

# **The Civil Procedure Rules of the Supreme Court of The Bahamas, 2022**

This working draft of the new Civil Procedure Rules of the Supreme Court of The Bahamas, 2022 ("**the CPR**") is released for review, consideration and comments by all stakeholders and interested parties.

The Judiciary in collaboration with the Bahamas Bar Association will be conducting seminars, webinars and workshops on the CPR during the months of February, March and April with a view to finalizing and promulgating the CPR in April, 2022. The active participation of members of the Bar and other interested parties in the training sessions and Discussion Groups is strongly encouraged.

The draft Forms for the new Rules will be released in February, 2022.

You are requested to provide your feedback, comments and/or suggestions in connection with the CPR by email to [cprinfo@courts.gov.bs](mailto:cprinfo@courts.gov.bs)

Enquiries relating to the process or related matters should be directed to the Office of the Chief Justice for the attention of Mrs. Cheryl Brown.

***Office of the Chief Justice***

# **BAH SUP CT CPR:**

## **PARTS 1 TO 39**

### **COMMENCEMENT TO TRIAL**

# **DRAFT CIVIL PROCEDURE RULES OF THE SUPREME COURT OF THE COMMONWEALTH OF THE BAHAMAS – JANUARY 28 2022**

## **Part 1**

### **The overriding objective**

#### **CPR 1.1**

##### **1.1 The Overriding Objective**

- (1) The overriding objective of these Rules is to enable the court to deal with cases justly and at proportionate cost.
- (2) Dealing justly with a case includes, so far as is practicable:
  - (a) ensuring that the parties are on an equal footing;
  - (b) saving expense;
  - (c) dealing with the case in ways which are proportionate to
    - (i) the amount of money involved;
    - (ii) the importance of the case;
    - (iii) the complexity of the issues; and
  - (iv) the financial position of each party;
- (d) ensuring that it is dealt with expeditiously and fairly;
- (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases; and
- (f) enforcing compliance with rules, practice directions and orders.

## **CPR 1.2**

### **1.2 Application of overriding objective by the court**

(1) The court must seek to give effect to the overriding objective when –

- (a) exercising any powers under these Rules;
- (b) exercising any discretion given to it by the Rules; or
- (c) interpreting these Rules.

(2) These Rules shall be liberally construed to give effect to the overriding objective and, in particular, to secure the just, most expeditious and least expensive determination of every cause or matter on its merits.

## **CPR 1.3**

### **1.3 Duty of parties**

It is the duty of the parties to help the court to further the overriding objective. In applying the Rules to give effect to the overriding objective the Court may take into account a party's failure to help in this respect.

*[Part 25 deals with the court's duty to forward the overriding objective by active case management.]*

## **Part 2**

### **Application and Interpretation of these Rules**

#### **CPR 2.1**

##### **2.1 Citation and Commencement**

- (1) These Rules may be cited as the Civil Procedure Rules of the Supreme Court of The Bahamas, 2022.
- (2) A reference to a rule such as CPR 2.7 or rule 2.7 is a reference to a rule so numbered in these Rules.

#### **CPR 2.2**

##### **2.2 Application of these Rules**

- (1) Subject to paragraph (3), these Rules apply to all civil proceedings in the Supreme Court.
- (2) In these Rules “civil proceedings” include Judicial Review.
- (3) These Rules do not apply to proceedings of the following kinds –
  - (a) bankruptcy and insolvency proceedings (including winding up of companies);
  - (b) family proceedings except proceedings under the Child Protection Act;
  - (c) non-contentious probate proceedings;
  - (d) proceedings in which the Supreme Court is acting as a Prize Court;
  - (e) any other proceedings in the Court instituted under any enactment, in so far as rules made under that enactment regulate those proceedings; and
  - (f) any proceedings to which, by Part 73 (transitional provisions) it is provided that these Rules do not apply.

#### **CPR 2.3**

##### **2.3 Definitions**

In these Rules, unless otherwise provided for or the context otherwise requires –

“ADR procedure” means any procedure for alternative dispute resolution including, in particular, mediation;

“additional claim” has the meaning given in rule 18.2(2);

“additional claimant” means a person who makes an additional claim;

“additional defendant” has the meaning given in rule 18.2;

“applicant” has the meaning given in rule 11.2;

“application” has the meaning given in rule 11.2;

“attorney” means a person admitted or otherwise entitled to practise as an attorney-at-law in The Bahamas either generally or in respect of a particular cause or matter;

“body corporate” means a company or other body corporate wherever or however incorporated, other than a corporation sole, and includes a limited company unless a rule otherwise provides;

“Chief Justice” means the Chief Justice of The Bahamas and includes, in relation to any period in which the office of Chief Justice is vacant, the person for the time being performing the functions of the Chief Justice or any other Judge authorised to act as Chief Justice;

“claim” is to be construed in accordance with Part 8;

“claim form” is to be construed in accordance with Part 8;

“claim for a specified sum of money” means -

(a) a claim for a sum of money that is ascertained or capable of being ascertained as a matter of arithmetic and is recoverable under a contract ; and

(b) for the purposes of Parts 12 (default judgments) and 14 (judgment on admissions), a claim for -

(i) the cost of repairs executed to a vehicle;

(ii) the cost of repairs executed to any property in, on or abutting a road; or

(iii) any other actual financial loss other than loss of wages or other income,

claimed as a result of damage which is alleged to have been caused in an accident as a result of the defendant's negligence where the amount of each item in the claim is specified and copies of receipted bills for the amounts claimed are attached to the claim form or statement of claim;

“claim for personal injuries” means proceedings in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person's death;

“claimant” means a person who makes a claim and, in relation to any proceedings commenced before these Rules came into force, includes a plaintiff in an action or the petitioner or applicant in any proceedings commenced by petition, originating summons or motion;

“Court” means the Supreme Court of The Bahamas;

“court office” refers to -

- (a) the place where documents are to be filed, etc. and includes a Registry; and
- (b) members of the court staff who carry out work of a formal or administrative nature under rule 2.5(1);

“defendant” means a person against whom a claim is made and, in relation to proceedings commenced before these Rules came into force, includes a respondent to any petition, originating summons or motion;

“external company” means any incorporated or unincorporated body formed under the laws of a State other than The Bahamas except such an incorporated body which has been either continued or registered in The Bahamas.

“FAX” means the making of a facsimile copy of a document by the transmission of electronic signals;

“filing” is to be construed in accordance with rule 3.4;

“fixed date claim form” is a claim form in Form [ ] (See rule 8.1(6)) upon which there is stated a date, time and place for the first hearing of the claim;

“Hague Convention” means the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters signed at The Hague on November 15, 1965;

“judge” (a) includes the Chief Justice and any justice appointed under Article 94 or 95 of the Constitution; but (b) does not include a registrar unless the context otherwise requires;

“judgment creditor” has the meaning given in rule 43.1(2);

“judgment debtor” has the meaning given in rule 43.1(2);

“jurisdiction” means the jurisdiction of the court as extending throughout The Commonwealth of the Bahamas and any part of its territorial waters;

“limited company” means a body corporate that is incorporated or continued under the relevant legislation relating to companies in The Commonwealth of the Bahamas;

“litigation guardian” (a) means (i) a person who is authorised by or under an enactment to conduct proceedings in the name of, or on behalf of, an incapacitated person or a minor (but only in a proceeding to which the authority extends); or (ii) a person who is appointed under rule 23.8 to conduct a proceeding; and (b) has the same meaning as the expression “*guardian ad litem*”;

“minor” means a person who has not attained the age of majority;

“money lending action” has the meaning assigned to it by Part 62 Section II;

“month” means a calendar month;

“Northern Region” means the Islands of Grand Bahama, Abaco and Bimini all of which are situate in The Bahamas;

“order” includes an award, declaration, decree, direction or judgment;

“overriding objective” means the objective set out in rule 1.1;

“party” means any person who is a claimant or a defendant or a person added to a proceeding;

“patient” means a person who by reason of mental disorder is incapable of managing his or her own affairs;

“period for filing a defence” has the meaning given by rule 10.3;

“personal injuries” includes any disease and any impairment of a person’s physical or mental condition;

“Registry” means a Registry of the Supreme Court;

“statement of case” means -

(a) a claim form, statement of claim, defence, counterclaim, additional claim form or defence and a reply; and

(b) any further information given in relation to any statement of case under Part 34 either voluntarily or by order of the court;

“statutory rate of interest” means the rate of interest on judgment debts that may be prescribed for the time being.

“Supreme Court” means the Supreme Court constituted under the Supreme Court Act, Chapter 53 of the statute laws of The Bahamas.

“The Bahamas” means the Commonwealth of The Bahamas.

“Videoconference” means a remote hearing where the hearing is by video-link, live television link, internet link or any other means that will allow the Court and the parties to engage in simultaneous visual and

oral communication facilitated through the use of technology by the Court.

## **CPR 2.4**

### **2.4 Who may exercise the powers of the court**

- (1) Except where any enactment, rule or practice direction provides otherwise, the functions of the Supreme Court may be exercised by the Chief Justice, any judge or registrar of that court in accordance with these Rules and/or any practice direction made by the Chief Justice.
- (2) Where
  - (a) a trial has been commenced but not completed by a judge;
  - (b) any enactment or rule requires an application to be made to, or jurisdiction to be exercised by, the judge by whom a claim was tried then if the judge dies or is incapacitated, or ceases to be a judge of the Supreme Court, or if for any other reason it is impossible or inconvenient for the judge to act in the matter; or
  - (c) a trial or the hearing of an application has been completed by a judge and the judge has completed the judgment but has not delivered it prior to ceasing to be a judge of the Supreme Courtthe Chief Justice may assign some other judge to retry or complete the trial of the claim or to hear any application or exercise the jurisdiction or to deliver the judgment.
- (3) The Chief Justice may by practice direction allocate the work of the Court between judges and registrars.

## **CPR 2.5**

### **2.5 Court staff**

- (1) Where these Rules refer to an act being done by the court office or require or permit the performance of an act of a formal or administrative character, that act may be performed by a member of the court staff authorised generally or individually in writing by the Chief Justice.
- (2) Where these Rules expressly so provide, any other functions of the court may be carried out by a member of the court staff authorised in writing by the Chief Justice.
- (3) If a step may be taken by a member of the court staff -
  - (a) that person may consult a judge or registrar before taking the step;and

(b) that step may be taken by a judge or registrar instead of a member of the court staff.

## **CPR 2.6**

### **2.6 Court's discretion as to where, when and how it deals with cases**

(1) Cases shall be heard in open court and applications shall be heard in chambers except that -

(a) any hearing except the trial of an action may be conducted in chambers if the court so directs; and the court shall in each case decide whether the application is a proper one to be made in open court or by application in chambers, and may at or before the hearing, if it shall think fit, remove the same into open court or into chambers, as the case may be; and

(2) An order made in chambers shall have the same force and effect as an order made in open court, and the court sitting in chambers shall have the same power to enforce, vary, or deal with any such order, as if sitting in open court.

(3) The Court may order that any:

(i) hearing be conducted in whole or in part by means of a telephone call, conference call, video-conference or any other form of electronic communication; or

(ii) trial be conducted in whole or in part by means of video-conferencing or any other form of electronic communication.

(4) The Court may give directions to facilitate the conduct of a hearing by videoconference or the use of any other electronic or digital means of communication or storage or retrieval of information, or any other technology it considers appropriate.

## **Part 3**

### **Time, Documents etc**

#### **CPR 3.1**

##### **3.1 Time – court to state calendar date**

When making any judgment, order or direction which imposes a time limit for doing any act the Court must, wherever practicable, state-

- (a) the calendar date; and
  - (b) the time of day,
- by which the act must be done.

#### **CPR 3.2**

##### **3.2 Time – computation**

(1) This rule shows how to calculate any period of time for doing any act which is fixed by -

- (a) any judgment or order of the Court;
- (b) any practice direction; or
- (c) these Rules.

(2) All periods of time expressed as a number of days are to be computed as clear days.

(3) In this rule “clear days” means that in computing the number of days the day on which the period begins and the day on which the period ends are not included.

##### *Examples*

(a) *Document served by post are deemed to be served 14 days after posting: A Document posted on 1st September is deemed to be served on 16th September.*

(b) *Document must be filed at least 3 days before the hearing – Application is to be heard on Friday 20th October*

*The last date for filing the document is Monday 16th October.)*

- (4) When the specified period –
  - (a) is 7 days or less; and
  - (b) includes
    - (i) a Saturday or Sunday; or

- (ii) any other day on which the court office is closed, that day does not count.

(Example

*Notice of application must be given not less than 7 days before a hearing:*

*Hearing on Friday 20th October: Notice must be given not later than Tuesday 10th October.)*

- (5) If the period specified for doing any act at the court office ends on a day on which the Court is closed, the act is in time if done before close of business on the next day on which the Court is open.
- (6) If the period specified for doing any act which does not need to be done at court ends on -
  - (a) a Saturday or Sunday; or
  - (b) any public holiday,the act must be done before 4 p.m. on the next ordinary business day.

**CPR 3.3**

**3.3 Documents**

- (1) Unless otherwise prescribed by Practice Direction issued by the Chief Justice every document, so far as is practicable, prepared for use in the Supreme Court must be on “letter size” paper and in a form to be prescribed by Practice Direction issued by the Chief Justice.
- (2) The Chief Justice may by practice direction -
  - (a) require any document filed or to be used at court to be in the format that the Chief Justice prescribes to facilitate electronic recording or filing of that document; and
  - (b) prescribe the conditions under which documents may be served or filed electronically.
- (3) Every document to be filed at the court must -
  - (a) be headed with the -
    - (i) full title of the proceedings; and
    - (ii) title of the document;
  - (b) state the –
    - (i) name;

- (ii) business address;
  - (iii) reference (if any);
  - (iv) telephone number; and
  - (v) email address (if any)
- of the person or persons filing it;
- (c) contain its date;
  - (d) (except in the case of an affidavit) be signed by the person filing it; and
  - (e) state the name of the party on whose behalf it is filed.
- (4) If a document is signed the full name of the signatory must be set out legibly below the signature.

### **CPR 3.4**

#### **3.4 Filing of documents**

- (1) A document may be filed by -
  - (a) delivering it; or
  - (b) submitting it by the method of electronic filing (e-filing) or by any other electronic means approved by or under the Rules in accordance with a Practice Direction issued by the Chief Justiceto the court office where the claim is proceeding or intended to proceed.
- (2) A document is filed on the day when it is stamped (manually or electronically) by or on behalf of the court office.
- (3) If a fee is to be paid, a document is not to be treated as filed until -
  - (a) the fee is paid; or
  - (b) an undertaking to pay the fee acceptable to the Registrar is received.

### **CPR 3.5**

#### **3.5 Sealing of documents issued by the court**

- (1) The court must seal the following documents on issue
  - (a) the claim form;
  - (b) all notices of appeal; and
  - (c) all judgments (except Default Judgments), orders or directions of the court.
- (2) The court may place the seal on any document by -

- (a) hand; or
- (b) printing a facsimile of the seal on the document electronically or by any other electronic means.
- (3) All judgments (except Default Judgments) and orders and directions of the court must be signed or initialled by the judge or registrar who made the order or judgment or given the directions. PROVIDED that if that judge or registrar has demitted office or is otherwise not available to sign or initial the order or judgment or directions another judge may do so.
- (4) A document purporting to bear the court's seal is admissible in evidence without further proof.

### **CPR 3.6**

#### **3.6 Forms**

- (1) The forms in the Appendix to these Rules and, where appropriate, practice forms must be used in the cases to which they apply.
- (2) A form may be varied if the variation is required by the circumstances of a particular case.
- (3) A form must not be varied so as to leave out any information or guidance which the form in the Appendix or practice form gives to the intended recipient of the form.
- (4) If these Rules require a party to send a blank form to any other party, the party must send it to the other party without variation except the insertion of the title of the case and the court's address to which that document is to be returned.
- (5) A form marked with the word 'Seal' must bear the seal of the Supreme Court.

### **CPR 3.7**

#### **3.7 Statements of case – address for service**

- (1) Every statement of case must contain an address (including a street address) within the jurisdiction at which the party filing the statement of case will accept service of documents.
- (2) The address for service must also state -
  - (a) if given by an attorney the name or reference of the person who is dealing with the matter; and

(b) the telephone number and the email address of the attorney filing the document or if filed by one of the parties the telephone number and email address (if any) of that party.

(3) A party must notify the court and all other parties immediately if the address for service is changed and any document sent to the original address before notice of such change is received by the party serving the document is regarded as validly served.

### **CPR 3.8**

#### **3.8 Statement of case – statement of truth**

(1) Every statement of case must be verified by a statement of truth.

(2) The statement of truth should be signed by the party personally.

(3) If it is impracticable for the party personally to sign the statement required by paragraph (1) it may be given by that person's attorney.

(4) A statement of truth given by the attorney must also certify -

(a) that the statement is given on the party's instructions; and

(b) the reasons why it is impractical for the lay party to give the statement.

(5) If a statement of case is changed under Part 20, the amended statement of case must be verified by a statement of truth.

(6) Information given under Part 34 (whether voluntarily or following an order of the court) must be verified by a statement of truth.

(7) A statement of truth given by a party personally must be in the following form -

"I [*name*] certify that I believe that the facts stated in this [*name document*] are true."

(8) A statement given by the attorney for a party must be in the following form -

"I [*name of the individual attorney giving the certificate*] certify that -

(a) the [*claimant or as the case may be*] believes that the facts stated in this [*name document*] are true; and

(b) this statement is given on the [*claimant's or as the case may be*] instructions.

The [*claimant or as the case may be*] cannot give the certificate because [*state reason*]"

### **CPR 3.9**

#### **3.9 Failure to give statement of truth**

- (1) The court may strike out any statement of case which has not been verified by a statement of truth.
- (2) Any party may apply for an order under paragraph (1).

### **CPR 3.10**

#### **3.10 Right to inspect, etc. certain documents filed in court office**

- (1) On payment of the prescribed fee, any person is entitled, during office hours, to search for, inspect and take a copy of any of the following documents filed in the court office, with redactions, if any, deemed necessary by a registrar namely —
  - (a) a claim form;
  - (b) a defence;
  - (c) a reply;
  - (d) a notice of appeal;
  - (e) a judgment or order given or made in court; and
  - (f) with the leave of the court, which may be granted on an application made without notice, any other document.
- (2) Nothing in paragraph (1) prevents a party in any proceedings from searching for, inspecting asking for a copy of any affidavit or other document filed in the court office in those proceedings or filed before the commencement of those proceedings but with a view to its commencement.
- (3) Any document filed in or in the custody of a Registry must not be taken out of the Registry without the leave of the court unless the document is to be sent to another Registry or to a judge or registrar.

# Practice Direction CPR 3: Court Documents

This Practice Direction is made pursuant to the Civil Procedure Rules of the Supreme Court, 2022 and supplements Part 3 of the Rules.

## 1. Introduction

This Practice Direction clarifies the position as stated in CPR Part 3.3 with regard to all court documents which are filed.

## 2. Scope of CPR Part 3.3 (3) & (4)

Part 3.3(3)(a) states that every document filed at the court must be headed with the full title of the proceedings and the title of the document. Part 3.3(3)(b) states that every document which is filed should state the name of the person filing it, or, in the case where it is more than one person, the persons filing the document, their business address, reference (if any) telephone number and email address (if any). Part 3.3(3)(c), and (d) go on to state that every document must contain its date and must, except in the case of an affidavit, be signed by the person filing it. Part 3.3 (4) complements the previous provisions by stating that the full name of the signatory must be set out legibly below the signature.

## 3. Document Headings

All documents filed at the court must be headed in accordance with the rules. This would mean that the full title of the proceedings as well as the title of the document must be at the head of the document. At first glance the nature of the proceedings as well as the document filed should be clear to the reader. If any of the parties is acting in a representative capacity this should be properly reflected in the heading.

3.1 Where proceedings are brought under the provisions of a particular statute, the statute should be named in the title of the proceedings.

*Example;*

[INSERT]

3.2 Where the subject matter of the proceedings is particular property this should be reflected in the title of the proceedings.

*Example;*

In the Matter of parcel 223, block 44 in the [ ] subdivision.

BETWEEN:

A.B. a minor (by J.K. his litigation guardian)

Claimant

and

C.D.

Defendant

### DEFENCE AND COUNTERCLAIM

3.3 Where the proceedings concern a particular document, such as a will or a trust or a deed the document should be identified in the title.

*Example;*

In the Matter of a Deed of Conveyance dated 28 February 1975 OR [ trust or settlement ] of ...

OR

In the Matter of the last will and testament of [ ], deceased... [ or as the case may be.]

BETWEEN:

A.B. (Acting herein and represented by her attorney Jim Doe)

Claimant

and

C.D.

Defendant

### CLAIM FORM



## 6. Effective Date

This Practice Direction will come into effect on the [ ] day of [ ], 2022 and will be applicable to all civil proceedings filed in the Court.

DRAFT #1

## **Part 4**

### **Practice Directions and Guides**

#### **CPR 4.1**

##### **4.1 Who may issue practice directions**

Practice directions may be issued only by the Chief Justice.

#### **CPR 4.2**

##### **4.2 Scope of practice directions**

- (1) A practice direction may be issued in any case where provision for such a direction is made by these Rules.
- (2) Where there is no express provision in these Rules for such a direction, the Chief justice may give directions as to the practice and procedure to be followed in the Supreme Court.

#### **CPR 4.3**

##### **4.3 Publication of practice directions**

Practice directions and guides must forthwith be posted on the website of the Judiciary or made available in such other manner as the Chief Justice may direct.

#### **CPR 4.4**

##### **4.4 Compliance with practice directions**

- (1) A party must comply with any relevant practice direction unless there is good reason for not doing so.
- (2) The court may make an order under Part 26 (case management – the court's powers) or Part 71 (costs – general) against a party who fails to comply with a practice direction.

#### **CPR 4.5**

##### **4.5 Practice guides**

- (1) The Chief Justice may issue practice guides to assist parties in the conduct of litigation.
- (2) Parties must have regard to any relevant practice guide.
- (3) The court may take into account the failure of any party to comply with any practice guide when deciding whether or not to make an order under Part 26 (case management – the court's powers) or Part 71 (costs – general).

## **CPR 4.6**

### **4.6 Date from which practice directions and guides take effect**

A practice direction or guide takes effect from the date specified in the direction or guide.

DRAFT #1

## **Part 5**

### **Service of Claim Form within Jurisdiction**

#### **CPR 5.1**

##### **5.1 Service of claim form – normal method**

- (1) The general rule is that a claim form must be served personally on each defendant.
- (2) Notwithstanding any other provisions of this Part the Chief Justice may by practice direction authorise the use of electronic means of communication (including e-mail) for service of a claim form under this Part.

Part 6 deals with service of other documents.

#### **CPR 5.2**

##### **5.2 Statement of claim to be served with claim form**

- (1) The general rule is that the claimant's statement of claim must be served with the claim form.
- (2) The claim form may be served without the statement of claim in accordance with rule 8.2.
- (3) In this Part reference to service of the claim form requires that -
  - (a) unless dispensed with under paragraph (2) above, the statement of claim; or
  - (b) if these Rules so require, an affidavit or other document;
  - (c) a copy of any order that may have been made; and
  - (d) a copy of any order or application made under rule 8.2;must be served with the claim form unless the statement of claim is contained in the claim form.

#### **CPR 5.3**

##### **5.3 Method of personal service**

A claim form is served personally on an individual by handing it to or leaving it with the person to be served.

#### **CPR 5.4**

##### **5.4 Permitted place of service**

Except as permitted by Part 7 (service out of the jurisdiction), a claim form must be served at a place within the jurisdiction.

## **CPR 5.5**

### **5.5 Proof of personal service**

(1) Personal service of the claim form is proved by an affidavit sworn by the server stating -

- (a) the date and time of service;
- (b) the precise place or address at which it was served;
- (c) the precise manner by which the person on whom the claim form was served was identified; and
- (d) precisely how the claim form was served.

(2) If the person served was identified by another person, there must also be filed where practicable an affidavit by that person-

- (a) proving the identification of the person served; and
- (b) stating how the maker of the affidavit was able to identify the person served.

(3) If the server identified the person to be served by means of a photograph or description there must also be filed an affidavit by a person -

- (a) verifying the description or photograph as being of the person intended to be served; and
- (b) stating how the maker of the affidavit is able to verify the description or photograph as being of the person intended to be served.

## **CPR 5.6**

### **5.6 Service on attorney**

If an attorney -

- (a) is authorised to accept service of the claim form on behalf of a party; and
- (b) has notified the claimant in writing that he or she is so authorised, the claim form must be served on that attorney.

## **CPR 5.7**

### **5.7 Service on limited company**

Service of the claim form on a limited company may be effected -

- (a) by leaving the claim form at the registered office of the company;

- (b) by serving the claim form personally on an officer or manager of the company at any place of business of the company which has a real connection with the claim; or
- (c) by serving the claim form personally on any director, officer, receiver, receiver-manager or liquidator of the company;
- (d) in any other way allowed by any enactment.

## **CPR 5.8**

### **5.8 Service on firm or partnership**

- (1) Service of the claim form on a firm or partnership may be effected -
  - (a) by serving the claim form personally on a manager of the firm at any place of business of the firm or partnership which has a real connection with the claim;
  - (b) by serving the claim form personally on any partner of the firm; or
  - (c) in any other way allowed by any enactment.
- (2) If the claimant knows that a partnership has been dissolved when the claim is issued, the claim form must be served personally on every person within the jurisdiction whom the claimant seeks to make liable.

## **CPR 5.9**

### **5.9 Service on body corporate**

- (1) Service of the claim form on a body corporate (other than a limited company) may be effected:
  - (a) by leaving the claim form at the principal office of the body corporate;
  - (b) by serving the claim form personally on any principal officer of the body corporate; or
  - (c) in any other way allowed by any enactment.
- (2) In this rule

“principal officer” means the chairman or president of the body, or the chief executive officer, secretary, treasurer or other similar officer of the body.

Rule 65.3 deals with service on the Crown.

## **CPR 5.10**

### **5.10 Service on minors and patients**

- (1) Paragraphs (2) to (5) specify the persons on whom a claim form must be served if it would otherwise be served on a minor or patient.
- (2) A claim form which would otherwise be served on a minor who is not also a patient must be served on -
  - (a) one of the minor's parents or guardians; or
  - (b) the person with whom the minor resides or in whose care the minor is, if there is no parent or guardian.
- (3) If a person is authorised under any relevant enactment to conduct the proceedings in the name of the patient or on the patient's behalf, a claim form must be served on that person.
- (4) If there is no person so authorised, a claim form must be served on the person with whom the patient resides or in whose care the patient is.
- (5) The court may make an order permitting the claim form to be served on the minor or patient, or on some person other than the person specified in paragraphs (2) to (4).
- (6) The court may order that, although paragraphs (2) to (4) have not been complied with, the claim form is to be treated as properly served.
- (7) An application for an order under paragraph (5) or (6) may be made without notice but must be supported by evidence on affidavit.

Part 23 deals generally with parties who are minors or patients.

## **CPR 5.11**

### **5.11 Proof of postal service**

- (1) Where service by post of a claim form is permitted proof of service is by an affidavit of service sworn by the person responsible for posting the claim form to the person to be served.
- (2) The affidavit must exhibit a copy of the claim form and state the address to which it was sent.

## **CPR 5.12**

### **5.12 Proof of service by electronic means**

- (1) Service by electronic means of a claim form is proved by an affidavit of service by the person responsible for transmitting the claim form to the person to be served.
- (2) The affidavit must exhibit a copy of –

- (a) the document served;
  - (b) any cover sheet or email to that document;
  - (c) the transmission record; and
  - (d) proof of electronic service of the document, and must state the –
    - (i) electronic means by which the document was served;
    - (ii) e-mail address or FAX number to which the document was transmitted;
- and
- (iii) date and time of the transmission.

(3) Electronic confirmation of delivery may be treated as proof of service for a document that is served electronically and may include a written e-mail response or a read receipt.

### **CPR 5.13**

#### **5.13 Alternative methods of service**

- (1) Instead of personal service of a claim form a party may choose an alternative method of service after taking reasonable steps to personally serve the claim form.
- (2) Where a party -
  - (a) chooses an alternative method of service; and
  - (b) the court is asked to take any step (including the filing of a Default Judgment) on the basis that the claim form has been served;the party who served the claim form must file evidence on affidavit proving that it was impracticable to personally serve the defendant and that the method of service was sufficient to enable the defendant to ascertain the contents of the claim form.
- (3) An affidavit under paragraph (2) must -
  - (a) exhibit a copy of the documents served;
  - (b) give details of the attempts made to personally serve the defendant;
  - (c) give details of the alternative method of service used;
  - (d) show that -
    - (i) the person intended to be served was able to ascertain the contents of the documents; or
    - (ii) it is likely that he or she would have been able to do so; and

- (e) state the time when the person served was or was likely to have been in a position to ascertain the contents of the documents.
- (4) The court office must immediately refer any affidavit filed under paragraph (2) to a judge or registrar who must -
  - (a) consider the evidence; and
  - (b) endorse on the affidavit whether it satisfactorily proves service.
- (5) If the court is not satisfied that it was impracticable to personally serve the defendant or that the method of service chosen was sufficient to enable the defendant to ascertain the contents of the claim form, the court office must fix a date time and place to consider making an order under rule 5.14 and give at least 7 days' notice to the claimant or the claimant's attorney.

#### **CPR 5.14**

##### **5.14 Power of court to deem alternative method of service to be good service**

- (1) The court may direct that a claim form served by a method specified in the court's order be deemed to be good service.
- (2) An application for an order to serve by a specified method may be made without notice but must be supported by evidence on affidavit -
  - (a) showing that it is impracticable to personally serve the defendant;
  - (b) specifying the method of service proposed; and
  - (c) showing that that method of service is likely to enable the person to be served to ascertain the contents of the claim form and statement of claim.

#### **CPR 5.15**

##### **5.15 Proof of service by specified method**

Service is proved by an affidavit made by the person who served the document showing that the terms of the order have been carried out.

#### **CPR 5.16**

##### **5.16 Service of claim form by contractually agreed method**

- (1) This rule applies where a contract contains a term specifying how any proceedings under the contract should be served.
- (2) A claim form containing a claim in respect of a contract may be served by any method permitted by that contract.

(3) If the claim form is served within the jurisdiction in accordance with the contract, it is to be treated as having been served on the defendant.

(4) If the claim form is served out of the jurisdiction in accordance with the contract, it is not to be treated as having been served on the defendant unless service out of the jurisdiction is permitted under Part 7.

## **CPR 5.17**

### **5.17 Service of claim form on agent of principal who is out of jurisdiction**

(1) Where the conditions specified in paragraph (2) are satisfied, the court may permit a claim form relating to a contract to be served on a defendant's agent.

(2) The court may not make an order under this rule unless it is satisfied that-

(a) at the time of the application -

(i) the agent's authority had not been terminated; or

(ii) the agent is still in business relations with the defendant;

(b) the contract to which the claim relates was entered into within the jurisdiction with or through the defendant's agent; and

(c) the defendant cannot be served within the jurisdiction.

(3) An application may be made without notice but must be supported by evidence on affidavit.

(4) An order under this rule must state the periods within which the defendant must file -

(a) an acknowledgment of service; and

(b) a defence.

(5) When the court makes an order under this rule, the claimant must serve the agent with -

(a) the claim form;

(b) the order; and

(c) subject to rule 5.2 (2) above, the statement of claim,

and at the same time send to the defendant at the defendant's address out of the jurisdiction a copy of each document.

## **CPR 5.18**

### **5.18 Service of claim form for possession of vacant land**

- (1) Paragraphs (2) to (3) deal with the service of a claim form for possession of land where -
  - (a) there is no person in occupation of the land; and
  - (b) service cannot otherwise be effected on the defendant.
- (2) The court may direct that a claim form and statement of claim be served by affixing a copy of the claim form to some conspicuous part of the land and by publishing a notice of the claim at least once in one or more newspapers of general circulation in the island in which the land is situated.
- (3) An application for an order under this rule -
  - (a) may be made without notice; but
  - (b) must be supported by evidence on affidavit that there is no -
    - (i) other method of serving the defendant; and
    - (ii) person in possession of the land.

## **CPR 5.19**

### **5.19 Deemed date of service**

- (1) A claim form that has been served within the jurisdiction by an alternative method of service is deemed to be served, unless the contrary is shown, on the day shown in the table in rule 6.6.
- (2) If a claim is sent to the attorney of a party who certifies that he or she accepts service on behalf of the defendant, the claim is deemed to have been served on the date on which the attorney certifies that he or she accepts service.
- (3) If an acknowledgment of service is filed, whether or not the claim form has been duly served, the claimant may treat -
  - (a) the date of filing the acknowledgment of service; or
  - (b) (if earlier) the date shown on the acknowledgment of service for receipt of the claim form; as the date of service.
- (4) A claimant may file evidence on affidavit to prove that service was in fact effected on a date earlier than the date on which it is deemed to be effected.

## **Practice Direction 5 – Service of Claim Form by Electronic Means**

This Practice Direction is made pursuant to Part 4.2(1) of the Civil Procedure Rules of the Supreme Court, 2022 and supplements Part 5 of the Rules.

### **1. Introduction**

1.1 This practice direction authorises the use of electronic means of communication for service of a claim form.

1.2 In this practice direction “electronic means” means CD ROMs, memory sticks, e-mail or other means of electronic communication of the contents of documents.

### **2. Service by electronic means**

2.1 Where a party intends to serve a claim form by electronic means that party must first ask the party who is to be served whether there are any limitations to the recipient's agreement to accept service by such means (for example, the format in which documents are to be sent and the maximum size of attachments that may be received).

2.2 The party who is to be served or the attorney acting for that party must previously have indicated in writing to the party serving—

- (a) that the party to be served or the attorney is willing to accept service by electronic means; and
- (b) the e-mail address or other electronic identification to which it must be sent.

2.3 The following are to be taken as sufficient written indications for the purposes of paragraph 2.2 (b) —

- (a) an e-mail address set out on the letterhead of the attorney acting for the party to be served where it is stated that the e-mail address may be used for service; or
- (c) an e-mail address or electronic identification set out on a statement of case or a response to a claim filed with the court.

2.4 Where a document is served by electronic means, the party serving the document shall, upon request by the party being served send or deliver a hard copy.

2.5 Where a document is to be served by electronic means and any of the Rules or any practice direction requires that document to be signed, that requirement shall be satisfied if the signature is printed by computer or other mechanical means.

Rule 5.12 of the Civil Procedure Rules 2020 applies as it relates to proof of service where service is by electronic means.

### **3. Effective date**

3. This practice direction will come into effect on the [ ] day of [ ], 2022 and will be applicable to all claim forms which are dispatched or transmitted after that date. ]

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## **Part 6**

### **Service of other Documents**

#### **CPR. 6.1**

##### **6.1 Who is to serve documents other than the claim form**

- (1) Every order must be served by the party obtaining the order unless the court orders otherwise.
- (2) Any other document must be served by the party who filed it unless -
  - (a) a rule or practice direction otherwise provides; or
  - (b) the court orders otherwise.

#### **CPR 6.2**

##### **6.2 Method of service**

If these Rules require a document other than a claim form to be served on any person it may be served by any of the following methods -

- (a) any means of service in accordance with Part 5;
- (b) leaving it at any address for service in accordance with rule 6.3(1); or
- (c) other means of electronic communication if this is permitted by a relevant practice direction;

unless a rule otherwise provides or the court orders otherwise.

#### **CPR 6.3**

##### **6.3 Address for service**

- (1) Documents must be delivered or, if allowed, sent by electronic communication or posted to a party at any address for service within the jurisdiction given by that party.
- (2) If a party to be served has not given an address within the jurisdiction at which documents for that party may be served, documents must be served at the address indicated in rule 6.4.

#### **CPR 6.4**

##### **6.4 Serving documents where no address for service is given**

- (1) If no address is given for service the document may be served by leaving it -
  - (a) in the case of a firm or partnership – either –

- (i) at the principal or last known address of the firm or partnership or any place where the firm or partnership carries on business and which has a real connection with the claim; or
  - (ii) the usual or last known place of residence of one of the partners;
  - (b) in the case of an individual – that person’s usual or last known place of residence;
  - (c) in the case of a proprietor of a business – that person’s –
    - (i) usual or last known place of residence; or
    - (ii) place of business or last known place of business; or
  - (d) the business address of any attorney who purports to act for the party in the proceedings.
- (2) The provisions of Part 5 may be applied to such a document as if it were a claim form.

## **CPR 6.5**

### **6.5 Service of documents on person who is not a party**

If the court or a party is to serve documents on a person who is not a party, such documents must be served by one of the methods specified in Part 5 or as the court shall otherwise direct.

## **CPR 6.6**

### **6.6 Deemed date of service**

(1) A document which is served within the jurisdiction in accordance with these Rules is deemed to be served on the day shown in the following table –

#### **Method of Service**

##### **Deemed date of service**

Post - 28 days after posting;

Registered Post - 21 days after the date indicated on the Post Office or courier receipt;

Leaving document at a permitted address - the day after leaving the document;

Other electronic method of service – 4:00 p.m. on the same day of transmission or if transmission is after 4:00 p.m. the following business day at 9:00 a.m.

(2) Any document served after 4 p.m. on a business day or at any time on a day other than a business day is treated as having been served on the next business day.

(3) In this rule “business day” means any -

(a) day other than a Saturday, Sunday or Public Holiday; or

(b) other day on which the court office is closed.

## **CPR 6.7**

### **6.7 Proof of service**

If proof of service of any document is required it may be proved by any method of proving service set out in Part 5.

## **CPR 6.8**

### **6.8 Power of court to dispense with service**

(1) The court may dispense with service of a document if it is appropriate to do so.

(2) An application for an order to dispense with service may be made without notice but must be supported by evidence on affidavit.

## **CPR 6.9**

### **6.9 Service of notices, etc. on Attorney General**

(1) This rule applies where any document has to be served on the Attorney General in connection with any proceedings of which notice has to be given to the Attorney General and where express provision as to service is not made by any enactment or rule.

(2) Any such document must be served in accordance with rule 65.3.

## **Part 7**

### **Service of Court Process out of Jurisdiction**

#### **CPR 7**

##### **7.1 Scope of this Part**

- (1) This Part contains provisions about the -
- (a) circumstances in which court process may be served out of the jurisdiction; and
  - (b) procedure for serving court process out of the jurisdiction.
- when under these Rules it is required to serve a party but such service cannot be served in The Bahamas.
- (2) In this Part references to service or filing copies of the claim form include-
- (a) the statement of claim (unless contained in the claim form); or
  - (b) an affidavit in support of the claim, if these Rules so require; and
  - (c) if permission has been given under rule 8.2(2) to serve the claim form without the statement of claim a copy of the order giving permission.

#### **CPR 7.2**

##### **7.2 When allowed without leave**

A claim form may be served out of The Bahamas without leave in the following cases—

- (1) when a claim is founded on a tort, fraud or breach of duty whether statutory at law or in equity and—
- (i) any act or omission in respect of which damage was sustained was done or occurred in The Bahamas; or
  - (ii) the damage was sustained in The Bahamas;
- (2) when a contract sought to be enforced or rescinded, dissolved, annulled, cancelled, otherwise affected or interpreted in any proceeding, or for the breach of which damages or other relief is demanded in the proceeding—
- (i) was made or entered into in The Bahamas; or
  - (ii) was made by or through an agent trading or residing within The Bahamas; or
  - (iii) was to be wholly or in part performed in The Bahamas; or
  - (iv) was by its terms or by implication to be governed by the law of The Bahamas;

(3) when there has been a breach in The Bahamas of any contract, wherever made;

(4) when the claim is for a permanent injunction to compel or restrain the performance of any act in The Bahamas;

(5) when the subject matter of the proceeding is land or other property situated in The Bahamas, or any act, deed, will, instrument, or thing affecting such land or property;

(6) when the proceeding relates to the carrying out or discharge of the trusts of any written instrument of which the person to be served is a trustee or beneficiary or protector and which ought to be carried out or discharged according to the laws of The Bahamas;

(7) when any relief is sought against any person domiciled or ordinarily resident in The Bahamas;

(8) when any person out of the jurisdiction is —

(i) a necessary or proper party to proceedings properly brought against another defendant served or to be served (whether within The Bahamas or outside The Bahamas under any other provision of these rules), and there is a real issue between the claimant and that defendant that the court ought to try; or

(ii) a defendant to a claim for contribution or indemnity in respect of a liability enforceable by proceedings in the court;

(9) when the proceeding is for the administration of the estate of any deceased person who at the time of his or her death was domiciled in The Bahamas;

(10) when the claim arises under an enactment and either—

(i) any act or omission to which the claim relates was done or occurred in The Bahamas; or

(ii) any loss or damage to which the claim relates was sustained in The Bahamas; or

(iii) the enactment applies expressly or by implication to an act or omission that was done or occurred outside The Bahamas in the circumstances alleged; or

(iv) the enactment expressly confers jurisdiction on the court over persons outside The Bahamas (in which case any requirements of the enactment relating to service must be complied with);

(11) when the person to be served has submitted to the jurisdiction of the court;

(12) when it is sought to enforce any judgment or arbitral award;

(13) when a claim is made for restitution or for the remedy of a constructive trust and the defendant's alleged liability arises out of acts committed within the jurisdiction or out of acts which, wherever committed, were to the detriment of a person domiciled or ordinarily resident within the jurisdiction;

(14) when a claim is made under an enactment which confers jurisdiction on the Court and the proceedings are not covered by any of the other grounds referred to in this rule;

(15) when the subject matter of a claim relates to the constitution, administration, management or conduct of the affairs or the ownership or control of a company incorporated, continued or registered within the jurisdiction;

(16) when a claim is made for interim relief in support of judicial or arbitral proceedings commenced or to be commenced outside the jurisdiction;

(17) when the claim is brought for any relief or remedy in respect of any trust, whether express, implied or constructive, that is governed by or ought to be executed according to the laws of The Bahamas or in respect of the status, rights or duties of any trustee thereof in relation thereto; or

(18) when the claim is brought against a person who is or was a director, officer or member of a company incorporated or registered within the jurisdiction or who is or was a partner of a partnership, whether general or limited, which is governed by the laws of The Bahamas and the subject matter of the claim relates in any way to such company or partnership or to the status, rights or duties of such director, officer, member or partner in relation thereto.

### **CPR 7.3**

#### **7.3 When allowed with leave.**

(1) In any proceeding when service is not allowed under rule 7.2, a claim form may be served out of The Bahamas with the leave of the court.

(2) An application for leave under this rule must be made on notice to every party other than the party intended to be served.

(3) A sealed copy of every order made under this rule must be served with the document to which it relates.

(4) An application for leave under this rule must be supported by an affidavit stating any facts or matters related to the desirability of the court assuming jurisdiction under rule 7.4, including the grounds on which the application is made, the place or country in which the person to be served is or possibly may be found, whether or not the person to be served is a citizen of The Bahamas and a statement that in the deponents belief there is a serious issue to be tried on the merits.

(5) The court may grant an application for leave if the applicant establishes that—

(a) the claim has a real and substantial connection with The Bahamas ;  
and

(b) there is a serious issue to be tried on the merits; and

(c) The Bahamas is the appropriate forum for the trial; and

(d) any other relevant circumstances support an assumption of jurisdiction.

### **CPR 7.4**

#### **7.4 Court's discretion whether to assume jurisdiction.**

(1) If service of process has been effected out of The Bahamas without leave, and the court's jurisdiction is protested under rule 9.7, the court must dismiss the proceeding unless the party effecting service establishes—

(a) that there is—

(i) a good arguable case that the claim falls wholly within 1 or more of the paragraphs of rule 7.2; and

(ii) the court should assume jurisdiction by reason of the matters set out in rule 7.3(5)(b) to (d); or

(b) that, had the party applied for leave under rule 7.3,—

- (i) leave would have been granted; and
- (ii) it is in the interests of justice that the failure to apply for leave should be excused.

(2) If service of process has been effected out of The Bahamas under rule 7.3, and the court's jurisdiction is protested under rule 9.7, and it is claimed that leave was wrongly granted under rule 7.3, the court must dismiss the proceeding unless the party effecting service establishes that in the light of the evidence now before the court leave was correctly granted.

(3) When service of process has been validly effected out of The Bahamas, but The Bahamas is not the appropriate forum for trial of the action, the defendant may apply for a stay, or for a dismissal of the proceeding under rule 9.8 or under the court's inherent jurisdiction to stay proceedings.

## **CPR 7.5**

### **7.5 Service of other documents outside The Bahamas.**

Any document other than a claim form required by any rule to be served personally may be served abroad with the leave of the court, upon an application without notice and supported by an affidavit, which may be given with any directions that the court thinks just.

## **CPR 7.6**

### **7.6 Acknowledgment of service and defence where claim form served out of the jurisdiction**

(1) A claim form to be served out of the jurisdiction must be amended to state the period within which the

- (i) acknowledgment of service; and
- (ii) defence;

must be filed.

## **CPR 7.6A**

### **7.6A Notice to defendant served outside The Bahamas.**

If a defendant is to be served out of The Bahamas with a claim form, the Claimant must attach a notice to the claim form, which may be in Form [ ] informing the defendant of—

- (a) the scope of the jurisdiction of the court in respect of claims against persons who are not resident in The Bahamas; and
- (b) the grounds alleged by the claimant in relying on that jurisdiction; and
- (c) the defendant's right to enter an acknowledgment of service and objection to the jurisdiction of the court under Part 9.

## **CPR 7.7**

### **7.7 Service outside The Bahamas.**

- (1) A claim form permitted under these rules to be served outside The Bahamas may be served by a method—
  - (a) specified in Part 5; or
  - (b) permitted by the law of the country in which it is to be served; or
  - (c) provided for in rules 7.8 and 7.9.
- (2) Paragraph (1) is subject to paragraphs (3) and (4).
- (3) When a convention relating to service of process is in force between The Bahamas and the country where service is to be effected, service must be effected in accordance with a method provided for, or permitted by, that convention.
- (4) No service outside The Bahamas is valid if effected contrary to the law of the country where service is effected.

## **CPR 7.8**

### **7.8 Service through official channels**

- (1) When a party seeks service outside The Bahamas through official channels, the request must be sent by the Registrar to the Minister of Foreign Affairs for further transmission to the appropriate authorities in the foreign country.
- (2) Proof of service must be returned to the Registrar through the same channels.
- (3) In respect of each person to be served, the request for service must be accompanied by—
  - (a) the document to be served; and
  - (b) a copy of the document to be exhibited to the evidence verifying service; and
  - (c) when the language of the person to be served is not English,—

- (i) a translation of the document into the language (verified as correct to the satisfaction of the Registrar) of the person to be served for service with the document; and
- (ii) a copy of that translation, which must be exhibited to the evidence verifying service.

(4) A certificate establishing the fact and date of service and given by the competent authority of the country concerned, or by a The Bahamas consular officer, is sufficient proof of that fact and date.

(5) This rule is subject to any relevant convention that requires or permits any other method of service through official channels.

## **CPR 7.9**

### **7.9 Service in convention countries**

(1) This rule applies when—

- (a) a convention is in force between The Bahamas and any other country relating to the service of documents in proceedings in the courts of the respective countries; and
- (b) a party to a proceeding in The Bahamas desires to take advantage of any provision made in the convention for service in that other country by official means.

(2) When this rule applies, the party seeking service may file a request in Form [ ] stating the official means of service desired and containing the undertaking set out in that form covering the payment of expenses.

(3) Paragraph (2) is subject to the provisions of the convention.

(4) In respect of each person to be served, the request for service must be accompanied by—

- (a) the document to be served; and
- (b) a copy of it exhibited to the evidence verifying service; and
- (c) when the language of the person to be served is not English,—
  - (i) a translation of the document into his or her language (verified as correct to the satisfaction of the Registrar) for service with the document; and
  - (ii) a copy of that translation to be exhibited to the evidence verifying service.

(5) The document and translation to be served must be sealed by the Registrar with the seal of the court and the documents required to

accompany the request for service forwarded by the Registrar to the Ministry of Foreign Affairs for transmission through the appropriate channels to the country concerned for service in accordance with the request for service.

(6) A certificate establishing the fact and date of service and given by the competent authority of the country concerned, or by a Bahamas consular officer, and transmitted by the Ministry of Foreign Affairs to the Registrar is sufficient proof of that service.

(7) A certificate filed by the Registrar is equivalent to an affidavit of service of the documents referred to in the certificate.

## **CPR 7.10**

### **7.10 Time for filing defence**

Except when the court otherwise orders, a defendant who has been served out of The Bahamas must file a statement of defence or acknowledgment of service within 30 working days from the date of service.

## **CPR 7.11**

### **7.11 Mode of service – alternative method**

- (1) Where service on the defendant under rule 7.7 is impracticable, the claimant may apply for an order under this rule that the claim form be served by a method specified by the court.
- (2) An order made under this rule shall specify the date on which service of the claim form shall be deemed to have been effected.
- (3) Where an order is made under this rule, service by the method specified in the court's order shall be deemed to be good service.
- (4) An application for an order under this rule may be made without notice but must be supported by evidence on affidavit –
  - (a) specifying the method of service proposed;
  - (b) full details as to why service under rule 7.7 is impracticable;
  - (c) showing that such method of service is likely to enable the person to be served to ascertain the contents of the claim form and statement of claim; and
  - (d) certifying that the method of service proposed is not contrary to the law of the country in which the claim form is to be served.

(5) Where any method of service specified in an order made under this rule is subsequently shown to be contrary to the law of the country in which the claim was purportedly served, such service shall be invalid.

## **CPR 7.12**

### **7.12 Service of claim form on a State where court permits service out of jurisdiction**

- (1) This rule applies where a claimant wishes to serve a claim form on a State.
- (2) If the State has agreed to a method of service other than a method permitted by this Part, the claim form may be served either by the method agreed or in accordance with the other rules in this Part.
- (3) The claimant must file at the court office –
  - (a) a copy of the claim form;
  - (b) any translation required by virtue of rule; and
  - (c) a request for service to be arranged by the Minister with responsibility for foreign affairs.
- (4) The court office must send documents filed under this rule to the minister with responsibility for foreign affairs with a request that the minister arrange for the claim form to be served.
- (5) If a State has under any enactment relating to state immunity agreed to a method of service the claim form may be served either by the method agreed or in accordance with this rule.
- (6) An official certificate by the minister with responsibility for foreign affairs stating that a claim form has been duly served on a specified date in accordance with a request made under this rule is evidence of that fact.
- (7) A document purporting to be such a certificate is to be treated as such a certificate, unless it is proved not to be.

## **CPR 7.13**

### **7.13 Service of court process other than claim form**

- (1) An application, order or notice issued, made or given in any proceedings may be served out of the jurisdiction without the court's permission if it is served in proceedings in which permission has been given to serve the claim form out of the jurisdiction.

(2) The procedure by which a document specified in paragraph (1) is to be served is the same as that applicable to the service of a claim form and accordingly the rules under Part 5 shall apply.

## **Practice Direction CPR PD 7– Service of Claim Form out of Jurisdiction**

This Practice Direction is made pursuant to Part 4.2(1) of the Civil Procedure Rules of the Supreme Court, 2022 and supplements Part 7 of the Rules.

### **1. Introduction**

This Practice Direction relates to permission to serve a claim form out of the jurisdiction.

### **2. Scope of CPR Part 7**

Part 7 deals with the procedure for service of a claim form out of the jurisdiction. In addition to setting out the procedure for making the application for such service, Part 7 provides that an order granting permission for service out of the jurisdiction must state the periods within which the defendant must file the acknowledgement of service and the defence.

### **3. Periods for Filing Acknowledgement of Service and Defence**

(a) Where an application has been granted for service of a claim form out of the jurisdiction the periods for filing the acknowledgment of service and defence, which will be stipulated in the order granting such application, will be calculated in accordance with the Table set out below.

(b) The period for filing the acknowledgement of service under Part 7.6 is within the number of days after service of the claim form as listed in the Table. The only exception to the above is where the defendant is served with a claim form and the statement of claim is to follow. In such a case the period for filing the acknowledgment of service will be the number of days listed in the Table commencing from the date of service of the statement of claim. (See rule 9.3(2))

(c) For example in the case where a defendant outside The Bahamas is served with a claim form, including a statement of claim, the period for filing an acknowledgment of service of the claim is 28 days after service. If the defendant is served with a claim form without a statement of claim the period for filing an acknowledgment of service does not begin to run until the statement of claim is served.

(d) The period for filing a defence under rule 7.6 in the case where a statement of claim has been served is the number of days listed in the Table.

#### 4. Translations

When a claim form is served in accordance with rules 7.8 and 7.9 the claimant must also file a translation of all the forms that will accompany the claim form.

*Table*

Place or Country	Acknowledgment of Service	Defence	Number of Days	

#### 6. Effective Date

This Practice Direction will come into effect on the [ ] day of [ ] 2022.

## **Part 8**

### **How to start proceedings**

#### **Section I: General Provisions, Standard Claim Form and Fixed Date Claim Form**

#### **Section II Alternative Procedure for Claims – Originating Application Form**

### **Section I: General Provisions**

#### **CPR 8.1**

#### **8.1 How to start proceedings**

(1) Depending upon the nature of the proceedings and the provisions of any statutory provision or rule or Practice Direction, there are three methods by which a claimant may start proceedings:

(a) by Standard Claim Form (Form [ ]);

(b) by Fixed Date Claim Form (Form [ ]) ; or

(c) by Originating Application Form using the Alternative Procedure for Claims Part 8 Section II (Form [ ])

(2) A claimant starts proceedings by filing in the court office the original and not less than two copies of -

(a) the claim form; and (subject to rule 8.2);

(b) the statement of claim; or

(c) if any rule or practice direction so requires, an affidavit or other document.

(3) A claim form is issued on the date when it is stamped (manually or electronically) by or on behalf of the court office.

(4) For the purpose of any enactment relating to limitation periods, an action is brought on the day on which the claim form is stamped (manually or electronically) as received in, by or on behalf of the court office.

Rule 3.4(2) defines when a document is filed.

(5) A Standard Claim (Form [ ]) is to be used except where: (1) rule 8.1(6) requires that the claim must be started using a Fixed Date Claim Form or (2) where an Originating Application Form under Section II of

Part 8 is the more appropriate method of starting and thereafter conducting the claim.

- (6) Form [ ] (Fixed Date Claim Form) must be used -
- (a) in claims arising out of hire-purchase or credit sale agreements;
  - (b) in money lending actions: Part 62 Section II
  - (c) in proceedings for possession of land; and
  - (d) whenever its use is required by a rule or practice direction.

Rule 27.2 (fixed date claims - first hearing) and Practice Direction [ ] deal with the procedure under a Fixed Date Claim Form.

- (7) A person who seeks a remedy -
- (a) before proceedings have been started; or
  - (b) in relation to proceedings which are taking place, or will take place, in another jurisdiction
- must seek that remedy by an application under Part 11.

## **CPR 8.2**

### **8.2 Statement of claim, etc. to be issued and served with claim form**

(1) A claim form may be issued and served without the statement of claim (or affidavit or other document required by rule 8.1(2)(b) or (c)) only if the -

- (a) claimant has included in the claim form all the information required by rules 8.6, 8.7, 8.8 and 8.9; or
- (b) the court gives permission.

(2) In a case of urgency when it is not practicable to include in the claim form all the information required by rules 8.6, 8.7, 8.8 and 8.9 or first to obtain the permission of the court a claimant may issue and serve the claim form without a statement of claim or affidavit or other document required by rule 8.1(2)(b) or (c)) provided that the claimant -

- (a) certifies in writing that the issue and service of the claim form is a matter of urgency, stating why; and
- (b) serves a copy of the -
  - (i) certificate; and
  - (ii) an application for permission;

with the claim form.

- (3) If a claim form is issued under paragraph (2), unless the court otherwise orders, pending the granting of permission by the court, the claimant may take no further steps in the action except to file and serve the claim form (together with the certificate and application for permission) and to take such steps as are necessary to pursue the application for permission.
- (4) The court may give permission under paragraph (1) (b) only if it is satisfied that –
  - (a) a relevant limitation period is or was about to expire and the claimant has obtained legal advice relating to the claim for the first time within the 28 days prior to the date that the claimant wishes to file the claim; or
  - (b) the claim form requires or required to be issued as a matter of urgency and that it is or was not practicable for the claimant to prepare a statement of claim or affidavit.
- (5) An application for permission may be made without notice but must be supported by evidence on affidavit.
- (6) Any order giving permission for the claim form to be filed and served without a statement of claim (or affidavit or other document required by rule 8.2(1)(b) or (c)) must state a date by which the Statement of Claim or other document must be filed and served.
- (7) Such date must in no case be more than 28 days from the date of the order giving permission.
- (8) A copy of the order (or the certificate and application under paragraph (2)) must be served with the claim form.
- (9) The claimant must file a copy of the statement of claim (or affidavit or other document required by rule 8.1(1)(b) or (c)) served in accordance with paragraph (6) endorsed with a certificate stating the date of service and the address at which and manner in which it was served.

### **CPR 8.3**

#### **8.3 Where to start proceedings**

- (1) This rule identifies the court office at which a claim form may be issued.
- (2) Where proceedings relate to land in the Northern Region they shall be commenced in the court office in Grand Bahama. In all other cases relating to land, the court proceedings shall be commenced in the court office in New Providence.
- (3) In the case of any other proceedings:

- (a) where either the cause of action arose or the defendant resides or carries on business in the Northern Region, they shall be commenced in the court office in Grand Bahama; or
  - (b) where the cause of action arose or the defendant resides or carries on business in any place outside the Northern Region, they shall be commenced in the court office in New Providence.
- (4) In any case the court can, either on its own motion or on an application without notice supported by an affidavit, order that the proceedings are to be commenced in or transferred to any court office which it deems appropriate.
  - (5) In the case of an application under sub paragraph (3) above, the affidavit shall set out the grounds of the application and all circumstances relevant thereto.

#### **CPR 8.4**

##### **8.4 Right to make claim which includes two or more claims**

A claimant may use a single claim form to include all or any other claims which can be conveniently disposed of in the same proceedings.

#### **CPR 8.5**

##### **8.5 Claim not to fail by adding or failing to add parties**

- (1) The general rule is that a claim will not fail because a person -
  - (a) who should have been made a party was not made a party to the proceedings; or
  - (b) was added as a party to proceedings who should not have been added.
- (2) However -
  - (a) where a claimant claims a remedy to which some other person is jointly entitled, all persons jointly entitled to the remedy must be parties to the proceedings, unless the court orders otherwise; and
  - (b) if any such person does not agree to be a claimant, that person must be made a defendant, unless the court orders otherwise.
- (3) This rule does not apply in probate or administration proceedings.

## **CPR 8.6**

### **8.6 What must be included in claim form**

- (1) The claimant must in the claim form -
  - (a) include a short description of the nature of the claim;
  - (b) specify any remedy that the claimant seeks; and
  - (c) give an address for service in accordance with rule 3.7.
- (2) Notwithstanding paragraph (1)(b) the court may grant any other remedy to which the claimant may be entitled.
- (3) A claimant who seeks aggravated damages and/or exemplary damages must say so in the claim form.
- (4) A claimant who is seeking interest must -
  - (a) say so expressly in the claim form, and
  - (b) include, in the claim form or statement of claim, details of the
    - (i) basis of entitlement;
    - (ii) rate; and
    - (iii) period for which it is claimed.
- (5) If the claim is for a specified sum of money, the total amount of interest claimed to the date of the claim, and the daily rate at which interest will accrue after the date of the claim must be expressly stated in the claim form.
- (6) A claimant who claims in a representative capacity under Part 21 must state what that capacity is.
- (7) A claimant suing a defendant in a representative capacity under Part 21 must state what that capacity is.

Rule 3.8 requires the claim form to include a statement of truth.

## **CPR 8.7**

### **8.7 Claimants duty to set out case**

- (1) The claimant must include in the claim form or in the statement of claim a statement of all the relevant facts on which the claimant relies.
- (2) The statement must be as short as practicable.
- (3) The claim form or the statement of claim must identify any document known to the claimant which the claimant considers to be necessary to his or her case.

(4) If the claimant seeks recovery of any property, the claimant's estimate of the value of that property must be stated.

(5) The statement of claim must include a certificate of truth in accordance with rule 3.8.

## **CPR 8.8**

### **8.8 Permission to rely on allegation or factual argument not pleaded**

The claimant may not rely on any allegation or factual argument which is not set out in the claim, but which could have been set out there, unless the court gives permission or the parties agree.

## **CPR 8.9**

### **8.9 Special requirements applying to claims for personal injuries**

(1) This rule sets out additional requirements with which a claimant making a claim for personal injuries must comply.

(2) The claimant's date of birth or age must be stated in the claim form or statement of claim.

(3) If the claimant intends to rely at trial on the evidence of a medical practitioner, the claimant must attach to the claim form a report from the medical practitioner on the personal injuries alleged in the claim.

(4) Paragraph (3) does not restrict the right of the claimant to call other or additional medical evidence at the trial of the claim.

(5) The claimant must include in, or attach to, the claim form or statement of claim a schedule of any special damages claimed.

## **CPR 8.10**

### **8.10 Relator claims**

A person's name may not be used in any claim as a relator unless that person has given written authority to that effect and the authority is filed at the court office before the claim is issued.

## **CPR 8.11**

### **8.11 Service of claim form**

After the claim form has been issued it may be served on the defendant in accordance with Part 5 (service of claim form within jurisdiction) or Part 7 (service of court process out of the jurisdiction).

## **CPR 8.12**

### **8.12 Time within which claim form may be served**

- (1) The general rule is that a claim form must be served within 6 months after the date when the claim was issued.
- (2) The period for -
  - (a) service of a claim form out of the jurisdiction; or
  - (b) service of an Admiralty claim form in rem;is 6 months.

Part 7 deals with service out of the jurisdiction; Part 59 deals with Admiralty proceedings.

## **CPR 8.13**

### **8.13 Extension of time for serving a claim form**

- (1) The claimant may apply for an order extending the period within which a claim form may be served.
- (2) The period by which the time for serving a claim form is extended may not be longer than 6 months on any one application.
- (3) An application under paragraph (1) -
  - (a) must be made within the period -
    - (i) for serving a claim form specified by rule 8.12; or
    - (ii) of any subsequent extension permitted by the court;and
  - (b) may be made without notice but must be supported by evidence on affidavit.
- (4) The court may make an order under paragraph (1) only if it is satisfied that –
  - (a) the claimant has taken all reasonable steps to -
    - (i) trace the defendant; and
    - (ii) serve the claim form, but has been unable to do so; or
  - (b) there is some other special reason for extending the period.
- (5) If an order is made extending the validity of the claim form for the purposes of service-

(a) the claim form must be marked with an official stamp or endorsement by the court office showing the period for which its validity has been extended; and

(b) a sealed copy of any order made must be served with the claim form.

(6) No more than one extension may be allowed unless the court is satisfied that -

(a) the defendant is deliberately avoiding service; or

(b) there is some other compelling reason for so doing.

## **CPR 8.14**

### **8.14 Defence form, etc. must be served with claim form**

(1) When a claim form is served on a defendant, it must be accompanied by -

(a) a copy of any order made under rules 8.2 or 8.13;

(b) a defence form (Form [ ]);

(c) a form of acknowledgment of service (Form [ ]);

(d) if the claim is for money, an application to pay by instalments (Form 3); and

(e) the prescribed notes for defendants.

(2) There must be inserted on each form the -

(a) the address of the court office to which the defendant is to return the forms;

(b) the reference number of the claim; and

(c) the title of the claim.

(3) If there is a standard defence form appropriate to the particular case set out in a practice guide, the form sent to the defendant must be in a standard form of that type.

## **Part 8 Section II**

### **Alternative procedure for claims – Originating Application Form**

#### **CPR 8.15**

**8.15** The alternative procedure of an Originating Application Form for commencing proceedings under this Section instead of by Standard Claim Form or a Fixed Date Claim Form is intended for use where:

- (1) the court's decision is sought on a question which is unlikely to involve a substantial dispute of fact: or
- (2) a statute, rule or Practice Direction requires or permits the use of this procedure for commencing proceedings of a specified type.

## **CPR 8.16**

### **8.16 Approval of settlement**

An Originating Application Form under this Section of this Part must be used where there is a claim by or against a child or protected party/patient which has been settled before the commencement of proceedings and the sole purpose of the claim is to obtain the approval of the court to the settlement.

## **CPR 8.17**

### **8.17 Claim Form**

An Originating Application brought under this Section of Part 8 must be in Form [ ].

## **CPR 8.18**

### **8.18 No Default Judgment**

Where the claimant uses an Originating Application Form under this Section of Part 8 he may not obtain default judgment under Part 12.

## **CPR 8.19**

### **8.19 The general procedure in a claim using an Originating Application Form:**

- (1) The court may at any stage, either on application or on its own initiative, order a claim commenced by Originating Application Form to continue as if the proceedings had been commenced using a Standard Claim Form and where the court takes this course it will give such directions as it considers appropriate.
- (2) The court may give directions either on its own initiative or on the application of a party immediately after the Originating Application Form is issued and such directions may include fixing a hearing date where the court will give directions for the disposal of the claim as soon as practicable after the defendant has acknowledged service.
- (3) A rule or practice direction may, in relation to a specified type of proceedings—

- (a) require or permit the use of an Originating Application Form; and
- (b) disapply or modify any of the rules set out in this Part as they apply to those proceedings.

## **CPR 8.20**

### **8.20 Contents of the Originating Application Form**

Where the claimant uses an Originating Application Form it must state—

- (a) that this Section of Part 8 applies;
- (b) the question which the claimant wants the court to decide or the remedy which the claimant is seeking and the legal basis for the claim to that remedy;
- (c) if the claim is being made under an enactment, what that enactment is;
- (d) if the claimant is claiming in a representative capacity, what that capacity is; and
- (e) if the defendant is sued in a representative capacity, what that capacity is.

Every Originating Application Form must be verified by a certificate of truth in compliance with Rule 3.8 as amended to apply to such a form.

## **CPR 8.21**

### **8.21 Issue of claim form without naming defendants**

- (1) A practice direction may set out the circumstances in which an Originating Application Form may be issued under this Section of Part 8 without naming a defendant.
- (2) The practice direction may set out those cases in which an application for permission must be made by application notice before the claim form is issued.
- (3) The application notice for permission—
  - (a) need not be served on any other person; and
  - (b) must be accompanied by a copy of the claim form that the applicant proposes to issue.
- (4) Where the court gives permission it will give directions for the future management of the claim.

## **CPR 8.22**

### **8.22 Acknowledgment of service**

- (1) The defendant must—
  - (a) file an acknowledgment of service in the relevant practice form not more than 14 days after service of the claim form; and
  - (b) serve the acknowledgment of service on the claimant and any other party.
- (2) The acknowledgment of service must state—
  - (a) whether the defendant contests the claim; and
  - (b) if the defendant seeks a different remedy from that set out in the claim form, what that remedy is.

## **CPR 8.23**

### **8.23 Consequence of not filing an acknowledgment of service**

- (1) This rule applies where—
  - (a) the defendant has failed to file an acknowledgment of service; and
  - (b) the time period for doing so has expired.
- (2) The defendant may attend the hearing of the claim but may not take part in the hearing unless the court gives permission.

## **CPR 8.24**

### **8.24 Filing and serving written evidence**

- (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 unless otherwise ordered by the Court on an application without notice.
- (4) If a defendant files written evidence he must forthwith serve a copy of his evidence on the other parties. Any evidence filed at the time of filing his acknowledgment of service must be served when the acknowledgment of service is served on the claimant and any other party.
- (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.

## **CPR 8.25**

### **8.25 Evidence—general**

- (1) No written evidence may be relied on at the hearing of the claim unless—
  - (a) it has been served in accordance with rule 8.24; or
  - (b) the court gives permission.
- (2) The court may require or permit a party to give oral evidence at the hearing.
- (3) The court may give directions requiring the attendance for cross-examination of a witness who has given written evidence.

## **CPR 8.26**

### **8.26 Additional claims**

Where the procedure under this Section is used, Part 18 (counterclaims and other additional claims) applies except that a party may not without the court's permission make an additional claim against a person who is not already a party to the proceedings.

## **CPR 8.27**

### **8.27 Procedure where defendant objects to use of the Part 8 procedure**

- (1) Where the defendant contends that the procedure under this Section should not be used because—
  - (a) there is a substantial dispute of fact; and
  - (b) the use of this procedure is not required or permitted by a rule or practice direction,he must state his reasons when he files his acknowledgment of service.
- (2) When the court receives the acknowledgment of service and any written evidence it will give directions as to the future management of the case.

## Practice Direction 8 – Fixed Date Claims

This Practice Direction is made pursuant to rule 4.2(1) of the Supreme Court Civil Rules, 2022 and supplements Part 8 of the Rules.

### 1. Introduction

1.1 This practice direction clarifies the scope and application of Part 8 of the Rules.

### 2. Circumstances in which an affidavit or a statement of claim must be filed

2.1 This paragraph clarifies rule 8.2(1).

2.2 The judge may direct that an affidavit or a statement of claim be filed and served in addition to the claim form.

### 3. First hearing

3.1 The first hearing of a fixed date claim shall take place in open court unless -

- (a) all parties agree *otherwise*; or
- (b) the court directs otherwise of its own initiative or on the application of one or more of the parties.

### 4. Effective date

This practice direction will come into effect on the [            ], 2022 and will be applicable to all claims where the claim form is filed after that date or the court otherwise directs.

## **Part 9**

### **Acknowledgment of Service and Notice of Intention to Defend**

#### **CPR 9.1**

##### **9.1 Scope of this Part**

(1) This Part deals with the procedure to be used by a defendant who wishes to contest proceedings and avoid a default judgment being entered.

Part 12 deals with default judgments.

(2) The defendant does so

(a) by filing -

(i) a defence in accordance with Part 10; and

(ii) an acknowledgment of service in Form 3 or 4 containing a notice of intention to defend within the time limit under rule 9.3; or

(b) by filing a defence in accordance with Part 10 within the time limit under rule 9.3 or

(c) where applicable, by filing an acknowledgment of service in accordance with rule 8.22.

(3) The filing of an acknowledgment of service is to be treated as the entry of an appearance for the purpose of any enactment referring to the entry of such an appearance.

Part 14 deals with the cases where the defendant wishes to admit all or part of the claim and enables the defendant to make an offer as to the time and rate of payment.

#### **CPR 9.2**

##### **9.2 Filing acknowledgment of service and consequence of not doing so**

(1) A defendant who wishes to -

(a) dispute the claim; or

(b) dispute the court's jurisdiction,

must file at the court office at which the claim form was issued an acknowledgment of service in Form [ ] containing a notice of intention to defend.

- (2) A defendant files an acknowledgment of service by completing the form of acknowledgment of service and handing it in at or electronic filing to the court office.
- (3) An acknowledgment of service has no effect until it is filed at the court office.
- (4) A defendant need not file an acknowledgment of service if a defence is filed within the period specified in rule 9.3.
- (5) If a defendant fails to file an acknowledgement of service or a defence, judgment may be entered if Part 12 allows it.

### **CPR 9.3**

#### **9.3 The period for filing acknowledgment of service**

- (1) The period for filing an acknowledgment of service is the period of 14 days after the date of service of the claim form.
- (2) If permission has been given under rule 8.2 for a claim form to be served without a statement of claim, the period for filing an acknowledgment of service is to be calculated from the date when the statement of claim is served.
- (3) A defendant may file an acknowledgment of service at any time before a default judgment is filed at the court office out of which the claim form was issued.
- (4) Paragraph (1) does not apply where the claim is served -
  - (a) outside the jurisdiction in accordance with Part 7; or
  - (b) on an agent of an overseas principal under rule 5.17.

Rules 7.6 and 5.17(4) deal with the time for filing an acknowledgment of service in those cases.

Rule 65.2(3) makes special provision for extending the time for the Crown to acknowledge service.

### **CPR 9.4**

#### **9.4 Notice to claimant of filing of acknowledgment of service**

- (1) The defendant must forthwith notify the claimant in writing that an acknowledgment of service has been filed.
- (2) A copy of the acknowledgment of service must be annexed to the notice.

## **CPR 9.5**

### **9.5 Contents of acknowledgment of service**

- (1) A defendant acknowledging service -
  - (a) may state in the acknowledgment of service that all or part of the claim is admitted;
  - (b) must state in the acknowledgment of service the date on which the defendant received the claim form;
  - (c) who admits all or part of a claim for a specified sum of money may file with the acknowledgment of service -
    - (i) details of the defendant's financial circumstances;
    - (ii) proposals for payment of any sums admitted; and
  - (d) who admits part of the claim under paragraph (a), must state the amount admitted.
- (2) A defendant who admits part of the claim must also file a defence as to the disputed part of the claim within the time for filing a defence. Rule 10.3 sets out the time for filing a defence.
- (3) The defendant or the defendant's attorney must sign the acknowledgment of service.
- (4) The defendant must include in the acknowledgment of service an address for service within the jurisdiction to which documents may be sent.

## **CPR 9.6**

### **9.6 Right to dispute jurisdiction of court not taken away by acknowledgment of service**

A defendant who files an acknowledgment of service does not by doing so lose any right to dispute the court's jurisdiction.

## **CPR 9.7**

### **9.7 Procedure for disputing court's jurisdiction etc.**

- (1) A defendant who disputes the court's jurisdiction to try the claim may apply to the court for a declaration to that effect.
- (2) A defendant who wishes to make an application under paragraph (1) must first file an acknowledgment of service.
- (3) An application under paragraph (1) of this rule must be made within the period for filing a defence; the period for making an application under this rule includes any period by which the time for filing a defence

has been extended where the court has made an order, or the parties have agreed, to extend the time for filing a defence.

Rule 10.3 sets out the period for filing a defence.

(4) An application under this rule must be supported by evidence on affidavit.

(5) A defendant who -

(a) files an acknowledgment of service; and

(b) does not make an application under this rule within the period for filing a defence,

is treated as having accepted that the court has jurisdiction to try the claim.

(6) An order under this rule may also -

(a) discharge an order made before the claim was commenced or the claim form served;

(b) set aside service of the claim form; and

(c) strike out a statement of claim.

(7) If on application under this rule the court does not make a declaration, it -

(a) may-

(i) fix a date for a case management conference; or

(ii) treat the hearing of the application as a case management conference; and

(b) must make an order as to the period for filing a defence.

Part 26 sets out powers which the court may exercise on a case management conference.

(8) Where a defendant makes an application under this rule, the period for filing a defence is extended until the time specified by the court under paragraph (7)(b) and such period may be extended only by an order of the court.

## **CPR 9.8**

### **9.8 Procedure for applying for a stay etc.**

(1) A defendant who contends that the court should not exercise its jurisdiction in respect of any proceedings may apply to the court for a stay and a declaration to that effect.

(2) A defendant who wishes to make an application under paragraph (1) must first file an acknowledgment of service if he has not previously done so.

(3) An application under paragraph (1) of this rule may be made at any time.

(4) An application under this rule must be supported by evidence on affidavit.

(5) If on application under this rule the court does not make a declaration, it:

(a) may-

(i) fix a date for a case management conference; or

(ii) treat the hearing of the application as a case management conference; and

(b) must make an order as to the period for filing a defence if none has yet been filed.

Part 26 sets out powers which the court may exercise on a case management conference.

(6) Where a defendant makes an application under this rule, the period for filing a defence (where none has yet been filed) is extended until the time specified by the court under paragraph (5)(b) and such period may be extended only by an order of the court.

## Practice Direction 9 – Disputing the Court’s Jurisdiction

This practice direction is made pursuant to Rule [ ] of the Supreme Court Civil Procedure Rules 2022 and supplements Part 9 of the Rules.

### **1. Evidence and practice in cases where the court’s jurisdiction is disputed**

1.1 This paragraph clarifies the application of rule 9.7(4) of the Rules.

1.2 Where a defendant is unable to file all the evidence on which he wishes to rely to support his application under rule 9.7(4), he must

- (a) file with his application an affidavit which sets out the general nature of the grounds on which he proposes to contest the jurisdiction ;
- (b) indicate when the additional evidence will be available; and
- (c) apply for case management directions for the future conduct of the application and, in particular, the timetable which will apply.

### **2. Effective date**

2.1 This practice direction will come into effect on the [ ] day of [ ], 2022 and will be applicable to all claim forms filed after that date.

## **Part 10 Defence**

### **CPR 10.1**

#### **10.1 Scope of this part**

The Rules in this Part set out the procedure for disputing the whole or part of a claim.

Part 18 deals with the procedure for making a counterclaim.

### **CPR 10.2**

#### **10.2 The defendant – filing defence and the consequences of not doing so**

(1) A defendant who wishes to defend all or part of a claim must file a defence (which may be in Form [ ]).

(2) If -

(a) a claim is commenced by a fixed date claim form in Form [ ] and there is served with that claim form an affidavit instead of a statement of claim; or

(b) any rule requires the service of an affidavit,  
the defendant may file an affidavit in answer instead of a defence.

(3) In this Part the expression “defence” includes an affidavit filed under paragraph (2).

(4) A defendant who admits liability and wishes to be heard on the issue of quantum must file and serve a defence dealing with that issue.

(5) If a defendant fails to file a defence within the period for filing a defence, judgment for failure to defend may be entered if Part 12 allows it.

Part 14 deals with the procedure to admit all or part of the claim.

### **CPR 10.3**

#### **10.3 The period for filing defence**

(1) The general rule is that the period for filing a defence is the period of 28 days after the date of service of the claim form.

(2) If permission has been given under rule 8.2 for a claim form to be served without a statement of claim, the period for filing a defence is the period of 28 days after the service of the statement of claim.

- (3) If the defendant within the period set out in paragraph (1) or (2) makes an application under any relevant legislation relating to arbitration to stay the claim on the grounds that there is a binding agreement to arbitrate, the period for filing a defence is extended to 14 days after the determination of that application.
- (4) The parties may agree to extend the period for filing a defence specified in paragraph (1), (2) or (3).
- (5) The parties may not make more than two agreements under paragraph (4).
- (6) The maximum total extension of time that may be agreed is 56 days.
- (7) The defendant must file details of such an agreement.
- (8) A defendant may apply for an order extending the time for filing a defence.
- (9) The general rule is subject to -
  - (a) rule 5.17(4) (service of claim form on agent of overseas principal);
  - (b) rule 7.6 (service of claim form outside jurisdiction);
  - (c) rule 9.7 (procedure for disputing court's jurisdiction); and
  - (d) rule 65.2 (claims against the Crown).

## **CPR 10.4**

### **10.4 Service of copy of defence**

On filing a defence, the defendant must also serve a copy on every other party.

## **CPR 10.5**

### **10.5 Defendant's duty to set out case**

- (1) The defence must set out all the facts on which the defendant relies to dispute the claim.
- (2) Such statement must be as short as practicable.
- (3) In the defence the defendant must say which (if any) allegations in the claim form or statement of claim -
  - (a) are admitted;
  - (b) are denied; and

- (c) are neither admitted nor denied, because the defendant does not know whether they are true;
  - (d) the defendant wishes the claimant to prove.
- (4) If the defendant denies any of the allegations in the claim form or statement of claim-
- (a) the defendant must state the reasons for doing so; and
  - (b) if the defendant intends to prove a different version of events from that given by the claimant, the defendant's own version must be set out in the defence.
- (5) If, in relation to any allegation in the claim form or statement of claim, the defendant does not -
- (a) admit it; or
  - (b) deny it and put forward a different version of events,
- the defendant must state the reasons for resisting the allegation.
- (6) The defendant must identify in or annex to the defence any document known to the defendant which is considered to be necessary to the defence.
- (7) A defendant who defends in a representative capacity, must say -
- (a) what that capacity is; and
  - (b) whom the defendant represents.
- (8) The defendant must verify the facts set out in the defence by a certificate of truth in accordance with rule 3.8.

## **CPR 10.6**

### **10.6 Special requirements applying to claims for personal injuries**

- (1) This rule sets out additional requirements with which a defendant to a claim for personal injuries must comply.
- (2) If the claimant has attached to the claim form or statement of claim a report from a medical practitioner on the personal injuries which the claimant is alleged to have suffered, the defendant must state in the defence -
  - (a) whether all or any part of the medical report is agreed; and
  - (b) if any part of the medical report is disputed, the nature of the dispute.
- (3) If the defendant intends to rely on a report from a medical practitioner to dispute any part of the claimant's claim for personal

injuries and the defendant has obtained such a report, the defendant must attach that report to the defence.

## **CPR 10.7**

### **10.7 Consequences of not setting out defence**

The defendant may not rely on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the court gives permission or the parties agree.

Rule 20.1 contains provisions about amendments to statements of claim.

## **CPR 10.8**

### **10.8 Defence of tender**

(1) The defence of tender is not available unless the defendant pays into -

(a) an interest bearing account with the agreement of the claimant or the permission of the court, an interest bearing account; or

(b) court;

the amount alleged to have been tendered within the period for filing a defence.

(2) If the claimant does not give notice accepting the payment into court within 28 days of service of the defence, the defendant may apply for payment out of the monies.

Rule 10.3 states the period for filing a defence, Part 36 deals with payments into court.

## **CPR 10.9**

### **10.9 Reply to defence**

(1) A claimant may file and serve a reply to a defence -

(a) 14 days after the date of service of the defence; or

(b) at any time with the permission of the court.

(2) Where the defence contains a counterclaim, Part 18 shall apply.

Part 18 deals with a defence to an additional claim including counterclaims.

## **Part 11**

### **General Rules about Applications for Court Orders**

#### **CPR 11.1**

##### **11.1 Scope of this Part**

This Part deals with interlocutory applications (in these Rules sometimes called “applications”) for court orders being applications made before, during or after the course of proceedings.

#### **CPR 11.2**

##### **11.2 Applicants and respondents**

In this Part -

“applicant” means a person who seeks a court order by making an application;

“respondent” means

- (a) the person against whom the order is sought and any other person on whom the applicant considers it just to serve the application; and
- (b) any other person whom the court directs is to be served with the application.

#### **CPR 11.3**

##### **11.3 Applications to be dealt with at case management conference**

- (1) So far as is practicable all applications relating to pending proceedings must be listed for hearing at a case management conference or pre-trial review.
- (2) Where an application is made which could have been dealt with at a case management conference or pre-trial review the court must order the applicant to pay the costs of the application unless there are special circumstances.

#### **CPR 11.4**

##### **11.4 Time when application is made**

If an application must be made within a specified period, it is so made if it is filed at the court office or, where allowed under rule 11.6(2), if made orally to the court within that period.

## **CPR 11.5**

### **11.5 Where to make application**

- (1) The general rule is that an application must be made to the court office where the claim was filed.
- (2) If the claim has been transferred to another court office the application must be made to that court office.
- (3) An application made before a claim has been filed must be made to the court office where it is likely that the claim to which the application relates will be made.

## **CPR 11.6**

### **11.6 Application to be in writing**

- (1) The general rule is that an application must be in writing in Form [ ]
- (2) An application may be made orally if -
  - (a) the court dispenses with the requirement for the application to be made in writing; or
  - (b) this is permitted by a rule or practice direction.

## **CPR 11.7**

### **11.7 What application must include**

- (1) An application must state -
  - (a) briefly, the grounds on which the applicant is seeking the order; and
  - (b) what order the applicant is seeking.
- (2) The applicant must file with the application or not less than 3 days before the hearing of the application a draft of the order sought and serve a copy on all respondents to whom notice is given.
- (3) If the application is made without notice, the draft order must be attached to the application when it is filed.

## **CPR 11.8**

### **11.8 Notice of application and evidence in support**

- (1) The general rule is that the applicant must give notice of the application to each respondent.
- (2) An applicant may make an application without giving notice if this is permitted by -
  - (a) a practice direction or

- (b) a rule.
- (3) The applicant need not give evidence in support of an application unless it is required by a -
  - (a) court order; or
  - (b) practice direction; or
  - (c) rule.
- (4) Notice of the application must be included in the form used to make the application (Form [ ]).

## **CPR 11.9**

### **11.9 Evidence in support of application**

Evidence in support of an application must be contained in an affidavit unless a -

- (a) court order;
- (b) a practice direction; or
- (c) rule;

otherwise provides.

Part 30 deals with affidavit evidence.

## **CPR 11.10**

### **11.10 Contents of notice of application**

- (1) The notice must state the date, time and place when the application is to be heard.
- (2) If there is not going to be a hearing but notice of the application is required, the notice must state how the court will be asked to deal with the application.

(Rule 11.14 sets out the circumstances in which there may not be a hearing.)

## **CPR 11.11**

### **11.11 Service of notice of application**

- (1) The general rule is that a notice of an application must be served -
  - (a) as soon as practicable after the day on which it is issued; and
  - (b) at least 7 days before the court is to deal with the application.
- (2) The period in paragraph (1)(b) does not apply if any rule or practice direction specifies some other period for service.

- (3) If -
  - (a) notice of an application has been given, but
  - (b) the period of notice is shorter than the period required, the court may nevertheless direct that, in all the circumstances of the case, sufficient notice has been given and may accordingly deal with the application.
- (4) The notice must be accompanied by -
  - (a) a copy of any draft order which the applicant has attached to the application; and
  - (b) any evidence in support.
- (5) The notice must be served in accordance with Part 6 unless any respondent is not a party, in which case the notice must be served in accordance with Part 5 or Part 7, as the case may be.

## **CPR 11.11A**

### **11.11A Evidence on application**

The respondent must file and serve on the applicant any evidence in opposition to the application at least 3 days before the court is to deal with the application. PROVIDED that if any such evidence is filed and served within a shorter period than required, the court may nevertheless, in all the circumstances of the case, proceed to deal with the application.

## **CPR 11.12**

### **11.12 Powers of court in relation to the conduct of application**

- (1) The court may of its own motion or on application by any party require a party to produce any document or documents or things at any hearing or on some specified date prior to any hearing.
- (2) The court in an exceptional case and where circumstances require such a step so that justice may be done:
  - (a) issue a witness summons requiring a party or other person to attend the court on the hearing of the application;
  - (b) examine any party or witness at such a hearing whether by putting written questions to the witness and asking the witness to give written answers or orally.
- (3) Any party may then cross examine the witness.
- (4) The court may exercise any power which it might exercise at a case management conference.

(5) A party asking for an order under this rule must give the court and the respondent as much notice as possible of his application for the order.

### **CPR 11.13**

#### **11.13 Consequence of not asking for order in application**

An applicant may not ask at any hearing for an order which was not sought in the application unless the court gives permission.

### **CPR 11.14**

#### **11.14 Applications which may be dealt with without an oral hearing**

The court may deal with an application without an oral hearing if -

- (a) no notice of the application is required;
- (b) the court does not consider that an oral hearing would be appropriate;
- (c) the parties agree; or
- (d) the parties have agreed to the terms of an order -
  - (i) which does not come within rule 27.8(1); and
  - (ii) the application (or a copy of the application) is signed by the attorney for all parties to the application.

### **CPR 11.14A**

#### **11.14A Hearing by telephone, etc.**

The court may, if it deems just, deal with the application over the telephone or by any other means of communication;

Rules 2.6 (3) and (4) contain powers to enable the court to deal with applications by electronic means.

Rule 42.7 deals with consent orders.

### **CPR 11.15**

#### **11.15 Service of application where order made on application made without notice**

(1) After the court has disposed of an application made without notice, a copy of the application and any evidence in support, together with a copy of any order made, must be served by the applicant on all other parties.

(2) Where an urgent application is made without notice and the applicant undertakes to file evidence after the hearing he must also serve copies of the evidence on all other parties affected by the order.

## **CPR 11.16**

### **11.16 Applications to set aside or vary order made on application made without notice**

(1) A respondent to whom notice of an application was not given may apply to the court for any order made on the application to be set aside or varied and for the application to be dealt with again.

(2) A respondent must make such an application not more than 14 days after the date on which the order was served on the respondent.

(3) An order made on an application of which notice was not given must contain a statement telling the respondent of the right to make an application under this rule, and the time within which it must be made.

## **CPR 11.17**

### **11.17 Power of the court to proceed in absence of party**

If the applicant or any person on whom the notice of application has been served fails to attend the hearing of the application, the court may proceed in the absence of that party.

## **CPR 11.18**

### **11.18 Application to set aside order made in absence of party**

(1) A party who was not present when an order was made may apply to set aside or vary the order.

(2) The application must be made not more than 14 days after the date on which the order was served on the applicant.

(3) The application to set aside the order must be supported by evidence on affidavit showing -

(a) a good reason for failing to attend the hearing; and

(b) that it is likely that had the applicant attended some other order might have been made.

## **Part 12 Default Judgments**

### **CPR 12.1**

#### **12.1 Scope of this Part**

- (1) This Part contains provisions under which a claimant may obtain judgment without trial where the defendant has failed to file -
- (a) a defence in accordance with Part 10; or
  - (b) an acknowledgment of service giving notice of intention to defend in accordance with Part 9.
- (2) Such a judgment is called a “default judgment”.

### **CPR 12.2**

#### **12.2 Claims in which default judgment may not be obtained**

A claimant may not obtain default judgment if the claim is -

- (a) a claim in probate proceedings;
- (b) a fixed date claim;
- (c) a claim under Section II of Part 8; or
- (c) an admiralty claim in rem.

Part 63 deals with probate proceedings.

Rule 59.21 makes special provision for default judgment in admiralty cases for personal injury arising out of a collision between two ships.

### **CPR 12.3**

#### **12.3 Cases in which permission required**

- (1) A claimant who wishes to obtain a default judgment on any claim which is -

- (a) a claim against a minor or patient as defined in rule 2.3; or
- (b) a claim against a State as defined in any relevant enactment relating to state immunity;

must obtain the court’s permission.

Part 65 deals with proceedings against the Crown.

Part 2.3 deals with proceedings involving a minor or patient.

(2) A claimant who wishes to obtain judgment in default of acknowledgment of service against a diplomatic agent who enjoys immunity from civil jurisdiction by virtue of any relevant enactment relating to diplomatic privileges must obtain the court's permission.

(3) An application under paragraph (1) or (2) must be supported by evidence on affidavit.

Rule 12.8(2) contains restrictions on a default judgment where it is sought against some but not all defendants.

## **CPR 12.4**

### **12.4 Conditions to be satisfied – judgment for failure to file acknowledgment of service**

The claimant may enter judgment for failure to file an acknowledgment of service if –

- (a) evidence has been filed proving service of the claim form and statement of claim on the defendant;
- (b) the defendant has not filed -
  - (i) an acknowledgment of service; or
  - (ii) a defence to the claim or any part of it;
- (c) the defendant has not satisfied in full the claim on which the claimant seeks judgment;
- (d) where the only claim is for a specified sum of money, apart from costs and interest, and the defendant has not filed an admission of liability to pay all of the money claimed together with a request for time to pay it;
- (e) the period for filing an acknowledgment of service under rule 9.3 has expired; and
- (f) (if necessary) the claimant has the permission of the court to enter judgment.

Rules, 5.5, 5.11, 5.12 and 5.15 deal with how to prove service of the claim form and statement of claim.

## **CPR 12.5**

### **12.5 Conditions to be satisfied – judgment for failure to defend**

The claimant may enter judgment for failure to defend if –

- (a)
  - (i) the claimant proves service of the claim form and statement of claim; or
  - (ii) an acknowledgment of service has been filed by the defendant against whom judgment is sought;
- (b) the period for filing a defence and any extension agreed by the parties or ordered by the court has expired;
- (c) the defendant has not -
  - (i) filed a defence to the claim or any part of it (or the defence has been struck out or is deemed to have been struck out under rule 22.1(6));
  - (ii) (if the only claim is for a specified sum of money) filed or served on the claimant an admission of liability to pay all of the money claimed, together with a request for time to pay it; or
  - (iii) satisfied the claim on which the claimant seeks judgment; and
- (d) if necessary) the claimant has the permission of the court to enter judgment.

## **CPR 12.6**

### **12.6 Admission of part – request for time to pay**

- (1) This rule deals with the situation where the -
  - (a) defendant is an individual who has admitted liability to pay either -
    - (i) a specified sum towards a claim for an unspecified sum of money; or
    - (ii) part only of a claim for a specified sum;
  - (b) defendant has not filed a defence; and
  - (c) claimant does not accept the sum admitted.
- (2) Subject to any restriction imposed by this Part, the claimant may apply for judgment to be entered for -
  - (a) the whole amount of the claim for a specified sum together with interest and fixed costs under Part 71.

(b) if the claim is for an unspecified sum, the payment of an amount to be decided by the court.

(3) If the defendant has requested time to pay, that request must be dealt with if the claim is for -

(a) a specified sum in accordance with rules 14.9 and 14.10 or 14.11; or

(b) an unspecified sum, when damages are assessed in accordance with rule 16.3.

## **CPR 12.7**

### **12.7 Claim for specified sum of money**

(1) The fact that the claimant also claims costs and interest at a specified rate does not prevent a claim from being a claim for a specified sum of money.

(2) A claimant who claims a specified sum of money together with interest at an unspecified rate may apply to have judgment entered for either the sum of money claimed –

(a) and for interest to be assessed; or

(b) together with interest at the statutory rate from the date of the claim to the date of entering judgment.

(3) If a claim is partly for a specified sum and partly for an unspecified sum the claimant may abandon the claim for the unspecified sum and enter default judgment for the specified sum.

Rule 2.3 defines “claim for a specified sum of money”.

## **CPR 12.8**

### **12.8 Claim against more than one defendant**

(1) A claimant may apply for default judgment on a claim for money or a claim for delivery of goods against one of two or more defendants and proceed with the claim against the other defendants.

(2) If a claimant applies for a default judgment against one of two or more defendants then if the claim -

(a) can be dealt with separately from the claim against the other defendants -

(i) the court may enter judgment against that defendant; and

(ii) the claimant may continue the proceedings against the other defendants; or

(b) cannot be dealt with separately from the claim against the other defendants, the court -

(i) may not enter judgment against that defendant; and

(ii) must deal with the application at the same time as it disposes of the claim against the other defendants.

(3) If a claim for delivery of goods is made against more than one defendant (with or without any other claim), the claimant may not enforce any judgment for delivery entered under this Part against a defendant unless the -

(a) claimant has obtained a judgment for delivery (whether or not obtained under this Part) against all the defendants to the claim; or

(b) court gives permission.

## **CPR 12.9**

### **12.9 Nature of default judgment**

(1) Default judgment on a claim for -

(a) a specified sum of money – must be judgment for payment of that amount or, if a part has been paid, the amount certified by the claimant as outstanding-

(i) if the defendant has applied for time to pay under Part 14 – at the time and rate ordered by the court; or

(ii) in all other cases – at the time and rate specified in the request for judgment,

Rule 2.3 defines “a claim for a specified sum of money” and sets out the circumstances under which a claim for the cost of repairing property damaged in a road accident can be treated as such a claim.

Part 72 deals with the quantification of costs.

(b) an unspecified sum of money – must be judgment for the payment of an amount to be decided by the court;

Rule 16.2 deals with the procedure for assessment of damages where judgment is entered under this paragraph.

(c) goods – must be -

(i) judgment requiring the defendant either to deliver the goods or pay their value as assessed by the court;

(ii) judgment requiring the defendant to pay the value of the goods as assessed by the court; or

(iii) if the court gives permission, a judgment requiring the defendant to deliver the goods without giving the defendant the alternative of paying their assessed value.

(2) An application for permission to enter a default judgment under paragraph (1)(c)(iii) must be supported by evidence on affidavit.

(3) A copy of the application and the evidence under paragraph (2) must be served on the defendant against whom judgment has been sought even though that defendant has failed to file an acknowledgment of service or a defence.

(4) Default judgment where the claim is for some other remedy shall be in such form as the court considers the claimant to be entitled to on the statement of claim.

(5) An application for the court to determine the terms of the judgment under paragraph (4) need not be on notice but must be supported by evidence on affidavit and rule 11.15 does not apply.

## **CPR 12.10**

### **12.10 Interest**

(1) A default judgment must include judgment for interest to the date it is filed if the -

(a) claim form includes a claim for interest; and

(b) claim form or statement of claim includes the details required by rule 8.6(4).

(2) If the claim form includes any other claim for interest, then unless such claim for interest is abandoned by the claimant, the default judgment must include judgment for an amount of interest to be decided by the court.

## **CPR 12.11**

### **12.11 Costs**

(1) A default judgment must include fixed costs under rule 71 unless the court assesses the costs.

(2) An application to assess costs must be on notice to the defendant.

(Rule 72 deals with the assessment of costs).

## **CPR 12.12**

### **12.12 Defendant's rights following default judgment**

Unless the defendant applies for and obtains an order for the judgment to be set aside, the only matters on which a defendant against whom a default judgment has been entered may be heard are -

- (a) an application under rule 12.10(2);
- (b) costs;
- (c) enforcement of the judgment; and
- (d) the time of payment of any judgment debt.

Part 13 deals with setting aside or varying default judgments.

DRAFT #1

# Practice Direction 12 – Default Judgment

This practice direction is made pursuant to rule [ ] of the Supreme Court Civil Procedure Rules 2022 and supplements Part 12 of the Rules.

## 1. Introduction

1.1 This practice direction clarifies the application of rules 12.4 and 12.5 of the Rules.

1.2 In the circumstances where

- (i) the claimant does not enter judgment and 42 days have elapsed since the last date for filing a defence without a defence being filed; or
- (ii) a defence is filed after the claimant has made a request under rule 12.4

the court shall fix a status hearing and notify the parties of the date of that hearing.

1.3 Where there is uncertainty as to the application of any of the rules relating to the grant of default judgments, the matter must be referred to a registrar or a judge immediately.

1.4 At the status hearing the court will give case management directions for the future conduct of the claim and the timetable which will apply.

## 2. Effective date

2.1 This practice direction will come into effect on the [ ] day of April 2022 and will be applicable to all claims issued after that date. ]

## **Part 13**

### **Setting Aside or Varying Default Judgment**

#### **CPR 13.1**

##### **13.1 Scope of this Part**

The Rules in this Part set out the procedure for setting aside or varying a default judgment entered under Part 12 (default judgments).

Rule 42.9 deals with variation of the terms of a judgment as to time and method of payment.

#### **CPR 13.2**

##### **13.2 Cases where court must set aside default judgment**

- (1) The court must set aside a judgment entered under Part 12 if judgment was wrongly entered because, in the case of -
  - (a) a failure to file an acknowledgment of service, any of the conditions in rule 12.4 was not satisfied; or
  - (b) judgment for failure to defend, any of the conditions in rule 12.5 was not satisfied.
- (2) The court may set aside a judgment under this rule on or without an application.

#### **CPR 13.3**

##### **13.3 Cases where court may set aside or vary default judgment**

- (1) If rule 13.2 does not apply, the court may set aside a judgment entered under Part 12 only if the defendant -
  - (a) applies to the court as soon as reasonably practicable after finding out that judgment had been entered;
  - (b) gives a good explanation for the failure to file an acknowledgment of service or a defence as the case may be; and
  - (c) has a real prospect of successfully defending the claim.
- (2) In any event the court may set aside a judgment entered under Part 12 if the defendant satisfies the court that there are exceptional circumstances.
- (3) Where this rule gives the court power to set aside a judgment, the court may instead vary it.

Rule 26.1(3) enables the court to attach conditions to any order.

## **CPR 13.4**

### **13.4 Applications to vary or set aside judgment – procedure**

- (1) An application may be made by any person who is directly affected by the entry of judgment.
- (2) The application must be supported by evidence on affidavit.
- (3) The affidavit must exhibit a draft of the proposed defence.

## **CPR 13.5**

### **13.5 Court to impose condition as to filing of defence**

If judgment is set aside under rule 13.3, the general rule is that the order must be conditional upon the defendant filing and serving a defence by a specified date.

## **CPR 13.6**

### **13.6 Hearing to be treated as case management conference**

- (1) If judgment is set aside under rule 13.3 the court must treat the hearing as a case management conference unless it is not possible to deal with the matter justly at that time.
- (2) If it is not possible to deal with the matter justly at that time, the court office must fix a date, time and place for a case management conference and give notice to the parties.

Part 26 deals with the powers of the court on a case management conference, Part 27 deals with the procedure for case management conferences.

## **CPR 13.7**

### **13.7 Abandoned claims to be restored if judgment set aside**

If the claimant has abandoned any remedy sought in the claim form in order to enter a default judgment, the abandoned claim is restored if judgment is set aside.

## **Part 14**

### **Judgment on Admissions**

#### **CPR 14.1**

##### **14.1 Making an admission**

- (1) A party may admit the truth of the whole or any part of any other party's case.
- (2) A party may do this by giving notice in writing (such as in a statement of case or by letter) before or after the issue of proceedings.
- (3) A defendant may admit the whole or part of a claim for money by filing an acknowledgment of service containing the admission.
- (4) The defendant may do this in accordance with the following rules -
  - (a) rule 14.6 (admission of whole of claim for specified sum of money);
  - (b) rule 14.7 (admission of part of claim for money only); or
  - (c) rule 14.8 (admission of liability to pay whole of claim for unspecified sum of money).
- (5) A defendant may file an admission under paragraph (4) at any time before a default judgment is entered, but the claimant may apply for assessed costs if the admission is filed after the time for filing an acknowledgment of service has expired.

Rule 9.3 specifies the time for filing an acknowledgment of service.

#### **CPR 14.2**

##### **14.2 Satisfaction**

- (1) If the defendant pays the claimant the sum claimed together with interest at the statutory rate (if claimed) and the fixed costs as set out on the claim form within the period for filing an acknowledgment of service under rule 9.3 the –
  - (a) claim is stayed; and
  - (b) claimant must forthwith file and serve a notice of discontinuance.
- (2) Rule 37.6 (liability for costs) does not apply to a notice of discontinuance served under this rule.
- (3) If the claimant does not file and serve a notice of discontinuance in accordance with paragraph (1) within 7 days of payment, the defendant may file and serve a notice in the form specified in Form [ ] to request that the claim be recorded as satisfied.

(4) If there is no dispute the court office must record that the claim has been satisfied.

(5) If the claimant disputes satisfaction, the court office must fix a hearing to consider the application by the defendant and the defendant must give not less than 7 days' notice of the hearing to the claimant.

### **CPR 14.3**

#### **14.3 Admissions where party a minor or patient**

Judgment may not be entered on an admission if the -

- (a) defendant is a minor or patient; or
- (b) claimant is a minor or patient and the admission is made under rule 14.7 or 14.8.

Rule 23.12 deals with compromise of claims made by or against a minor or patient.

### **CPR 14.4**

#### **14.4 Admission by notice in writing – application for judgment**

- (1) Where a party makes an admission under rule 14.1(2) (admission by notice in writing), any other party may apply for judgment on the admission.
- (2) The terms of the judgment must be such as it appears to the court that the applicant is entitled to on the admission.

### **CPR 14.5**

#### **14.5 Admission in whole or in part of money claim**

On making an admission of the whole or part of a claim for money under rule 14.1(3), the defendant must send a copy of the admission and any request for time to pay under rule 14.9 to the claimant.

### **CPR 14.6**

#### **14.6 Admission of claim for specified sum of money**

- (1) This rule applies where the -
  - (a) defendant admits the whole of the claim in the acknowledgment of service;
  - (b) defendant has not requested time to pay; and
  - (c) only remedy which the claimant is seeking is payment of a specified sum of money.

- (2) The claimant may file judgment (in Form [ ]) for the amount claimed, interest and fixed costs under Part 71 and may specify the -
- (a) date on which the judgment debt is to be paid; or
  - (b) time and rate at which it is to be paid if by instalments.

Rule 2.3 defines “a claim for a specified sum of money” and sets out the circumstances under which a claim for the cost of repairing property damaged in a road accident can be treated as such a claim.

## **CPR 14.7**

### **14.7 Admission of part of claim for money only**

- (1) This rule applies where -
- (a) the only remedy which the claimant is seeking is the payment of money;
  - (b) the defendant admits a specified -
    - (i) sum of money; or
    - (ii) proportion of a claim for an unspecified sum of money,
- in the acknowledgment of service or defence; and
- (c) defendant has filed a defence as to the amount not admitted.

If the defendant does not file a defence the claimant will be entitled to default judgment in accordance with rule 12.5.

- (2) The claimant must serve a notice on the defendant stating that -
- (a) the amount or proportion admitted in satisfaction of the claim is accepted; or
  - (b) the claimant intends to continue the claim .

- (3) The claimant must -
- (a) file the notice under paragraph (2); and
  - (b) serve a copy on the defendant;

within 14 days after service of the defendant’s acknowledgment of service or defence, as the case may be.

- (4) If the claimant does not file the notice within 14 days after service of the defendant’s acknowledgment of service or defence -
- (a) the claim is stayed until the notice is filed; and
  - (b) any party may apply for the stay to be lifted.

(5) If the defendant has not requested time to pay under rule 14.9, the claimant may file judgment in Form [ ] for the amount admitted, interest and fixed costs and may specify -

- (a) the date on which the judgment debt is to be paid; or
- (b) the time and rate at which it is to be paid by instalments.

(6) If the claimant gives notice that he accepts the defendant's admission of a specified proportion of a claim for an unspecified sum of money, the claimant may file judgment for that proportion of an amount to be decided by the court and costs.

(7) If the claimant files notice under paragraph (2)(b) the court office must fix a date, time and place for a case management conference.

Part 27 sets out the procedure relating to a case management conference. Part 71 deals with fixed costs.

### **CPR 14.8**

#### **14.8 Admission of liability to pay whole of claim for unspecified sum of money**

- (1) This rule applies where the -
  - (a) amount of the claim is not specified;
  - (b) defendant admits liability in the acknowledgment of service to pay the whole of the claim and does not offer to pay a specified sum of money or proportion of the claim in satisfaction of the claim;
  - (c) defendant has not requested time to pay under rule 14.9, and
  - (d) only remedy the claimant seeks is the payment of money.
- (2) The claimant may file judgment in Form [ ].
- (3) Judgment will be for an amount to be decided by the court and costs.

Rule 16.3 deals with how the court decides the amount of the judgment.

Part 72 deals with the quantification of costs.

### **CPR 14.9**

#### **14.9 Requests for time to pay**

- (1) A defendant who -
    - (a) makes an admission under rules 14.6, 14.7 or 14.8; and
    - (b) is an individual,
- may make a request for time to pay.

- (2) A request for time to pay is a proposal -
  - (a) about the date of payment; or
  - (b) to pay by instalments at a rate specified in the request.
- (3) The defendant's request for time to pay must be -
  - (a) accompanied by a statement of his or her financial position in the appropriate practice form; and
  - (b) filed with the admission.
- (4) The statement under paragraph (3)(a) must be certified by the defendant as being correct and may be used as evidence of the defendant's financial position at the date it was signed in any subsequent proceedings with regard to enforcement of the judgment.
- (5) If the -
  - (a) request for time to pay relates to a claim for an unspecified sum of money; and
  - (b) court must assess damages under rule 14.8(3);the court must deal with the request for time to pay when it assesses damages.

#### **CPR 14.10**

#### **14.10 Requests for time to pay – procedure where time and rate agreed**

- (1) This rule applies where the -
  - (a) only remedy which the claimant seeks is the payment of a sum of money together with interest and costs;
  - (b) defendant -
    - (i) admits the whole of a claim for a specified sum of money; or
    - (ii) offers to pay a specified sum; and
    - (iii) requests time to pay or makes an offer to pay by instalments; and
  - (c) claimant accepts the defendant's offer as to the amount, time and rate of payment.
- (2) If this rule applies, the claimant can file judgment on the admission for the specified sum of money admitted (less any payments made), interest and fixed costs under Part 71 to be paid at the agreed time and rate.

## **CPR 14.11**

### **14.11 Requests for time to pay – procedure where time and rate not agreed**

- (1) This rule applies where -
  - (a) the only remedy which the claimant seeks is the payment of a sum of money together with interest and costs;
  - (b) the defendant -
    - (i) admits the whole of a claim for a specified sum of money; or
    - (ii) offers to pay a specified sum; and
    - (iii) requests time to pay or makes an offer to pay by instalments; and
  - (c) the claimant accepts the sum admitted but does not accept the defendant's offer as to the amount, time and rate of payment.
- (2) If this rule applies, the claimant must apply by notice to the registrar for judgment in Form [ ] supported by an affidavit stating the reasons for objecting to the defendant's proposals as to payment.
- (3) The court must consider the defendant's request and the claimant's objections and enter judgment for the amount of the claim, interest and fixed costs under Part 71 on such terms as it sees fit.
- (4) The general rule is that the court should enter judgment under paragraph (3) without a hearing.
- (5) If the court decides to deal with the matter at a hearing, it must fix a date and the claimant must give the parties at least 7 days' notice of the hearing.
- (6) If there is a hearing, the court must determine whether to make an order for the costs of the application, by whom the costs should be paid and assess such costs under Part 72.

The claimant is entitled to fixed costs on the judgment in accordance with Part 71.

## **CPR 14.12**

### **14.12 Right of re-determination**

- (1) If the court has determined the time and rate of payment under rule 14.11 without a hearing, either party may apply for the decision to be re-determined by the court at a hearing.
- (2) An application for re-determination must be made within 14 days after service of the judgment on the applicant.

(3) At the hearing the court may confirm the judgment or make such other order as to the time and rate of payments as it considers just.

(4) The court must determine whether to make an order for costs, and by whom the costs should be paid and assess such costs under rule Part 72.

**-CPR 14.13**

**14.13 Variation of Order**

Either a claimant or a defendant may apply to vary an order made under this Part.

DRAFT #1

## **Part 15**

### **Summary Judgment**

#### **CPR 15.1**

##### **15.1 Scope of this Part**

This Part sets out a procedure by which the court may decide a claim or a particular issue without a trial.

#### **CPR 15.2**

##### **15.2 Grounds for summary judgment**

The court may give summary judgment on the claim or on a particular issue if it considers that the -

- (a) claimant has no real prospect of succeeding on the claim or the issue; or
- (b) defendant has no real prospect of successfully defending the claim or the issue.

Rule 26.3 gives the court power to strike out the whole or part of statement of case if it discloses no reasonable ground for bringing or defending the claim.

#### **CPR 15.3**

##### **15.3 Types of proceedings for which summary judgment is not available**

The court may give summary judgment in any type of proceedings except -

- (a) admiralty proceedings in rem;
- (b) probate proceedings;
- (c) proceedings by way of a fixed date claim;
- (d) proceedings for –
  - (i) claims against the Crown;
  - (ii) defamation;
  - (iii) false imprisonment;
  - (iv) malicious imprisonment; and
  - (v) redress under the Constitution.

## **CPR 15.4**

### **15.4 Procedure**

- (1) Notice of an application for summary judgment must be served not less than 14 days before the date fixed for hearing the application.
- (2) The notice under paragraph (1) must identify the issues which it is proposed that the court should deal with at the hearing.
- (3) The court may exercise its powers without such notice at any case management conference.

(Part 11 contains general rules about applications.)

## **CPR 15.5**

### **15.5 Evidence for the purpose of summary judgment hearing**

- (1) The applicant must -
  - (a) file affidavit evidence in support with the application; and
  - (b) serve copies of the application and the affidavit evidence on each party against whom summary judgment is sought;not less than 14 days before the date fixed for hearing the application.

- (2) A respondent who wishes to rely on evidence must -
  - (a) file affidavit evidence; and
  - (b) serve copies on the applicant and any other respondent to the application;

at least 7 days before the summary judgment hearing.

## **CPR 15.6**

### **15.6 Powers of court on application for summary judgment**

- (1) The court may give summary judgment on any issue of fact or law whether or not the judgment will bring the proceedings to an end.
- (2) Where the proceedings are not brought to an end the court must also treat the hearing as a case management conference.

## **Part 16**

### **Assessment of Damages**

#### **CPR 16.1**

##### **16.1 Scope of this Part**

This Part deals with the procedure by which a hearing to assess damages is fixed.

#### **CPR 16.2**

##### **16.2 Assessment of damages after default judgment**

- (1) An application for a default judgment to be entered under rule 12.9(1)(b), must state-
  - (a) whether the claimant is in a position to prove the amount of the damages; and, if so
  - (b) the claimant's estimate of the time required to deal with the assessment; or
  - (c) that the claimant is not yet in a position to prove the amount of the damages.
- (2) Unless the application states that the claimant is not in a position to prove the amount of damages, the court office must fix a date for the assessment of damages and inform the claimant at least 14 days prior to the date time and place fixed for the hearing.
- (3) A claimant who is not in a position to prove damages must state the period of time that will elapse before this can be done.
- (4) The court office must then fix a period within which the assessment of damages will take place.

Rule 27.9 deals with the fixing of a date for a trial.

#### **CPR 16.3**

##### **16.3 Assessment of damages after admission of liability on claim for unspecified sum of money**

- (1) This rule applies where the defendant has admitted liability for the whole or a specified proportion of a claim for an unspecified sum of money.
- (2) An application for judgment to be entered for damages to be assessed on an admission under Part 14 must -
  - (a) state whether the claimant is in a position to prove the amount of damages; and, if so

(b) give an estimate of the time required to deal with the assessment;  
or

(c) state that the claimant is not yet in a position to prove the amount of damages.

(3) Unless the application states that the claimant is not in a position to prove the amount of damages, the court office must fix a date for the assessment of damages and the claimant must give the parties at least 14 days' notice of the date time and place fixed for the hearing.

(4) A claimant who is not in a position to prove damages must state the period of time that will elapse before this can be done.

(5) The court office must then fix either -

(a) a case management conference; or

(b) a period within which the assessment of damages will take place.

Rule 27.9 deals with the fixing of a date for trial.

(6) The defendant is entitled to cross examine any witness called on behalf of the claimant and to make submissions to the court but is not entitled to call any evidence unless the defendant has filed a defence setting out the facts the defendant seeks to prove.

(7) The court must also deal with any request under Part 14 for time to pay.

## **CPR 16.4**

### **16.4 Assessment of damages after direction for trial of issue of quantum**

(1) This rule applies where the court makes a direction for the trial of an issue of quantum.

(2) The direction may be given at -

(a) a case management conference;

(b) the hearing of an application for summary judgment; or

(c) the trial of the claim or of an issue, including the issue of liability.

(3) On making such a direction the court must exercise the powers of a case management conference and in particular may give directions about -

(a) disclosure under Part 28;

(b) service of witness statements under Part 29; and

(c) service of expert reports under Part 32.

(4) The court must also fix a period within which the assessment of damages is to commence.

(Rule 27.9 deals with the fixing of a date for trial)

DRAFT #1

**Part 17**  
**Interim Remedies**

**SECTION I INTERIM REMEDIES: GENERAL PROVISIONS**

**CPR 17.1**

**17.1 Orders for interim remedies: relief which may be granted**

- (1) The court may grant interim remedies including -
- (a) an interim declaration;
  - (b) an interim injunction;
  - (c) 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 (h);
  - (d) an order directing a party to prepare and file accounts relating to the dispute;
  - (e) 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 order;
  - (f) 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;
  - (g) an order for interim costs;
  - (h) an order for the –
    - (i) carrying out of an experiment on or with relevant property;
    - (ii) detention, custody or preservation of relevant property;
    - (iii) inspection of relevant property;
    - (iv) payment of income from relevant property until a claim is decided;
    - (v) sale of relevant property (including land) which is of a perishable nature or which for any other good reason it is desirable to sell quickly;
    - (vi) taking of a sample of relevant property;
  - (i) an order permitting a party seeking to recover personal property to pay a specified sum of money into court pending the outcome of the proceedings and directing that, if the party does so, the property must be given up to the party;
  - (j) an order (referred to as a “freezing order”) restraining a party from
-

- (i) dealing with any asset whether located within the jurisdiction or not;
  - (ii) removing from the jurisdiction assets located there;
  - (k) an order to deliver up goods;
  - (l) an order (referred to as a “search order”) requiring a party to admit another party to premises for the purpose of preserving evidence, etc.;
  - (m) an order (referred to as an “order for interim payment”) under rules 17.14 and 17.15 for payment by a defendant on account of any damages, debt or other sum which the Court may find the defendant liable to pay.
- (2) In paragraph (1)(e) and (h), “relevant property” means property which is the subject of a claim or in relation to which any question may arise on a claim.
- (3) The fact that a particular type 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) The Chief Justice may issue a practice direction in respect of the procedure for applying for an interim order including, in particular, interim injunctions, search orders and freezing orders.

## **CPR 17.2**

### **17.2 Interim Injunctions and similar orders including search orders and freezing orders**

- (1) This rule deals with applications for -
- (a) an interim injunction under rule 17.1(1)(b);
  - (b) a search order under rule 17.1(1)(l);
  - (c) a freezing order under rule 17.1(1)(j);
  - (d) an order authorising a person to enter any land or building for the purpose of carrying out an order under rule 17.1(1)(h); and
  - (e) an order for the detention, custody or preservation of relevant property under rule 17.1(1)(h)(ii).
- (2) Unless the court otherwise directs, a party applying for an interim order under this rule must undertake to abide by any order as to damages caused by the granting or extension of the order.

- (3) An application for an interim order under this rule may in the first instance be made on 3 days' notice to the respondent.
- (4) The court may grant an interim order under this rule on an application made without notice for a period of not more than 28 days (unless any of these Rules permits a longer period) if it is satisfied that -
- (a) in a case of urgency no notice is possible; or
  - (b) that to give notice would defeat the purpose of the application.
- (5) On granting an order under paragraph (4) the court must -
- (a) fix a date for further consideration of the application; and
  - (b) fix a date (which may be later than the date under sub-paragraph (a)) on which the interim order will terminate unless a further order is made on the further consideration of the application.
- (6) When an order is made under paragraph (4), the applicant must, not less than 7 days before the date fixed for further consideration of the application, serve the respondent personally with -
- (a) the application for an interim order;
  - (b) the evidence in support of the application;
  - (c) a copy of the transcript of the hearing, if any, or if there is no such transcript a copy of Counsel's note of the hearing;
  - (d) a copy of any written submissions or skeleton arguments used at the hearing;
  - (e) any interim order made without notice; and
  - (f) notice of the date and time on which the court will further consider the application under paragraph 5.
- (7) An application to extend an interim order under this rule must be made on notice to the respondent unless the court otherwise orders.

### **CPR 17.3**

#### **17.3 Time when an order for interim remedy may be made**

- (1) An order for an interim remedy may be made at any time, including-
- (a) after judgment has been given; and
  - (b) before a claim has been filed.
- (2) Paragraph (1) is subject to any rule which provides otherwise.
- (3) The court may grant an interim remedy before a claim has been made only if -

- (a) the matter is urgent; or
- (b) it is otherwise necessary to do so in the interests of justice;
- (4) Unless the court otherwise orders, a defendant may not apply for any of the orders listed in rule 17.1(1) before filing an acknowledgment of service under Part 9.
- (5) If the court grants an interim remedy before a claim has been filed, it must require an undertaking from the claimant to file and serve a claim form by a specified date.
- (6) If no claim has been filed the application must be made in accordance with the general rules about applications contained in Part 11.

## **CPR 17.4**

### **17.4 How to apply for interim remedy**

- (1) An application for an interim remedy must be supported by evidence on affidavit unless the court otherwise orders.
- (2) Where, in support of any application under this rule, it is not practicable to produce evidence on affidavit then the application may be heard on the basis of either:
  - (i) information given orally to the court with an undertaking to file an affidavit within a specified date setting out the oral information; or
  - (ii) evidence given by witness statement and, in such event, the court may at any time give such directions as it thinks fit in relation to the filing, in due course, of evidence by affidavit.
- (3) 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.
- (4) The evidence in support of an application made without giving notice must state the reasons why notice has not been given.

## **CPR 17.5**

### **17.5 Costs**

- (1) The court may make any order as to costs that it considers just in relation to any order made under this Part.
- (2) Without limiting the generality of paragraph (1), an order as to costs includes an order as to the costs of any person affected by a search order or freezing order.

## **SECTION II: SEARCH ORDERS: ADDITIONAL PROVISIONS**

### **CPR 17.6**

#### **17.6 Interpretation**

In this Section, unless the context otherwise requires,—

‘applicant’ means an applicant for a search order;

‘described’ includes described generally, whether by reference to a class or otherwise;

‘premises’ includes a vehicle or vessel of any kind;

‘record’ includes a document, copy, photograph, film, or sample;

‘respondent’ means a person against whom a search order is sought or made;

‘search order’ means an order made under rule 17.7.

### **CPR 17.7**

#### **17.7 Search order: evidence, notice and form of order**

(1) This rule applies only if the evidence is, or may be, relevant to an issue in the proceeding or anticipated proceeding.

(2) The court may make an order (a search order), in a proceeding or before a proceeding commences, with or without notice to the respondent, to—

(a) secure or preserve evidence; and

(b) require a respondent to permit persons to enter premises for the purpose of securing the preservation of evidence.

(3) Form [ ] must be used but may be varied as the circumstances require.

(4) A search order must be served on the respondent.

## **CPR 17.8**

### **17.8 Requirements for grant of search order**

The court may make a search order under rule 17.7 only if the court is satisfied that—

- (a) an applicant seeking the order has a strong prima facie case on an accrued cause of action; and
- (b) the potential or actual loss or damage to the applicant will be serious if the search order is not made; and
- (c) there is sufficient evidence in relation to a respondent that—
  - (i) the respondent possesses relevant evidentiary material; and
  - (ii) there is a real possibility that the respondent might destroy such material or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the court.

## **CPR 17.9**

### **17.9 Restriction on entrants**

- (1) The permitted persons identified under rule 17.11(1)(a) must not include the applicant in person, or, if the applicant is not a natural person, any director, officer, employee, partner, or other person associated with the applicant, other than the applicant's attorney.
- (2) The number of those permitted persons must be as small as is reasonably practicable in the circumstances.

## **CPR 17.10**

### **17.10 Applicant's undertaking and duty**

- (1) As a condition of the making of the order, the applicant must undertake to the court to pay the reasonable costs and disbursements of any independent attorney appointed under rule 17.12.
- (2) The court must require the applicant for a search order to give appropriate undertakings, including an undertaking as to damages.
- (3) If the applicant has, or may later have, insufficient assets within the jurisdiction to discharge the obligation created by an undertaking as to damages, the court may require the applicant to provide security for that

obligation in a form and in an amount fixed by a Judge or, if the Judge so directs, the Registrar.

(4) An applicant for a search order without notice to a respondent must fully and frankly disclose to the court all material facts, including—

- (a) any possible defences known to the applicant; and
- (b) information casting doubt on the applicant's ability to discharge the obligation created by the undertaking as to damages.

## **CPR 17.11**

### **17.11 Terms of search order**

(1) A search order may direct a named or described person—

- (a) to permit, or arrange to permit, another or other named or described person or persons specified—
  - (i) to enter specified premises; and
  - (ii) to take other steps including searching for, inspecting, or removing a listed or described thing and making or obtaining a record of it or information contained in it; and
- (b) to provide, or arrange to provide, named or described persons with any described information, thing, or service; and
- (c) to allow other named or described persons, including computer specialists not associated with either the applicant or the respondent, to take and retain in their custody, or copy, any described thing or information; and
- (d) not to disclose any information about the order, for up to 3 working days after the date on which the order was served, except for the purposes of obtaining legal advice or legal representation; and
- (e) to do or refrain from doing any specified act.

(2) A search order may contain whatever other incidental provisions the court considers just.

(3) A search order must fix a date on which the court will consider a report on the search from the independent attorneys, and any applications related to the matters listed in rule 17.13.

## **CPR 17.12**

### **17.12 Independent attorneys**

- (1) If the court makes a search order, the court must appoint one or more attorneys, each of whom is independent (the independent attorneys), to supervise the execution of the order, and to do whatever things in relation to the order the court considers appropriate.
- (2) The court may appoint an independent attorney to supervise the carrying out of the order at any one or more premises, and a different independent attorney or attorneys to supervise execution of the order at other premises, with each independent attorney having power to do whatever things in relation to the order the court considers appropriate.
- (3) Service of a search order, or of any other document ordered to be served on a respondent, on a person appearing to an independent attorney to be responsible and in charge of premises, is to be treated as service on the respondent.
- (4) A search order must fix a date on which the court will consider a report on the search from the independent attorneys, and any applications related to the matters in rule 17.13

## **CPR 17.13**

### **17.13 Review of search**

- (1) On the date fixed under rule 17.12(4) the applicant and the respondent and the independent attorneys are entitled to appear, and the court may make any order it considers just.
- (2) In making an order under paragraph (1), the court must consider the following—
  - (a) what is to happen to any goods removed from the premises or to any documents or copies that have been made;
  - (b) how the confidentiality to which the respondent is entitled is to be maintained;
  - (c) any claim to privilege;
  - (d) any application by a party;
  - (e) any issue raised by an independent attorney.

## SECTION III : INTERIM PAYMENTS

### CPR 17.14

#### 17.14 Interim payments – general procedure

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

Rule 9.3 sets out the period for filing a acknowledgment of service.

(2) The claimant may make more than one application for an order for an interim payment even though an earlier application has been refused.

(3) Notice of an application for an order must be -

- (a) served at least 14 days before the hearing of the application; and
- (b) supported by evidence on affidavit.

(4) The affidavit must -

(a) exhibit any documentary evidence relied on by the claimant to support of the application;

(b) state the claimant's assessment of the amount of damages or other monetary judgment that are likely to be awarded; and

(c) if the claim is made under any relevant enactment in respect of injury resulting in death, contain full particulars of the -

- (i) nature of the claim in respect of which the damages are sought to be recovered; and
- (ii) person or persons for whom and on whose behalf the claim is brought.

(5) If the respondent to an application for an interim payment wishes to rely on evidence or the claimant wishes to rely on evidence in reply, that party must -

- (a) file the evidence on affidavit; and
- (b) serve copies on every other party to the application, at least 7 days before the hearing of the application.

(6) The court may order an interim payment to be made in one sum or by instalments.

## **CPR 17.15**

### **17.15 Interim payments – conditions to be satisfied and matters to be taken into account**

- (1) The court may make an order for an interim payment only if -
  - (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 an order for an account to be taken as between the claimant and the defendant and for judgment for any amount certified due on taking the account;
  - (c) the claimant has obtained judgment against that defendant for damages to be assessed or for a sum of money (including costs) to be assessed;
  - (d) (except where paragraph (3) applies), it is satisfied that, if the claim went to trial, the claimant would obtain judgment against the defendant from whom an order for interim payment is sought for a substantial amount of money or for costs; or
  - (e) the following conditions are satisfied -
    - (i) the claimant is seeking an order for possession of land (whether or not any other order is also being 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 rent or for the defendant's use and occupation of the land while the claim for possession was pending.
- (2) In addition, in a claim for personal injuries the court may make an order for the interim payment of damages only if the defendant is -
  - (a) a person whose means and resources are such as to enable that person to make the interim payment;
  - (b) insured in respect of the claim; or
  - (c) a public authority.
- (3) In a claim for damages for personal injuries where there are two or more defendants, the court may make an order for the interim payment of damages against any defendant if -
  - (a) it is satisfied that, if the claim went to trial, the claimant would obtain judgment for substantial damages against at least one of the defendants (even if the court has not yet determined which of them is liable); and
  - (b) paragraph (2) is satisfied in relation to each defendant.

- (4) The court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.
- (5) The court must take into account -
  - (a) contributory negligence (where applicable); and
  - (b) any relevant set-off or counterclaim.

### **CPR 17.16**

#### **17.16 Powers of court where it has made order for interim payment**

- (1) Where a defendant has been ordered to make an interim payment, or has in fact voluntarily made an interim payment, the court may make an order to adjust the interim payment.
- (2) The court may in particular -
  - (a) order a defendant to reimburse, either in whole or in part, another defendant who has made an interim payment;
  - (b) order all or part of the interim payment to be repaid; or
  - (c) vary or discharge the order for interim payment.
- (3) The court may make an order under this rule -
  - (a) on an application by a party made at any time; or
  - (b) without an application by a party if it makes the order when it disposes of the claim or any part of it.

### **CPR 17.17**

#### **17.17 Power of Court to order early trial, etc**

On hearing any application under this Part, the court may exercise any of its case management powers under Parts 26 and 27 and may, in particular, give directions for an early trial of the claim or any part of the claim.

## **Part 18**

### **COUNTERCLAIMS AND OTHER ADDITIONAL CLAIMS**

#### **CPR 18.1**

##### **18.1 Purpose of this Part**

The purpose of this Part is to enable counterclaims and other additional claims to be managed in the most convenient and effective manner.

#### **CPR 18.2**

##### **18.2 Scope and interpretation**

- (1) This Part applies to—
  - (a) a counterclaim by a defendant against the claimant or against the claimant and some other person;
  - (b) an additional claim by a defendant against any person (whether or not already a party) for contribution or indemnity or some other remedy; and
  - (c) where an additional claim has been made against a person who is not already a party, any additional claim made by that person against any other person (whether or not already a party).
- (2) In these Rules—
  - (a) “additional claim” means any claim other than the claim by the claimant against the defendant or a claim for a set off contained in a defence; and
  - (b) unless the context requires otherwise, references to a claimant or defendant include a party bringing or defending an additional claim.

#### **CPR 18.3**

##### **18.3 Application of these Rules to additional claims**

- (1) An additional claim shall be treated as if it were a claim for the purposes of these Rules, except as provided by this Part.
- (2) Rule 8.12 time (within which a claim form may be served) does not apply to an additional claim.
- (3) Part 12 (default judgment) applies to a counterclaim but not to other additional claims.

- (4) Part 14 (admissions) applies to a counterclaim, but only—
  - (a) rules 14.1(1) (which provides that a party may admit the truth of another party's case in writing); and
  - (b) rule 14.4 (admission by notice in writing - application for judgment),

apply to other additional claims.

#### **CPR 18.4**

##### **18.4 Defendant's counterclaim against the claimant**

- (1) A defendant may make a counterclaim against a claimant by filing particulars of the counterclaim.
- (2) A defendant may make a counterclaim against a claimant—
  - (a) without the court's permission if he files it with his defence; or
  - (b) at any other time with the court's permission.
- (3) Part 9 (acknowledgment of service) does not apply to a claimant who wishes to defend a counterclaim.

#### **CPR 18.5**

##### **18.5 Counterclaim against a person other than the claimant**

- (1) A defendant who wishes to counterclaim against a person other than the claimant must apply to the court for an order that that person be added as an additional party.
- (2) An application for an order under paragraph (1) may be made without notice unless the court directs otherwise.
- (3) Where the court makes an order under paragraph (1), it will give directions as to the management of the case.

#### **CPR 18.6**

##### **18.6 Defendant's additional claim for contribution or indemnity from another party**

- (1) A defendant who has filed an acknowledgment of service or a defence may make an additional claim for contribution or indemnity against a person who is already a party to the proceedings by—

- (a) filing a notice containing a statement of the nature and grounds of his additional claim; and
  - (b) serving the notice on that party.
- (2) A defendant may file and serve a notice under this rule—
- (a) without the court's permission, if he files and serves it—
    - (i) with his defence; or
    - (ii) if his additional claim for contribution or indemnity is against a party added to the claim later, within 28 days after that party files his defence; or
  - (b) at any other time with the court's permission.

### **CPR 18.7**

#### **18.7 Procedure for making any other additional claim**

- (1) This rule applies to any additional claim except—
- (a) a counterclaim only against an existing party; and
  - (b) a claim for contribution or indemnity made in accordance with rule 18.6.
- (2) An additional claim is made when the appropriate claim form is filed in the court office.
- (Rule 8.1(2) provides that a claim form is issued on the date when it is stamped (manually or electronically) by or on behalf of the court office).
- (3) A defendant may make an additional claim—
- (a) without the court's permission if the additional claim is issued before or at the same time as he files his defence;
  - (b) at any other time with the court's permission.

(Rule 10.3 sets out the period for filing a defence).

(4) Particulars of an additional claim must be contained in or served with the additional claim.

(5) An application for permission to make an additional claim may be made without notice, unless the court directs otherwise.

## **CPR 18.8**

### **18.8 Service of claim form**

(1) Where an additional claim may be made without the court's permission, any claim form must—

- (a) in the case of a counterclaim against an additional party only, be served on every other party when a copy of the defence is served;
- (b) in the case of any other additional claim, be served on the person against whom it is made within 14 days after the date on which the additional claim is issued by the court.

(2) Paragraph (1) does not apply to a claim for contribution or indemnity made in accordance with rule 18.6.

(3) Where the court gives permission to make an additional claim it will at the same time give directions as to its service.

### **18.9 Matters relevant to question of whether an additional claim should be separate from the claim**

(1) This rule applies where the court is considering whether to—

- (a) permit an additional claim to be made;
- (b) dismiss an additional claim; or
- (c) require an additional claim to be dealt with separately from the claim by the claimant against the defendant.

(Under its case management powers the court may order that part of proceedings be dealt with as separate proceedings and to decide the order in which issues are to be tried).

(2) The matters to which the court may have regard include—

- (a) the connection between the additional claim and the claim made by the claimant against the defendant;
- (b) whether the additional claimant is seeking substantially the same remedy which some other party is claiming from him; and

- (c) whether the additional claimant wants the court to decide any question connected with the subject matter of the proceedings—
  - (i) not only between existing parties but also between existing parties and a person not already a party; or
  - (ii) against an existing party not only in a capacity in which he is already a party but also in some further capacity.

#### **CPR 18.10**

##### **18.10 Effect of service of an additional claim**

- (1) A person on whom an additional claim is served becomes a party to the proceedings if he is not a party already.
- (2) When an additional claim is served on an existing party for the purpose of requiring the court to decide a question against that party in a further capacity, that party also becomes a party in the further capacity specified in the additional claim.

#### **CPR 18.11**

##### **18.11 Special provisions relating to default judgment on an additional claim other than a counterclaim or a contribution or indemnity notice**

- (1) This rule applies if—
  - (a) the additional claim is not—
    - (i) a counterclaim; or
    - (ii) a claim by a defendant for contribution or indemnity against another defendant under rule 18.6; and
  - (b) the party against whom an additional claim is made fails to file an acknowledgment of service or defence in respect of the additional claim.
- (2) The party against whom the additional claim is made—
  - (a) is deemed to admit the additional claim, and is bound by any judgment or decision in the proceedings in so far as it is relevant to any matter arising in the additional claim;
  - (b) subject to paragraph (3), if default judgment under Part 12 is given against the additional claimant, the additional claimant

may obtain judgment in respect of the additional claim by filing a request in the relevant practice form.

(3) An additional claimant may not enter judgment under paragraph (2)(b) without the court's permission if—

(a) he has not satisfied the default judgment which has been given against him; or

(b) he wishes to obtain judgment for any remedy other than a contribution or indemnity.

(4) An application for the court's permission under paragraph (3) may be made without notice unless the court directs otherwise.

(5) The court may at any time set aside or vary a judgment entered under paragraph (2)(b).

### **CPR 18.12**

#### **18.12 Procedural steps on service of an additional claim form on a non-party**

(1) Where an additional claim form is served on a person who is not already a party it must be accompanied by—

(a) a form for defending the claim;

(b) a form for admitting the claim;

(c) a form for acknowledging service; and

(d) a copy of—

(i) every statement of case which has already been served in the proceedings; and

(ii) such other documents as the court may direct.

(2) A copy of the additional claim form must be served on every existing party.

**CPR 18.13**

**18.13 Case management where a defence to an additional claim is filed**

(1) Where a defence is filed to an additional claim the court must consider the future conduct of the proceedings and give appropriate directions.

(2) In giving directions under paragraph (1) the court must ensure that, so far as practicable, the original claim and all additional claims are managed together.

(Part 52 contains provisions about counterclaims and other Part 18 claims in relation to proceedings by or against the Crown.)

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## **Practice Direction 18—Counterclaims and Other Additional Claims**

### **Applications for permission to issue an additional claim**

1.1 An application for permission to make an additional claim must be supported by evidence stating:

- (1) the stage which the proceedings have reached,
- (2) the nature of the additional claim to be made or details of the question or issue which needs to be decided,
- (3) a summary of the facts on which the additional claim is based, and
- (4) the name and address of any proposed additional party.

1.2 Where delay has been a factor contributing to the need to apply for permission to make an additional claim an explanation of the delay should be given in evidence.

1.3 Where possible the applicant should provide a timetable of the proceedings to date.

1.4 Rules 18.5(2) and 18.7(5) allow applications to be made to the court without notice unless the court directs otherwise.

### **General**

2. The Civil Procedure Rules apply generally to additional claims as if they were claims. Parties should be aware that the provisions relating to failure to respond to a claim will apply.

### **Statement of truth**

3.1 The contents of an additional claim should be verified by a statement of truth.

### **Case management where there is a defence to an additional claim**

4.1 Where the defendant to an additional claim files a defence, other than to a counterclaim, the court will arrange a hearing to consider case management of the additional claim. This will normally be at the same time as a case management hearing for the original claim and any other additional claims.

4.2 The court will give notice of the hearing to each party likely to be affected by any order made at the hearing.

4.3 At the hearing the court may:

- (1) treat the hearing as a summary judgment hearing,
- (2) order that the additional claim be dismissed,
- (3) give directions about the way any claim, question or issue set out in or arising from the additional claim should be dealt with,
- (4) give directions as to the part, if any, the additional defendant will take at the trial of the claim,
- (5) give directions about the extent to which the additional defendant is to be bound by any judgment or decision to be made in the claim.

4.4 The court may make any of the orders in 4.3(1) to (5) either before or after any judgment in the claim has been entered by the claimant against the defendant.

### **Form of counterclaim**

4.1 Where a defendant to a claim serves a counterclaim, the defence and counterclaim should normally form one document with the counterclaim following on from the defence.

4.2 Where a claimant serves a reply and a defence to counterclaim, the reply and the defence to counterclaim should normally form one document with the defence to counterclaim following on from the reply.

### **Titles of proceedings where there are additional claims**

6.1 Paragraph 3 of Practice Direction 3 contains directions regarding the title to proceedings.

6.2 Where there are additional claims which add parties, the title to the proceedings should comprise a list of all parties describing each by giving them a single identification. Subject to paragraph 6.11, this identification should be used throughout.

6.3 Claimants and defendants in the original claim should always be referred to as such in the title to the proceedings, even if they subsequently acquire an additional procedural status.

6.4 Additional parties should be referred to in the title to the proceedings in accordance with the order in which they are joined to the proceedings, for example "Third Party" or "Fourth Party", whatever their actual procedural status.

Examples:

- (a) If the defendant makes an additional claim against a single additional party, the additional party should be referred to in the title as “Third Party”.
- (b) If the defendant makes separate additional claims against two additional parties, the additional parties should be referred to in the title as “Third Party” and “Fourth Party”.
- (c) If the defendant makes a counterclaim against the claimant and an additional party, the claimant should remain as “Claimant” and the additional party should be referred to in the title as “Third Party”.
- (d) If the Third Party in example (b) makes an additional claim against a further additional party, that additional party should be referred to in the title as “Fifth Party”.

6.5 If an additional claim is brought against more than one party jointly, they should be referred to in the title to the proceedings as, for example, “First Named Third Party” and “Second Named Third Party”.

6.6 In group litigation, the court should give directions about the designation of parties.

6.7 All parties should co-operate to ensure that two parties each making additional claims do not attribute the same nominal status to more than one party.

6.8 In proceedings with numerous parties, the court will if necessary give directions as to the preparation and updating of a list of parties giving their roles in the claim and each additional claim.

6.9 If an additional party ceases to be a party to the proceedings, for example because the claim against that party is discontinued or dismissed, all other additional parties should retain their existing nominal status.

6.10 In proceedings where there are additional parties, the description of all statements of case or other similar documents should clearly identify the nature of the document with reference to each relevant party.

Examples:

- (e) In example (a), the defendant's additional claim should be headed “Defendant's Additional Claim against Third Party” and the Third Party's defence to it should be headed “Third Party's Defence to Defendant's Additional Claim”.
- (f) In example (c), the defendant's counterclaim should be headed “Defendant's Counterclaim against Claimant and Third Party”

and the Third Party's defence to it should be headed "Third Party's defence to Defendant's Counterclaim".

6.11 In proceedings where there are Fourth or subsequent parties, additional parties should be referred to in the text of statements of case or other similar documents by name, suitably abbreviated if appropriate. If parties have similar names, suitable distinguishing abbreviations should be used.

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## **Part 19**

### **Addition and Substitution of Parties**

#### **CPR 19.1**

##### **19.1 Scope of this Part**

This Part deals with the addition or substitution of parties after proceedings have been commenced.

#### **CPR 19.2**

##### **19.2 Change of parties – general**

- (1) A claimant may add a new defendant to proceedings without permission at any time before the case management conference.
- (2) The claimant does so by filing at the court office an amended claim form and statement of claim and Parts 5 (service of claim within jurisdiction) 7 (service of process out of jurisdiction), 9 (acknowledgment of service and notice of intention to defend), 10 (defence) and 12 (default judgments) apply to the amended claim form as they do to a claim form.

Part 18 deals with counterclaims and the adding of additional parties by a defendant.

- (3) The court may add a new party to proceedings without an application, if -
  - (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or
  - (b) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue.
- (4) The court may order any person to cease to be a party if it considers that it is not desirable for that person to be a party to the proceedings.
- (5) The court may order a new party to be substituted for an existing one if -
  - (a) court can resolve the matters in dispute more effectively by substituting the new party for the existing party; or
  - (b) existing party's interest or liability has passed to the new party.
- (6) The court may add, remove or substitute a party at the case management conference.

(7) The court may not add a party (except by substitution) after the case management conference on the application of an existing party unless that party can satisfy the court that the addition is necessary because of some change in circumstances which became known after the case management conference.

## **CPR 19.3**

### **19.3 Procedure for adding and substituting parties**

- (1) The court may add, substitute or remove a party on or without an application.
- (2) An application for permission to add, substitute or remove a party may be made by -
  - (a) an existing party; or
  - (b) a person who wishes to become a party.
- (3) An application for an order under rule 19.2(5) (substitution of new party where existing party's interest or liability has passed) may be made without notice but must be supported by evidence on affidavit.
- (4) A person may not be added or substituted as a claimant unless that person's written consent is filed with the court office.
- (5) An order for the addition, substitution or removal of a party must be served on -
  - (a) all parties to the proceedings;
  - (b) any party added or substituted; and
  - (c) any other person affected by the order.
- (6) If the court makes an order for the removal, addition or substitution of a party, it must consider whether to give consequential directions about -
  - (a) filing and serving the claim form and any statements of case on any new defendant;
  - (b) serving relevant documents on the new party; and
  - (c) the management of the proceedings,and subject to such directions rule 19.2(2) applies.
- (7) If the -
  - (a) court makes an order for the addition or substitution of a new defendant; and
  - (b) claim form is served on the new defendant,

these Rules apply to the new defendant as they apply to any other defendant.

## **CPR 19.4**

### **19.4 Special provisions about adding or substituting parties after end of relevant limitation period**

- (1) This rule applies to a change of parties after the end of a relevant limitation period.
- (2) The court may add or substitute a party only if the -
  - (a) addition or substitution is necessary; and
  - (b) relevant limitation period was current when the proceedings were started.
- (3) The addition or substitution of a party is necessary only if the court is satisfied that -
  - (a) the claim cannot properly be carried on by or against an existing party unless the new party is added or substituted as claimant or defendant;
  - (b) the interest or liability of the former party has passed to the new party; or
  - (c) the new party is to be substituted for a party who was named in the claim form in mistake for the new party.

## **Part 20**

### **Changes to statement of case**

#### **CPR 20.1**

##### **20.1 Changes to statement of case**

(1) A statement of case may be amended once, without the court's permission, at any time prior to the date fixed by the court for the first case management conference.

(2) The court may give permission to amend a statement of case at a case management conference or at any time on an application to the court.

(3) When considering an application to amend a statement of case pursuant to Rule 20.1(2), the

factors to which the court must have regard are –

- (a) how promptly the applicant has applied to the court after becoming aware that the change was one which he or she wished to make;
- (b) the prejudice to the applicant if the application was refused;
- (c) the prejudice to the other parties if the change were permitted;
- (d) whether any prejudice to any other party can be compensated by the payment of costs and or interest;
- (e) whether the trial date or any likely trial date can still be met if the application is granted; and
- (f) the administration of justice.

(4) A statement of case may not be amended without permission under this rule if the change is one to which any of the following applies -

- (a) rule 19.4 (special provisions about adding or substituting changing parties after the end of a relevant limitation period) or
- (b) rule 20.2 (changes to statement of case after the end of relevant period).

(5) An amended statement of case must include a certificate of truth under rule 3.8.

(6) The Chief Justice may, by practice direction, set out additional factors to which the court must have regard when considering an application under this rule

Rule 27.3 (1) deals with the fixing of case management conference.

## **CPR 20.2**

### **20.2 Changes to statements of case after end of relevant limitation period**

- (1) This rule applies to a change in a statement of case after the end of a relevant limitation period.
- (2) The court may allow an amendment the effect of which will be to add or substitute a new claim but only if the new claim arises out of the same or substantially the same facts as a claim in respect of which the party wishing to change the statement of case has already claimed a remedy in the proceedings.
- (3) The court may allow an amendment to correct a mistake as to the name of a party but only where the mistake was -
  - (a) genuine; and
  - (b) not one which would in all the circumstances cause reasonable doubt as to the identity of the party in question.
- (4) The court may allow an amendment to alter the capacity in which a party claims.

Rule 19.4 specifies the circumstances in which the court may allow a new party to be added or substituted after the end of a relevant limitation period.

## **CPR 20.3**

### **20.3 Filing an amended statement of case**

A party who amends his statement of case must file in the court office the original amended statement of case and one copy of the amended statement of case and, after filing, serve a copy of it on every other party.

## **CPR 20.4**

### **20.4 Amendments to statements of case and time for service**

- (1) Where an amended statement of claim is served on a defendant –
  - (a) the defendant, if he or she has already served a defence on the claimant, may file and serve an amended defence;
  - (b) the period for filing and serving an amended defence is the period of 28 days after the date of service of the amended statement of claim;

(c) if the defendant has not already served a defence on the claimant, the period for filing and serving a defence is the period of 28 days after the date of service of the amended statement of claim.

(2) Where an amended defence is served on the claimant by a defendant –

(a) the claimant, if he or she has already served a reply on the defendant, may file and serve an amended reply; and

(b) the period for filing and serving an amended reply is the period of 14 days after the date of service of the amended defence;

(c) if the claimant has not already served a reply on the defendant, the period for filing and serving a reply is the period of 28 days after the date of service of the amended defence.

(3) In paragraphs (1) and (2), reference to a defence and a reply include references to a counterclaim and a defence to a counterclaim respectively.

(4) Where a party has filed a statement of case in answer to another statement of case which subsequently amended and served on him or her under this rule, then, if that party does not amend

his or her statement of case in accordance with this rule, he or she shall be taken to rely on it in

answer to the amended statement of case.

(5) This rule shall apply mutatis mutandis to an amended ancillary claim

## Practice Direction 20 – Changes to statements of case

This practice direction is made pursuant to Rule [ ] 4.2(1) of the Supreme Court Civil Procedure Rules 2022 and supplements Part 20 of the Rules.

### 1. Introduction

1.2 This Practice Direction supplements rule 20.1(2).

### 2. Applications to change the statement of case where the permission of the court is required

2.1 The application may be dealt with at a hearing or, if rule 11.14 applies, without a hearing.

2.2 When making an application to change a statement of case, the applicant should file with the court:

- (1) the application and affidavit in support, together with
- (2) a copy of the statement of case with the proposed changes.

2.3 Where permission to change has been given, the applicant should within 14 days of the date of the order, or within such other period as the court may direct, file with the court the amended statement of case.

2.4 A copy of the order and the amended statement of case should be served on every party to the proceedings, unless the court orders otherwise.

### 3. General

3.1 The amended statement of case and the court copy of it should be endorsed as follows:

- (1) Where the court's permission was required:

Amended [Particulars of Claim *or as may be*] by Order of [Registrar .....][ Judge ..... *or as may be*] dated.....

- (2) Where the court's permission was not required:

Amended [Particulars of Claim *or as may be*] under CPR [rule 20.1(1)] dated.....

3.2 The statement of case in its amended form must show the original text and the amendments made, the court may direct that the amendments should be shown either:

- (1) by coloured amendments, either manuscript or computer generated, or

(2) by use of a numerical code in a monochrome computer generated document.

3.3 Where colour is used, the text to be deleted should be struck through in colour and any text replacing it should be inserted or underlined in the same colour.

3.4 The order of colours to be used for successive amendments is: (1) red, (2) green, (3) violet and (4) yellow.

3.5 If the substance of the statement of case is changed by reason of the amendment, the statement of case should be re-verified by a statement of truth.

3.6 A copy of the amended statement of case should be served on every party to the proceedings.

3.7 A party applying for an amendment will usually be responsible for the costs of and arising from the amendment.

#### **4. Effective date**

5.1 This practice direction will come into effect on the [ ], 2022 and will be applicable to all claims whenever issued.

## **Part 21**

### **Representative Parties**

#### **CPR 21.1**

##### **21.1 Representative claimants and defendants – general**

(1) This rule applies to any proceedings, other than proceedings falling within rule 21.4, in which 5 or more persons have the same or a similar interest in the proceedings.

(2) The court may appoint -

- (a) a body having a sufficient interest in the proceedings; or
- (b) one or more of those persons;

to represent all or some of the persons with the same or similar interest.

(3) A representative under this rule may be either a claimant or a defendant.

#### **CPR 21.2**

##### **21.2 Appointment of representative claimant or defendant – procedure**

(1) An application for an order appointing a representative party may be made at any time, including a time before proceedings have been started.

(2) An application for such an order may be made by any -

- (a) party;
- (b) person or body who wishes to be appointed as a representative party; or
- (c) person who is likely to be a party to proceedings.

(3) An application for such an order must -

- (a) be supported by affidavit evidence; and
- (b) identify every person to be represented, either
  - (i) individually; or
  - (ii) by description, if it is not practicable to identify a person individually.

(4) An application to appoint a representative defendant must be on notice to the claimant.

(5) An application to appoint a representative claimant may be made without notice.

(6) The court may direct that notice of an application be given to such other persons as it thinks fit.

(7) If the court directs that a person not already a party is to be a representative defendant, it must make an order adding that person as a defendant.

### **CPR 21.3**

#### **21.3 Consequence of order appointing representative party**

(1) If there is a representative claimant or defendant, an order of the court binds everyone whom that party represents.

(2) It may not however be enforced against a person not a party to the proceedings unless the person wishing to enforce it obtains permission from the court.

(3) An application for permission must be supported by evidence on affidavit and must be served on the person against whom it is wished to enforce the judgment.

### **CPR 21.4**

#### **21.4 Representation of persons who cannot be ascertained, etc., in proceedings about estates, trusts and construction of written instruments**

(1) This rule applies only to proceedings about -

- (a) the construction of a written instrument;
- (b) the estate of someone who is deceased; or
- (c) property subject to a trust.

(2) The court may appoint one or more persons to represent any person or class of persons (including an unborn person or persons) who is or may be interested in or affected by the proceedings (whether presently or for any future, contingent or unascertained interest) where -

- (a) the person, or the class or some member of it, cannot be ascertained or cannot readily be ascertained;
- (b) the person, or the class or some member of it, though ascertained cannot be found; or
- (c) it is expedient to do so for any other reason.

(3) An application for an order to appoint a representative party under this rule may be made by any -

- (a) party; or

- (b) person who wishes to be appointed as a representative party.
- (4) A representative appointed under this rule may be either a claimant or a defendant.
- (5) A decision of the court binds everyone whom a representative claimant or representative defendant represents.

## **CPR 21.5**

### **21.5 Compromise in proceedings to which rule 21.4 applies**

- (1) If -
  - (a) a compromise is proposed in proceedings to which rule 21.4 applies;
  - (b) some of the persons who are interested in, or who may be affected by, the compromise are not parties to the proceedings;
  - (c) those persons are represented by a representative appointed under rule 21.4 when the court considers the proposed compromise; and
  - (d) the court is satisfied that the compromise will be for the benefit of the absent persons;the court may approve the compromise.
- (2) The persons for whose benefit the court may approve a compromise may be unborn or unascertained.
- (3) The court's order approving the compromise binds the absent persons unless it has been obtained by fraud or non-disclosure of material facts.

## **CPR 21.6**

### **21.6 Representation of beneficiaries by trustees**

- (1) A claim may be made by or against a person in that person's capacity as a trustee, executor or administrator.
- (2) If a claim is so made, there is no need for a beneficiary also to be a party.
- (3) The court may direct that notice of the proceedings be given to an beneficiary.
- (4) A decision of the court in such proceedings binds a beneficiary unless the court otherwise orders.
- (5) The only grounds for an order that a decision is not binding on a beneficiary is that the trustee, executor or administrator -
  - (a)

- (i) could not or
  - (ii) did not in fact,
- represent the interest of the beneficiary; or
- (b) has acted fraudulently.

## **CPR 21.7**

### **21.7 Proceedings against estate of deceased person**

- (1) If in any proceedings it appears that a deceased person was interested in the proceedings then, but the deceased person has no personal representatives, the court may make an order appointing someone to represent the deceased person's estate for the purpose of the proceedings.
- (2) A person may be appointed as a representative if that person -
  - (a) can fairly and competently conduct proceedings on behalf of the estate of the dead person; and
  - (b) has no interest adverse to that of the estate of the deceased person.
- (3) The court may make such an order on or without an application.
- (4) Until the court has appointed someone to represent the deceased person's estate, the claimant may take no step in the proceedings apart from applying for an order to have a representative appointed under this rule.
- (5) A decision in proceedings in which the court has appointed a representative under this rule binds the estate to the same extent as if the person appointed were an executor or administrator of the deceased person's estate.

## **CPR 21.8**

### **21.8 Power of court to give directions to enable proceedings to be carried on after party's death**

- (1) If a party to proceedings dies, the court may give directions to enable the proceedings to be carried on.
- (2) An order under this rule may be made on or without an application.

## **CPR 21.9**

### **21.9 Power of court to strike out claim after death of claimant**

- (1) If a claimant dies and the claimant's personal representatives do not apply for an order under rule 19.3 to be substituted as claimants, the defendant may apply for the claim to be struck out.
- (2) Notice of the application must be given to the personal representatives of the claimant (if any) and such other persons as the court directs.
- (3) The general rule is that if the court makes an order on an application under this rule it will be that unless the personal representatives or some other persons on behalf of the estate apply to be substituted under rule 19.3 or for directions under rule 21.8 by a specified date, the claim is to be struck out.
- (4) The court may give directions under rule 21.8 at the hearing of an application under this rule.

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## **Part 22**

### **Miscellaneous Rules about Parties**

#### **CPR 22.1**

##### **22.1 Partners**

(1) Persons claiming to be entitled, or alleged to be liable, as partners may sue or be sued in the firm name if -

(a) the firm name is the name of the firm in which they were partners; and

(b) they carried on business in that name within the jurisdiction, when the right to claim arose.

(2) If partners sue or are sued in the firm's name, they must, if any other party so demands in writing, immediately -

(a) deliver to that party; and

(b) file;

a statement of the names and residential addresses of all the persons who were partners in the firm when the right to claim arose.

(3) If they do not comply, the court on application by any other party may order them to provide such a statement and to certify it to the court.

(4) An application under paragraph (3) may be made without notice.

(5) The party making the application must -

(a) certify that the other party has not complied;

(b) certify that the party has made a demand in writing; and

(c) state the date of the demand.

(6) If the partners do not comply within 21 days after service of the order any claim or defence brought by them is deemed to be struck out.

(Rule 26.5 deals with the procedure for striking out a statement of case.)

(7) A duly authorised employee of a partnership or firm may -

(a) conduct proceedings on behalf of the partnership or firm; or

(b) represent it in court with the court's permission.

(8) Permission under paragraph (7)(b) is to be given or refused at a case management conference.

Rule 46.2 deals with enforcement of a judgment against a partnership or by a firm against one of its members.

## **CPR 22.2**

### **22.2 Person carrying on business in another name**

- (1) A claim may be made by or against a person -
  - (a) carrying on business within the jurisdiction; or
  - (b) who was carrying on business within the jurisdiction when the right to claim arose –
    - (i) in that person's own name;
    - (ii) in that person's own name, followed by the words "trading as X.Y.";
    - (iii) as "X.Y." followed by the words "(a trading name)"; or
    - (iv) as "X.Y." followed by the words "a firm".
- (2) If a claim is made by or against a person in his or her business name, the Rules about claims by or against partners apply as if that person had been a partner in a firm when the right to claim arose and the business name were the firm's name.

## **CPR 22.3**

### **22.3 Bodies corporate**

- (1) Except as expressly provided by or under any enactment, a body corporate may not begin or carry on any court proceedings otherwise than by an attorney unless the court permits it to be represented by a duly authorised director or other officer.
- (2) Permission for a duly authorised director or other officer to represent the body corporate at the trial should wherever practicable be sought at a case management conference or pre-trial review.
- (4) In considering whether to give permission the court must take into account all the circumstances including the complexity of the case.
- (5) In paragraphs (1) and (2) "duly authorised" means authorised by the body corporate to conduct the proceedings on its behalf.

## **Part 23 Minors and Patients**

### **CPR 23.1**

#### **23.1 Scope of this part**

- (1) This Part -
  - (a) contains special provisions which apply in proceedings involving minors and patients; and
  - (b) sets out how a person becomes a minor's or patient's litigation guardian.

Rule 5.10 contains provisions about the service of documents on minors and patients.

Rule 14.3 contains restrictions on entering judgment on an admission where a party is a minor or patient.

- (2) In this Part "Act" means the Mental Health Act.

### **CPR 23.2**

#### **23.2 Requirement of litigation guardian in proceedings by or against minors or patients**

- (1) The general rule is that a minor or patient must have a litigation guardian to conduct proceedings on his or her behalf.
- (2) The court may, on the application of a minor, make an order permitting the minor to conduct proceedings without a litigation guardian.
- (3) An application for an order under paragraph (2) -
  - (a) may be made by the minor;
  - (b) if the minor has a litigation guardian must be on notice to that litigation guardian; and
  - (c) if there is no litigation guardian may be made without notice.
- (4) If -
  - (a) the court has made an order under paragraph (2); and
  - (b) it subsequently appears to the court that it is desirable for a litigation guardian to conduct the proceedings on behalf of the minor;the court may appoint a person to be the minor's litigation guardian.
- (5) A litigation guardian must act by an attorney unless the court otherwise orders.

(6) The litigation guardian must sign any certificate of truth under rule 3.8 on behalf of the minor or patient.

### **CPR 23.3**

#### **23.3 Stage of proceedings at which litigation guardian becomes necessary**

(1) A minor or patient must have a litigation guardian in order to issue a claim except where the court has made an order under rule 23.2(2).

(2) A person may not -

(a) make any application against a minor or patient before proceedings have started; or

(b) take any step in proceedings except -

(i) applying for the appointment of a litigation guardian under rule 23.8; or

(ii) issuing and serving a claim form against a minor or patient; until the minor or patient has a litigation guardian.

(3) If a person other than a minor becomes a patient during proceedings, any party may not take any step in the proceedings apart from applying to the court for the appointment of a litigation guardian until the patient has a litigation guardian.

(4) Any step other than an application under -

(a) rule 23.2(2); or

(b) paragraph (2)(b);

taken before a minor or patient has a litigation guardian is of no effect unless the court otherwise orders.

### **CPR 23.4**

#### **23.4 Who may be minor's litigation guardian**

(1) A person who satisfies the conditions set out in rule 23.6 may act as a minor's litigation guardian without a court order, unless -

(a) the court has already appointed a litigation guardian; or

(b) makes or has made an order under rule 23.9 (court's power to terminate appointment of and substitute litigation guardian).

## **CPR 23.5**

### **23.5 Who may be patient's litigation guardian**

- (1) Unless the court appoints some other person, a person authorised under the Act to conduct legal proceedings in the name of the patient or on the patient's behalf is entitled to be the litigation guardian of the patient in any proceedings to which the authority extends.
- (2) Where nobody has been appointed by the court or authorised under the Act, a person who satisfies the conditions set out in rule 23.6 may be a patient's litigation guardian without a court order.

## **CPR 23.6**

### **23.6 Conditions for being litigation guardian**

A person may act as a litigation guardian if that person -

- (a) can fairly and competently conduct proceedings on behalf of the minor or patient; and
- (b) has no interest adverse to that of the minor or patient.

## **CPR 23.7**

### **23.7 How person becomes litigation guardian without court order**

- (1) If the court has not appointed a litigation guardian, a person who wishes to act as litigation guardian must follow the procedure set out in this rule.
- (2) A person authorised under the Act must file an official copy of the order or other document which constitutes that person's authorisation to act.
- (3) Any other person must file a certificate that that person satisfies the conditions specified in rule 23.6.
- (4) A person who is to act as a litigation guardian for a claimant must file the -
  - (a) authorisation; or
  - (b) certificate under paragraph (3);at the time when the claim is made.
- (5) A person who is to act as a litigation guardian for a defendant must file the -
  - (a) authorisation; or
  - (b) certificate under paragraph (3),

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

(6) The litigation guardian must -

(a) serve a copy of the certificate under paragraph (3) on every person on whom in accordance with rule 5.10 (service on minors or patients) the claim form should be served; and

(b) file an affidavit of service.

### **CPR 23.8**

#### **23.8 How person becomes litigation guardian by court order**

(1) The court may make an order appointing a litigation guardian with or without an application.

(2) An application for an order appointing a litigation guardian may be made by a -

(a) party, or

(b) person who wishes to be a litigation guardian.

(3) If -

(a) a person makes a claim against a minor or patient;

(b) the minor or patient has no litigation guardian; and

(c) either -

(i) someone who is not entitled to be a litigation guardian files a defence; or

(ii) the claimant wishes to take some step in the proceedings,

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

(4) An application for an order appointing a litigation guardian must be supported by evidence on affidavit.

(5) The court may not appoint a litigation guardian under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 23.6.

#### **23.9 Court's power to terminate appointment of and substitute litigation guardian**

(1) The court may -

(a) appoint a new litigation guardian in substitution for an existing one;

(b) direct that a person may not act as a litigation guardian ; or

- (c) terminate a litigation guardian's authority to act.
- (2) The court may make an order under paragraph (1) with or without an application.
- (3) An application for an order under paragraph (1) must be supported by evidence on affidavit.
- (4) The court may not appoint a litigation guardian under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 23.6.

### **CPR 23.10**

#### **23.10 Appointment of litigation guardian by court order – supplementary**

- (1) An application for an order under rule 23.8 or 23.9 must be served on every person on whom, in accordance with rule 5.10 (service on minors or patients) the claim form should have been served.
- (2) An application for an order under rule 23.9 (courts power to terminate appointment of and substitute litigation guardian must also be served on the person who -
  - (a) is or who purports to act as litigation guardian; and
  - (b) it is proposed should act as Litigation Guardian if that person is not the applicant.
- (3) On an application for an order under rule 23.8 or 23.9, the court may appoint the person proposed or any other person.

### **CPR 23.11**

#### **23.11 Procedure where appointment as litigation guardian ceases**

- (1) The appointment of a minor's litigation guardian ceases when a minor who is not a patient reaches the age of majority.
- (2) When a party, other than a minor, ceases to be a patient during the course of proceedings, the litigation guardian's appointment continues until it is ended by court order.
- (3) An application for an order under paragraph (2) may be made by -
  - (a) a party; and
  - (b) the former patient; or
  - (c) the litigation guardian ;and must be supported by evidence on affidavit.

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

- (a) giving an address for service;
- (b) stating that the appointment of the litigation guardian has ceased; and
- (c) stating whether or not he or she chooses to carry on the proceedings.

(5) If the notice is not served within 28 days after the appointment of the litigation guardian ceases the court may, on application, strike out any claim or defence brought or filed by the minor or patient.

(6) The liability of a litigation guardian for costs continues until the -

- (a) minor or patient serves the notice referred to in paragraph (4); or
- (b) litigation guardian serves notice on the other parties that the appointment has ceased.

## **CPR 23.12**

### **23.12 Compromise, etc. by or on behalf of minor or patient**

- (1) If a claim is made -
  - (a) against a minor or patient; or
  - (b) by or on behalf of a minor or patient;

any settlement, compromise or payment and any acceptance of money is not valid, so far as it relates to the claim by, on behalf of, or against the minor or patient, without the approval of the court.

- (2) If -
  - (a) before proceedings in which a claim is to be made by or on behalf of a minor or patient (whether alone or with any other person) are begun, an agreement is reached for the settlement of the claim; and
  - (b) the sole purpose of proceedings on that claim is to obtain the approval of the court to a settlement or compromise of the claim, the claim may be made by a fixed date claim form (Form 2) which may -
    - (i) be issued jointly by the claimant and defendant; and
    - (ii) include a request to the court for approval of the settlement.

## **CPR 23.13**

### **23.13 Control of money recovered by or on behalf of minor or patient**

- (1) If, in any proceedings money -
  - (a) is recovered by or on behalf of or for the benefit of a minor or patient; or
  - (b) paid into court is accepted by or on behalf of a minor or patient;that money must be dealt with in accordance with directions given by the court under this rule and not otherwise.
- (2) Directions given under this rule may provide that the money must be wholly or partly paid into court and invested or otherwise dealt with.

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## **Part 24**

### **Security for costs**

#### **CPR 24.1**

##### **24.1 Scope of this Part**

This Part deals with the power of the court to require a claimant to give security for the costs of the defendant.

Additional provision is made in relevant enactments relating to limited companies for security to be ordered against an insolvent claimant company.

#### **CPR 24.2**

##### **24.2 Application for order for security for costs**

- (1) A defendant in any proceedings may apply for an order requiring the claimant to give security for the defendant's costs of the proceedings.
- (2) Where practicable such an application should be made at or before a case management conference.
- (3) An application for security for costs must be supported by evidence on affidavit.
- (4) The amount and nature of the security shall be such as the court thinks fit.

#### **CPR 24.3**

##### **24.3 Conditions to be satisfied**

The court may make an order for security for costs under rule 24.2 against a claimant only if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and that-

- (a) some person other than the claimant 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;
- (b) the claimant –
  - (i) failed to give his or her address in the claim form;
  - (ii) gave an incorrect address in the claim form; or
  - (iii) has changed his or her address since the claim was commenced; with a view to evading the consequences of the litigation;

- (c) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him;
- (d) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 21, and there is reason to believe that the claimant will be unable to pay the defendant's costs if ordered to do so;
- (e) the claimant is an assignee of the right to claim and the assignment has been made with a view to avoiding the possibility of a costs order against the assignor;
- (f) the claimant is an external company; or
- (g) the claimant is ordinarily resident out of the jurisdiction.

#### **CPR 24.4**

##### **24.4 Security for costs against counter-claiming defendant**

Rules 24.2 and 24.3 apply where a defendant makes a counterclaim as if references in those rules –

- (a) to a claimant – were references to a defendant making a counterclaim;
- (b) to a defendant – were references to a claimant defending a counterclaim.

#### **CPR 24.5**

##### **24.5 Enforcing order for security for costs**

On making an order for security for costs the court must also order that -

- (a) the claim (or counterclaim) be stayed until such time as security for costs is provided in accordance with the terms of the order;
- (b) if security is not provided in accordance with the terms of the order by a specified date, the claim (or counterclaim) be struck out.

## **Part 25**

### **Case Management – the objective**

#### **CPR 25.1**

#### **25.1 Court's duty actively to manage cases**

The court must further the overriding objective by actively managing cases. This may include -

- (a) identifying the issues at an early stage;
  - (b) actively encouraging and assisting parties to settle the whole or part of their case on terms that are fair to each party;
  - (c) considering whether the likely benefits of taking a particular step will justify the cost of taking it;
  - (d) dealing with as many aspects of the case as is practicable on the same occasion;
  - (e) dealing with as many aspects of the case, as it appears appropriate to do, without requiring the parties to attend court;
  - (f) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
  - (g) deciding the order in which issues are to be resolved;
  - (h) encouraging the parties to co-operate with each other in the conduct of proceedings;
  - (i) encouraging the parties to use any appropriate form of ADR procedure including, in particular, mediation, if the court considers it appropriate and facilitating the use of such procedures;
  - (j) ensuring that no party gains an unfair advantage by reason of that party's failure to give full disclosure of all relevant facts prior to the trial or the hearing of any application;
  - (k) fixing timetables or otherwise controlling the progress of the case;
  - (l) giving directions to ensure that the trial of the case proceeds quickly and efficiently; and
  - (m) making appropriate use of technology.
- Part 1 sets out the overriding objective.

## **Part 26**

### **Case Management – The Court's Powers**

#### **CPR 26.1**

##### **26.1 Court's general powers of management**

- (1) The list of powers in this rule is in addition to any powers given to the court by any other rule, practice directions or any enactment
- (2) Except where these rules provide otherwise, the court may -
  - (a) adjourn or bring forward a hearing to a specific date;
  - (b) consolidate proceedings;
  - (c) deal with a matter without the attendance of any of the parties;
  - (d) decide the order in which issues are to be tried;
  - (e) direct a separate trial of any issue;
  - (f) direct that any evidence be given in written form;
  - (g) direct that notice of any proceedings or application be given to any person;
  - (h) direct that part of any proceedings (such as a counterclaim or other additional third party claim) be dealt with as separate proceedings;
  - (i) dismiss or give judgment on a claim after a decision on a preliminary issue;
  - (j) exclude an issue from determination if the court can do substantive justice between the parties on the other issues and determines it would therefore serve no worthwhile purpose;
  - (k) extend or shorten the time for compliance with any rule, practice direction, order or direction of the court even if the application for an extension is made after the time for compliance has passed;
  - (l) give the conduct of any matter to any person it thinks fit and make any appropriate consequential order about costs;
  - (m) hold a hearing and receive evidence by telephone or use any other method of direct oral communication;
  - (n) instead of holding an oral hearing deal with a matter on written representations submitted by the parties;
  - (o) require any party or a party's attorney to attend the court;
  - (p) require the maker of an affidavit or witness statement to attend for cross-examination;

- (q) stay the whole or part of any proceedings generally or until a specified date or event;
  - (r) transfer the whole or any part of any proceedings to another court office in the Bahamas from the court office where the proceedings were filed;
  - (s) try two or more claims on the same occasion;
  - (t) where there is a substantial inequality in the proven financial position of each party, order any party having the greater financial resources who applies for an order to pay the other party's costs of complying with the order;
  - (u) where two or more parties are represented by the same attorney –
    - (i) direct that they be separately represented;
    - (ii) if necessary, adjourn any hearing to a fixed date to enable separate representation to be arranged; and
    - (iii) make any consequential order as to costs thrown away; and
  - (v) take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective, including hearing an Early Neutral Evaluation, or directing that such a hearing take place before a court appointed neutral third party, with the aim of helping the parties settle the case.
- (3) When the court makes an order or gives a direction, it may make the order or direction subject to conditions.
- (4) The conditions which the court may impose include -
- (a) requiring a party to give an undertaking;
  - (b) requiring a party to give security;
  - (c) requiring a party to pay all or part of the costs of the proceedings;
  - (d) requiring the payment of money into court or as the court may direct; and
  - (e) that a party permit entry to property owned or occupied by that party to another party or someone acting on behalf of another party.
- (5) In considering whether to make an order, the court may take into account whether a party is prepared to give an undertaking.
- (6) In special circumstances on the application of a party the court may dispense with compliance with any of these rules.

## **CPR 26.2**

### **26.2 Court's power to make orders of its own initiative**

- (1) Except where a rule or other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.
- (2) If the court proposes to make an order of its own initiative it must give any party likely to be affected a reasonable opportunity to make representations.
- (3) The opportunity may be to make representations orally, in writing, telephonically or by any other means as the court considers reasonable.
- (3) If the court proposes to -
  - (a) make an order of its own initiative; and
  - (b) hold a hearing to decide whether to do so;the court office must give each party likely to be affected by the order at least 7 days' notice of the date, time and place of the hearing.

## **CPR 26.3**

### **26.3 Sanctions – striking out statement of case**

- (1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that -
  - (a) there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings;
  - (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
  - (c) the statement of case or the part to be struck out is frivolous, vexatious, scandalous, an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings; or
  - (d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.
- (2) Where -
  - (a) the court has struck out a claimant's statement of case;
  - (b) the claimant is ordered to pay costs to the defendant; and
  - (c) before those costs are paid, the claimant starts a similar claim against the same defendant based on substantially the same facts,the court may on the application of the defendant stay the subsequent claim until the costs of the first claim have been paid.

## **CPR 26.4**

### **26.4 Court's general power to strike out statement of case**

- (1) If a party has failed to comply with any of these rules or any court order in respect of which no sanction for non-compliance has been imposed, any other party may apply to the court for an “unless order”.
- (2) Such an application may be made without notice but must be supported by evidence on affidavit which –
  - (a) contains a certificate that the other party is in default;
  - (b) identifies the rule or order which has not been complied with; and
  - (c) states the nature of the breach.
- (3) The judge or registrar may -
  - (a) grant the application;
  - (b) direct that an appointment be fixed to consider the application and that the applicant give to all parties notice of the date, time and place for such appointment; or
  - (c) seek the views of the other party.
- (4) If an appointment is fixed the applicant must give 7 days' notice of the date, time and place of the appointment to all parties.
- (5) An “unless order” must identify the breach and require the party in default to remedy the default by a specified date.
- (6) The general rule is that the respondent should be ordered to pay the assessed costs of such an application.
- (7) If the defaulting party fails to comply with the terms of any ‘unless order’ made by the court, that party’s statement of case shall be struck out subject to an order under rule 26.8.

Rule 11.16 deals with applications to set aside any order made on an application made without notice.

## **CPR 26.5**

### **26.5 Judgment without trial after striking out**

- (1) This rule applies where the court makes an order which includes a term that the statement of case of a party be struck out if the party does not comply with the “unless order” by the specified date.
- (2) If the party against whom the order was made does not comply with the order, any other party may apply for a judgment to be entered

and for costs to be assessed appropriate to the stage that the proceedings have reached.

(3) A party may obtain judgment under this rule by filing a request for judgment.

(4) The request must -

(i) certify that the right to enter judgment has arisen because the court's order was not complied with;

(ii) prove service of the "unless order"; and

(iii) state the facts which entitle the party to judgment.

(5) If the party wishing to obtain judgment is the claimant and the claim is for -

(a) an amount of money to be decided by the court;

(b) a specified sum of money;

(c) delivery of goods and the claim form gives the defendant the alternative of paying their value; or

(d) any combination of these remedies;

judgment must be in accordance with the terms of the statement of claim plus any interest and costs after giving credit for any payment that may have been made.

(6) If the party wishing to obtain judgment is the claimant and the claim is for some other remedy the judgment must be such as the court considers that the claimant is entitled to.

(7) If the party wishing to obtain judgment is a defendant, judgment must be for assessed costs.

(8) If a decision of the court is necessary in order to decide the terms of the judgment the party making the request must apply for directions.

Part 72 deals with the quantification of costs.

## **CPR 26.6**

### **26.6 Setting aside judgment entered after striking out**

(1) A party against whom the court has entered judgment under rule 26.5 when the right to enter judgment had not arisen may apply to the court to set it aside.

(2) If the right to enter judgment had not arisen at the time when judgment was entered, the court must set aside judgment.

(3) If the application to set aside is made for any other reason, rule

26.8 (relief from sanctions) applies.

## **CPR 26.7**

### **26.7 The Court's powers in cases of failure to comply with rules, etc.**

- (1) If the court makes an order or gives directions the court must whenever practicable also specify the consequences of failure to comply.
- (2) If a party has failed to comply with any of these rules, a direction or any order, any express sanction for non-compliance imposed by the rule, direction or the order has effect unless the party in default applies for and obtains relief from the sanction, and rule 26.9 does not apply.
- (3) If a rule, practice direction or order -
  - (a) requires a party to do something by a specified date; and
  - (b) specifies the consequences of failure to comply,the time for doing the act in question may not be extended by agreement between the parties.
- (3A) (i) If a party has failed to comply with any of these rules, a direction or any order, where no express sanction for non-compliance is imposed by the rule, direction or the order the party in default may make an application under rule 26.9.
- (3B) (ii) If a rule, practice direction or order -
  - (a) requires a party to do something by a specified date; and
  - (b) does not specify the consequences of failure to comply,the time for doing the act in question may be extended by agreement in writing between the parties provided that the extension does not affect the date of any hearing or the trial.

## **CPR 26.8**

### **26.8 Relief from sanctions**

- (1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need –
  - (a) for litigation to be conducted efficiently and at proportionate cost; and
  - (b) to enforce compliance with rules, practice directions and orders.
- (2) An application for relief must be supported by evidence.

(3) The court may not order the respondent to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown.

## **CPR 26.9**

### **26.9 General power of the court to rectify matters**

(1) This rule applies only where the consequence of failure to comply with a rule, practice direction or court order has not been specified by any rule, practice direction, court order or direction.

(2) An error of procedure or failure to comply with a rule, practice direction or court order does not invalidate any step taken in the proceedings, unless the court so orders.

(3) If there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the court may make an order to put matters right.

(4) The court may make such an order on or without an application by a party.

DRAFT

## **Part 27**

### **Case Management Conferences – Procedure**

#### **CPR 27.1**

##### **27.1 Scope of this Part**

This Part deals with the procedures by which the court will manage cases.

#### **CPR 27.2**

##### **27.2 Fixed date claims – first hearing**

- (1) When a fixed date claim is filed the claimant must obtain from the court office a date for the first hearing of the claim.
- (2) On that hearing, in addition to any other powers that the court may have, the court shall have all the powers of a case management conference.
- (3) The court may, however, treat the first hearing as the trial of the claim if it is not defended or it considers that the claim can be dealt with summarily.
- (4) The general rule is that all parties must be given at least 14 days' notice of any first hearing.
- (5) The general rule is subject to any rule or statutory provision which specifies a different period.
- (6) The court may on or without an application direct that shorter notice be given -
  - (a) if the parties agree; or
  - (b) in urgent cases.
- (7) Unless the defendant files an acknowledgement of service the claimant must file evidence by affidavit of service of the claim form and the relevant documents specified in rule 5.2(3) at least 7 days before the first hearing.

#### **CPR 27.3**

##### **27.3 Case management conference**

- (1) The general rule is that the claimant must apply for a date for a case management conference as soon as practicable upon the filing of a defence to a claim other than a fixed date claim.
- (2) If the defendant files a defence and also an admission of a specified sum of money, the case management conference is not to be

fixed until the claimant gives notice under rule 14.7(3) that the claim is to continue.

(3) The case management conference must take place not less than 4 weeks nor more than 12 weeks after the defence is filed (or notice is given under rule 14.7(3)) unless any rule or practice direction prescribes a shorter or longer period or the case is urgent.

(4) Notwithstanding paragraph (3) a party may apply to the court to fix a case management conference before a defence is filed.

(5) The application may be without notice but must state the reasons for the application.

(6) The applicant must give all parties' not less than 14 days' notice of the date, time and place of the case management conference.

(7) The court may with or without an application direct that shorter notice be given -

(a) if the parties agree; or

(b) in urgent cases.

(8) Notwithstanding any provisions of this Rule, the Court shall at the first case management conference consider mediation either by agreement between the parties or by court referral.

## **CPR 27.4**

### **27.4 Attendance at case management conference or pre-trial review**

(1) If a party is represented by an attorney, that attorney or another attorney who is authorised to negotiate on behalf of the client and competent to deal with the case must attend the case management conference and any pre-trial review.

(2) The general rule is that the party or a person who is in a position to represent the interests of the party (other than the attorney) must attend the case management conference or pre-trial review.

(3) The court may dispense with the attendance of a party or representative (other than an attorney).

(4) If the case management conference or pre-trial review is not attended by the attorney and the party or a representative the court may adjourn the case management conference or pre-trial review to a fixed date and may exercise any of its powers under Part 26 (case management – the court's powers) or Part 71 (costs – general).

## **CPR 27.5**

### **27.5 Orders to be made at case management conference**

(1) The general rule is that at a case management conference the court must consider whether to give directions for -

- (a) service of experts' reports (if any);
- (b) service of witness statements; and
- (c) standard disclosure and inspection;

by dates fixed by the court.

(2) The court may also give directions for the preparation of an agreed statement –

- (a) as to any relevant specialist area of law;
- (b) of facts;
- (c) of issues; and
- (d) of the basic technical, scientific or medical matters in issue;

which statement does not bind the trial judge.

(3) The court must fix a date for a pre-trial review unless it is satisfied that having regard to the value, importance and complexity of the case it may be dealt with justly without a pre-trial review.

(4) The court must in any event, fix the -

- (a) period within which the trial is to commence; or
- (b) trial date.

(5) The claimant must serve an order containing the directions made on all parties in Form [ ] and give notice of the -

- (a) date of any pre-trial review; and
- (b) trial date or trial period.

## **CPR 27.6**

### **27.6 Dispensing with case management conference in simple and urgent proceedings**

(1) The court may, of its own motion or on the application of a party, make an order dispensing with a case management conference if it is satisfied that the –

- (a) case can be dealt with justly without a case management conference;
- (b) case should be dealt with as a matter of urgency; or

(c) cost of a case management conference is disproportionate to the value of the proceedings or the benefits that might be achieved from a case management conference.

(2) If the court dispenses with a case management conference, it must at the same time –

- (a) fix a trial date or the period within which the trial is to take place;
- (b) give directions in writing about the preparation of the case; and
- (c) set a timetable for the steps to be taken before the date of trial.

(3) If the court dispenses with a case management conference, it may

-

- (a) dispense with all or any of the requirements relating to the preparation and filing of bundles of documents under rule 39.1;
- (b) dispense with a pre-trial review under Part 38; and
- (c) give any other direction that will assist in the speedy and just trial of the claim, including any direction that might be given under Part 38.

## **CPR 27.7**

### **27.7 Adjournment of case management conference**

(1) The court may adjourn a case management conference whenever it deems it appropriate to do so including when it is satisfied that the parties are -

- (a) attending, or have arranged to attend, a form of ADR procedure; or
- (b) in the process of negotiating, or are likely to negotiate a settlement;

(2) The court may not adjourn a case management conference without fixing a new date, time and place for the adjourned case management conference.

(3) If the case management conference is adjourned under paragraph (1) each party must notify the court office promptly if the claim is settled.

(4) The court may give directions as to the preparation of the case for trial if the case management conference is adjourned.

(5) So far as practicable any adjourned case management conference and procedural application made prior to a pre-trial review must be heard and determined by the judge or registrar who conducted the first case management conference.

## **CPR 27.8**

### **27.8 Variation of case management timetable**

(1) A party must apply to the court if that party wishes to vary a date which the court has fixed for -

- (a) a case management conference;
- (b) a party to do something where the order specifies the consequences of failure to comply;
- (c) a pre-trial review; or
- (d) the trial date or trial period.

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

(3) A party seeking to vary any other date in the timetable without the agreement of the other parties must apply to the court, and the general rule is that the party must do so before that date.

Rule 42.7 deals with consent orders.

(4) A party who applies after that date must apply for -

- (a) an extension of time; and
- (b) relief from any sanction to which the party has become subject under these Rules or any court order or an order under rule 26.9.

Rule 26.8 provides for applications for relief from sanctions.

(5) The parties may agree to vary a date in the timetable other than one mentioned in paragraph (1) or (2).

(6) Where the parties so agree, they must -

- (a) submit a draft consent order for the consideration of the court; and
- (b) certify on the draft consent order that the variation agreed will not affect the date fixed for the trial or, if no date has been fixed, the period in which the trial is to commence,

and the court will determine without a hearing whether or not to accept and sign it.

## **CPR 27.9**

### **27.9 Fixing trial date**

(1) As soon as practicable after the case management conference fix a trial date if one was not fixed under rule 27.5(4).

- (2) The general rule is that the court office must give the parties at least 8 weeks' notice of the date of the trial.
- (3) The court may however give shorter notice -
  - (a) if the parties agree; or
  - (b) in urgent cases.

DRAFT #1

## **Part 28**

### **Disclosure and Inspection of Documents**

#### **CPR 28.1**

##### **28.1 Scope of this Part**

(1) This Part sets out rules about the disclosure and inspection of documents.

(2) In this Part

“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; and

“document” means anything on or in which information of any description is recorded whether in writing, electronically or howsoever.

(3) A party “discloses” a document by revealing that the document exists or has existed.

(4) For the purposes of this part a document is “directly relevant” if -

- (a) the party with control of the document intends to rely on it;
- (b) it tends to adversely affect that party’s case; or
- (c) it tends to support another party’s case,

but the rule of law known as “the rule in Peruvian Guano” does not apply to make a document “directly relevant”.

#### **CPR 28.2**

##### **28.2 Duty of disclosure limited to documents which are or have been in party's control**

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

(2) For this purpose a party has or has had control of a document if -

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

#### **CPR 28.3**

##### **28.3 Disclosure of copies**

(1) Except where required by paragraph (2), a party need not disclose more than one copy of a document.

(2) A party must however disclose a copy if it contains a modification, obliteration or other marking or feature which is not present in the original or any copy of the document which is being disclosed.

#### **CPR 28.4**

#### **28.4 Standard disclosure – what documents are to be disclosed**

If a party is required by any direction of the court to give standard disclosure that party must disclose all documents which are directly relevant to the matters in question in the proceedings.

#### **CPR 28.5**

#### **28.5 Specific disclosure**

(1) 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 or categories of documents specified in the order;
- (b) disclose documents relevant within the principles relating to discovery of documents, or, alternatively, directly relevant, to a specified issue or issues in the proceedings; or
- (c) carry out a search to the extent stated in the order for
  - (i) documents relevant, in the sense indicated in paragraph (b), or directly relevant to the proceedings or to a specified issue or issues; or
  - (ii) documents of a particular description or class or in a particular category or identified in any other manner,

and disclose any documents within the scope of the order located as a result of that search.

(2) An order for specific disclosure may be made on or without an application.

(3) An application for specific disclosure is to be made on notice and unless in special circumstances at a case management conference.

(4) An application for specific disclosure may identify documents -

- (a) by describing the class to which they belong; or
- (b) in any other manner.

(5) An order for specific disclosure may require disclosure only of documents which are directly relevant to one or more matters in issue in the proceedings.

## **CPR 28.6**

### **28.6 Criteria for ordering specific disclosure**

- (1) When deciding whether to make an order for specific disclosure, the court must consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save costs.
- (2) The court must have regard to-
  - (a) the likely benefits of specific disclosure;
  - (b) the likely cost of specific disclosure; and
  - (c) whether it is satisfied that the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order.
- (3) If, having regard to paragraph (2)(c), the court would otherwise refuse to make an order for specific disclosure it may nonetheless make such an order on terms that the party seeking the order must pay the other party's costs of such disclosure in any event.
- (4) If the court makes an order under paragraph (3) it must assess the costs to be paid in accordance with rule 71.6 (summary assessment).
- (5) The party in whose favour such order for costs was made may apply to vary the amount of costs so assessed.

## **CPR 28.7**

### **28.7 Procedure for disclosure**

- (1) Paragraphs (2) to (5) set out the procedure for disclosure.
- (2) Each party must make, and serve on every other party, a list of documents in Form [ ].
- (3) The list must identify the documents or categories of documents in a convenient order and manner and as concisely as possible.
- (4) The list must state -
  - (a) what documents are no longer in the party's control;
  - (b) what has happened to those documents; and
  - (c) where each such document then is, to the best of the party's knowledge, information or belief.
- (5) The list must include documents already disclosed.
- (6) A list of documents served by a company, firm, association or other organisation must -

- (a) state the name and position of the person responsible for identifying individuals who might be aware of any document which should be disclosed; and
- (b) identify those individuals who have been asked whether they are aware of any such documents and state the position of those individuals.

## **CPR 28.8**

### **28.8 Duty of attorney**

The attorney for a party must –

- (a) explain to the maker of the list of documents the –
  - (i) necessity of making full disclosure in accordance with the terms of the order for disclosure and these Rules; and
  - (ii) possible consequences of failing to do so; and
- (b) certify on the list of documents under rule 28.7(2) that the explanation required by sub-paragraph (a) has been given.

## **CPR 28.9**

### **28.9 Requirement for maker to certify understanding of duty of disclosure**

- (1) The maker of the list of documents must certify in the list of documents that –
  - (a) the maker understands the duty of disclosure; and
  - (b) to the best of the knowledge of the maker the duty has been carried out.
- (2) In the case of a list served on behalf of a company, firm, association or other organisation the certificate referred to in paragraph (1) must be made by the person identified in rule 28.7(6) (a).
- (3) If it is impracticable for the maker of the list of documents to sign the certificate required by paragraph (1), it may be given by that person's attorney.
- (4) A certificate given by the attorney must also certify –
  - (a) that the certificate is given on the instructions of the maker; and
  - (b) the reasons why it is impractical for the maker of the list of documents to give the certificate.

## **CPR 28.10**

### **28.10 Disclosure in stages**

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

## **CPR 28.11**

### **28.11 Inspection and copying of listed documents**

(1) When a party has served a list of documents on any other party, that party has a right to inspect any document on the list, except documents -

(a) for which the right or privilege to withhold from disclosure is claimed; or

(b) which are no longer in the physical possession of the party who served the list.

(2) The party wishing to inspect the documents must give the party who served the list written notice of the wish to inspect documents in the list.

(3) The party who is to give inspection must permit inspection not more than 7 days after the date on which the notice is received.

(4) If the party giving the notice undertakes to pay the reasonable cost of copying, the party who served the list must supply the other with a copy of each document requested not more than 7 days after the date on which the notice was received.

## **CPR 28.12**

### **28.12 Duty of disclosure continuous during proceedings**

(1) The duty of disclosure in accordance with any order for standard or specific 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, that party must immediately notify every other party and serve a supplemental list of those documents.

(3) The supplemental list must be served not more than 14 days after the documents to which that duty extends have come to the notice of the party required to serve it.

## **CPR 28.13**

### **28.13 Consequence of failure to disclose documents under order for disclosure**

- (1) A party who fails to give disclosure by the date ordered or to permit inspection, may not rely on or produce at the trial any document not so disclosed or made available for inspection.
- (2) A party seeking to enforce an order for disclosure may apply to the court for an order that the other party's statement of case or some part of it be struck out.
- (3) An application under paragraph (2) relating to an order for specific disclosure may be made without notice but must be supported by evidence on affidavit that the other party has not complied with the order.
- (4) On an application under paragraph (2) the court may order that unless the party in default complies with the order for disclosure by a specific date that party's statement of case or some part of it be struck out.

Rule 11.16 deals with applications to set aside an order made on application without notice.

Rule 26.5 deals with judgment without trial after striking out.

Rule 26.8 deals with relief from sanctions.

## **CPR 28.14**

### **28.14 Claim of right to withhold disclosure or inspection of a document**

- (1) A person who claims a right to withhold disclosure or inspection of a document or part of a document must -
  - (a) make such claim for the document; and
  - (b) state the grounds on which such a right is claimed,in the list or otherwise in writing to the person wishing to inspect the document.
- (2) A person may however apply to the court, without notice, for an order permitting that person not to disclose the existence of a document on the ground that disclosure of the existence of the document would damage the public interest.
- (3) A person who applies under paragraph (2) must -

- (a) identify the document, documents or parts thereof for which a right to withhold disclosure is claimed; and
- (b) give evidence on affidavit showing -
  - (i) that the applicant has a right or duty to withhold disclosure; and
  - (ii) the grounds on which the right or duty is claimed.
- (4) Unless the court orders otherwise, an order of the court under paragraph (2) is not to be -
  - (a) open for inspection by; nor
  - (b) served on;any person.
- (5) A person who does not agree with a claim of right to withhold inspection or disclosure of a document may apply to the court for an order that the document be disclosed or made available for inspection.
- (6) On hearing such an application the court must make an order that the document be disclosed unless it is satisfied that there is a right to withhold disclosure.
- (7) If a person -
  - (a) applies for an order permitting that person not to disclose the existence of, a document or part of a document; or
  - (b) claims a right to withhold inspection;the court may require the person to produce that document to the court to enable it to decide whether the claim is justified.
- (8) On considering any application under this rule, the court may invite any person to make representations on the question of whether the document ought to be withheld.

## **CPR 28.15**

### **28.15 Restrictions on use of a privileged document inspection of which has been inadvertently allowed**

Where a party inadvertently allows a privileged document to be inspected the party who has inspected it may use it only with the -

- (a) the agreement of the party disclosing the document; or
- (b) the permission of the court.

## **CPR 28.16**

### **28.16 Documents referred to in statements of case, etc.**

- (1) A party may inspect and copy a document mentioned in -
  - (a) an affidavit;
  - (b) an expert's report;
  - (c) a statement of case;
  - (d) a witness statement or summary; or
  - (e) the claim form.
- (2) A party who wishes to inspect and copy such a document must give written notice to the party who, or whose witness, mentioned the document.
- (3) The party to whom the notice is given must comply with the notice not more than 7 days after the date on which the notice is served.

## **CPR 28.17**

### **28.17 Subsequent use of disclosed documents**

- (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, unless -
  - (a) the document has been read to or by the court, or referred to, in open court; or
  - (b)
    - (i) the party disclosing the document and the person to whom the document belongs; or
    - (ii) the court;gives permission.
- (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 in open court.
- (3) An application for such an order may be made by any -
  - (a) party; or
  - (b) person to whom the document belongs.

**CPR 28.18**

**28.18 Notice to prove a document Notice to prove a document**

- (1) A party shall be deemed to admit the authenticity of any document disclosed to that party under this Part unless that party serves notice that the documents must be proved at trial.
- (2) A notice to prove a document must be served not less than 42 days before the trial.

DRAFT #1

## **Part 29 Evidence**

### **CPR 29.1**

#### **29.1 Power of court to control evidence**

The court may control the evidence to be given at any trial or hearing by giving appropriate directions, at a case management conference or by other means, as to the –

- (a) issues on which it requires evidence; and
- (b) way in which any matter is to be proved.

### **CPR 29.2**

#### **29.2 Evidence at trial – general rule**

(1) The general rule is that any fact which needs to be proved by evidence of witnesses is to be proved at –

- (a) trial, by their oral evidence given in public; and
- (b) any other hearing, by affidavit.

(2) The general rule is subject to any –

- (a) order of the court; and
- (b) provision to the contrary contained in these Rules or elsewhere.

(3) Any evidence taken at the trial or other hearing of any proceedings may be used subsequently in those proceedings.

Part 30 deals with affidavits.

### **CPR 29.3**

#### **29.3 Evidence by video link or other means**

The court may allow a witness to give evidence without being present in the courtroom, through a video link or by any other means.

### **CPR 29.4**

#### **29.4 Requirement to serve witness statements**

(1) The court may order a party to serve on any other party a statement of the evidence of any witness upon which the first party intends to rely in relation to any issue of fact to be decided at the trial.

(2) A statement of the evidence referred to in paragraph (1) is known as a “witness statement”.

(3) A party's obligation to serve a witness statement is independent of any other party's obligation to serve such a statement.

Rule 29.7 provides a procedure that may be adopted when one party does not serve witness statements by the date directed.

(4) The court may give directions as to -

- (a) the order in which witness statements are to be served; and
- (b) when they are to be filed.

## **CPR 29.5**

### **29.5 Form of witness statements**

(1) A witness statement must -

- (a) be dated;
  - (b) be signed or otherwise authenticated by the intended witness;
  - (c) give the name, address and occupation of the witness;
  - (d) include a statement by the intended witness that he or she believes the statements of fact in it to be true;
  - (e) not include any matters of information or belief which are not admissible or, where admissible, must state the source of any matters of information or belief;
  - (f) so far as reasonably practicable, be in the intended witness's own words; and
  - (g) sufficiently identify any document to which the statement refers without repeating its contents unless this is necessary in order to identify the document.
- (2) The court may order that any inadmissible scandalous, irrelevant or otherwise oppressive matter be struck out of any witness statement.

## **CPR 29.6**

### **29.6 Witness summaries**

(1) A party who is required to provide and is not able to obtain a witness statement may serve a witness summary instead.

(2) The party who serves a witness summary must certify on the witness summary the reason why a witness statement could not be obtained.

(3) A "witness summary" is a summary of the -

- (a) evidence, so far as is known, which would otherwise be included in a witness statement; or
  - (b) matters about which the party serving the witness summary proposes to question the witness, if the evidence is not known.
- (4) Unless the court orders otherwise, a witness summary must include the name and address of the intended witness or other sufficient means of identifying the intended witness.
- (5) A witness summary must be served within the period in which a witness statement would have had to be served.
- (6) Where a party provides a witness summary, so far as practicable, rules 29.4 (requirement to serve witness statements), 29.7 (procedure where one party does not serve witness statements by date directed), 29.8 (witness to give evidence unless court otherwise orders) and 29.9 (amplifying witness statements at trial) apply to the witness summary.

### **CPR 29.7**

#### **29.7 Procedure where one party will not serve witness statement by date directed.**

- (1) This rule applies where -
- (a) one party (the “first party”) is able and prepared to comply with the order to serve witness statements; and
  - (b) the other party fails to make reasonable arrangements to exchange statements.
- (2) The first party may comply with the requirements of this Part by -
- (a) filing the witness statements in a sealed envelope at the court office by the date directed; and
  - (b) giving notice to all other parties that the witness statements have been filed.
- (3) Statements filed pursuant to paragraph (2) must not be disclosed to the other party until the other party certifies that the witness statements or summaries in respect of all witnesses upon whose evidence the other party intends to rely have been served.

### **CPR 29.8**

#### **29.8 Witness to give evidence unless court otherwise orders**

- (1) If a party -
- (a) has served a witness statement or summary; and

(b) wishes to rely on the evidence of that witness;

that party must call the witness to give evidence unless the court orders otherwise.

(2) If a party -

(a) has served a witness statement or summary; and

(b) does not intend to call that witness at the trial,

that party must give notice to that effect to the other parties not less than 28 days before the trial.

### **CPR 29.9**

#### **29.9 Amplifying witness statements at trial**

A witness giving oral evidence may with the permission of the court -

(a) amplify the evidence as set out in his or her witness statement if that statement has disclosed the substance of the evidence which the witness is asked to amplify;

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

(c) comment on evidence given by other witnesses.

### **CPR 29.10**

#### **29.10 Cross-examination on witness statement**

If a witness is called to give evidence at trial, that witness may be cross-examined on the evidence as set out in his or her witness statement, whether or not the statement or any part of it was referred to during the witness's evidence in chief.

### **CPR 29.11**

#### **29.11 Consequence of failure to serve witness statement or summary**

(1) If a witness statement or witness summary is not served in respect of an intended witness within the time specified by the court, the witness may not be called unless the court permits.

(2) The court may not give permission at the trial unless the party asking for permission has a good reason for not previously seeking relief under rule 26.8.

## **CPR 29.12**

### **29.12 Use of witness statement for other purposes**

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

## **CPR 29.13**

### **29.13 Notice to admit facts**

- (1) A party may serve notice on another party requiring that other party to admit the facts or the part of the first party's case specified in the notice.
- (2) A notice to admit facts must be served no later than 42 days before the trial.
- (3) If the other party makes any admission in response to the notice to admit facts, the admission may be used against that party only -
  - (a) by the party who served the notice; and
  - (b) in the proceedings in which the notice is served.
- (4) If the party served with the notice to admit does not admit the facts set out in the notice within 21 days of service of the notice upon that party the court may assess the costs incurred by the party serving the notice in proving such facts and order the party served with the notice to pay such costs.

Part 71 deals with assessment of costs.

## **Part 30 Affidavits**

### **CPR 30.1**

#### **30.1 Affidavit evidence**

- (1) The court may require evidence to be given by affidavit instead of, or in addition to oral evidence.
- (2) In this Part “deponent” means the maker of an affidavit.
- (3) Whenever an affidavit is to be used in evidence, any party may apply to the court for an order requiring the deponent to attend to be cross-examined.
- (4) Such an application must be made not less than -
  - (a) in the case of a trial – 21 days; or
  - (b) any other hearing – 7 days;before the date of the hearing at which it is intended to cross-examine the deponent.
- (5) If the deponent does not attend as required by the court order, the affidavit may not be used as evidence unless the court permits.
- (6) The general rule is that an affidavit must be filed before it may be used in any proceedings.
- (7) In a case of urgency the court may make an order on an affidavit which has not been filed if the party tendering it undertakes to file it.

### **CPR 30.2**

#### **30.2 Form of affidavits**

Every affidavit must -

- (a) be headed with the title of the proceedings;
- (b) be divided into paragraphs numbered consecutively;
- (c) be in the first person and state the name, address and occupation of the deponent and, if more than one, of each of them;
- (d) be marked on the top right hand corner of the affidavit (and of the backsheet) with –
  - (i) the name of the party on whose behalf it is filed;
  - (ii) the initials and surname of the deponent;
  - (iii) (where the deponent swears more than one affidavit in any proceedings), the number of the affidavit in relation to the deponent;

- (iv) the identifying reference of each exhibit referred to in the affidavit;
- (v) the date when sworn; and
- (vi) the date when filed;

Example:

“Claimant: N. Berridge: 2nd: NB 3 and 4:1.10.98: 3.10.98.”) and

- (e) state if any deponent is employed by a party to the proceedings.

### **CPR 30.3**

#### **30.3 Contents of affidavits**

- (1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his or her own knowledge.
- (2) An affidavit may contain statements of information and belief -
  - (a) if any of these Rules so allows; and
  - (b) if the affidavit is for use in an application for summary judgment under Part 15 or any procedural or interlocutory application, provided that the affidavit indicates-
    - (i) which of the statements in it are made from the deponent’s own knowledge and which are matters of information or belief; and
    - (ii) the source of any matters of information and belief.
- (3) The court may order that any scandalous, irrelevant or otherwise oppressive matter be struck out of any affidavit.
- (4) An affidavit containing any alteration may not be used in evidence unless all such alterations have been initialled both by the deponent and the person before whom the affidavit is sworn.

### **CPR 30.4**

#### **30.4 Documents to be used in conjunction with affidavits**

- (1) Any document to be used in conjunction with an affidavit must be exhibited with it.
- (2) If there is more than one such document those documents may be included in a bundle which is arranged chronologically or in some other convenient order and is properly paginated.
- (3) Clearly legible photocopies of original documents may be exhibited, provided that the originals are made available for inspection by the other parties before the hearing and by the court at the hearing.
- (4) Each exhibit or bundle of exhibits must be -

- (a) produced to and verified by the deponent;
- (b) accurately identified by an endorsement on the exhibit or on a certificate attached to it signed by the person before whom the affidavit is sworn or affirmed; and
- (c) marked in accordance with rule 30.2(d).

## **CPR 30.5**

### **30.5 Making of affidavits**

- (1) An affidavit must -
  - (a) be signed by all deponents;
  - (b) be sworn or affirmed by each deponent;
  - (c) be completed and signed by the person before whom the affidavit is sworn or affirmed; and
  - (d) contain the full name, address and qualifications of the person before whom it is sworn or affirmed.
- (2) The statement authenticating the affidavit (“the jurat”) must follow immediately from the text and not be on a separate page.
- (3) An affidavit may not be admitted into evidence if sworn or affirmed before the attorney of the party on whose behalf it is to be used or before any agent, partner, employee or associate of such attorney.
- (4) If it appears that the deponent is illiterate or blind, the person before whom the affidavit is sworn or affirmed must certify in the jurat that the -
  - (a) affidavit was read to the deponent by him or her in his or her presence;
  - (b) deponent appeared to understand it; and
  - (c) deponent signed or made his or her mark in his or her presence.
- (5) A person may make an affidavit outside the jurisdiction in accordance with -
  - (a) the law of the place where he makes the affidavit; or
  - (b) this part.
- (6) Any affidavit which purports to have been sworn or affirmed in accordance with the law and procedure of any place outside the jurisdiction is presumed to have been so sworn.

## **CPR 30.6**

### **30.6 Service of affidavits**

- (1) The general rule is that a party who is giving evidence by affidavit must serve a copy of the affidavit on every other party.
- (2) The general rule applies whether the affidavit was made in the proceedings or in some other proceedings.
- (3) The general rule does not apply if the affidavit is being used in support of an application that may be made without notice.

DRAFT #1

## **Part 31 Miscellaneous Rules about Evidence**

### **CPR 31.1**

#### **31.1 Use of plans, photographs etc., as evidence**

- (1) A party who intends to rely at a trial on evidence which is not -
  - (a) to be given orally, and
  - (b) contained in a witness statement, affidavit or expert report,must disclose that intention to the other parties in accordance with this rule.
- (2) If a party fails to disclose the intention to rely on the evidence as required by this rule, the evidence may not be given.
- (3) Subject to paragraphs (4) and (5) a party who intends to use the evidence referred to in paragraph (1) to prove any fact must disclose such intention not later than the latest date for serving witness statements.
- (4) If.-
  - (a) there is no order for service of witness statements; or
  - (b) a party intends to put in the evidence referred to in paragraph (1) solely in order to disprove an allegation made in a witness statement,that party must disclose the evidence at least 21 days before the hearing at which it is proposed to put in the evidence.
- (5) If the evidence referred to in paragraph (1) forms part of expert evidence, the intention to put in the evidence must be disclosed when the expert's report is served on the other party.
- (6) Where a party has disclosed the intention to put in the evidence referred to in paragraph (1) that party must give every other party an opportunity to inspect the evidence and to agree to its admission without proof.

### **CPR 31.2**

#### **31.2 Evidence on questions of foreign law**

- (1) This rule sets out the procedure which must be followed by a party who intends to adduce evidence on a question of foreign law.
- (2) A party who intends to adduce evidence on a question of foreign law must first give every other party notice of that intention.

(3) Notice under paragraph (2) must be given not less than 42 days before the hearing at which the party proposes to adduce the evidence.

(4) The notice must -

(a) have attached a document which forms the basis of the evidence;  
and

(b) specify the question on which the evidence is to be adduced.

### **CPR 31.3**

#### **31.3 Evidence of consent of trustee to act**

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

DRAFT

## **Part 32**

### **Experts and Assessors**

#### **EC CPR 32.1**

##### **32.1 Scope of this Part**

(1) This Part deals with the provision of expert evidence to assist the court.

(2) In this Part

“expert witness” means an expert who has been instructed to prepare or give evidence for the purpose of court proceedings.

#### **CPR 32.2**

##### **32.2 General duty of court and of parties**

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

#### **CPR 32.3**

##### **32.3 Expert's overriding duty to court**

(1) It is the duty of an expert witness to help the court impartially on the matters relevant to his or her expertise.

(2) This duty overrides any obligation to the person by whom he or she is instructed or paid.

#### **CPR 32.4**

##### **32.4 Way in which expert's duty to court is to be carried out**

(1) Expert evidence presented to the court must be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the demands of the litigation.

(2) An expert witness must provide independent assistance to the court by way of objective unbiased opinion in relation to matters within the witness's expertise.

(3) An expert witness must state the facts or assumptions upon which his or her opinion is based and must consider and include any material fact which could detract from his or her conclusion.

(4) An expert witness must state if a particular matter or issue falls outside his or her expertise.

(5) If the opinion of an expert witness is not properly researched then this must be stated with an indication that the opinion is no more than a provisional one.

(6) If an expert witness cannot assert that his or her report contains the truth, the whole truth and nothing but the truth without some qualification, that qualification must be stated in the report.

(7) If after service of a report, an expert witness changes his or her opinion on a material matter, that change of opinion must be communicated to all parties.

## **CPR 32.5**

### **32.5 Expert's right to apply to court for directions**

(1) An expert witness may apply in writing to the court for directions to assist him or her in carrying out his or her functions and duty to the court as an expert witness.

(2) An expert witness who applies for directions under paragraph (1) need not give notice of the application to any party.

(3) The court may direct that –

(a) notice of an application under paragraph (1) be given to any party; or

(b) a copy of the application and any directions given be sent to any party.

## **CPR 32.6**

### **32.6 Court's power to restrict expert evidence**

(1) A party may not call an expert witness or put in the report of an expert witness without the court's permission.

(2) The general rule is that the court's permission is to be given at a case management conference.

(3) When a party applies for permission under this rule –

(a) that party must name the expert witness and identify the nature of his or her expertise; and

(b) any permission granted shall be in relation to that expert witness only.

(4) The oral or written expert witness' evidence may not be called or put in unless the party wishing to call or put in that evidence has served a report of the evidence which the expert witness intends to give.

- (5) The court must direct by what date the report must be served.
- (6) The court may direct that part only of an expert witness' report be disclosed.

### **CPR 32.7**

#### **32.7 General requirement for expert evidence to be given in written report**

- (1) Expert evidence is to be given in a written report unless the court directs otherwise.
- (2) This rule is subject to any enactment restricting the use of "hearsay evidence".

### **CPR 32.8**

#### **32.8 Written questions to experts**

- (1) A party may put written questions to an expert witness instructed by another party or jointly about his or her report.
- (2) Written questions under paragraph (1) –
  - (a) may be put once only;
  - (b) must be put within 28 days of service of that expert witness' report; and
  - (c) must only be in order to clarify the report; unless –
    - (i) the court permits; or
    - (ii) the other party agrees.
- (3) An expert witness' answers to questions under this rule must be treated as part of that expert witness' report.
- (4) If a party has put a written question to an expert witness instructed by another party in accordance with this rule and the expert witness does not answer the question, the court may make one or more of the following orders in relation to the party who instructed the expert, namely that –
  - (a) that party may not recover the fees and expenses of the expert witness from any other party;
  - (b) that party may not rely on the evidence of the expert witness;
  - (c) the party asking the questions may seek to obtain answers from another expert.
- (5) This rule also applies where evidence from a single expert witness is to be used under rule 32.9.

## **CPR 32.9**

### **32.9 Court's power to direct evidence by single expert**

- (1) If two or more parties wish to submit expert evidence on a particular issue, the court may direct that expert evidence be given by one expert witness.
- (2) The parties referred to in paragraph (1) are known as “the instructing parties”.
- (3) If the instructing parties cannot agree who should be the expert witness, the court may –
  - (a) select the expert witness from a list prepared or identified by the instructing parties; or
  - (b) direct that the expert witness be selected in such other manner as the court may direct.
- (4) The court may vary a direction given under this rule.
- (5) The court may appoint a single expert witness instead of the parties instructing their own expert witnesses or may replace expert witnesses instructed by the parties.

## **CPR 32.10**

### **32.10 Cross-examination of court expert**

If an expert appointed by the court under rule 32(9) gives oral evidence, the expert may be cross-examined by any party.

## **CPR 32.11**

### **32.11 Instructions to single expert**

- (1) If the court gives directions under rule 32.9 for a single expert witness to be used, each instructing party may give instructions to the expert witness.
- (2) When an instructing party gives instructions to the expert witness that party must, at the same time, send a copy of the instructions to the other instructing parties.
- (3) The court may give directions about the arrangements for –
  - (a) any inspection, examination or experiment which the expert witness wishes to carry out; and
  - (b) the payment of the expert witness' fees and expenses.
- (4) The court may, before an expert witness is instructed –

- (a) limit the amount that can be paid by way of fees and expenses to the expert witness; and
  - (b) direct that the instructing parties pay that amount into court in such proportions as may be directed.
- (5) Unless the court directs otherwise, the instructing parties are jointly and severally liable for the payment of the expert witness' fees and expenses.

## **CPR 32.12**

### **32.12 Power of court to direct party to provide expert report**

- (1) If a party has access to information which is not reasonably available to the other party, the court may order that party -
- (a) to arrange for an expert witness to prepare a report on any matter;
  - (b) if appropriate, to arrange for an examination to be carried out in relation to that matter; and
  - (c) to file the report and serve a copy on any other party.
- (2) The court's powers under this rule may be exercised only on the application of a party.

## **CPR 32.13**

### **32.13 Expert's reports to be addressed to court**

An expert must address his or her report to the court and not to any person from whom the expert witness has received instructions.

## **CPR 32.14**

### **32.14 Contents of report**

- (1) An expert witness' report must –
- (a) give details of the expert witness' qualifications;
  - (b) give details of any literature or other material which the expert witness has used in making the report;
  - (c) say who carried out any test or experiment which the expert witness has used for the report;
  - (d) give details of the qualifications of the person who carried out any such test or experiment;
  - (e) if 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 or her opinion; and
- (f) contain a summary of the conclusions reached.
- (2) At the end of an expert witness' report there must be a statement that the expert witness –
  - (a) understands his or her duty to the court as set out in rules 32.3 and 32.4;
  - (b) has complied with that duty;
  - (c) has included in the report all matters within the expert witness' knowledge and area of expertise relevant to the issue on which the expert evidence is given; and
  - (d) has given details in the report of any matter which to his or her knowledge might affect the validity of the report.
- (3) There must also be attached to an expert witness' report copies of:
  - (a) all written instructions given to the expert witness;
  - (b) any supplemental instructions given to the expert witness since the original instructions were given; and
  - (c) a note of any oral instruction given to the expert witness;and the expert must certify that no other instruction than those disclosed have been received by him or her from the party instructing the expert, the party's legal practitioner or any other person acting on behalf of the party.
- (4) If a report refers to photographs, plans, calculations, survey reports or other similar documents, these must be provided to the opposite party at the same time as the service of the report.
- (5) If it is not practicable to provide a copy of the documents referred to in paragraph (4), those documents must be made available for inspection by the other party or any expert witness instructed by that party within 7 days of a request to do so.

## **CPR 32.15**

### **32.15 Meeting of experts**

- (1) The court may direct a meeting of expert witnesses of like speciality.
- (2) The court may specify the issues which the expert witnesses must discuss.
- (3) The contents of the discussion between the expert witnesses must not be referred to at the trial unless the parties agree.

- (4) The meeting may take place personally, over the telephone or by any other suitable means.
- (5) After the meeting, the expert witnesses must prepare for the court a statement of any issue within their expertise on which they –
  - (a) agree; and
  - (b) disagree, with their reasons for disagreeing.
- (6) Instead of, or in addition to such statement the court may direct that the expert witnesses prepare an agreed statement of the basic 'science' which applies to the matters relevant to their expertise.
- (7) The statement referred to in paragraph (6) must be as short as practicable.

### **CPR 32.16**

#### **32.16 Consequence of failure to disclose expert's report**

- (1) A party who fails to comply with a direction to disclose an expert witness' report may not use the report at the trial or call the expert witness unless the court gives permission.
- (2) The court may not give permission at the trial unless the party asking for permission can show that it was not reasonably practicable to have applied for relief at an earlier stage.

Rule 26.8 deals with relief from sanctions.

### **CPR 32.17**

#### **32.17 Appointment of assessor**

- (1) The court may appoint an assessor to –
  - (a) advise the judge at the trial with regard to evidence of expert witnesses called by the parties;
  - (b) assist the court in understanding technical evidence; or
  - (c) provide a written report.
- (2) On making an order under paragraph (1), the court must decide
  - (a) what fee is to be paid to the assessor; and
  - (b) by whom.
- (3) Notwithstanding paragraph (2), the court may ultimately order any party to pay the fee of the assessor.
- (4) All communications apart from written instructions between the court and an assessor must be in open court.

(5) Before requesting a written report or opinion from an assessor the court must allow the parties to make submissions in respect of the form and content of the questions to be asked.

(6) Before giving judgment the court must provide the parties with the questions asked of, and any opinion given by the assessor and give them an opportunity to make submissions.

DRAFT #1

## **Part 33**

### **Court attendance by witnesses and depositions**

#### **CPR 33.1**

##### **33.1 Scope of this Part**

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

#### **EC CPR 33.2**

##### **33.2 Witness summonses**

- (1) A witness summons is a document issued by the court requiring a witness to attend court –
  - (a) to give evidence; or
  - (b) to produce documents to the court.
- (2) A witness summons must be in Form 12.
- (3) There must be a separate witness summons for each witness.
- (4) A witness summons may require a witness to produce documents to the court either on –
  - (a) the date fixed for the trial or the hearing of any application in the proceedings; or
  - (b) any other date the court may direct.

#### **CPR 33.3**

##### **33.3 Issue of witness summons**

- (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 when that party wishes to have –
  - (a) a witness summons issued less than 21 days before the date of the hearing; or
  - (b) 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 the hearing of any application.

(3) An application for permission under paragraph (2) may be without notice but must be supported by evidence on affidavit.

(4) The court may set aside or vary a witness summons.

#### **CPR 33.4**

##### **33.4 Witness summons in aid of inferior court or tribunal**

(1) The court may issue a witness summons in aid of an inferior court or of a tribunal.

(2) The court may set aside a witness summons issued under this rule.

(3) In this rule – “inferior court or tribunal” means any court or tribunal which does not have power to issue a witness summons in relation to proceedings before it.

#### **CPR 33.5**

##### **33.5 Time for serving witness summons**

(1) The general rule is that a witness summons is binding only if it is served at least 14 days before the date on which the witness is required to attend before the court or tribunal.

(2) The court may direct that a witness summons shall be binding although it will be served less than 14 days before the date on which the witness is required to attend before the court or tribunal.

(3) An application under paragraph (2) may be made without notice but must be supported by evidence on affidavit.

(4) A witness summons which –

(a) is 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.

#### **CPR 33.6**

##### **33.6 Compensation for loss of time**

At the time of service of a witness summons the witness must be offered or paid –

(a) a sum reasonably sufficient to cover his or her subsistence and expenses in travelling to and from the court; and

(b) such sum by way of compensation for loss of time as may be specified in a practice direction.

## **CPR 33.7**

### **33.7 Evidence by deposition before examiner**

(1) A party may apply for an order for a person to be examined before the trial or the hearing of any application in the proceedings.

(2) In this rule –

“deponent” means a person from whom evidence is to be obtained following any order under this rule, and “deposition” means the evidence given by the deponent.

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

(a) a judge;

(b) an attorney who has practised for at least 5 years;

(c) a magistrate; or

(d) a registrar;

(4) A person listed in paragraph (3) is referred to as an “examiner”.

(5) The order must state –

(a) the date, time and place of the examination; and

(b) the name of the examiner.

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

(7) Rule 2.6 applies to an examination under this rule.

(8) At the time of service of the order the deponent must be offered or paid travelling expenses and compensation for loss of time in accordance with rule 33.6.

(9) An application may be made by any party whether or not that party would otherwise call the witness.

(10) If the application is made by the party who would call the witness to give evidence, the court may order that party to serve a witness statement or witness summary in relation to the evidence to be given by the person to be examined.

Part 29 contains general rules about witness statements and witness summaries.

## **CPR 33.8**

### **33.8 Conduct of examination**

- (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, with the consent of the parties, conduct the examination of a person not named in the order for examination.
- (3) The examiner may conduct the examination in private if he or she considers it appropriate to do so.
- (4) The examiner must ensure that a full record is taken of the evidence given by the witness.
- (5) If any person being examined objects to answer any question put to him or her, the ground of the objection and the answer to any such question must be set out in the deposition or in a statement annexed to the deposition.
- (6) The examiner must send the original deposition to the court office and a copy of the deposition to—
  - (a) every party to the proceedings; and
  - (b) the deponent.
- (7) If the witness or any attorney present at the hearing is of the opinion that the deposition does not accurately represent the evidence, he or she may—
  - (a) endorse on the copy deposition the corrections which in his or her opinion should be made;
  - (b) file the endorsed copy deposition; and
  - (c) serve a copy of it on all other parties.

## **CPR 33.9**

### **33.9 Evidence without examiner being present**

- (1) With the consent of the parties, the court may order that the evidence of a witness be taken as if before an examiner, but without an examiner being appointed or present.
- (2) Where such an order is made then, subject to any directions that may be contained in the order—
  - (a) an attorney for any party may administer the oath to a witness;

- (b) any person transcribing evidence given need not be sworn but must certify as correct the transcript of the evidence and deliver it to the attorney for the party whose witness was examined;
- (c) the attorney for the party whose witness was examined must file the original transcript and deliver a true copy to all other parties and to the witness who was examined;
- (d) the party whose witness is to be examined must provide a means of recording the evidence of the witness; and
- (e) if the witness or any attorney present at the hearing is of the opinion that the transcript does not accurately represent any evidence given, he or she may –
  - (i) endorse on the copy transcript the corrections which in his or her opinion should be made;
  - (ii) file the endorsed copy transcript; and
  - (iii) serve a copy of it on all other parties.

### **CPR 33.10**

#### **33.10 Enforcing attendance of witness**

- (1) If a person served with a witness summons to attend before an examiner –
  - (a) fails to attend;
  - (b) refuses to answer any lawful question or produce any document at the examination; or
  - (c) refuses to be sworn or to affirm for the purpose of the examination; the party requiring the deposition may file a certificate signed by the examiner of such failure or refusal.
- (2) On the certificate being filed, the party requiring the deposition may apply to the court for an order requiring the person to attend, to be sworn, to affirm 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) Any order made by the court must be served personally on the person served with the witness summons and be endorsed with a notice in the form of [ ].
- (5) The court may order the person against whom an order is made under this rule to pay any costs resulting from the –

- (a) failure to attend before a referee;
- (b) refusal to answer any lawful question or produce any document at the inquiry; or
- (c) refusal to be sworn or to affirm for the purpose of the inquiry.

Part 51 deals with the procedure relating to committal for contempt of court.

## **CPR 33.11**

### **33.11 Special report**

The examiner may make a special report to the court with regard to the –

- (a) absence of any person; or
  - (b) conduct of any person present;
- when the deposition was taken.

## **CPR 33.12**

### **33.12 Fees and expenses of examiner**

- (1) On appointing an examiner the court must fix the fee to be paid the examiner for carrying out the examination.
- (2) If an examination is carried out by a person other than an attorney, the fee must be paid into the court office.
- (3) The party who obtained the order must also pay the fee and all reasonable travelling and other expenses including charges for a room (other than the examiner's own chambers or office) where the examination takes place.
- (4) Notwithstanding paragraphs (1) and (3), the court may ultimately order any party to bear the costs of the examination.

## **CPR 33.13**

### **33.13 Order for payment of examiner's fees**

- (1) The examiner may report to the court the fact that any fees or expenses due to him or her have not been paid and the court may make an order that the party who obtained the order for the examination should pay such fees and expenses.
- (2) An order under paragraph (1) may be enforced as a money judgment.

## **CPR 33.14**

### **33.14 Use of deposition at hearing**

- (1) A deposition ordered under rule 33.7 or 33.9 may be given in evidence at the trial unless the court orders otherwise.
- (2) A party intending to put in evidence a deposition at a hearing must serve notice of such intention on every other party at least 21 days before the day fixed for the hearing.
- (3) The court may require a deponent to attend the hearing and give oral evidence.

## **CPR 33.15**

### **33.15 Where person to be examined is out of the jurisdiction – letter of request**

- (1) If a party wishes to take a deposition from a party outside the jurisdiction, the court may direct the issue of a letter of request to the judicial authorities of the country in which the proposed deponent is.
- (2) A letter of request is a request to a judicial authority to take the evidence of that person, or arrange for it to be taken.
- (3) If the government of the country to which the letter is sent allows a person appointed by the court to examine a person in that country, the court may make an order appointing an 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 list of questions or the subject matter of questions to be put to the person to be examined; and
    - (iii) a statement of the issues relevant to the proceedings; and
  - (b) an undertaking to be responsible for the expenses of the minister with responsibility for foreign affairs in relation to the request.
- (6) There is no need to file a translation if English is one of the official languages of the country where the examination is to take place.

## **CPR 33.16**

### **33.16 Early appointment to produce documents**

(1) The court may permit a party to issue a witness summons requiring any person to attend at a date, time or place specified in the summons prior to the date of the trial for the purpose of producing one or more documents.

(2) The only type of document that a summons under this rule can require a person to produce is a document which that person could be compelled to produce at the trial.

DRAFT #1

## **Part 34**

### **Requests for information**

#### **CPR 34.1**

##### **34.1 Right of parties to obtain information**

(1) This Part enables a party to obtain from any other party information ~~about any matter~~ relevant to the determination of any matter which is in dispute in the proceedings.

(2) To obtain the information referred to in paragraph (1), the party must serve on the other party a request identifying the information sought.

#### **CPR 34.2**

##### **34.2 Orders compelling reply to request for information**

(1) If a party does not, within 14 days, give information or agree to give such information within a reasonable period thereafter which another party has requested under rule 34.1, the party who served the request may apply for an order compelling the other party to do so.

(2) An order may not be made under this rule unless it is necessary in order to dispose fairly of the claim or to save costs.

(3) When considering whether to make an order, the court must have regard to –

- (a) the likely benefit which will result if the information is given;
- (b) the likely cost of giving it; and
- (c) whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with the order.

#### **CPR 34.3**

##### **34.3 Information obtained under Part 34 not to be used in other proceedings**

A party may use information obtained –

- (a) in compliance with an order under rule 34.2; or
- (b) in response to a request under rule 34.1;

only in the proceedings in which the request or order was made unless otherwise ordered by the court.

## **CPR 34.4**

### **34.4 Statement of truth**

Any information provided under this Part must be verified by a statement of truth in accordance with rule 3.8.

DRAFT #1

## **Part 35**

### **Offers to settle**

#### **CPR 35.1**

##### **35.1 Scope of this Part**

- (1) This Part contains Rules about –
  - (a) offers to settle which a party may make to another party; and
  - (b) the consequences of such offers.
- (2) This Part does not limit a party's right to make an offer to settle otherwise than in accordance with this Part.
- (3) The Rules in this Part are subject to rule 23.12 (compromise, etc. on behalf of a minor or patient).

Part 36 deals with payments into court.

#### **CPR 35.2**

##### **35.2 Introductory**

- (1) An offer to settle may be made in any proceedings whether or not there is a claim for money.
- (2) The party who makes the offer is called the "offeror".
- (3) The party to whom the offer is made is called the "offeree".
- (4) An offer to settle is made when it is served on the offeree.

#### **CPR 35.3**

##### **35.3 Making offer to settle**

- (1) A party may make an offer to another party which is expressed to be "without prejudice" and in which the offeror reserves the right to make the terms of the offer known to the court after judgment is given with regard to –
  - (a) the allocation of the costs of the proceedings; and
  - (b) (in the case of an offer by the claimant) the question of interest on damages.
- (2) The offer may relate to the whole of the proceedings or to part of them or to any issue that arises in them.

## **CPR 35.4**

### **35.4 Time when offer to settle may be made**

A party may make an offer to settle under this Part at any time before the beginning of the trial.

## **CPR 35.5**

### **35.5 Procedure for making offer to settle**

- (1) An offer to settle must be in writing.
- (2) The offeror must serve the offer on the offeree and a copy on all other parties.
- (3) Neither the fact nor the amount of the offer or any payment into court in support of the offer must be communicated to the court before all questions of liability and the amount of money to be awarded (other than costs and interest) have been decided.
- (4) Paragraph (3) does not apply to an offer which has been accepted or where a defence of tender before claim has been pleaded.

## **CPR 35.6**

### **35.6 Extent to which offer to settle covers interest, costs or counterclaim**

- (1) An offer to settle a claim for damages must state whether or not the amount offered includes interest or costs.
- (2) If the offer covers interest or costs it must state the amount which is included for each.
- (3) If there is a counterclaim as well as a claim, the offer must state in the case of an offer by the –
  - (a) claimant – whether or not it takes into account the counterclaim; or
  - (b) defendant – whether or not it takes into account the claim;and in each case in what amount.

## **CPR 35.7**

### **35.7 Offer to settle made after interim payment**

If an interim payment has been made, whether voluntarily or under an order under Part 17, any subsequent offer to settle must state whether it is in addition to the interim payment or whether it is intended to replace it.

## **CPR 35.8**

### **35.8 Offer to settle part of claim**

- (1) An offer to settle must state whether or not it covers the whole or part of the claim.
- (2) If it does not state that it covers part of the claim, it is to be taken to cover the whole claim.
- (3) If the offer covers only part or parts of the claim it must –
  - (a) identify the part or parts of the claim in respect of which it is made; and
  - (b) if more than one, state what is offered in respect of each part covered by the offer.

## **CPR 35.9**

### **35.9 Time limit for accepting offer to settle**

- (1) The offeror may state in the offer that it is open for acceptance until a specified date.
- (2) The offer shall have no effect on any decision that the court makes as to the consequences of the offer unless it is made at least 22 days prior to the commencement of the trial and that it is open for acceptance for at least 21 days.
- (3) Acceptance of the offer after the commencement of the trial shall have no effect on any decision that the court makes as to the consequences of such acceptance.
- (4) The court may permit an offeree to accept an offer after the specified date on such terms as the court considers just.

## **CPR 35.10**

### **35.10 Procedure for acceptance**

- (1) To accept an offer a party must –
  - (a) serve written notice of acceptance on the offeror; and
  - (b) send a copy of the notice to any other party.
- (2) The offeree accepts the offer when notice of acceptance is served on the offeror.
- (3) If an offer or payment into court under Part 36 is made in proceedings to which rule 23.12 applies –
  - (a) the offer or payment may be accepted only with the permission of the court; and

(b) no payment out of any sum paid into court may be made without a court order.

Rule 23.12 deals with compromises, etc. by or on behalf of a minor or patient.

## **CPR 35.11**

### **35.11 Effect of acceptance – generally**

(1) If the offeree accepts an offer which is not limited in accordance with rule 35.8, the claim is stayed upon the terms of the offer.

(2) If the offer covers a claim and a counterclaim, both the claim and the counterclaim are stayed on the terms of the offer.

(3) In any other case, the proceedings are stayed to the extent that they are covered by the terms of the offer.

(4) If the court's approval is required for the settlement of the proceedings, any stay arising on the acceptance of the offer has effect only when the court gives its approval.

Rule 23.12 deals with the settlement of proceedings involving minors and patients.

(5) A stay arising on the acceptance of an offer does not affect proceedings to deal with any question of interest on damages or any question of costs relating to the proceedings which have been stayed and which have not been dealt with by the offer.

(6) If money has been paid into court in support of an offer, a stay arising out of the acceptance of the offer does not affect any proceedings to obtain payment out of court.

Part 36 deals with payments into court.

(7) If an offer is accepted and its terms are not complied with, any stay arising on acceptance ceases to have effect and –

(a) the proceedings or the part which was stayed may continue; and

(b) either party may apply to the court to enforce those terms.

(8) If a party claims damages for breach of contract arising from an alleged failure of another party to carry out the terms of an agreed offer, that party may do so by applying to the court without the need to commence new proceedings unless the court orders otherwise.

## **CPR 35.12**

### **35.12 Effect of acceptance – more than two parties**

(1) If there is more than one defendant whom the claimant claims are jointly and severally, or severally, liable and the claimant –

(a) agrees to settle the claim as against one or more, but not all of them; and

(b) discontinues the claim against any other defendant;

the claimant is liable to pay the costs of the defendant against whom the claim has been discontinued unless the court otherwise orders.

Part 37 deals with discontinuance.

(2) If a claimant accepts an offer made by one of a number of joint defendants –

(a) paragraph (1) does not apply; and

(b) the defendant who made the offer is liable for the costs of the other joint defendants.

(3) If–

(a) there is more than one claimant and

(b) one or more, but not all, of them agree to settle;

the other claimants may continue the proceedings.

## **CPR 35.13**

### **35.13 Costs of offeror and offeree where offer is accepted – defendant's offer**

(1) If the –

(a) defendant makes an offer to settle; and

(b) claimant accepts the offer within any period stated for accepting it and before the beginning of the trial;

the claimant is entitled to the costs of the proceedings up to the date of acceptance of the offer.

(2) If the defendant permits a claimant to accept an offer after the time stated for accepting it, the general rule is that the –

(a) claimant is entitled to costs to the end of the period stated for accepting the offer; and

(b) defendant is entitled to any costs incurred between the end of the period stated for accepting the offer and the date when the offeree accepts the offer;

unless the court orders otherwise.

(3) If the settlement relates only to part of the proceedings and the remaining part or parts of the proceedings continue –

(a) the claimant is entitled under this rule only to the costs relating to that part of the proceedings which has been settled; and

(b) unless the court orders otherwise or the defendant agrees, the claimant may not recover any such costs, nor have them quantified, until the conclusion of the rest of the proceedings, when the court can deal with the costs of the whole of the proceedings including any costs relating to those parts of the proceedings that were not settled.

### **CPR 35.14**

#### **35.14 Costs of offeror and offeree where offer is accepted – claimant's offer**

If the claimant makes an offer which is accepted by the defendant, the claimant is entitled to costs up to the time when notice of acceptance of the offer is served.

### **CPR 35.15**

#### **35.15 Costs where offer not accepted – general rules**

(1) The general rule for defendants' offers is that, if the defendant makes an offer to settle which is not accepted and in –

(a) the case of an offer to settle a claim for damages – the court awards less than 90% of the amount of the defendant's offer;

(b) any other case – the court considers that the claimant acted unreasonably in not accepting the defendant's offer;

the claimant must pay any assessed costs incurred by the defendant after the latest date on which the offer could have been accepted without the court's permission.

(2) If a claimant makes an offer to settle and in –

(a) the case of an offer to settle a claim for damages – the court awards an amount which is equal to or more than the amount of the offer;

(b) any other case – the court considers that the defendant acted unreasonably in not accepting the claimant's offer;

the court may, in exercising its discretion as to interest take into account the rates set out in the following table:

<b>Net amount of damages</b>	<b>Rate of Interest</b>
not exceeding B\$100,000	12% per annum.
for the next B\$150,000	10% per annum
for the next B\$500,000	9% per annum
in excess of B\$800,000	7% per annum

where 'net' means the amount of damages on the claim less the amount (if any) awarded on any counterclaim.

(Example

One year since the offer. Damages – B\$400,000;

The court might award –

12% on the first \$100,000 for one year (\$12,000);

plus 10% interest on the next \$150,000 for one year (\$15,000);

plus 9% interest on the remaining \$150,000 for one year (\$13,500);

a total of B\$40,500 interest on damages.)

(3) The court may decide that the general rule under paragraph (1) is not to apply in a particular case.

(4) In deciding whether the rule in (1) above should not apply and in considering the exercise of its discretion the court may take into account the –

- (a) conduct of the offeror and the offeree with regard to giving or refusing information for the purposes of enabling the offer to be made or evaluated;
  - (b) information available to the offeror and the offeree at the time that the offer was made;
  - (c) stage in the proceedings at which the offer was made; and
  - (d) terms of any offer.
- (5) This rule applies to offers to settle at any time, including before proceedings were started.

## **CPR 35.16**

### **35.16 How costs are to be dealt with.**

- (1) If an offer to settle is accepted, the parties may agree the amount of costs that are due to be paid under this Part.
- (2) If an offer to settle –
  - (a) is accepted after the time originally stated for accepting it under rule 35.10(2); or
  - (b) deals only with part of the case in accordance with rule 35.13(3);the amount of costs to be paid to the party entitled to such costs must be assessed by the court.

## **Part 36**

### **Payments into Court to Support Offers under Part 35 and under Court Order**

#### **CPR 36.1**

##### **36.1 Scope of this part**

- (1) This Part deals with payments into court made –
  - (a) in accordance with an order of court;
  - (b) to support a defence of tender; and
  - (c) to support an offer of payment under Part 35.
- (2) A defendant is not obliged to make a payment into court to support an offer under Part 35.
- (3) With the –
  - (a) agreement of the claimant; or
  - (b) permission of the court;

a defendant may pay money in support of an offer of payment into an interest bearing account on such terms as to the –

- (i) names of the account holders; and
- (ii) terms on which money may be paid out of the account as may be ordered by the court or agreed between the parties.

#### **CPR 36.2**

##### **36.2 Payments into court to support offers to settle**

- (1) A defendant who offers to settle the whole or part of a claim may pay money into court in support of the offer.
- (2) A defendant may not pay money into court unless the –
  - (a) defendant certifies that such payment is in support of an offer to settle;
  - (b) payment is made to support a defence of tender; or
  - (c) payment is made under a court order.
- (3) A payment into court may not be made until a claim is filed.
- (4) A payment into court to support an offer may be made –
  - (a) when the offer is made; or
  - (b) at any time while the offer is outstanding.

- (5) A defendant who pays money into court must –
  - (a) serve notice of payment on the claimant; and -
  - (b) file a copy of the notice with a statement of the date (if any) by which the offer is open for acceptance under rule 35.9(1).

### **CPR 36.3**

#### **36.3 Right to payment out on acceptance of offer**

- (1) The general rule is that a claimant who accepts an offer to settle –
  - (a) within the period stated; or
  - (b) where no period is stated;

for accepting it in the defendant's offer is entitled to payment of the sum which the defendant paid into court to support the offer, without needing a court order.

- (2) To obtain payment, the claimant must file a request for payment certifying that the offer has been accepted in accordance with paragraph (1) (a) or (b).

- (3) The general rule is qualified by rule 36.4.

### **CPR 36.4**

#### **36.4 Cases where payment out requires court order**

- (1) If a claimant accepts money paid into court –
  - (a) after the end of the period stated for accepting it;
  - (b) by one or more, but not all, of a number of defendants;
  - (c) to settle a claim to which –
    - (i) Part 23 (claims by minors and patients); or
    - (ii) rule 36.7 (proceedings under Fatal Accidents Acts)apply; or
- (d) with a defence of tender before claim;

the money in court may only be paid out under an order of the court.

- (2) An order under paragraph (1) (c) may not be made by consent.

- (3) If –

- (a) a claimant accepts money paid into court after the trial has begun; and

- (b) all further proceedings on the claim or that part of it to which the acceptance relates are stayed;

the money in court may only be paid out under a court order.

(4) An order under this rule must deal with the costs of the proceedings which have been stayed.

## **CPR 36.5**

### **36.5 Money paid into court under order**

(1) When a party makes a payment into court under a court order that party must give notice of the payment to every other party.

(2) Money paid into court under a court order may not be paid out unless the court gives permission.

(3) Paragraph (2) does not apply where –

(a) the money is paid into court by a defendant;

(b) in accordance with rule 36.6(2) that defendant chooses to treat the money paid into court as if it were payment into court in support of an offer to settle; and

(c) the claimant accepts the offer to settle.

## **CPR 36.6**

### **36.6 Money paid into court as condition for permission to defend or to continue to defend**

(1) This rule applies where the court makes an order permitting a defendant to –

(a) continue to defend; or

(b) defend;

on condition that the defendant makes a payment into court.

(2) If –

(a) a defendant makes such a payment into court; and

(b) makes an offer to settle (whether before or after the order to pay money into court);

the defendant may choose to treat the whole or any part of the money paid into court as if it were a payment into court made in support of the offer to settle.

(3) To do this the defendant must –

(a) file a notice that the defendant so chooses; and

(b) serve a copy of it on every other party to the proceedings.

## **CPR 36.7**

### **36.7 Proceedings under Fatal Accidents Acts**

(1) If a single sum of money is paid into court in satisfaction of proceedings arising under a Fatal Accidents Act and that sum is accepted, the court must, where there is more than one cause of action, apportion that sum between the different causes of action when –

- (a) giving directions under rule 23.13; or
- (b) authorising its payment out of court.

(2) If in proceedings arising under a Fatal Accidents Act a claim is made by more than one person and a single sum of money is paid into or apportioned by the court to the cause of action under the Act and is accepted by such persons, the court must apportion the payment between those persons.

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## **Part 37**

### **Discontinuance**

#### **CPR 37.1**

##### **37.1 Scope of this Part**

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

(2) A claimant who –

(a) claims more than one remedy; and

(b) subsequently abandons a claim to one or more remedies but continues with the claim for the other remedies;

is not treated as discontinuing part of a claim for the purposes of this Part.

Rule 42.7 deals with consent orders which may include orders bringing a claim to an end by way of a consent judgment or otherwise,

#### **CPR 37.2**

##### **37.2 Right to discontinue claim**

(1) The general rule is that a claimant may discontinue all or part of a claim without the permission of the court.

(2) However –

(a) a claimant needs permission from the court to discontinue all or part of a claim in relation to which –

(i) any party has given an undertaking to the court; or

(ii) the court has granted an interim injunction;

(b) a claimant who has received an interim payment in relation to a claim (whether voluntarily or pursuant to an order under Part 17) may discontinue only if the –

(i) court gives permission; or

(ii) defendant who made the payment consents in writing;

(c) if 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) If there is more than one defendant the claimant may discontinue all or part of the claim against all or any of the defendants.

## **CPR 37.3**

### **37.3 Procedure for discontinuing**

- (1) To discontinue a claim or any part of a claim a claimant must –
  - (a) serve a notice of discontinuance on every other party to the claim; and
  - (b) file a copy of it.
- (2) The claimant must certify on the filed copy that notice of discontinuance has been served on every other party to the claim.
- (3) If the claimant needs the consent of some other party, a copy of the necessary consent must be attached to the filed copy of the notice of discontinuance.
- (4) If the claimant needs permission from the court, the notice of discontinuance must contain details of the order by which the court gave permission.
- (5) If there is more than one defendant, the notice of discontinuance must specify against which defendant or defendants the claim is discontinued.

## **CPR 37.4**

### **37.4 Right to apply to have notice of discontinuance set aside**

- (1) If the claimant discontinues without the consent of the defendant or the permission of the court, where such consent or permission is required, any defendant who has not consented may apply to have the notice of discontinuance set aside.
- (2) A defendant may not apply under this rule more than 28 days after the date when the notice of discontinuance was served on that defendant.

## **CPR 37.5**

### **37.5 Effect of discontinuance**

- (1) Discontinuance against any defendant takes effect on the date when the notice of discontinuance is served on that defendant under rule 37.3 (1) (a).
- (2) A claim or the relevant part of a claim is brought to an end as against that defendant on that date.
- (3) However, this does not affect –
  - (a) any proceedings relating to costs; or

(b) the right of the defendant under rule 37.4 to apply to have the notice of discontinuance set aside.

## **CPR 37.6**

### **37.6 Liability for costs**

(1) Unless the –

(a) parties agree; or

(b) court orders otherwise;

a claimant who discontinues is liable for the costs incurred by the defendant against whom the claim is discontinued, up to the date on which notice of discontinuance was served.

(2) If a claim is only partly discontinued –

(a) the claimant is only liable for the costs relating to that part of the claim which is discontinued; and

(b) unless the court orders otherwise, the costs which the claimant is liable to pay are not to be quantified until the conclusion of the rest of the claim.

## **CPR 37.7**

### **37.7 Quantification of costs**

If the claimant discontinues part of the case only, the amount of costs must be assessed by the court when the remainder of the claim is resolved.

## **CPR 37.8**

### **37.8 Discontinuance and subsequent proceedings**

If the claimant –

(a) discontinues a claim after the defendant against whom the claim is discontinued has filed a defence; and

(b) makes a subsequent claim against the same defendant arising out of facts which are the same or substantially the same as those relating to the discontinued claim; and

(c) has not paid the defendant's costs of the discontinued claim;

the court may stay the subsequent claim until the costs of the discontinued claim are paid.

## **Part 38**

### **Pre-Trial Review**

#### **CPR 38.1**

##### **38.1 Scope of this Part**

This Part deals with the pre-trial review which is to be held shortly before trial if the court so orders.

#### **CPR 38.2**

##### **38.2 Direction for pre-trial review**

- (1) At any case management conference and at any subsequent hearing in the claim other than the trial the court must consider whether a pre-trial review should be held to enable the court to deal justly with the claim.
- (2) A party may apply for a direction that a pre-trial review be held.
- (3) An application for a pre-trial review must be made at least 60 days before the trial date or the beginning of any trial period fixed under rule 27.5(4).
- (4) The court office must give each party at least 14 days' notice of the date time and place for the pre-trial review.

#### **CPR 38.3**

##### **38.3 Rules relating to case management conferences to apply**

Parts 25 and 26, where appropriate, apply to a pre-trial review as they do to a case management conference.

#### **CPR 38.4**

##### **38.4 Who is to conduct pre-trial review**

Wherever practicable the pre-trial review is to be conducted by the trial judge.

#### **CPR 38.5**

##### **38.5 Parties to prepare pre-trial memorandum**

- (1) The parties must seek to agree on and file at the court office a pre-trial memorandum not less than 7 days before the pre-trial review.
- (2) If the parties are not able to agree on such a memorandum each party must file its own memorandum and serve a copy on all other parties not less than 3 days before the date fixed for the pre-trial review.
- (3) A pre trial memorandum must contain -

- (a) a concise statement of the nature of the proceedings;
- (b) a statement of the issues to be determined at the trial;
- (c) details of any admissions made; and
- (d) the factual and legal contentions of the party or parties filing it.

## **CPR 38.6**

### **38.6 Directions at pre-trial review**

(1) At the pre-trial review the judge must give directions as to the conduct of the trial in order to ensure the fair, expeditious and economic trial of the issues.

(2) In particular, the court may –

- (a) decide on the total time to be allowed for the trial;
- (b) direct either party to provide further information to the other;
- (c) direct how that time shall be allocated between the parties;
- (d) direct the parties jointly to prepare one or more of –
  - (i) a core bundle of documents (that is, a bundle containing only the documents which the trial judge will need to pre-read or to which it will be necessary to refer repeatedly at the trial);
  - (ii) an agreed statement of facts;
  - (iii) an agreed statement of the basic technical, scientific or medical matters in issue;
  - (iv) an agreed statement as to any relevant specialist area of law, which statement shall not be binding on the trial judge;
- (e) direct when and by whom the documents should be filed at the court;
- (f) direct whether or not there are to be any opening or closing addresses and the time to be allocated to each;
- (g) give directions as to the extent to which evidence may be given in written form;
- (h) give directions as to the procedure to be followed at the trial; and
- (i) give directions for the filing by each party and service on all other parties of one or more of the following –
  - (i) a chronology of relevant events;
  - (ii) a list of authorities which it is proposed to cite in support of those propositions;

- (iii) a skeleton argument; and
- (iv) a summary of any legal propositions to be relied on at the trial.

DRAFT #1

## **Part 39 Trial**

### **CPR 39.1**

#### **39.1 Documents for use at trial**

- (1) At least 21 days before the date fixed for the trial all parties must inform the claimant of the documents that they wish to have included in the bundle of documents to be used at the trial.
- (2) The claimant must prepare a bundle including all the documents which any party wishes to make use of at the trial.
- (3) The bundle of documents should separate those which are agreed and those which are not agreed.
- (4) The claimant must paginate and index the bundle of documents.
- (5) At least 10 days before the date fixed for the trial the claimant must file at the Registry –
  - (a) a bundle comprising copies of –
    - (i) all statements of case;
    - (ii) any document which the parties were ordered to file under rule 38.6(2)(b);
    - (iii) any requests for information and the replies;
    - (iv) the claim form; and
    - (v) the pre-trial memorandum or memoranda;
  - (b) a second bundle comprising copies of –
    - (i) all expert reports;
    - (ii) all witness statements or affidavits filed for the purpose of the trial; and
    - (iii) any agreed statements under rule 38.6(2) (d) (ii)-(iv);
  - (c) a third bundle comprising the documents referred to in paragraph (2); and
  - (d) where the bundles exceed 100 pages of documents in total, a core bundle (that is, a bundle containing only the documents which the trial judge will need to pre-read or to which it will be necessary to refer repeatedly at the trial).

(6) There must be excluded from the bundles prepared under this rule any -

(a) applications or order relating to interim payments under Part 17; and

(b) offer to settle under Part 35 or notice of payment into court under Part 36;

and any reference to any such payment or offer must be excised from any document contained in the bundles.

(7) Where only a counterclaim is to be tried, references in this rule to the “claimant” should be construed as references to the defendant.

(8) The Court may direct that all or some of the bundles required under this rule are to be electronic bundles prepared in accordance with Practice Directions issued by the Chief Justice.

Rule 27.6 allows the court to dispense with all or some of the requirements of this rule in simple and urgent cases.

## **CPR 39.2**

### **39.2 Cross-examination**

The court may limit examination, cross-examination or re-examination of any witness.

## **CPR 39.3**

### **39.3 Written submissions**

(1) The parties may with the consent of the judge file written submissions-

(a) instead of; or

(b) in addition to, closing speeches.

(2) Such written submissions must be filed within 7 days of the conclusion of the trial or such other period as the judge directs.

## **CPR 39.4**

### **39.4 Failure of party to attend trial**

If the judge is satisfied that notice of the hearing has been served on the absent party or parties in accordance with these Rules –

(a) if no parties appear at the trial, the judge may strike out the claim;

(b) if one or more but not all parties appear, the judge may proceed in the absence of the parties who do not appear.

## **CPR 39.5**

### **39.5 Application to set aside judgment given in party's absence**

- (1) A party who was not present at a trial at which judgment was given or an order made may apply to set aside that judgment or order.
- (2) The application must be made within 14 days after the date on which the judgment or order was served on the applicant.
- (3) The application to set aside the judgment or order must be supported by evidence on affidavit showing -
  - (a) a good reason for failing to attend the hearing; and
  - (b) that it is likely that had the applicant attended some other judgment or order might have been given or made.

## **CPR 39.6**

### **39.6 Adjournment of trial**

- (1) The judge may adjourn a trial on such terms as the judge thinks just.
- (2) The judge may only adjourn a trial to a date and time fixed by the judge or to be fixed by the court office.

## **CPR 39.7**

### **39.7 Inspection**

The judge trying a claim may inspect any place or thing that may be relevant to any issue in the claim.