial or further order.
- (3) Any order for an injunction must set out clearly what the respondent must do or not do.

14. *Search orders (orders for the preservation of evidence and property)*

- (1) A search order must name the individual advocate who is to execute the order (‘the supervising advocate’). The supervising advocate must not be the applicant’s advocate or an employee or member of the applicant’s advocate’s firm.
- (2) An application for a search order must be supported by an affidavit which must —
- (a) state the name, firm and its address, and experience of the supervising advocate,

- (b) state the address of the premises to be entered, whether it is a private or business address, and if a private address, what persons are likely to be on the premises, and
 - (c) disclose fully the reason the order is sought, including the probability that relevant material would disappear if the order were not made.
- (3) The search order must be served personally by the supervising advocate, unless the court otherwise orders, and (subject to sub-paragraph (4)) must be accompanied by the evidence in support and any documents capable of being copied. If the court orders that the order need not be served by the supervising advocate, the reason for so ordering must be set out in the order.
- (4) Confidential exhibits need not be served but they must be —
 - (a) made available for inspection by the respondent in the presence of the applicant or the applicant’s advocate while the order is carried out, and
 - (b) afterwards retained by the respondent’s advocate on his undertaking not to permit the respondent —
 - (i) to see them or copies of them except in their presence, and
 - (ii) to make or take away any note or record of them,or, if the respondent has no advocate, retained by the supervising advocate.
 - (5) The supervising advocate may be accompanied only by the persons mentioned in the search order.
 - (6) The supervising advocate must explain the terms and effect of the search order to the respondent in everyday language and advise him —
 - (a) of his right to take legal advice and to apply to vary or discharge the order; and
 - (b) that he may be entitled to avail himself of —
 - (i) legal professional privilege; and
 - (ii) the privilege against self-incrimination.
 - (7) Where the supervising advocate is a man and the respondent is likely to be an unaccompanied woman, at least one other person named in the search order must be a woman and must accompany the supervising advocate.
 - (8) The search order may only be served between 9.30 a.m. and 5.30 p.m. Monday to Friday unless the court otherwise orders.
 - (9) The following provisions apply to the search for and custody of materials pursuant to a search order, unless the court otherwise orders —
 - (a) no material shall be removed unless clearly covered by the terms of the order,
 - (b) the premises must not be searched and no items shall be removed from them except in the presence of the respondent or a person who appears to be a responsible employee of the respondent,
 - (c) where copies of documents are sought, the documents may be retained for no more than 2 days before return to the owner,
 - (d) where material in dispute is removed pending trial, the applicant’s advocate must place it in the custody of the respondent’s advocate on his undertaking to retain it in safekeeping and to produce it to the court when required or, if the respondent has no advocate, in the custody of the supervising advocate,
 - (e) in appropriate cases the applicant must insure the material retained in the respondent’s advocate’s or supervising advocate’s custody,

- (f) the supervising advocate must make a list of all material removed from the premises and supply a copy of the list to the respondent,
 - (g) no material shall be removed from the premises until the respondent has had reasonable time to check the list,
 - (h) if any of the listed items exists only in computer readable form, the respondent must immediately give the applicant's advocate effective access to the computers, with all necessary passwords, to enable them to be searched, and cause the listed items to be printed out,
 - (i) the applicant must take all reasonable steps to ensure that no damage is done to any computer or data,
 - (j) the applicant and his representatives may not themselves search the respondent's computers unless they have sufficient expertise to do so without damaging the respondent's system,
 - (k) the supervising advocate shall within 10 days provide a report on the carrying out of the order to the applicant's advocate,
 - (l) as soon as the report is received the applicant's advocate must file a copy of it and serve a copy of it on the respondent, and
 - (m) where the supervising advocate is satisfied that full compliance with (g) and (h) above is impracticable, he may permit the search to proceed and items to be removed without compliance with the impracticable requirements.
- (10) A search order must not be executed at the same time as a police or customs search warrant.

15. *Other orders for delivery up or preservation of evidence or property*

On an application for an order, other than a search order, for delivery up or preservation of evidence or property where it is likely that such an order will be executed at the premises of the respondent or a third party, the court shall consider whether to include in the order for the benefit or protection of the parties similar provisions to those specified in paragraphs 5 and 6 in relation to injunctions and search orders.

16. *Orders against third parties*

(1) This paragraph applies to orders which will affect a person other than the applicant or respondent, who —

- (a) did not attend the hearing at which the order was made; and
- (b) is served with the order.

(2) Where such a person requests —

- (a) a copy of any materials read by the judge, including material prepared after the hearing at the direction of the judge or in compliance with the order; or
- (b) a note of the hearing,

the applicant or his advocate must comply promptly with the request, unless the court orders otherwise.

SCHEDULE 7.3 — INTERIM PAYMENTS (PD 25B)

Rule 7.26(2)

17. *General*

The permission of the court must be obtained before making a voluntary interim payment in respect of a claim by a minor or patient.

18. *Evidence*

(1) An application for an interim payment of damages must be supported by evidence dealing with the following —

- (a) the sum of money sought by way of an interim payment,
- (b) the items or matters in respect of which the interim payment is sought,
- (c) the sum of money for which final judgment is likely to be given,
- (d) the reasons for believing that the conditions set out in rule 7.21 are satisfied,
- (e) any other relevant matters,
- (f) in claims for personal injuries, details of special damages and past and future loss (if known), and
- (g) in a claim under the Fatal Accidents Act 1981, details of the person or persons on whose behalf the claim is made and the nature of the claim.

(2) Any documents in support of the application should be exhibited, including, in personal injuries claims, the medical report or reports.

19. *Interim payment where account to be taken*

Where —

- (a) a party seeks an interim payment under rule 7.21(1)(b),
- (b) the court has ordered an account to be taken, and
- (c) the evidence on the application for interim payment shows that the account is bound to result in a payment to the applicant,

the court shall, before making an order for interim payment, order that the liable party pay to the applicant the amount shown by the account to be due.

20. *Instalments*

Where an interim payment is to be paid in instalments the order shall set out —

- (a) the total amount of the payment,
- (b) the amount of each instalment,
- (c) the number of instalments and the date on which each is to be paid, and
- (d) to whom the payment should be made.

21. *Compensation recovery payments*

(1) Where in a claim for personal injuries there is an application for an interim payment of damages —

- (a) otherwise than by consent,
- (b) which falls under the heads of damage set out in column 1 of Schedule 2 of the Social Security (Recovery of Benefits) Act 1997 (an Act of Parliament) ('the Act') in respect of recoverable benefits received by the claimant set out in column 2 of that Schedule, and
- (c) where the defendant is liable to pay recoverable benefits to the Department of Health and Social Security,

the defendant must obtain from that Department a certificate of recoverable benefits.

(2) A copy of the certificate must be filed at the hearing of the application for an interim payment.

(3) The order shall set out the amount by which the payment to be made to the claimant has been reduced according to the Act and the Social Security (Recovery of Benefits) Regulations 1997.

(4) The payment made to the claimant shall be the net amount but the interim payment for the purposes of rule 10.18 is the gross amount.