

57th UPDATE – PRACTICE DIRECTION AMENDMENTS

The new Practice Directions and the amendments to the existing Practice Directions supplementing the Civil Procedure Rules 1998 are made by the Master of the Rolls under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and are approved by
_____, Parliamentary Under Secretary of State, by the authority of the Lord Chancellor.

The amendments to the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents are approved by the Master of the Rolls as Head of Civil Justice.

The new Practice Directions and amendments to the existing Practice Directions, and the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents come into force as follows—	
PD7C—Production Centre	1 st September 2011
PD7E—Money Claim Online	1 st September 2011
PD27—The Small Claims Track	1 st October 2011
PDS43-48—The Costs Practice Direction	1 st October 2011
PD51B—Automatic Orders Pilot Scheme	1 st October 2011
PD51D—Defamation Proceedings Costs Management Scheme	1 st October 2011
PD51E—County Court Provisional Assessment Pilot Scheme	1 st October 2011
PD51G—Costs Management In Mercantile Courts and Technology and Construction Courts – Pilot Scheme	1 st October 2011
PD52—Appeals	1 st October 2011
PD55B—Possession Claims Online	1 st September 2011
PD64B—Applications to the Court for Directions by Trustees in relation to the administration of the Trust	1 st October 2011
Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents	1 st October 2011

The Right Honourable The Lord Neuberger of Abbotsbury
Master of the Rolls and Head of Civil Justice

Signed by authority of the Lord Chancellor:

Parliamentary Under Secretary of State
Ministry of Justice

PRACTICE DIRECTION 7C – PRODUCTION CENTRE

(1) For paragraph 2.3(7), substitute—

“(7) a claim where the claimant’s address for service as it appears on the claim form is not in the United Kingdom;

(7A) a claim where the defendant’s address for service as it appears on the claim form is not in England and Wales;”.

PRACTICE DIRECTION 7E – MONEY CLAIM ONLINE

(1) After paragraph 4(3), insert—

“(3A) the claimant’s address for service is within the United Kingdom;”.

(2) In paragraph 4(6), for “each party’s”, substitute “the defendant’s”.

PRACTICE DIRECTION 27 – SMALL CLAIMS TRACK

In paragraph 7.3(1), for “£50” substitute “£90”.

PRACTICE DIRECTIONS 43-48 – THE COSTS PRACTICE DIRECTION

(1) After paragraph 23A.5, insert—

“SECTION 23B COSTS CAPPING ORDERS IN RELATION TO TRUST FUNDS

23B.1 In this Section “trust fund” means property which is the subject of a trust, and includes the estate of a deceased person.

23B.2 This Section contains additional provisions to enable—

- (a) the parties to consider whether to apply for; and
- (b) the court to consider whether to make of its own initiative, a costs capping order in proceedings relating to trust funds.

It supplements rules 44.17-20 and Section 23A of this Practice Direction.

23B.3 Any party to such proceedings who intends to apply for an order for the payment of costs out of the trust fund must file and serve on all other parties written notice of that intention together with an estimate of the costs likely to be incurred by that party.

23B.4 The documents mentioned in paragraph 23B.3 must be filed and served—

- (a) in a Part 7 claim, with the first statement of case; and
- (b) in a Part 8 claim, with the evidence (or, if a defendant does not intend to serve and file evidence, with the acknowledgement of service).

23B.5 When proceedings first come before the court for directions the court may make a costs capping order of its own initiative whether or not any party has applied for such an order.”.

(2) In paragraph 52.4, for “£9.25” substitute “£18”.

PRACTICE DIRECTION 51B – AUTOMATIC ORDERS PILOT SCHEME

In paragraph 1.1B(1), for “30th September 2011” substitute “31st March 2012”.

PRACTICE DIRECTION 51D – DEFAMATION PROCEEDINGS COSTS MANAGEMENT SCHEME

- (1) In paragraph 1.1(1), for “1 October 2009 to 30 September 2011” substitute “1 October 2011 to 30 September 2012”.
- (2) In paragraph 2(3), in the inserted paragraph 6.5, for “following” substitute “which substantially follows”.
- (3) In paragraph 5.1, after “the reputational” insert “and public interest”.
- (4) In paragraph 5.3, for “either by agreement between the parties or after hearing argument,”, substitute “to the extent the budgets are not agreed between the parties,”.
- (5) After paragraph 5.3 insert—

“5.3A For the avoidance of doubt, the court cannot approve costs incurred before the date of the first costs management conference. However, the court may record its comments on those costs and should take those costs into account when considering the reasonableness and proportionality of all subsequent costs.

5.3B When approving or disapproving a budget, the court will not attempt to undertake a detailed assessment in advance, but will consider whether the budgeted totals for each stage of the work are with the broad range of reasonable and proportionate costs.”
- (6) In paragraph 5.5, after “is not being” insert “or is likely to be”.
- (7) For paragraph 5.6 substitute—

- “5.6 When assessing costs on the standard basis, the court—
- (1) will have regard to the receiving party’s last approved budget; and
 - (2) will not depart from such approved budget unless satisfied that there is good reason to do so.”
- (8) For the “Precedent HA” substitute “Precedent HA” at **Annex C**.

PRACTICE DIRECTION 51E – COUNTY COURT PROVISIONAL ASSESSMENT PILOT SCHEME

In paragraph 1.1, for “30 September 2011” substitute “30 September 2012”.

PRACTICE DIRECTION 51G – COSTS MANAGEMENT IN MERCANTILE COURTS AND TECHNOLOGY AND CONSTRUCTION COURTS – PILOT SCHEME

Insert Practice Direction (Costs Management in Mercantile Courts and Technology and Construction Courts – Pilot Scheme) as set out at **Annex B**

PRACTICE DIRECTION 52 – APPEALS

- (1) In the table following paragraph 20.3—
- (a) after the entry for the Friendly Societies Act 1992, insert—
“Health Professions Order 2001, art. 38 22.3”;
 - (b) after the entry for the Nurses, Midwives and Health Visitors Act 1997, insert—
“Nursing and Midwifery Order 2001, art. 38 22.3”;
 - (c) after the entry for the Pharmacy Act 1954, insert—
“Pharmacy Order 2010, art. 58 22.3”.
- (2) In paragraph 22.3—

- (a) at the end of sub-paragraph (1)(h), delete “and”;
 - (b) at the end of sub-paragraph (1)(i), for “.” substitute “;”; and
 - (c) after sub-paragraph (1)(i), insert—
 - “(j) article 38 of the Health Professions Order 2001; and
 - (k) article 58 of the Pharmacy Order 2010.”.
- (3) In the table following paragraph 22.3, after the entry for the Chiropractors Act 1994, insert—

“Health Professions Order 2001, art. 38	The Health Professions Council	The Registrar of the Council
Pharmacy Order 2010, art. 58	The General Pharmaceutical Council	The Registrar of the Council”.

PRACTICE DIRECTION 55B – POSSESSION CLAIMS ONLINE

- (1) After paragraph 5.1(3), insert—
 - “(3A) the claimant has an address for service in the United Kingdom;”.
- (2) In paragraph 5.1(4), for “each party”, substitute “the defendant”.

PRACTICE DIRECTION 64B – APPLICATIONS TO THE COURT FOR DIRECTIONS BY TRUSTEES IN RELATION TO THE ADMINISTRATION OF THE TRUST

- (1) For paragraph 6.1 substitute—
 - “6.1 (1) The court will dispose of the application without a hearing if it considers that to do so will save time or expense, and that a hearing is not necessary. The trustees must therefore consider whether a hearing is necessary and, if so, explain why in their evidence.
 - (2) When considering whether to hold a hearing, the court will take into account any dispute between the parties as to directions, but will not necessarily direct a hearing for that reason alone.

- (3) If a defendant considers that a hearing is needed, and that the need is not sufficiently explained in the trustees' evidence, that defendant should so state in evidence, giving reasons why."
- (2) For paragraph 6.2 substitute—

"6.2 Where the court deals with an application without a hearing, it will in any order give the parties an opportunity, within a stated time, to apply to vary or discharge the order at an oral hearing."
- (3) For paragraph 7.2 substitute—

"7.2 Applications for directions whether or not to take or defend or pursue litigation should be supported by evidence of the following matters—

 - (1) the advice of an appropriately qualified lawyer as to the prospects of success;
 - (2) an estimate in summary form of—
 - (a) the value or other significance to the trust estate of the issues in the proceedings;
 - (b) the costs likely to be incurred by the trustees in the proceedings, by reference to the principal stages in the proceedings; and
 - (c) the costs of other parties to the proceedings for which, if unsuccessful, the trustees may be exposed to liability;
 - (3) any known facts concerning the means of other parties to the proceedings; and
 - (4) any other factors relevant to the court's decision whether to give the directions sought."
- (4) In paragraph 7.4, omit the first sentence.

(5) For paragraph 7.8(2) substitute—

“(2) In such a case the court will if possible deal with the matter without a hearing, and in deciding whether to do so will take into account the advice of an appropriately qualified lawyer supporting the continuation by the trustees of the pursuit or defence (as the case may be) of the proceedings.”.

AMENDMENTS TO THE PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY CLAIMS IN ROAD TRAFFIC ACCIDENTS

In paragraph 7.55, for (a) and (b) substitute—

- “(a) in Part A, the schedule of the claimant’s losses and the defendant’s responses comprising only the figures specified in subparagraphs (1) and (2) above, together with supporting comments and evidence from both parties on any disputed heads of damage; and
- (b) in Part B, the final offer and counter offer from the Stage 2 Settlement Pack Form and, where relevant, the offer and any final counter offer made under paragraph 7.45.”.

PRACTICE DIRECTION 51G – COSTS MANAGEMENT IN MERCANTILE COURTS AND TECHNOLOGY AND CONSTRUCTION COURTS – PILOT SCHEME

This Practice Direction supplements CPR Parts 29, 43, 44, 59 and 60

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General

1.1 This Practice Direction is made under Rule 51.2. It provides for a pilot scheme (Costs Management in Mercantile Courts and Technology and Construction Courts Scheme) to—

- (1) operate from 1 October 2011 to 30 September 2012;
- (2) operate in all Mercantile Courts and Technology and Construction Courts; and
- (3) apply to proceedings in which the first case management conference is heard on or after 1 October 2011.

1.2 In this Practice Direction “costs management order” means an order approving the costs budget of any party to the proceedings, after the court has made any appropriate revisions.

- 1.3 The court cannot approve costs incurred before the date of the first costs management order, but the court—
- (1) may record its comments on those costs; and
 - (2) should take those costs into account when considering the reasonableness and proportionality of all subsequent costs.
- 1.4 Without prejudice to the court’s general powers of management under rule 3.1, in any case proceeding before a Mercantile Court or a Technology and Construction Court in which the judge considers it appropriate to do so, or on the application of any party in accordance with Part 23, the judge may make a costs management order.

Modifications of Relevant Practice Directions

2. During the operation of the Costs Management in Mercantile Courts and Technology and Construction Courts Scheme—

Use of Costs Budgets in Case and Costs Management

- (1) Practice Direction 29 is modified by inserting after paragraph 3A—

“Case management and costs in Mercantile and Technology and Construction Court cases

- 3B. In cases within the scope of the Costs Management in Mercantile Courts and Technology and Construction Courts Scheme provided for in Practice Direction 51G, the court will manage the costs of the litigation as well as the case itself, making use of case management conferences and cost management conferences in accordance with that Practice Direction”.

Estimates of Costs to be set out in detailed costs budgets

- (2) Paragraph 6.4(1)(a) of the Costs Practice Direction does not apply to proceedings within the scope of the Costs Management in Mercantile Courts and Technology and Construction Courts Scheme.
- (3) Section 6 of the Costs Practice Direction is modified by substituting for paragraph 6.5 the following—

“Costs Budgets in Mercantile Courts and Technology and Construction Courts

6.5 In proceedings within the scope of the Costs Management in Mercantile Courts and Technology and Construction Courts Scheme provided for in Practice Direction 51G, the estimate of costs must be presented as a detailed budget setting out the estimated costs for the entire proceedings in a standard template form, which substantially follows the precedent described as Precedent HB and annexed to that Practice Direction.”.

Filing of Costs Budgets

- 3.1 Save where the court otherwise orders, as part of its preparation for the first case management conference, at the same time as filing its Case Management Information Sheet, each party shall file and exchange its costs budget substantially in the form set out in Precedent HB annexed to this Practice Direction.

(In Mercantile Courts cases see paragraph 7.7 of the Practice Direction under Part 59.)

(In Technology and Construction Court cases see paragraph 8.3 of the Practice Direction under Part 60.)

- 3.2 Each party should include separately in its costs budget reasonable allowances for—
 - (1) intended activities: e.g., disclosure (if appropriate, showing comparative electronic and paper methodology), preparation of witness statements,

obtaining experts' reports, mediation or any other steps which are deemed appropriate to the particular case;

- (2) identifiable contingencies, e.g., specific disclosure application or resisting applications made or threatened by an opponent; and
- (3) disbursements, in particular court fees, counsel's fees and any mediator or expert fees.

Purpose of Costs Management

- 4.1 The court will seek to manage the costs of the litigation, as well as the case itself.
- 4.2 The objective of costs management is to control the costs of litigation in accordance with the overriding objective. (See rule 1.1.)
- 4.3 At any case management conference or pre-trial review, the court will have regard to any costs budgets filed pursuant to this Practice Direction and will decide whether or not it is appropriate to make a costs management order.
- 4.4 If the court decides to make a costs management order it will, after making any appropriate revisions, record its approval of a party's budget and may order attendance at a subsequent costs management hearing (by telephone if appropriate) in order to monitor expenditure.
- 4.5 Any party may thereafter apply to the court if that party considers another party is behaving oppressively in seeking to cause that party to spend money disproportionately on costs.

Discussions between Parties and Exchange of Budgets

5. A party submitting a costs budget to the court under this Practice Direction is not required to disclose it to any other party save by way of exchange. The parties should however discuss their costs budgets during the costs budget building

process and before each case management conference, costs management hearing, pre-trial review or trial.

Revision of Approved Budget

6. In a case where a costs management order has been made, at least seven days before any subsequent costs management hearing, case management conference or pre-trial review, and before trial, a party whose costs budget is no longer accurate must file and serve a budget revision showing what, if any, departures have occurred from that party's last approved budget, and the reasons for any increased budget. The court may approve or disapprove such departures from the previous budget.

Keeping the Parties Informed

7. No later than seven days after the conclusion of any hearing, each party's legal representative must—
 - (1) notify its client in writing of any costs management orders made at such hearing; and
 - (2) provide its client with copies of any new or revised budgets which the court has approved.

Effect on Subsequent Assessment of Costs

8. When assessing costs on the standard basis, the court—
 - (1) will have regard to the receiving party's last approved budget; and
 - (2) will not depart from such approved budget unless satisfied that there is good reason to do so.

ANNEX HB