

## 109th UPDATE – PRACTICE DIRECTION AMENDMENTS

The amendments to the 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 Paul Maynard MP, Parliamentary Under-Secretary of State for Justice, by the authority of the Lord Chancellor.

The amendments to the existing Practice Directions come into force as follows, subject to the transitional provision made in this update—	
Practice Direction 2B – Allocation of Cases to Levels of Judiciary	1 October 2019
Practice Direction 3E – Costs Management	1 October 2019
Practice Direction 7A – How to Start Proceedings — The Claim Form	1 October 2019
Practice Direction 7D – Claims for the Recovery of Taxes and Duties	1 July 2019
Practice Direction 27 – Small Claims Track	1 July 2019
Practice Direction 40F – Non-Disclosure Orders Information Scheme	1 October 2019
Practice Direction 49A – Applications under the Companies Acts and related legislation	1 October 2019
Practice Direction 51O – The Electronic Working Pilot Scheme	1 July 2019
Practice Direction 53A – Transferring Proceedings to and from the Media and Communications List	1 October 2019
Practice Direction 53B (substituted for existing Practice Direction 53) – Media and Communications Claims	1 October 2019
Practice Direction 57AA – Business and Property Courts	Date on which S.I. 2019/521 comes into force.

The Right Honourable Sir Terence Etherton  
Master of the Rolls and Head of Civil Justice

Signed by authority of the Lord Chancellor:

Paul Maynard MP  
Parliamentary Under Secretary of State  
Ministry of Justice  
Date: 30 June 2019

## **TRANSITIONAL PROVISION**

- 1) The following changes do not apply in relation to a claim issued before 1 October 2019—
  - a) The amendments made to Practice Direction 7A;
  - b) the addition of the new Practice Direction 53A; and
  - c) the substitution for Practice Direction 53 of a new Practice Direction 53B.

## **PRACTICE DIRECTION 2B – ALLOCATION OF CASES TO LEVELS OF JUDICIARY**

- 1) In paragraph 8.1, after “District Judge in the County Court” insert “save as provided in this Section”.

## **PRACTICE DIRECTION 3E – COSTS MANAGEMENT**

- 1) In paragraph 7.4, in the first sentence, for “before the date of any” substitute “up to and including the date of the”.

## **PRACTICE DIRECTION 7A – HOW TO START PROCEEDINGS — THE CLAIM FORM**

- 1) After paragraph 2.9 insert—

**“2.9A** (1) Subject to paragraph 2.9, a claim relating to media and communications work (which includes any work which would fall within the jurisdiction of the Media and Communications List if issued in the High Court) may be started in the County Court or High Court; and paragraph 2.1 shall not apply to such a claim.

(2) Such a claim should be started in the High Court if, by reason of the factors set out in paragraph 2.4(1) to (3), the claimant believes that the claim ought to be dealt with by a High Court judge.

(3) If a claimant starts such a claim in the High Court and the court decides that it should have been started in the County Court, the court will normally transfer it to the County Court on its own initiative. This is likely to result in delay.”

## **PRACTICE DIRECTION 7D – CLAIMS FOR THE RECOVERY OF TAXES AND DUTIES**

1) After paragraph 1.1 insert—

“1.2 This practice direction also applies to claims by the Welsh revenue Authority for the recovery of a devolved tax (as defined by section 116A(4) of the Government of Wales Act 2006) and interest and penalties thereon.

(Section 116A(4) of the Government of Wales Act 2006 defines a devolved tax as a tax which is specified in Part 4A of that Act as a devolved tax. For example, section 116L of the 2006 Act specifies as a devolved tax a tax which is charged on a Welsh land transaction and complies with the requirements of that section.)”

2) After the words in parentheses following paragraph 3.1, insert—

”(Section 168(1) of the Tax Collection and Management (Wales) Act 2016 (“the 2016 Act”) provides that a certificate of Welsh Revenue Authority that a relevant amount (as defined by section 164 of the 2016 Act) has not been paid to Welsh Revenue Authority is sufficient evidence that the sum mentioned in the certificate is unpaid unless the contrary is proved.)”

## **PRACTICE DIRECTION 27 – SMALL CLAIMS TRACK**

1) Omit paragraph 4.1.

## **PRACTICE DIRECTION 40F – NON-DISCLOSURE ORDERS INFORMATION SCHEME**

- 1) For Practice Direction 40F, substitute the new Practice Direction 40F set out in Schedule 1 to this Update.

#### **PRACTICE DIRECTION 49A – APPLICATIONS UNDER THE COMPANIES ACTS AND RELATED LEGISLATION**

- 1) In paragraph 16, for “must be started by a Part 7 claim form” substitute “may be started by a Part 7 or a Part 8 claim form, as appropriate”.

#### **PRACTICE DIRECTION 510 – THE ELECTRONIC WORKING PILOT SCHEME**

- 1) For paragraph 2.2A substitute—

“**2.2A** In the Central Office of the Queen’s Bench Division—

(a) from 1 January 2019, for a party who is legally represented, as well as for a party who is not legally represented, Electronic Working may be used by that party to start and/or continue any relevant claims or applications; and

(b) from 1 July 2019, for a party who is legally represented, Electronic Working must be used by that party to start and/or continue any relevant claims or applications.”

#### **PRACTICE DIRECTION 53A – TRANSFERRING PROCEEDINGS TO AND FROM THE MEDIA AND COMMUNICATIONS LIST**

- 1) Immediately after Part 53, insert Practice Direction 53A as set out in Schedule 2 to this Update.

#### **PRACTICE DIRECTION 53B – MEDIA AND COMMUNICATIONS CLAIMS**

- 1) For Practice Direction 53, substitute, after Practice Direction 53A, the new Practice Direction 53B as set out in Schedule 3 to this Update.

## **PRACTICE DIRECTION 57AA – BUSINESS AND PROPERTY COURTS**

- 1) In paragraph 1.5, for “EU Competition Law Practice Direction” substitute “Practice Direction – Competition Law”.
- 2) In paragraph 2.5(2), for “EU Competition Law Practice Direction” substitute “Practice Direction – Competition Law”.

## **SCHEDULE 1**

### **“PRACTICE DIRECTION 40F – NON-DISCLOSURE ORDERS INFORMATION SCHEME**

*This practice direction supplements Part 40*

1. This practice direction provides for a scheme for the recording, and transmission to the Ministry of Justice for analysis, of certain data in relation to applications for injunctive relief in civil proceedings to restrain the publication of private or confidential information. The purpose of the scheme is to enable the Ministry of Justice to collate and publish, in anonymised form, information about applications for non-disclosure orders where section 12 of the Human Rights Act 1998 is engaged.
2. The scheme applies in any civil proceedings in the High Court or Court of Appeal in which the court considers an application for a non-disclosure order in civil proceedings to restrain the publication of private or confidential information., the continuation of such a non-disclosure order, or an appeal against the grant or refusal of such a non-disclosure order. The scheme does not apply to proceedings to which the Family Procedure Rules 2010 or the Court of Protection Rules 2017 apply, to immigration or asylum proceedings, to proceedings which raise issues of national security or to proceedings to which Part 21 applies.
3. Except where a direction under paragraph 6 is made, following the hearing of an application for a non-disclosure order or any appeal against the grant or refusal of any such non-disclosure order—
  - (a) the legal representatives for the claimant a defendant will agree the information to be included in the Privacy Injunctions Statistics Form in the Annex to this practice direction (“the Form”) and the claimant’s legal representatives should send the completed Form to the judge or judge’s clerk;
  - (b) the judge will review and record the information specified in paragraph 4 (the information) in a final version of the Form.
4. The information to be included in the Form is—
  - (a) the application number, parties and claim title (anonymised where appropriate);

(b) whether the hearing was of—

(i) an application for an interim non-disclosure order;

(ii) an application for an extension or variation of an interim non-disclosure order or an undertaking to the court;

(iii) an application for a final non-disclosure order; or

(iv) an appeal against the grant or refusal of an interim or final non-disclosure order;

(c) whether the hearing was on notice, or without notice to—

(i) the defendant; or

(ii) any third party liable to be affected by the order;

(d) whether the parties consented to the order;

(e) whether the defendant was—

(i) a news media organisation;

(ii) a social media platform;

(iii) a search engine;

(iv) an individual publisher;

(v) other – please specify;

(f) whether the claimant notified a third party that was—

(i) a news media organisation;

(ii) a social media platform;

(iii) a search engine;

(iv) an individual publisher;

(v) other – please specify;

(g) whether any derogations from the principle of open justice were sought, and if so—

(i) what they were;

(ii) whether they were granted;

(iii) if granted whether with the parties' consent.

5. Derogations from the principle of open justice include, but are not limited to—

(a) an order that the hearing be held wholly or partly in private;

(b) an order that the names of one or more of the parties not be disclosed;

(c) an order that access to documents on the court file be restricted (under rule 5.4C or the inherent jurisdiction);

(d) an order that the provision of documents to third parties be restricted (under Practice Direction 25A, paragraph 9.2); and

(e) an order prohibiting disclosure of the existence of the proceedings or the order.

(Rule 39.2 provides for the general rule that a hearing is to be in public, and for the circumstances in which a hearing must be held in private.)

6. Subject to any express direction to the contrary in the order, any order made by the court on an application for a non-disclosure order or appeal from the grant or refusal of such a non-disclosure order shall be deemed to include a provision giving permission to a court officer to transmit the information to the Chief Statistician in the Ministry of Justice in order for it to be analysed and published in such form as does not enable the public identification of the parties to any proceedings.

7. If, in exceptional circumstances, the judge makes any direction under paragraph 8, the judge shall report that fact, and the nature of any derogation from open justice contained in the non-disclosure order, to the Master of the Rolls. The Master of the Rolls is, following consultation with the judge, entitled to transmit such information as the Master of the Rolls sees fit to the Chief Statistician to enable publication by the Ministry of Justice of the bare fact that a non-disclosure order of that type has been made.

8. Once the final version of the Form has been completed, the judge will send it or cause it to be sent to the Chief Statistician at the Ministry of Justice.”

## **SCHEDULE 2**

### **“PRACTICE DIRECTION 53A – TRANSFERRING PROCEEDINGS TO AND FROM THE MEDIA AND COMMUNICATIONS LIST**

*This practice direction supplements Part 53*

1. If a Media and Communications Judge orders proceedings to be transferred to the Media and Communications List—

(1) the judge will order them to be transferred to the Royal Courts of Justice; and

(2) the judge may give case management directions.

2. An application by a defendant, including a Part 30 defendant, for an order transferring proceedings to or from the Media and Communications List should be made promptly and normally not later than the first case management conference.

3. A party applying for an order transferring a claim to the Media and Communications List must give notice of the application to the court or list in which the claim is proceeding, and the Media and Communications Judge will not make an order for transfer unless and until satisfied that such notice and any applicable consent has been given.

4. A Media and Communications Judge may decide that the court should consider of its own motion whether a claim should be transferred from the Media and Communications List. If the judge does so, CPR rules 3.3 and 23.8(c) apply.

5. A Media and Communications List Judge deciding whether to transfer a claim to or from the Media and Communications List will consider whether the claim or any part of it—

(1) falls outside the scope of that list (whether or not it also falls within the scope of Part 63); or

(2) falls within the scope of the list but would more conveniently be dealt with in another court or list,

and make such order as the court considers appropriate in the light of its conclusions.

6. This practice direction is subject to CPR rule 30.5.”

## **SCHEDULE 3**

### **“PRACTICE DIRECTION 53B – MEDIA AND COMMUNICATIONS CLAIMS**

*This practice direction supplements Part 53*

#### **GENERAL**

1. This practice direction applies to media and communications claims.

(Rule 53.1 defines “media and communications claim”.)

#### **Statements of case**

**2.1** Statements of case should be confined to the information necessary to inform the other party of the nature of the case they have to meet. Such information should be set out concisely and in a manner proportionate to the subject matter of the claim

(Part 16 and the accompanying practice direction contain requirements for the contents of statements of case.)

**2.2** A claimant must in the particulars of claim give full details of the facts and matters on which they rely in support of any claim for damages.

(Rule 16.4(1)(c) requires a claimant seeking aggravated or exemplary damages to include in the particulars of claim a statement to that effect and the grounds for claiming such damages.)

**2.3** A claimant who wishes to advance any positive case in response to any facts or matters raised in a defence must file and serve a reply.

(Rule 15.8 contains the requirements for filing and serving a reply.)

(Further requirements as to the statements of case in particular types of claim are set out at paragraphs 4, 8, 9 and 10 below.)

#### **Statements in open court**

**3.1** This paragraph only applies where a party wishes to accept a Part 36 offer or other offer of settlement in relation to a claim for—

(1) libel;

(2) slander;

(3) malicious falsehood; or

(4) misuse of private or confidential information.

**3.2** A party may apply for permission to make a statement in open court before or after the Part 36 offer or other offer to settle the claim is accepted.

**3.3** The statement that the applicant wishes to make must be submitted for the approval of the court and must accompany the notice of application.

**3.4** The court may postpone the time for making the statement if other claims relating to the subject matter of the statement are still proceeding.

## **DEFAMATION**

### **Statements of case**

**4.1** (1) in a claim for libel the publication the subject of the claim must be identified in the claim form.

(2) In a claim for slander the claim form must so far as practicable identify the person or persons to whom the words were spoken and when.

**4.2** The claimant must set out in the particulars of claim—

(1) the precise words of the statement complained of, save where the length of the statement makes it impracticable to do so, in which case the words may be set out in a schedule annexed to the particulars of claim, or otherwise identified;

(2) when, how and to whom the statement was published. If the claimant does not know to whom the statement was published or it is impracticable to set out all such persons, then the particulars of claim must include all facts and matters relied upon to show (a) that such publication took place, and (b) the extent of such publication;

(3) the facts and matters relied upon in order to satisfy the requirement of section 1 of the Defamation Act 2013 that the publication of the statement complained of has caused or is likely to cause serious harm to the reputation of the claimant, or, in the case of a body that trades for profit, that it has caused or is likely to cause the body serious financial loss;

(4) the imputation(s) which the claimant alleges that the statement complained of conveyed, both—

(a) as to its natural and ordinary meaning; and

(b) by way of any innuendo meaning (that is, a meaning alleged to be conveyed to some person by reason of knowing facts extraneous to the statement complained of). In the case of an innuendo meaning, the claimant must also identify the relevant extraneous facts;

(5) full details of the facts and matters on which the claimant relies in support of the claim for damages. A claimant who seeks aggravated or exemplary damages must provide the information specified in rule 16.4(1)(c).

**4.3** Where a defendant relies on the defence under section 2 of the Defamation Act 2013 that the imputation conveyed by the statement complained of is substantially true, they must—

(1) specify the imputation they contend is substantially true; and

(2) give details of the matters on which they rely in support of that contention.

**4.4** Where a defendant relies on the defence under section 3 of the Defamation Act 2013 that the statement complained of was a statement of honest opinion, they must—

(1) specify the imputation they seek to defend as honest opinion; and

(2) set out the facts and matters relied on in support of their case that—

(a) the statement complained of indicated, in general or specific terms, the basis of the opinion; and

(b) an honest person could have held that opinion on the basis of any fact which existed at the time it was published or anything asserted to be a fact in a privileged statement published before the statement complained of.

**4.5** Where a defendant alleges that the statement complained of was, or formed part of, a statement on a matter of public interest under section 4 of the Defamation Act 2013, they must—

(1) specify the matter of public interest relied upon; and

(2) give details of all matters relied on in support of any case that they reasonably believed that publishing the statement was in the public interest.

**4.6** Where a defendant alleges that the statement complained of was published on a privileged occasion, they must specify the circumstances they rely on in support of that contention.

**4.7** Where a defendant relies on a defence under section 2(truth), section 3 (honest opinion), or section 4 (publication on a matter of public interest) of the Defamation Act 2013, the claimant must serve a reply specifically admitting, not admitting, or denying that defence and setting out the claimant's case in response to each fact alleged by the defendant in respect of it.

**4.8** (1) If the defendant contends that any of the statement complained of, or any part thereof, was honest opinion, or was published on a privileged occasion, and the claimant intends to allege that the defendant did not hold the opinion or acted with malice (as applicable), the claimant must serve a reply giving details of the facts or matters relied on.

(2) If the defendant relies on any other defence, and the claimant intends to allege that the defence is not available because of the defendant's state of mind, the claimant must serve a reply giving details of the facts or matters relied on. This includes—

(a) where a defendant relies on the defence under section 4 of the Defamation Act 2013 and the claimant intends to allege that the defendant did not reasonably believe that the publication was in the public interest;

(b) where a defendant relies on the defence under section 4(2) of the Defamation Act 1996 (offer to make amends) and the claimant intends to allege that the defendant had the state of mind referred to in section 4(3) of the defamation Act 1996.

**4.9** A defendant who relies on an offer to make amends under section 2 of the Defamation Act 1996 as their defence must—

(1) state in their defence—

(a) that they are relying on the offer in accordance with section 4(2) of the Defamation Act 1996; and

(b) that it has not been withdrawn by them or been accepted; and

(2) attach a copy of the offer made with their defence.

### **Court's powers in connection with an offer of amends**

**5.1** Sections 2 to 4 of the Defamation Act 1996 make provision for a person who has made a statement which is alleged to be defamatory to make an offer to make amends. Section 3 provides for the court to assist in the process of making amends.

**5.2** A claim under section 3 of the Defamation Act 1996 made other than in existing proceedings may be made under CPR Part 8—

(1) where the parties agree on the steps to make amends, and the sole purpose of the claim is for the court to make an order under section 3(3) for an order that the offer be fulfilled; or

(2) where the parties do not agree—

(a) on the steps to be taken by way of correction, apology and publication (see section 3(4));

(b) on the amount to be paid by way of compensation (see section 3(5)); or

(c) on the amount to be paid by way of costs (see section 3(6)).

(Applications in existing proceedings made under section 3 of the Defamation Act 1996 must be made in accordance with CPR Part 23.)

**5.3** (1) A claim or application under section 3 of the Defamation Act 1996 must be supported by written evidence.

(2) The evidence referred to in paragraph (1) must include—

(a) a copy of the offer of amends;

(b) details of the steps taken to fulfil the offer of amends;

(c) a copy of the text of any correction and apology;

(d) details of the publication of the correction and apology;

(e) a statement of the amount of any sum paid as compensation;

(f) a statement of the amount of any sum paid for costs;

(g) why the offer is unsatisfactory.

(3) Where any step specified in section 2(4) of the Defamation Act 1996 has not been taken, then the evidence referred to in paragraph (2)(c) to (f) must state what steps are proposed by the party to fulfil the offer of amends and the date or dates on which each step will be fulfilled and, if none, that no proposal has been made to take that step.

### **Determination of meaning**

**6.1** At any time in a defamation claim the court may determine—

- (1) the meaning of the statement complained of;
- (2) whether the statement is defamatory of the claimant at common law;
- (3) whether the statement is a statement of fact or opinion.

**6.2** An application for a determination of meaning may be made at any time after the service of particulars of claim. Such an application should be made promptly.

**6.3** Where an application is made for a determination of meaning, the application notice must state that it is an application for a determination of meaning made in accordance with this practice direction.

**6.4** An application made under this paragraph must be made to a Judge.

(Rule 3.3 applies where the court exercises its powers on its own initiative.)

(Following a determination of meaning the court may exercise its power under rule 3.4.)

### **Summary disposal**

**7.1** Where an application is made for summary disposal, the application notice must state—

- (1) that it is an application for summary disposal made in accordance with section 8 of the Defamation Act 1996; and
- (2) the matters set out in paragraph 2(3) of Practice Direction 24.

**7.2** An application for summary disposal may be made at any time after the service of particulars of claim.

(This provision disapplies for these applications the usual time restriction on making applications in rule 24.4.)

**7.3** (1) This paragraph applies where—

- (a) the court has ordered the defendant in defamation proceedings to agree and publish a correction and apology as summary relief under section 8(2) of the Defamation Act 1996; and

(b) the parties are unable to agree its content within the time specified in the order.

(2) Where the court grants this type of summary relief under the Act, the order will specify the date by which the parties should reach agreement about the content, time, manner, form and place of publication of the correction and apology.

(3) Where the parties cannot agree the content of the correction and apology by the date specified in the order, then the claimant must prepare a summary of the judgment given by the court and serve it on all the other parties within 3 days following the date specified in the order.

(4) Where the parties cannot agree the summary of the judgment prepared by the claimant they must within 3 days of receiving the summary –

(a) file with the court and serve on all the other parties a copy of the summary showing the revisions they wish to make to it; and

(b) apply to the court for the court to settle the summary.

(5) The court will then itself settle the summary and the judge who delivered the judgment being summarised will normally do this.

## **MISUSE OF PRIVATE OR CONFIDENTIAL INFORMATION**

**8.1** In a claim for misuse of private information, the claimant must specify in the particulars of claim (in a confidential schedule if necessary to preserve privacy)—

(1) the information as to which the claimant claims to have (or to have had) a reasonable expectation of privacy;

(2) the facts and matters upon which the claimant relies in support of the contention that they had (or have) such a reasonable expectation;

(3) the use (or threatened use) of the information by the defendant which the claimant claims was (or would be) a misuse; and

(4) any facts and matters upon which the claimant relies in support of their contention that their rights not to have the specified information used by the defendant in the way alleged outweighed (or outweigh) any rights of the defendant to use the information in that manner.

**8.2** In a claim for misuse of confidential information or breach of confidence, the claimant must specify in the particulars of claim (in a confidential schedule if necessary to preserve confidentiality)—

(1) the information said to be confidential;

(2) the facts and matters upon which the claimant relies in support of the contention that it was (or is) confidential information that the defendant held (or holds) under a duty or obligation of confidence;

(3) the use (or threatened use) of the information by the defendant which the claimant claims was (or would be) a misuse of the information or breach of that obligation.

## **DATA PROTECTION**

**9.** In any claim for breach of any data protection legislation the claimant must specify in the particulars of claim—

- (1) the legislation and the provision that the claimant alleges the defendant has breached;
- (2) any specific data or acts of processing to which the claim relates;
- (3) the specific acts or omissions said to amount to such a breach, and the claimant's grounds for that allegation; and
- (4) the remedies which the claimant seeks.

## **HARASSMENT**

**10.1** This paragraph applies to claims for harassment arising from publication or threatened publication via the media, online, or in speech.

**10.2** Rule 65.28(1)(a) shall not apply, and the claim should be commenced under the Part 7 procedure.

**10.3** The claimant must specify in the particulars of claim (in a schedule if necessary) the acts of the defendant alleged to constitute a course of conduct which amount to (and which were known or ought to have been known by the defendant to amount to) harassment, including specific details of any actual or threatened communications.

**10.4** A defendant must in any defence specifically admit or deny each act alleged in the particulars of claim to constitute part of a course of conduct amounting to harassment.

(Rule 16.5 contains requirements as to the contents of defences.)”