

PART 8 : EVIDENCE

CHAPTER 1: GENERAL

8.1 Power of court to control evidence (32.1)

- (1) The court may control the evidence by giving directions as to —
 - (a) the issues on which it requires evidence;
 - (b) the nature of the evidence which it requires to decide those issues; and
 - (c) the way in which the evidence is to be placed before the court.
- (2) The court may use its power under this rule to exclude evidence that would otherwise be admissible.
- (3) The court may limit cross-examination.

8.2 Evidence of witnesses — general rule (32.2)

- (1) The general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved —
 - (a) at trial, by their oral evidence given in public; and
 - (b) at any other hearing, by their evidence in writing.
- (2) This is subject —
 - (a) to any provision to the contrary contained in these Rules or elsewhere; or
 - (b) to any order of the court.

8.3 Evidence by video link or other means (32.3)

The court may allow a witness to give evidence through a video link or by other means.

8.4 Requirement to serve witness statements for use at trial (32.4)

- (1) A witness statement is a written statement signed by a person which contains the evidence which that person would be allowed to give orally.
- (2) The court shall order a party to serve on the other parties any witness statement of the oral evidence which the party serving the statement intends to rely on in relation to any issues of fact to be decided at the trial.
- (3) The court may give directions as to —
 - (a) the order in which witness statements are to be served; and
 - (b) whether or not the witness statements are to be filed.

8.5 Use at trial of witness statements which have been served (32.5)

- (1) If —
 - (a) a party has served a witness statement; and
 - (b) he wishes to rely at trial on the evidence of the witness who made the statement,

he must call the witness to give oral evidence unless the court orders otherwise or he puts the statement in as hearsay evidence.

- (2) Where a witness is called to give oral evidence under paragraph (1), his witness statement shall stand as his evidence in chief unless the court orders otherwise.
- (3) A witness giving oral evidence at trial may with the permission of the court —
 - (a) amplify his witness statement; and

- (b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties.

(4) The court shall give permission under paragraph (3) only if it considers that there is good reason not to confine the evidence of the witness to the contents of his witness statement.

- (5) If a party who has served a witness statement does not —

- (a) call the witness to give evidence at trial; or
- (b) put the witness statement in as hearsay evidence,

any other party may put the witness statement in as hearsay evidence.

8.6 Evidence other than at trial (32.6)

(1) Subject to paragraph (2), the general rule is that evidence at hearings other than the trial is to be by witness statement unless the court or a statutory provision requires otherwise.

- (2) At hearings other than the trial, a party may rely on the matters set out in —

- (a) his statement of case; or
- (b) his application notice,

if the statement of case or application notice is verified by a statement of truth.

8.7 Order for cross-examination (32.7)

(1) Where, at a hearing other than the trial, evidence is given in writing, any party may apply to the court for permission to cross-examine the person giving the evidence.

(2) If the court gives permission under paragraph (1) but the person in question does not attend as required by the order, his evidence may not be used unless the court gives permission.

8.8 Form of witness statement (32.8)

A witness statement must —

- (a) comply with the requirements set out in Schedule 8.1, and
- (b) be verified by a statement of truth in accordance with Schedule 8.2.

8.9 Witness summaries (32.9)

- (1) A party who —

- (a) is required to serve a witness statement for use at trial; but
- (b) is unable to obtain one,

may apply without notice for permission to serve a witness summary instead.

- (2) A witness summary is a summary of —

- (a) the evidence, if known, which would otherwise be included in a witness statement; or
- (b) if the evidence is not known, the matters about which the party serving the witness summary proposes to question the witness.

(3) Unless the court orders otherwise, a witness summary must include the name and address of the intended witness.

(4) Unless the court orders otherwise, a witness summary must be served within the period in which a witness statement would have had to be served.

(5) Where a party serves a witness summary, so far as practicable rules 8.4 (requirement to serve witness statements for use at trial), 8.5(3) (amplifying witness statements) and 8.8 (form of witness statement) shall apply to the summary.

8.10 Consequence of failure to serve witness statement or summary (32.10)

If a witness statement or a witness summary for use at trial is not served in respect of an intended witness within the time specified by the court, then the witness may not be called to give oral evidence unless the court gives permission.

8.11 Cross-examination on a witness statement (32.11)

Where a witness is called to give evidence at trial, he may be cross-examined on his witness statement whether or not the statement or any part of it was referred to during the witness's evidence in chief

8.12 Use of witness statements for other purposes (32.12)

(1) Except as provided by this rule, a witness statement may be used only for the purpose of the proceedings in which it is served.

(2) Paragraph (1) does not apply if and to the extent that —

- (a) the witness gives consent in writing to some other use of it;
- (b) the court gives permission for some other use; or
- (c) the witness statement has been put in evidence at a hearing held in public.

8.13 Availability of witness statements for inspection (32.13)

(1) A witness statement which stands as evidence in chief is open to inspection by the public during the course of the trial unless the court otherwise directs.

(2) Any person may ask for a direction that a witness statement be not open to inspection.

(3) The court shall not make a direction under paragraph (2) unless it is satisfied that a witness statement should not be open to inspection because of —

- (a) the interests of justice;
 - (b) the public interest;
 - (c) the nature of any expert medical evidence in the statement;
 - (d) the nature of any confidential information (including information relating to personal financial matters) in the statement; or
 - (e) the need to protect the interests of any minor or patient.
- (4) The court may exclude from inspection words or passages in the statement.

8.14 Affidavit evidence (32.15)

(1) Evidence must be given by affidavit instead of or in addition to a witness statement if this is required by the court, a provision contained in any other rule or another statutory provision.

(2) Nothing in these Rules prevents a witness giving evidence by affidavit at a hearing other than the trial if he chooses to do so in a case where paragraph (1) does not apply, but the party putting forward the affidavit may not recover the additional cost of making it from any other party unless the court orders otherwise.

8.15 Form of affidavit (32.16)

An affidavit must comply with the requirements set out in Schedule 8.1.

8.16 Affidavit made outside the jurisdiction (32.17)

A person may make an affidavit outside the jurisdiction in accordance with —

- (a) this Part; or
- (b) the law of the place where he makes the affidavit .

8.17 Notice to admit facts (32.18)

(1) A party may serve notice on another party requiring him to admit the facts, or the part of the case of the serving party, specified in the notice.

(2) A notice to admit facts must be served no later than 21 days before the trial.

(3) Where the other party makes any admission in response to the notice, the admission may be used against him only —

(a) in the proceedings in which the notice to admit is served; and

(b) by the party who served the notice.

(4) The court may allow a party to amend or withdraw any admission made by him on such terms as it thinks just.

8.18 Notice to admit or produce documents (32.19)

(1) A party shall be deemed to admit the authenticity of a document disclosed to him under Chapter 5 of Part 7 (disclosure and inspection of documents) unless he serves notice that he wishes the document to be proved at trial.

(2) A notice to prove a document must be served —

(a) by the latest date for serving witness statements; or

(b) within 7 days of disclosure of the document, whichever is later.

8.19 Notarial acts and instruments (32.20)

A notarial act or instrument may be received in evidence without further proof as duly authenticated in accordance with the requirements of law unless the contrary is proved.

8.20 Further provisions as to affidavits and witness statements

Schedule 8.1 makes further provision as to affidavits and witness statements.

CHAPTER 2: *CHANCERY PROCEDURE*

8.21 Evidence — general (8.6)

(1) This Chapter applies where a claim is allocated to the chancery procedure.

(2) No written evidence may be relied on at the hearing of the claim unless —

(a) it has been served in accordance with rule 8.22; or

(b) the court gives permission.

(3) Oral evidence may not be given at the hearing unless required or permitted by the court.

(4) The court may give directions requiring the attendance for cross-examination of a witness who has given written evidence.

8.22 Filing and serving written evidence (8.5)

(1) The claimant must file any written evidence on which he intends to rely when he files his claim form.

(2) The claimant's evidence must be served on the defendant with the claim form.

(3) A defendant who wishes to rely on written evidence must file it when he files his acknowledgment of service.

(4) If he does so, he must also at the same time serve a copy of his evidence on the other parties.

(5) The claimant may, within 14 days of service of the defendant's evidence on him, file further written evidence in reply.

(6) If he does so, he must also, within the same time limit, serve a copy of his evidence on the other parties.

(7) The claimant may rely on the matters set out in his claim form as evidence under this rule if the claim form is verified by a statement of truth.

CHAPTER 3: HEARSAY EVIDENCE

8.23 Introductory (33.1)

In this Chapter —

‘the Act’ means the Administration of Justice Act 2008;

‘hearsay’ means a statement made, otherwise than by a person while giving oral evidence in proceedings, which is tendered as evidence of the matters stated;

references to hearsay include hearsay of whatever degree.

8.24 Notice of intention to rely on hearsay evidence (33.2)

(1) Where a party intends to rely on hearsay evidence at trial and either —

- (a) that evidence is to be given by a witness giving oral evidence; or
- (b) that evidence is contained in a witness statement of a person who is not being called to give oral evidence;

that party complies with section 10(1)(a) of the Act by serving a witness statement on the other parties.

[Subs (1) amended by SD 686/09]

(2) Where paragraph (1)(b) applies, the party intending to rely on the hearsay evidence must, when he serves the witness statement —

- (a) inform the other parties that the witness is not being called to give oral evidence; and
- (b) give the reason why the witness shall not be called.

(3) In all other cases where a party intends to rely on hearsay evidence at trial, that party complies with section 10(1)(a) of the Act by serving a notice on the other parties which —

- (a) identifies the hearsay evidence;
- (b) states that the party serving the notice proposes to rely on the hearsay evidence at trial; and
- (c) gives the reason why the witness shall not be called.

(4) The party proposing to rely on the hearsay evidence must —

- (a) serve the notice no later than the latest date for serving witness statements; and
- (b) if the hearsay evidence is to be in a document, supply a copy to any party who requests him to do so.

8.25 Circumstances in which notice of intention to rely on hearsay evidence is not required (33.3)

Section 10(1) of the Act (duty to give notice of intention to rely on hearsay evidence) does not apply —

- (a) to evidence at hearings other than trials;
- (b) to an affidavit or witness statement which is to be used at trial but which does not contain hearsay evidence;

- (c) to a statement which a party to a probate action wishes to put in evidence and which is alleged to have been made by the person whose estate is the subject of the proceedings; or
- (d) where the requirement is excluded by a practice direction.

8.26 Power to call witness for cross-examination on hearsay evidence (33.4)

- (1) Where a party —
 - (a) proposes to rely on hearsay evidence; and
 - (b) does not propose to call the person who made the original statement to give oral evidence,

the court may, on the application of any other party, permit that party to call the maker of the statement to be cross-examined on the contents of the statement.

(2) An application for permission to cross-examine under this rule must be made not more than 14 days after the day on which a notice of intention to rely on the hearsay evidence was served on the applicant.

8.27 Credibility (33.5)

- (1) Where a party —
 - (a) proposes to rely on hearsay evidence; but
 - (b) does not propose to call the person who made the original statement to give oral evidence; and
 - (c) another party wishes to call evidence to attack the credibility of the person who made the statement,

the party who so wishes must give notice of his intention to the party who proposes to give the hearsay statement in evidence.

(2) A party must give notice under paragraph (1) not more than 14 days after the day on which a hearsay notice relating to the hearsay evidence was served on him.

8.28 Use of plans, photographs and models as evidence (33.6)

- (1) This rule applies to evidence (such as a plan, photograph or model) which is not —
 - (a) contained in a witness statement, affidavit or expert's report;
 - (b) to be given orally at trial; or
 - (c) evidence of which prior notice must be given under rule 8.24.

(2) This rule includes documents which may be received in evidence without further proof under section 17 (proof of records of business or public authority) of the Act.

(3) Unless the court orders otherwise the evidence shall not be receivable at a trial unless the party intending to put it in evidence has given notice to the other parties in accordance with this rule.

(4) Where the party intends to use the evidence as evidence of any fact then, except where paragraph (6) applies, he must give notice not later than the latest date for serving witness statements.

(5) He must give notice at least 21 days before the hearing at which he proposes to put in the evidence, if —

- (a) there are not to be witness statements; or
- (b) he intends to put in the evidence solely in order to disprove an allegation made in a witness statement.

(6) Where the evidence forms part of expert evidence, he must give notice when the expert's report is served on the other party.

(7) Where the evidence is being produced to the court for any reason other than as part of factual or expert evidence, he must give notice at least 21 days before the hearing at which he proposes to put in the evidence.

(8) Where a party has given notice that he intends to put in the evidence, he must give every other party an opportunity to inspect it and to agree to its admission without further proof.

8.29 Evidence of finding on question of foreign law (33.7)

(1) A party who intends to put in evidence a finding on a question of foreign law by virtue of section 4(2) of the Evidence Act 1983 must give any other party notice of his intention —

- (a) if there are to be witness statements, not later than the latest date for serving them; or
 - (b) otherwise, not less than 21 days before the hearing at which he proposes to put the finding in evidence.
- (2) The notice must —
- (a) specify the question on which the finding was made; and
 - (b) enclose a copy of a document where it is reported or recorded.

8.30 Evidence of consent of trustee to act (33.8)

A document purporting to contain the written consent of a person to act as trustee and to bear his signature verified by some other person is evidence of such consent.

8.31 Human rights (33.9)

- (1) This rule applies where a claim is —
- (a) for a remedy under section 7 of the Human Rights Act 2001 in respect of a judicial act which is alleged to have infringed the claimant's rights under Article 5 of the European Convention on Human Rights; and
 - (b) based on a finding by a court or tribunal that the claimant's rights under that Convention have been infringed.
- (2) The court —
- (a) may proceed on the basis of the finding of that other court or tribunal that there has been an infringement but it is not required to do so, and
 - (b) may reach its own conclusion in the light of that finding and of the evidence heard by that other court or tribunal.

CHAPTER 4: WITNESSES AND DEPOSITIONS

8.32 Scope of Chapter (34.1)

- (1) This Chapter provides —
- (a) for the circumstances in which a person may be required to attend court to give evidence or to produce a document; and
 - (b) for a party to obtain evidence before a hearing to be used at the hearing.
- (2) In this Chapter, reference to a hearing includes a reference to the trial.

8.33 Witness summonses (34.2)

- (1) A witness summons is a document issued by the court requiring a witness to —
- (a) attend court to give evidence; or
 - (b) produce documents to the court.
- (2) There must be a separate witness summons for each witness.

(3) A witness summons may require a witness to produce documents to the court either —

- (a) on the date fixed for a hearing; or
- (b) on such date as the court may direct.

(4) The only documents that a summons under this rule can require a person to produce before a hearing are documents which that person could be required to produce at the hearing.

8.34 Issue of a witness summons (34.3)

(1) A witness summons is issued on the date entered on the summons by the court office.

(2) A party must obtain permission from the court where he wishes —

- (a) to have a summons issued less than 7 days before the date of the trial;
- (b) to have a summons issued for a witness to attend court to give evidence or to produce documents on any date except the date fixed for the trial; or
- (c) to have a summons issued for a witness to attend court to give evidence or to produce documents at any hearing except the trial.

(3) The court may set aside or vary a witness summons issued under this rule.

8.35 Time for serving a witness summons (34.5)

(1) The general rule is that a witness summons is binding if it is served at least 7 days before the date on which the witness is required to attend before the court.

(2) The court may direct that a witness summons shall be binding although it shall be served less than 7 days before the date on which the witness is required to attend before the court.

(3) A witness summons which is —

- (a) served in accordance with this rule; and
- (b) requires the witness to attend court to give evidence,

is binding until the conclusion of the hearing at which the attendance of the witness is required.

8.36 Who is to serve a witness summons (34.6)

(1) A witness summons is to be served by the party on whose behalf it is issued unless the court, on an application for the purpose or on its own initiative, orders that it shall be served by the court.

(2) Where the court is to serve the witness summons, the party on whose behalf it is issued must deposit, in the court office, the money to be paid or offered to the witness under rule 8.37.

8.37 Right of witness to travelling expenses and compensation for loss of time (34.7)

In the case of a witness summons to be served outside the jurisdiction, at the time it is served the witness must be offered or paid —

- (a) a sum reasonably sufficient to cover his expenses in travelling to and from the court; and
- (b) such sum by way of compensation for loss of time as is prescribed by order under section 1 of the Witnesses' Allowances Act 1947.

8.38 Evidence by deposition (34.8)

(1) A party may apply for an order for a person to be examined before the hearing takes place.

(2) A person from whom evidence is to be obtained following an order under this rule is referred to as a 'deponent' and the evidence is referred to as a 'deposition'.

(3) An order under this rule shall be for a deponent to be examined on oath before —

(a) a judge; or

(b) such other person as the court appoints.

(4) The order may require the production of any document which the court considers is necessary for the purposes of the examination.

(5) The order must state the date, time and place of the examination.

(6) At the time of service of the order the deponent must be offered or paid —

(a) a sum reasonably sufficient to cover his expenses in travelling to and from the place of examination; and

(b) such sum by way of compensation for loss of time as is prescribed by order under section 1 of the Witnesses' Allowances Act 1947.

(7) Where the court makes an order for a deposition to be taken, it may also order the party who obtained the order to serve a witness statement or witness summary in relation to the evidence to be given by the person to be examined.

8.39 Conduct of examination (34.9)

(1) Subject to any directions contained in the order for examination, the examination must be conducted in the same way as if the witness were giving evidence at a trial.

(2) If all the parties are present, the examiner may conduct the examination of a person not named in the order for examination if all the parties and the person to be examined consent.

(3) The examiner may conduct the examination in private if he considers it appropriate to do so.

(4) The examiner must ensure that the evidence given by the witness is recorded in full.

(5) The examiner must —

(a) file the deposition, and

(b) send a copy of the deposition to the person who obtained the order for the examination of the witness.

(6) The party who obtained the order must send each of the other parties a copy of the deposition which he receives from the examiner.

8.40 Enforcing attendance of witness (34.10)

(1) If a person served with an order to attend before an examiner —

(a) fails to attend; or

(b) refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document at the examination,

a certificate of his failure or refusal, signed by the examiner, must be filed by the party requiring the deposition.

(2) On the certificate being filed, the party requiring the deposition may apply to the court for an order requiring that person to attend or to be sworn or to answer any question or produce any document, as the case may be.

(3) An application for an order under this rule may be made without notice.

(4) The court may order the person against whom an order is made under this rule to pay any costs resulting from his failure or refusal.

8.41 Use of deposition at a hearing (34.11)

(1) A deposition ordered under rule 8.38 may be given in evidence at a hearing unless the court orders otherwise.

(2) A party intending to put in evidence a deposition at a hearing must serve notice of his intention to do so on every other party.

(3) He must serve the notice at least 21 days before the day fixed for the hearing.

(4) The court may require a deponent to attend the hearing and give evidence orally.

(5) Where a deposition is given in evidence at trial, it shall be treated as if it were a witness statement for the purposes of rule 8.13 (availability of witness statements for inspection).

8.42 Restrictions on subsequent use of deposition (34.12)

(1) Where the court orders a party to be examined about his or any other assets for the purpose of any hearing except the trial, the deposition may be used only for the purpose of the proceedings in which the order was made.

(2) However, it may be used for some other purpose —

(a) by the party who was examined;

(b) if the party who was examined agrees; or

(c) if the court gives permission.

8.43 Letter of request for examination out of the jurisdiction (34.13)

(1) This rule applies where a party wishes to take a deposition from a person who is out of the jurisdiction.

(2) The court may order the issue to the judicial authorities of the country in which that person is of a request to take the evidence of that person, or arrange for it to be taken (a 'letter of request').

(3) If the government of a country allows a person appointed by the court to examine a person in that country, the court may make an order appointing a special examiner for that purpose.

(4) A person may be examined under this rule on oath or affirmation or in accordance with any procedure permitted in the country in which the examination is to take place.

(5) If the court makes an order for the issue of a letter of request, the party who sought the order must file —

(a) the following documents and, except where paragraph (6) applies, a translation of them —

(i) a draft letter of request;

(ii) a statement of the issues relevant to the proceedings;

(iii) a list of questions or the subject matter of questions to be put to the person to be examined; and

(b) an undertaking to be responsible for the Secretary of State's expenses.

(6) There is no need to file a translation if English is the official language, or one of the official languages, of the country where the examination is to take place.

8.44 Fees and expenses of examiner of the court (34.14)

(1) This rule applies where an examiner is appointed under rule 8.38(3)(b).

- (2) The examiner may charge a fee for the examination.
- (3) He need not send the deposition to the court unless the fee is paid.
- (4) The examiner's fees and expenses (at such rates as the Deemsters from time to time direct) must be paid by the party who obtained the order for examination.
- (5) If the fees and expenses due to an examiner are not paid within a reasonable time, he may report that fact to the court.
- (6) The court may order the party who obtained the order for examination to deposit in the court office a specified sum in respect of the examiner's fees and, where it does so, the examiner shall not be asked to act until the sum has been deposited.
- (7) An order under this rule does not affect any decision as to the party who is ultimately to bear the costs of the examination.

CHAPTER 5: EVIDENCE UNDER 1975 ACT

8.45 Evidence (Proceedings in Other Jurisdictions) Act 1975 (34.16)

(1) This Chapter applies to an application for an order under the 1975 Act for evidence to be obtained for proceedings in other jurisdictions.

(2) In this Chapter 'the 1975 Act' means the Evidence (Proceedings in Other Jurisdictions) Act 1975 (an Act of Parliament).

8.46 Application for order (34.17)

An application for an order under the 1975 Act for evidence to be obtained —

- (a) must be —
 - (i) supported by written evidence; and
 - (ii) accompanied by the request as a result of which the application is made, and where appropriate, a translation of the request into English; and
- (b) may be made without notice.

8.47 Examination (34.18)

- (1) The court may order an examination to be taken before —
 - (a) any fit and proper person nominated by the person applying for the order;
 - (b) a judge; or
 - (c) such other person as the court appoints.
- (2) Unless the court orders otherwise —
 - (a) the examination shall be taken as provided by rule 8.39; and
 - (b) rule 8.40 applies.
- (3) The court may make an order under rule 8.44 for payment of the fees and expenses of the examination.

8.48 Dealing with deposition (34.19)

- (1) The examiner must file the deposition of the witness.
- (2) A court officer shall —
 - (a) give a certificate sealed with the seal of the court and identifying the following documents —
 - (i) the request;
 - (ii) the order of the court for examination; and
 - (iii) the deposition of the witness; and

- (b) send the certificate and the documents referred to in paragraph (a) to the Secretary of State for transmission to the court or tribunal requesting the examination.

8.49 Claim to privilege (34.20)

- (1) This rule applies where —
 - (a) a witness claims to be exempt from giving evidence on the ground specified in section 3(1)(b) of the 1975 Act; and
 - (b) that claim is not supported or conceded as referred to in section 3(2) of that Act.
- (2) The examiner may require the witness to give the evidence which he claims to be exempt from giving.

(3) Where the examiner does not require the witness to give that evidence, the court may order the witness to do so.

(4) An application for an order under paragraph (3) may be made by the person who obtained the order under section 2 of the 1975 Act.

- (5) Where such evidence is taken —
 - (a) it must be contained in a document separate from the remainder of the deposition;
 - (b) the examiner shall send to the court —
 - (i) the deposition; and
 - (ii) a signed statement setting out the claim to be exempt and the ground on which it was made.
- (6) On receipt of the statement referred to in paragraph (5)(b)(ii), the court shall —
 - (a) retain the document containing the part of the witness's evidence to which the claim to be exempt relates; and
 - (b) send the statement and a request to determine that claim to the foreign court or tribunal together with the documents referred to in rule 8.46.
- (7) The court shall —
 - (a) if the claim to be exempt is rejected by the foreign court or tribunal, send the document referred to in paragraph (5)(a) to that court or tribunal;
 - (b) if the claim is upheld, send the document to the witness; and
 - (c) in either case, notify the witness and person who obtained the order under section 2 of the foreign court or tribunal's decision.

8.50 Order under 1975 Act as applied by Patents Act 1977 (34.21)

Where an order is made for the examination of witnesses under section 1 of the 1975 Act as applied by section 92 of the Patents Act 1977 (an Act of Parliament) the court may permit an officer of the European Patent Office —

- (a) to attend the examination and examine the witnesses; or
- (b) to request the court or the examiner before whom the examination takes place to put specified questions to them.

CHAPTER 6: EXPERTS AND ASSESSORS

8.51 Duty to restrict expert evidence (35.1)

Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.

8.52 Interpretation (35.2)

A reference to an ‘expert’ in this Chapter is a reference to an expert who has been instructed to give or prepare evidence for the purpose of court proceedings.

8.53 Experts — overriding duty to the court (35.3, PD35.1.3-1.6)

- (1) It is the duty of an expert to help the court on the matters within his expertise.
- (2) An expert must —
 - (a) assist the court by providing objective, unbiased opinion on matters within his expertise, and not assume the role of an advocate;
 - (b) consider all material facts, including those which might detract from his opinion;
 - (c) make it clear —
 - (i) when a question or issue falls outside his expertise; and
 - (ii) when he is not able to reach a definite opinion (for example because he has insufficient information).
- (3) If, after producing a report, an expert changes his view on any material matter, he must communicate such change of view to all the parties without delay, and when appropriate to the court.
- (4) The duty of an expert under this rule overrides any obligation to the person from whom he has received instructions or by whom he is paid.

8.54 Court’s power to restrict expert evidence (35.4)

- (1) Subject to paragraph (2), no party may call an expert or put in evidence an expert’s report without the court’s permission.
- (2) A party to a claim for personal injuries may —
 - (a) call one (but not more than one) expert, or
 - (b) put in evidence one (but not more than one) expert’s report,without the court’s permission.
- (3) When a party applies for permission under this rule he must identify the field in which he wishes to rely on expert evidence
- (4) If permission is granted under this rule it shall be in relation only to the field identified under paragraph (3).
- (5) The court may limit the amount of the expert’s fees and expenses that the party who wishes to rely on the expert may recover from any other party.

8.55 General requirement for expert evidence to be given in written report (35.5)

- (1) Expert evidence must be given in a written report unless the court directs otherwise.
- (2) Where the claim is allocated to the summary procedure, the court shall not direct an expert to attend a hearing unless it is necessary to do so in the interests of justice.

8.56 Written questions to experts (35.6)

- (1) A party may put to —
 - (a) an expert instructed by another party; or
 - (b) a single joint expert appointed under rule 8.57,written questions about his report.
- (2) Written questions under paragraph (1) —
 - (a) may be put once only;

- (b) must be put within 28 days of service of the expert's report; and
- (c) must be for the purpose only of clarification of the report,

unless in any case —

- (i) the court gives permission; or
- (ii) the other party agrees.

(3) An expert's answers to questions put in accordance with paragraph (1) shall be treated as part of the expert's report.

(4) Where —

- (a) a party has put a written question to an expert instructed by another party in accordance with this rule; and
- (b) the expert does not answer that question,

the court may make one or both of the following orders in relation to the party who instructed the expert —

- (i) that the party may not rely on the evidence of that expert; or
- (ii) that the party may not recover the fees and expenses of that expert from any other party.

8.57 Court's power to direct that evidence is to be given by a single joint expert (35.7, PD35.6)

(1) Where 2 or more parties wish to submit expert evidence on a particular issue, the court may direct that the evidence on that issue is to be given by one expert only.

(2) The parties wishing to submit the expert evidence are called 'the instructing parties'.

(3) Where the instructing parties cannot agree who should be the expert, the court may —

- (a) select the expert from a list prepared or identified by the instructing parties; or
- (b) direct that the expert be selected in such other manner as the court may direct.

(4) Where there are a number of disciplines relevant to the particular issue, a leading expert in the dominant discipline shall —

- (a) be identified as the single expert;
- (b) prepare the general part of the report and
- (c) be responsible for annexing or incorporating the contents of any reports from experts in other disciplines.

8.58 Instructions to a single joint expert (35.8)

(1) Where the court gives a direction under rule 8.57 for a single joint expert to be used, each instructing party may give instructions to the expert.

(2) When an instructing party gives instructions to the expert he must, at the same time, send a copy of the instructions to the other instructing parties.

(3) The court may give directions about —

- (a) the payment of the expert's fees and expenses; and
- (b) any inspection, examination or experiments which the expert wishes to carry out.

(4) The court may, before an expert is instructed —

- (a) limit the amount that can be paid by way of fees and expenses to the expert; and

(b) direct that the instructing parties pay that amount into court.

(5) Unless the court otherwise directs, the instructing parties are jointly and severally liable for the payment of the expert's fees and expenses.

8.59 Power of court to direct a party to provide information (35.9, PD35.3)

(1) Where a party has access to information which is not reasonably available to the other party, the court may direct the party who has access to the information to —

- (a) prepare and file a document recording the information; and
- (b) serve a copy of that document on the other party.

(2) That document must include sufficient details of all the facts, tests, experiments and assumptions which underlie any part of the information to enable the party on whom it is served to make, or to obtain, a proper interpretation of the information and an assessment of its significance.

8.60 Form and contents of report (35.10)

(1) An expert's report must be addressed to the court and not to the party from whom the expert has received his instructions.

(2) An expert's report must —

- (a) give details of the expert's qualifications;
- (b) give details of any literature or other material which the expert has relied on in making the report;
- (c) contain a statement setting out the substance of all facts and instructions given to the expert which are material to the opinions expressed in the report or upon which those opinions are based;
- (d) make clear which of the facts stated in the report are within the expert's own knowledge;
- (e) say who carried out any examination, measurement, test or experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision;
- (f) where there is a range of opinion on the matters dealt with in the report —
 - (i) summarise the range of opinion, and
 - (ii) give reasons for his own opinion;
- (g) contain a summary of the conclusions reached;
- (h) if the expert is not able to give his opinion without qualification, state the qualification; and
- (i) contain a statement that the expert understands his duty to the court, and has complied and will continue to comply with that duty.

(3) An expert's report must be verified by a statement of truth (in the form in Schedule 8.2).

8.61 Disclosure etc. of instructions (PD35.3 & 4)

(1) The instructions, whether written or oral, on the basis of which an expert's report was written shall not be privileged against disclosure but the court shall not, in relation to those instructions —

- (a) order disclosure of any specific document; or
- (b) permit any questioning in court, other than by the party who instructed the expert,

unless it is satisfied that there are reasonable grounds to consider the statement of instructions given under rule 8.60(2)(c) to be inaccurate or incomplete.

(2) Cross-examination of the expert on the contents of his instructions shall not be allowed without the permission of the court or the consent of the party who gave the instructions.

(3) The court shall not give such permission unless —

(a) it is satisfied that there are reasonable grounds to consider that the statement in the report of the substance of the instructions is inaccurate or incomplete, and

(b) it appears to the court to be in the interests of justice to do so.

8.62 Use by one party of expert's report disclosed by another (35.11)

Where a party has disclosed an expert's report, any party may use that expert's report as evidence at the trial.

8.63 Discussions between experts (35.12)

(1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to —

(a) identify and discuss the expert issues in the proceedings; and

(b) where possible, reach an agreed opinion on those issues.

(2) The court may specify the issues which the experts must discuss.

(3) The court may direct that following a discussion between the experts they must prepare a statement for the court showing —

(a) those issues on which they agree; and

(b) those issues on which they disagree and a summary of their reasons for disagreeing.

(4) The content of the discussion between the experts shall not be referred to at the trial unless the parties agree.

(5) Where experts reach agreement on an issue during their discussions, the agreement shall not bind the parties unless the parties expressly agree to be bound by the agreement.

8.64 Consequence of failure to disclose expert's report (35.13)

A party who fails to disclose an expert's report may not use the report at the trial or call the expert to give evidence orally unless the court gives permission.

8.65 Expert's right to ask court for directions (35.14)

(1) An expert may file a written request for directions to assist him in carrying out his function as an expert.

(2) An expert must, unless the court orders otherwise, provide a copy of any proposed request for directions under paragraph (1)—

(a) to the party instructing him, at least 7 days before he files the request; and

(b) to all other parties, at least 4 days before he files it.

(3) The court, when it gives directions, may also direct that a party be served with a copy of the directions.

8.66 Service of orders on expert (PD35.6A)

Where an order of the court requires an act to be done by an expert, or otherwise affects an expert, —

- (a) the party instructing that expert must serve a copy of the order on the expert instructed by him;
- (b) in the case of a jointly instructed expert, the claimant must serve the order.

8.67 Assessors (35.15, PD35.7.1-7.4)

(1) This rule applies where the court appoints one or more persons ('assessors') under section 17 of the High Court Act 1991.

(2) Not less than 21 days before making any such appointment, the court shall notify each party in writing of —

- (a) the name of the proposed assessor,
- (b) the matter in respect of which the assistance of the assessor will be sought, and
- (c) the qualifications of the assessor to give that assistance.

(3) Where a person has been proposed for appointment as an assessor, objection to him, either personally or in respect of his qualification, may be taken by any party. Any such objection must be made in writing and filed with the court within 7 days of receipt of the notification referred to in paragraph (2), and shall be taken into account by the court in deciding whether or not to make the appointment.

(4) The assessor shall assist the court in dealing with a matter in which the assessor has skill and experience.

(5) An assessor shall take such part in the proceedings as the court may direct and in particular the court may direct the assessor —

- (a) to prepare a report for the court on any matter at issue in the proceedings; and
- (b) to attend the whole or any part of the trial to advise the court on any such matter.

(6) If the assessor prepares a report for the court before the trial has begun —

- (a) the court shall send a copy to each of the parties; and
- (b) the parties may use it at trial.

(7) The remuneration to be paid to the assessor for his services shall be determined by the court and shall form part of the costs of the proceedings.

(8) The court may order any party to deposit in the court office a specified sum in respect of the assessor's fees and, where it does so, the assessor shall not be asked to act until the sum has been deposited.

(9) Paragraphs (7) and (8) do not apply where the remuneration of the assessor is to be paid out of money provided by Tynwald.

CHAPTER 7: STATEMENTS OF TRUTH

8.68 Documents to be verified by a statement of truth (22.1, PD22.1.3, 1.4)

(1) The following documents must be verified by a statement of truth —

- (a) a statement of case;
- (b) a response to an order under rule 6.44 to provide further information;
- (c) a witness statement;
- (d) an acknowledgement of service in a claim begun under the chancery procedure;
- (e) a certificate of service;
- (f) an expert's report;
- (g) an application notice for —

- (i) an arrestment order (rule 12.27),
 - (ii) a hardship payment order (rule 12.32), or
 - (iii) a charging order (rule 12.38);
- (h) a notice of objections to an account being taken by the court, unless verified by an affidavit or witness statement;
- (i) a schedule or counter-schedule of expenses and losses in a claim for personal injuries, and any amendments to such a schedule or counter-schedule, whether or not they are contained in a statement of case;
 - (j) any other document where a rule so requires.
- (2) Where a statement of case is amended, the amendments must be verified by a statement of truth unless the court orders otherwise.
- (3) If an applicant wishes to rely on matters set out in his application notice as evidence, the application notice must be verified by a statement of truth.
- (4) Subject to paragraph (5), a statement of truth is a statement that —
- (a) the party putting forward the document;
 - (b) in the case of a witness statement, the maker of the witness statement; or
 - (c) in the case of a certificate of service, the person who signs the certificate,
- believes that the facts stated in the document are true.
- (5) If a party is conducting proceedings with a litigation friend, the statement of truth in —
- (a) a statement of case;
 - (b) a response; or
 - (c) an application notice,
- is a statement that the litigation friend believes the facts stated in the document being verified are true.
- (6) A statement of truth which is not contained in the document which it verifies must clearly identify that document.
- (7) A statement of truth in a statement of case may be made by —
- (a) a person who is not a party; or
 - (b) by 2 parties jointly,
- where this is permitted by a relevant rule.
- (8) Where a prescribed form includes a jurat for the content to be verified by an affidavit, a statement of truth is not required in addition.

8.69 Signature of statement of truth (22.1(6), PD22.3.1-3.10)

- (1) A statement of truth must be signed —
 - (a) in the case of a statement of case, a response or an application, by —
 - (i) the party or litigation friend; or
 - (ii) the advocate on behalf of the party or litigation friend; and
 - (b) in the case of a witness statement, by the maker of the statement.
- (2) A statement of truth verifying a notice of objections to an account must be signed by the objecting party or his advocate.
- (3) Where a document is to be verified on behalf of a company or other corporation, subject to paragraph (7), the statement of truth must —

- (a) be signed by a person holding a senior position in the company or corporation, and
- (b) state the office or position he holds.
- (4) Where a document is to be verified on behalf of a partnership, the statement of truth may be signed by —
 - (a) any of the partners, or
 - (b) a person having the control or management of the partnership business.
- (5) An insurer or the Motor Insurers' Bureau may sign a statement of truth in a statement of case on behalf of a party where the insurer or the Motor Insurers' Bureau has a financial interest in the result of proceedings brought wholly or partially by or against that party.
- (6) If insurers are conducting proceedings on behalf of many claimants or defendants a statement of truth in a statement of case may be signed by a senior person responsible for the case at a lead insurer, but —
 - (a) the person signing must specify the capacity in which he signs;
 - (b) the statement of truth must be a statement that the lead insurer believes that the facts stated in the document are true; and
 - (c) the court may order that a statement of truth also be signed by one or more of the parties.
- (7) Where a party is legally represented, the advocate may sign the statement of truth on his behalf. The statement signed by the advocate must refer to the client's belief, not his own, and must state the capacity in which he signs and the name of his firm where appropriate.
- (8) Where an advocate has signed a statement of truth, his signature shall be taken by the court as his statement —
 - (a) that the client on whose behalf he has signed had authorised him to do so,
 - (b) that before signing he had explained to the client that in signing the statement of truth he would be confirming the client's belief that the facts stated in the document were true, and
 - (c) that before signing he had informed the client of the possible consequences to the client if it should subsequently appear that the client did not have an honest belief in the truth of those facts.
- (9) The individual who signs a statement of truth must print his full name clearly beneath his signature.
- (10) An advocate who signs a statement of truth must sign in his own name and not that of his firm or employer.

8.70 False statements (32.14)

- (1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth 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.

8.71 Power of the court to require a document to be verified (22.4)

- (1) The court may order a person who has failed to verify a document in accordance with rule 8.68 to verify the document.
- (2) Any party may apply for an order under paragraph (1).

- (3) This rule does not affect any power of the court —
 - (a) to strike out a statement of case which is not verified by a statement of truth
 - (b) direct that a witness statement which is not verified by a statement of truth shall not be admissible as evidence.

8.72 Forms of statement of truth

A statement of truth shall be in the appropriate form in Schedule 8.2.

SCHEDULE 8.1 — AFFIDAVITS AND WITNESS STATEMENTS (PD32)

Rules 8.8 & 8.20

1. *Evidence in general*

(1) Subject to the following provisions of this paragraph, evidence at a hearing other than the trial shall normally be given by witness statement.

(2) A witness may give evidence by affidavit if he wishes to do so.

(3) Statements of case and application notices may also be used as evidence provided that their contents have been verified by a statement of truth.

(4) Affidavits must be used as evidence in the following cases —

(a) where sworn evidence is required by any statutory provision;

(b) in any application for a search order, a freezing injunction, or an order requiring an occupier to permit another to enter his land, and

(c) in any application for an order against anyone for alleged contempt of court.

(5) If a party believes that sworn evidence is required by a court in another jurisdiction for any purpose connected with the proceedings, he may apply to the court for a direction that evidence shall be given only by affidavit on any pre-trial applications.

(6) The court may give a direction under rule 8.14 that evidence shall be given by affidavit instead of or in addition to a witness statement or statement of case —

(a) on its own initiative, or

(b) on an application by any party.

2. *Affidavits: heading*

(1) An affidavit must be headed with the title of the proceedings; where the proceedings are between several parties with the same status it is sufficient to identify the parties as follows:

AB (and others) Claimants

CD (and others) Defendants

(as appropriate)

(2) At the top right hand corner of the first page there must be clearly written —

(a) the party on whose behalf it is made,

(b) the initials and surname of the deponent,

(c) the number of the affidavit in relation to that deponent,

(d) the identifying initials and number of each exhibit referred to, and

(e) the date sworn.

3. *Body of affidavit*

(1) The affidavit must, if practicable, be in the deponent's own words, the affidavit should be expressed in the first person and the deponent should:

(a) commence '*I [full name] of [address] state on oath* ' (or, in the case of an affirmation, '*do solemnly and sincerely affirm* '),

(b) if giving evidence in his professional, business or other occupational capacity, give the address at which he works in (a) above, the position he holds and the name of his firm or employer,

(c) give his occupation or, if he has none, his description, and

(d) state if he is a party to the proceedings or employed by a party to the proceedings, if it be the case.

(2) An affidavit must indicate:

- (a) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief, and
- (b) the source for any matters of information or belief.
- (3) Where a deponent refers to an exhibit or exhibits, he should state '*there is now shown to me marked '...' the* [description of exhibit]'.
- (4) Where a deponent makes more than one affidavit (to which there are exhibits) in the same proceedings, the numbering of the exhibits should run consecutively throughout and not start again with each affidavit.

4. *Jurat*

The jurat of an affidavit (that is, the statement set out at the end of the document which authenticates it as an affidavit) must —

- (a) be signed by all deponents,
- (b) be completed and signed by the person before whom the affidavit was sworn, whose name and qualification must be printed beneath his signature,
- (c) contain the full address of the person before whom the affidavit was sworn, and
- (d) follow immediately on from the text and not be put on a separate page.

5. *Format of affidavits*

(1) An affidavit must —

- (a) be produced on durable quality A4 paper with a 25mm margin all round,
- (b) be fully legible and normally typed on one side of the paper only,
- (c) where possible, be bound securely in a manner which will not hamper filing, or otherwise each page should be endorsed with the case number and should bear the initials of the deponent and of the person before whom it was sworn,
- (d) have the pages numbered consecutively as a separate document (or as one of several documents contained in a file),
- (e) be divided into numbered paragraphs,
- (f) have all numbers, including dates, expressed in figures, and
- (g) give the reference to any document or documents mentioned either in the margin or in bold text in the body of the affidavit.

(2) It is usually convenient for an affidavit to follow the chronological sequence of events or matters dealt with; each paragraph of an affidavit should as far as possible be confined to a distinct portion of the subject.

6. *Inability of deponent to read or sign affidavit*

(1) Where an affidavit is sworn by a person who is unable to read or sign it, the person before whom the affidavit is sworn must certify in the jurat that —

- (a) he read the affidavit to the deponent,
- (b) the deponent appeared to understand it, and
- (c) the deponent signed or made his mark, in his presence.

(2) If that certificate is not included in the jurat, the affidavit may not be used in evidence unless the court is satisfied that it was read to the deponent and that he appeared to understand it.

7. *Alterations to affidavits*

(1) Any alteration to an affidavit must be initialled by both the deponent and the person before whom the affidavit was sworn.

(2) An affidavit which contains an alteration that has not been initialled may be filed or used in evidence only with the permission of the court.

8. *Translation of affidavit*

Where an affidavit is in a language other than English —

- (a) the party wishing to rely on it —
 - (i) must have it translated into English, and
 - (ii) must file the original affidavit with the court, and
- (b) the translator must make and file with the court an affidavit verifying the translation, stating his qualification to make it and exhibiting both the translation and a copy of the original affidavit.

9. *Exhibits: documents*

- (1) A document used in conjunction with an affidavit must be —
 - (a) produced to and verified by the deponent, and remain separate from the affidavit, and
 - (b) identified by a declaration of the person before whom the affidavit was sworn.
- (2) The declaration must be headed with the name of the proceedings in the same way as the affidavit.
- (3) The first page of each exhibit should be marked —
 - (a) as in paragraph 2(2), and
 - (b) with the exhibit mark referred to in the affidavit.

10. *Exhibits: letters*

- (1) Copies of individual letters should be collected together and exhibited in a bundle or bundles. They should be arranged in chronological order with the earliest at the top, and firmly secured.
- (2) When a bundle of correspondence is exhibited, the exhibit should have a front page attached stating that the bundle consists of original letters and copies. They should be arranged and secured as above and numbered consecutively.

11. *Exhibits: other documents*

- (1) Photocopies instead of original documents may be exhibited provided the originals are made available for inspection by the other parties before the hearing and by the judge at the hearing.
- (2) Court documents must not be exhibited.
- (3) Where an exhibit contains more than one document, a front page should be attached setting out a list of the documents contained in the exhibit; the list should contain the dates of the documents.

12. *Exhibits other than documents*

- (1) Items other than documents should be clearly marked with an exhibit number or letter in such a manner that the mark cannot become detached from the exhibit.
- (2) Small items may be placed in a container and the container appropriately marked.

13. *Exhibits: general provisions*

- (1) Where an exhibit contains more than one document —
 - (a) the bundle should not be stapled but should be securely fastened in a way that does not hinder the reading of the documents, and
 - (b) the pages should be numbered consecutively at bottom centre.

(2) Every page of an exhibit should be clearly legible; typed copies of illegible documents should be included, paginated with 'a' numbers.

(3) Where affidavits and exhibits have become numerous, they should be put into separate bundles and the pages numbered consecutively throughout.

(4) Where on account of their bulk the service of exhibits or copies of exhibits on the other parties would be difficult or impracticable, the directions of the court should be sought as to arrangements for bringing the exhibits to the attention of the other parties and as to their custody pending trial.

14. *Witness statements: heading*

(1) A witness statement must be headed with the title of the proceedings, but where the proceedings are between several parties with the same status it is sufficient to identify the parties as in paragraph 2(1).

(2) At the top right hand corner of the first page there should be clearly written —

- (a) the party on whose behalf it is made,
- (b) the initials and surname of the witness,
- (c) the number of the statement in relation to that witness,
- (d) the identifying initials and number of each exhibit referred to, and
- (e) the date the statement was made.

15. *Body of witness statement*

(1) The witness statement must, if practicable, be in the intended witness's own words, be expressed in the first person and also state —

- (a) the full name of the witness,
- (b) his place of residence or, if he is making the statement in his professional, business or other occupational capacity, the address at which he works, the position he holds and the name of his firm or employer,
- (c) his occupation, or if he has none, his description, and
- (d) the fact that he is a party to the proceedings or is the employee of such a party if it be the case.

(2) A witness statement must indicate —

- (a) which of the statements in it are made from the witness's own knowledge and which are matters of information or belief, and
- (b) the source for any matters of information or belief.

(3) An exhibit used in conjunction with a witness statement should be verified and identified by the witness and remain separate from the witness statement.

(4) Where a witness refers to an exhibit or exhibits, he should state '*I refer to the (description of exhibit) marked '...'*'.

(5) The provisions of paragraphs 9(3) to 13 (exhibits) apply similarly to witness statements as they do to affidavits.

(6) Where a witness makes more than one witness statement to which there are exhibits, in the same proceedings, the numbering of the exhibits should run consecutively throughout and not start again with each witness statement.

16. *Format of witness statement*

(1) A witness statement should —

- (a) be produced on durable quality A4 paper with a 25mm margin all round,
- (b) be fully legible and should normally be typed on one side of the paper only,

- (c) where possible, be bound securely in a manner which will not hamper filing, or otherwise each page should be endorsed with the case number and should bear the initials of the witness,
- (d) have the pages numbered consecutively as a separate statement (or as one of several statements contained in a file),
- (e) be divided into numbered paragraphs,
- (f) have all numbers, including dates, expressed in figures, and
- (g) give the reference to any document or documents mentioned either in the margin or in bold text in the body of the statement.

(2) It is usually convenient for a witness statement to follow the chronological sequence of the events or matters dealt with, each paragraph of a witness statement should as far as possible be confined to a distinct portion of the subject.

17. Statement of truth (22.3)

(1) A witness statement must include a statement of truth as required by rule 8.68.

(2) If the maker of a witness statement fails to verify the witness statement by a statement of truth, the court may direct that it shall not be admissible as evidence.

18. Inability of witness to read or sign statement

(1) Where a witness statement is made by a person who is unable to read or sign the witness statement, it must contain a certificate made by an authorised person.

(2) An authorised person is a person able to administer oaths and take affidavits but need not be independent of the parties or their representatives.

(3) The authorised person must certify —

- (a) that the witness statement has been read to the witness,
- (b) that the witness appeared to understand it and approved its content as accurate,
- (c) that the declaration of truth has been read to the witness,
- (d) that the witness appeared to understand the declaration and the consequences of making a false witness statement, and
- (e) that the witness signed or made his mark in the presence of the authorised person.

19. Alterations to witness statements

(1) Any alteration to a witness statement must be initialled by the person making the statement or by the authorised person where appropriate (see paragraph 18).

(2) A witness statement which contains an alteration that has not been initialled may be used in evidence only with the permission of the court.

20. Filing of witness statements

Where the court has directed that a witness statement in a language other than English is to be filed —

- (a) the party wishing to rely on it must —
 - (i) have it translated, and
 - (ii) file the original witness statement with the court, and
- (b) the translator must make and file with the court an affidavit verifying the translation, stating his qualification to make it and exhibiting both the translation and a copy of the original witness statement.

21. *Certificate of court officer*

Where the court has ordered that a witness statement is not to be open to inspection by the public or that words or passages in the statement are not to be open to inspection the court officer shall so certify on the statement and make any deletions directed by the court under rule 8.13(4).

22. *Defects in affidavits, witness statements and exhibits*

- (1) Where —
 - (a) an affidavit,
 - (b) a witness statement, or
 - (c) an exhibit to either an affidavit or a witness statement,

does not comply with Chapter 1 or this Schedule in relation to its form, the court may refuse to admit it as evidence and may refuse to allow the costs arising from its preparation.

(2) Permission to file a defective affidavit or witness statement or to use a defective exhibit may be obtained from a judge.

23. *Agreed bundles for hearings*

(1) The court may give directions requiring the parties to use their best endeavours to agree a bundle or bundles of documents for use at any hearing.

(2) All documents contained in bundles which have been agreed for use at a hearing shall be admissible at that hearing as evidence of their contents, unless —

- (a) the court orders otherwise; or
- (b) a party gives written notice of objection to the admissibility of particular documents.

24. *Penalty*

(1) Where a party alleges that a statement of truth or a disclosure statement is false the party shall refer that allegation to the court, which may —

- (a) exercise any of its powers under the rules;
- (b) initiate steps to consider if there is a contempt of court and, where there is, to punish it;
- (c) direct the party making the allegation to refer the matter to the Attorney General with a request to him to consider whether he wishes to bring proceedings for contempt of court.

(2) An application under sub-paragraph (1)(c) must be made in writing and be accompanied by —

- (a) a copy of the order recording the direction of the judge referring the matter to him, and
- (b) information which —
 - (i) identifies the statement said to be false; and
 - (ii) explains why it is false, and why the maker knew it to be false at the time he made it;
 - (iii) explains why contempt proceedings would be appropriate in the light of the overriding objective.

(3) Where a party makes an application to the court for permission to commence proceedings for contempt of court, it must be supported by written evidence containing —

- (a) the information specified in sub-paragraph (2)(b), and
- (b) the result of the application by the applicant to the Attorney General under sub-paragraph (1)(c).

SCHEDULE 8.2 — FORM OF STATEMENT OF TRUTH

Rules 8.8 & 8.72

1. The form of statement of truth verifying a document specified in column 1 of the following table is that specified in relation to it in column 2 of the table:

<i>Document</i>	<i>Form of statement of truth</i>
Particulars of claim	[I believe][The claimant believes] that the facts stated in these particulars of claim are true
Additional claim	[I believe][The [<i>person by whom additional claim is made</i>] believes] that the facts stated in this statement of case are true
Any other statement of case	[I believe][The claimant <i>or as the case may be</i> believes] that the facts stated in [this claim form][this defence][this reply <i>or as the case may be</i>] are true
Response to order under rule 6.44 to provide further information	[I believe][The claimant <i>or as the case may be</i> believes] that the facts stated in this response are true
Application notice	[I believe][The claimant <i>or as the case may be</i> believes] that the facts stated in this application notice are true
Notice of objections to account being taken by the court	[I believe][The claimant <i>or as the case may be</i> believes] that the facts stated in this notice are true
Witness statement	I believe that the facts stated in this witness statement are true.
Statement of reasons why chancery procedure should not be used (accompanying or contained in defendant's acknowledgment of service)	[I believe][The defendant believes] that the facts stated in this statement of reasons are true
Schedule or counter-schedule of expenses and losses in claims personal injuries, and amendments to such a schedule or counter-schedule	[I believe][The claimant <i>or as the case may be</i> believes] that the facts stated in this [schedule][counter-schedule] are true
Expert's report	I confirm that insofar as the facts stated in my report are within my own knowledge, I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.

2. Where the statement of truth is contained in a separate document, the document containing the statement of truth must be headed with the title of the proceedings and the claim number. The document being verified should be identified in the statement of truth as follows:

<i>Document</i>	<i>Identification</i>
Claim form	the claim form issued on [<i>date</i>]

Particulars of claim	the particulars of claim issued on <i>[date]</i>
Statement of case	the <i>[defence or as the case may be]</i> filed on <i>[date]</i>
Application notice	the application notice issued on <i>[date]</i> for <i>[remedy sought]</i>