

PART 9 : TRIALS AND HEARINGS

9.1 Interpretation (39.1)

In this Part 'hearing' includes a trial.

9.2 General rule — hearing to be in public (39.2)

- (1) The general rule is that a hearing is to be in public.
- (2) The requirement for a hearing to be in public does not require the court to make special arrangements for accommodating members of the public.
- (3) A hearing, or any part of it, may be in private if —
 - (a) publicity would defeat the object of the hearing;
 - (b) it involves matters relating to national security;
 - (c) it involves confidential information (including information relating to personal financial matters), and publicity would damage that confidentiality;
 - (d) a private hearing is necessary to protect the interests of any minor or patient;
 - (e) it is a hearing of an application made without notice, and it would be unjust to any respondent for there to be a public hearing;
 - (f) it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or
 - (g) the court considers this to be necessary, in the interests of justice.
- (4) The court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness.

9.3 Conduct of trial (28.7, 29.9)

Unless the trial judge otherwise directs, the trial shall be conducted in accordance with any order previously made.

9.4 Failure to attend the trial (39.3)

- (1) The court may proceed with a trial in the absence of a party but —
 - (a) if no party attends the trial, it may strike out the whole of the proceedings;
 - (b) if the claimant does not attend, it may strike out his claim and any defence to counterclaim; and
 - (c) if a defendant does not attend, it may strike out his defence or counterclaim (or both).
- (2) Where the court strikes out proceedings, or any part of them, under this rule, it may subsequently restore the proceedings, or that part.
- (3) Where a party does not attend and the court gives judgment or makes an order against him, the party who failed to attend may apply for the judgment or order to be set aside.
- (4) An application under paragraph (2) or (3) must be supported by evidence.
- (5) Where an application is made under paragraph (2) or (3) by a party who failed to attend the trial, the court may grant the application only if the applicant —
 - (a) acted promptly when he found out that the court had exercised its power to strike out or to enter judgment or make an order against him;
 - (b) had a good reason for not attending the trial; and
 - (c) has a reasonable prospect of success at the trial.

9.5 Trial bundles (39.5)

(1) Unless the court orders otherwise, the claimant must file an indexed and paginated bundle of documents, in one or more lever-arch files, (a 'trial bundle') containing a copy of each of the following documents —

- (a) the claim form and all statements of case,
- (b) a case summary and, if appropriate, a chronology,
- (c) requests for further information and responses to the requests,
- (d) all witness statements to be relied on as evidence,
- (e) any witness summaries,
- (f) any notices of intention to rely on hearsay evidence under rule 8.24,
- (g) any notices of intention to rely on evidence (such as a plan, photograph etc.) under rule 8.28 which is not —
 - (i) contained in a witness statement, affidavit or expert's report,
 - (ii) to be given orally at the trial,
 - (iii) hearsay evidence under rule 8.24,
- (h) any medical reports and responses to them,
- (i) any experts' reports and responses to them,
- (j) any order giving directions as to the conduct of the trial,
- (k) any document required to be included by a direction or court order; and
- (l) any other necessary documents.

(2) The court may direct that the claimant, instead of or as well as filing those documents in paper form, supply to the court office a CD-ROM containing those documents in such electronic form, arranged in such way, as is specified in the direction.

(3) Unless the court otherwise orders, the claimant must file the trial bundle not more than 10 days and not less than 7 days before the start of the trial.

9.6 Representation at trial of corporations (39.6)

Without prejudice to rule 5.10, a company or other corporation may be represented at trial by an officer or employee if —

- (a) the officer or employee has been authorised by the company or corporation to appear at the trial on its behalf; and
- (b) the court gives permission.

9.7 Impounded documents (39.7)

(1) Documents impounded by order of the court must not be released from the custody of the court except in compliance with a court order.

(2) Documents impounded by order of the court, while in the custody of the court, may not be inspected except by a person authorised to do so by a court order.

9.8 Audio recordings (SD 89/98)

(1) In this rule 'recording' means an audio recording of a hearing which is required to be made under section 27(4) of the High Court Act 1991.

(2) A recording shall be kept by the court office for a period of not less than 3 years following the conclusion of the claim to which the hearing relates.

(3) For the purposes of paragraph (2), a claim is concluded —

- (a) where an appeal is made to the Appeal Division, on the expiry of 12 months after the determination or withdrawal of that appeal, unless an appeal to the Judicial Committee of the Privy Council is made within that period; or

(b) in any other case, when (disregarding any power of the court to grant leave to appeal out of time) there is no further possibility of an appeal in respect of the claim.

(4) Where the public is excluded from the hearing, a person who is not a party to the claim to which the hearing relates is not entitled to obtain a copy of the recording of the hearing.

(5) Where the hearing relates to an application made without notice, a party to the claim to which the hearing relates may not, without the permission of the court, obtain a copy of the recording of the hearing unless he or his advocate was present at the hearing.

(6) Paragraphs (4) and (5) are subject to any court order permitting any person or party to obtain a copy of a recording.