41st UPDATE – PRACTICE DIRECTION AMENDMENTS

PRACTICE DIRECTION SUPPLEMENTING PART 4

In Table 1-

(1) After Form N7D – Notes for defendant – demotion claim, insert-

"N8 – Claim Form (Arbitration)

N8A Arbitration Claim (Notes for Claimant)

N8B Arbitration Claim (Notes for Defendant)".

(2) After Form N11R – Defence form (rented residential premises), insert-

"N15 Acknowledgment of Service (Arbitration)".

(3) After Form N148 – Remand Order (Housing Act 1996)(bail not granted), insert-

"N149 Allocation Questionnaire (Small Claims Track) (PD2B 2.1)".

(4) After Form N163 – Skeleton Argument, insert-

"N164 Appellant's Notice (Small Claims Track only) (PD52 5.8(1A))".

(5) For "N216 – Notice of non-service (Rule 6.11)" substitute "N216 – Notice of returned document (Rule 6.11)".

PRACTICE DIRECTION B SUPPLEMENTING PART 5

(1) In paragraph 3.3 for "Subject to paragraph 3.3A" substitute "Subject to paragraph 3.3A and paragraph 15.1A of the Practice Direction which supplements Part 52".

(2) for paragraph 3.3A substitute-

"3.3A A party may file by email an application notice in the Preston Combined Court where he is permitted to do so by PREMA (Preston E-mail Application Service) User Guide and Protocols.".

(3) after paragraph 3.3A, insert the following cross-reference-

"(Paragraph 15.1A of the Practice Direction which supplements CPR Part 52 provides for filing by email an appeal notice or application notice in proceedings

in the Court of Appeal, Civil Division.)".

PRACTICE DIRECTION SUPPLEMENTING PART 20

For the Practice Direction supplementing Part 20, substitute the Practice Direction – Counterclaims and other Additional Claims at **Annex 1**.

PRACTICE DIRECTION SUPPLEMENTING PART 22

(1) After Paragraph 3 insert–

"INABILITY OF PERSONS TO READ OR SIGN DOCUMENTS TO BE VERIFIED BY A STATEMENT OF TRUTH

3A.1 Where a document containing a statement of truth is to be signed by a person who is unable to read or sign the document, it must contain a certificate made by an authorised person.

3A.2 An authorised person is a person able to administer oaths and take affidavits but need not be independent of the parties or their representatives.

3A.3 The authorised person must certify:

(1) that the document has been read to the person signing it;

(2) that that person appeared to understand it and approved its content as accurate;

(3) that the declaration of truth has been read to that person;

(4) that that person appeared to understand the declaration and the consequences of making a false declaration; and

(5) that that person signed or made his mark in the presence of the authorised person.

3A.4 The form of the certificate is set out at Annex 1 to this Practice Direction.".

(2) After Paragraph 5, insert the following Annex 1-

"Annex 1

Certificate to be used where a person is unable to read or sign a document to be verified by a statement of truth

I certify that I [*name and address of authorised person*] have read over the contents of this document and the declaration of truth to the person signing

the document [*if there are exhibits, add* "and explained the nature and effect of the exhibits referred to in it"] who appeared to understand (a) the document and approved its content as accurate and (b) the declaration of truth and the consequences of making a false declaration, and made his mark in my presence.".

PRACTICE DIRECTION B SUPPLEMENTING PART 23

For the appendix, substitute—

Newcastle Combined Court Centre	1st Sept 2003 –1st October 2006
Bedford County Court	1st February 2004 –1st October 2006
Luton County Court	1st February 2004 – 1st October 2006
Any county court specified on Her Majesty's Courts Service website at www.hmcourts-service.gov.uk as one in which telephone hearings are available.	1st April 2006 – 1st October 2006

PRACTICE DIRECTION SUPPLEMENTING PART 26

In paragraph 2.1(1) for "The allocation questionnaire referred to in Part 26 will be in Form N150 "substitute "The allocation questionnaire referred to in Part 26 will be in Form N149 or Form N150".

PRACTICE DIRECTION SUPPLEMENTING PART 32

(1) After Paragraph 20.3, insert-

"(Paragraph 3A of the practice direction to Part 22 sets out the procedure to be followed where the person who should sign a document which is verified by a statement of truth is unable to read or sign the document.)".

(2) Omit Paragraph 21 and Annex 2.

PRACTICE DIRECTION SUPPLEMENTING PART 44

Section 20

Paragraph 20.1

In sub-paragraph (1) after "Attention is drawn to Regulation 3(2)(b) of the Conditional Fee Agreements Regulations 2000 and to Regulation 5(2)(b) of the Collective Conditional Fee Agreements Regulations 2000, which provide that some or all of a success fee ceases to be payable in certain circumstances" insert "[Both sets of regulations were revoked by the Conditional Fee Agreements (Revocation) Regulations 2005 but continue to have effect in relation to conditional fee agreements and collective conditional fee agreements entered into before 1st November 2005]".

Section 21

(1) For paragraph 21.2, substitute-

> "Rule 44.17(a) provides that the procedure for detailed assessment does not apply to the extent that section 11 of the Access to Justice Act 1999 and provisions made under that Act make different provision.".

(2) For paragraph 21.5(5), substitute-

> "General Family Help and Help with Mediation".

(3) Omit paragraph 21.5(6).

(4) In paragraph 21.6, for "Levels of service (4), (5) and (6) are provided" substitute "Levels of service (4) and (5) are provided".

(5) For paragraph 21.7, substitute-

> "Cost protection does not apply where-
>
> (1) The LSC funded client receives Help at Court;
> (2) The LSC funded client receives Legal Help only i.e. where the solicitor is advising, but not representing a litigant in person. However, where the LSC funded client receives Legal Help e.g. to write a letter before action, but later receives Legal Representation or General Family Help or Help with Mediation in respect of the same dispute, other than in family proceedings, cost

protection does apply to all costs incurred by the receiving party in the funded proceedings or prospective proceedings;

(3) The LSC funded client receives General Family Help or Help with Mediation in family proceedings;

(4) The LSC funded client receives Legal Representation in family proceedings.".

(6) In paragraph 21.8, omit the second sentence.

(7) In paragraph 21.9-

(a) for sub-paragraph (1), substitute "pre-action Legal Help is given and the LSC funded client subsequently receives Legal Representation or General Family Help or Help with Mediation in respect of the same dispute, other than in family proceedings; or"; and

(b) in sub-paragraph (2), after "before the grant of an emergency certificate" insert ", other than in family proceedings,".

(8) After paragraph 21.11, insert-

"21.11A Where an LSC funded client has cost protection, the procedure described in sections 22 and 23 of this Practice Direction applies. However that procedure does not apply in relation to costs claimed during any periods in the proceedings when the LSC funded client did not have cost protection, and the procedure set out in CPR Parts 45 to 47 will apply (as appropriate) in relation to those periods.".

(9) In paragraph 21.18-

(a) in sub-paragraph (2) omit "(and the application for funded services was made on or after 3 December 2001)"; and

(b) in sub-paragraph (4), for "the non-funded party will suffer severe financial hardship" substitute "the non-funded party will suffer financial hardship".

(10) After paragraph 21.19, insert-

"21.19 A An order under Regulation 5 may be made in relation to proceedings in the Court of Appeal, High Court or a County Court, by a Costs Judge or a District Judge."

PRACTICE DIRECTION SUPPLEMENTING PART 47

Section 32

Paragraph 32.5

In sub-paragraph (b), after "a statement of the reasons for the percentage increase given in accordance with Regulation 3(1)(a) of the Conditional Fee Agreements Regulations or Regulation 5(1)(c) of the Collective Conditional Fee Agreements Regulations 2000." insert "[Both sets of regulations were revoked by the Conditional Fee Agreements (Revocation) Regulations 2005 but continue to have effect in relation to conditional fee agreements and collective conditional fee agreements entered into before 1st November 2005]".

Paragraph 32.6

After "Attention is drawn to the fact that the additional amount recoverable pursuant to section 30 of the Access to Justice Act 1999 in respect of a membership organisation must not exceed the likely cost of the premium of an insurance policy against the risk of incurring a liability to pay the costs of other parties to the proceedings as provided by the Access to Justice (Membership Organisation) Regulations 2000 Regulation 4" insert "(for the purposes of arrangements entered into before 1st November 2005) and The Access to Justice (Membership Organisation) Regulations 2005 Regulation 5 (for the purposes of arrangements entered into on or after 1st November 2005).".

Section 49

After Section 49, insert new Section 49A set out at **Annex 2**.

PRACTICE DIRECTION SUPPLEMENTING PART 48

Section 57

Paragraph 57.8

(1) After "Sections 28 to 31 of the Access to Justice Act 1999, the Conditional Fee Agreements Regulations 2000, the Access to Justice (Membership Organisations) Regulations 2000, and the Access to Justice Act 1999 (Transitional Provisions) Order 2000 came into force on 1 April 2000. The Civil Procedure (Amendment No.3) Rules came into force on 3 July 2000." insert "[The Conditional Fee Agreements Regulations 2000 were revoked by the Conditional Fee Agreements (Revocation) Regulations 2005 but continue to have effect in relation to conditional fee agreements entered into before 1 November 2005. The Access to Justice (Membership Organisation) Regulations 2000 were revoked by the Access to Justice (Membership Organisation) Regulations 2005 but continue to have effect in relation to arrangements entered into before 1st November 2005.]".

(2) For sub-paragraph (3), substitute “The Collective Conditional Fee Agreements Regulations 2000 came into force on 30 November 2000. The Regulations apply to agreements entered into between 30 November 2000 and 31 October 2005. Agreements entered into before 30 November 2000 are treated as if the Regulations had not come into force. The Regulations do not apply to collective conditional fee agreements entered into on or after 1 November 2005.”.

PRACTICE DIRECTION SUPPLEMENTING PART 52

Paragraph 2A

(1) For paragraph 2A.1 to 2A.6, substitute the text at **Annex 3.**

(2) After paragraph 2A.4 (as amended), insert the following new paragraph 2A.5-

> “2A.5—(1) Where an applicant attempts to file an appellant’s notice and the appeal court does not have jurisdiction to issue the notice, a court officer may notify the applicant in writing that the appeal court does not have jurisdiction in respect of the notice.
>
> (2) Before notifying a person under paragraph (1) the court officer must confer–
> (a) with a judge of the appeal court; or,
> (b) where the Court of Appeal, Civil Division is the appeal court, with a court officer who exercises the jurisdiction of that Court under rule 52.16.
>
> (3) Where a court officer in the Court of Appeal, Civil Division notifies a person under paragraph (1), rule 52.16(5) shall not apply.“.

Paragraph 4

After paragraph 4.3, insert the following-

> “4.3A (1) This paragraph applies where a party applies for permission to appeal against a decision at the hearing at which the decision was made.
>
> (2) Where this paragraph applies, the judge making the decision shall state—
>
> (a) whether or not the judgment or order is final;

(b) whether an appeal lies from the judgment or order and, if so, to which appeal court;

(c) whether the court gives permission to appeal; and

(d) if not, the appropriate appeal court to which any further application for permission may be made.

(Rule 40.2(4) contains requirements as to the contents of the judgment or order in these circumstances.).

4.3B Where no application for permission to appeal has been made in accordance with rule 52.3(2)(a) but a party requests further time to make such an application, the court may adjourn the hearing to give that party the opportunity to do so.".

Paragraph 5

(1) For paragraph 5.2, substitute-

"5.2 Where the time for filing an appellant's notice has expired, the appellant must—

(a) file the appellant's notice; and

(b) include in that appellant's notice an application for an extension of time.

The appellant's notice should state the reason for the delay and the steps taken prior to the application being made.".

(2) After 5.6(2)(f), insert-

"(g) a copy of the order allocating a case to a track (if any).".

(3) In paragraph 5.17-

(a) After "Where the lower court or appeal court is satisfied that" insert ":– (1)"

(b) After "an unrepresented appellant" insert "; or (2) an appellant whose legal representation is provided free of charge to the appellant and not funded by the Community Legal Service;".

Paragraph 8A.1

The heading that precedes 8A.1 "Appeals to a judge of a county court from a district judge" should be a main heading not a sub-heading, therefore should be printed in block capitals.

Paragraph 9.1

The heading that precedes 9.1 “Re-hearings” should be a main heading not a sub-heading, therefore should be printed in block capitals.

Paragraph 10.1

The heading that precedes 10.1 “Appeals transferred to the Court of Appeal” should be a main heading not a sub-heading, therefore should be printed in block capitals.

Paragraph 11.1

The heading that precedes 11.1 “Applications” should be a main heading not a sub-heading, therefore should be printed in block capitals.

Paragraph 15.1

After paragraph 15.1, insert the following paragraph 15.1A-

“15.1A (1) A party may file by email-

(a) an appellant's notice;

(b) a respondent's notice;

(c) an application notice,

in the Court of Appeal, Civil Division, using the email account specified in the "Guidelines for filing by Email" which appear on the Court of Appeal, Civil Division website at www.civilappeals.gov.uk.

(2) A party may only file a notice in accordance with paragraph (1) where he is permitted to do so by the "Guidelines for filing by Email".

PRACTICE DIRECTION SUPPLEMENTING PART 63

(1) In paragraph 1.1, after “Section III – Provisions about appeals” insert

“Section IV – Provisions about final orders”.

(2) After Section III, insert new Section IV – Provisions about final orders:

“**SECTION IV PROVISIONS ABOUT FINAL ORDERS**

29.1 Where the court makes an order for delivery up or destruction of infringing goods, or articles designed or adapted to make such goods, the defendant will pay the costs of complying with that order unless the court orders otherwise.

29.2 Where the court finds that an intellectual property right has been infringed, the court may, at the request of the applicant, order appropriate measures for the dissemination and publication of the judgment to be taken at the defendant's expense.".

PRACTICE DIRECTION SUPPLEMENTING PART 65

In paragraph 13.3(1), for "31st March 2006" substitute "30th September 2006".

PRACTICE DIRECTION – PROCEEDS OF CRIME ACT 2002 PARTS 5 AND 8: CIVIL RECOVERY

Title

For the title to the Practice Direction, substitute "PRACTICE DIRECTION – CIVIL RECOVERY PROCEEDINGS".

Paragraph 1.1

Before the full stop, insert "and Part 5 of The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005".

Paragraph 1.2

For paragraph 1.2 substitute—

"1.2 Section II contains provisions about—

(1) applications to the High Court under Part 5 of the Act and Part 5 of the Order in Council for—

(a) a recovery order;

(b) a property freezing order; and

(c) an interim receiving order; and

(2) the register of external orders.".

Paragraph 1.5

(1) At the end of sub-paragraph (2), omit "and".

(2) For sub-paragraph (3), substitute—

"(3) 'the Order in Council' means the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005;

(4) 'civil recovery proceedings' means proceedings under Part 5 of the Act or Part 5 of the Order in Council (as appropriate);

(5) 'the Regulations' means the Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings) Regulations 2005; and

(6) other expressions used have the same meaning as in the Act or the Order in Council (as appropriate).".

Paragraph 2.1

After "the 2002 Act" insert "or Part 5 of the Order in Council".

Section II (paragraphs 4 to 7)

For Section II, substitute the new Section II at **Annex 4**.

PRACTICE DIRECTION – PROTOCOLS

For paragraph 4.7, substitute-

"4.7 The parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation, and if so, endeavour to agree which form to adopt. Both the Claimant and Defendant may be required by the Court to provide evidence that alternative means of resolving their dispute were considered. The Courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still actively being explored. Parties are warned that if the protocol is not followed (including this paragraph) then the Court must have regard to such conduct when determining costs.

It is not practicable in this protocol to address in detail how the parties might decide which method to adopt to resolve their particular dispute. However, summarised below are some of the options for resolving disputes without litigation:

- Discussion and negotiation.
- Early neutral evaluation by an independent third party (for example, a lawyer experienced in that field or an individual experienced in the subject matter of the claim).
- Mediation - a form of facilitated negotiation assisted by an independent neutral party.

The Legal Services Commission has published a booklet on "Alternatives to Court", CLS Direct Information Leaflet 23 (www.clsdirect.org.uk/legalhelp/leaflet23.jsp), which lists a number of organisations that provide alternative dispute resolution services.

It is expressly recognised that no party can or should be forced to mediate or enter into any form of ADR.".

Annex 1 – Part 20 – Counterclaims and other Additional Claims

PRACTICE DIRECTION – COUNTERCLAIMS AND OTHER ADDITIONAL CLAIMS

This Practice Direction supplements CPR Part 20

An additional claim is any claim other than the claim by the claimant against the defendant.

Claims under this Part were formerly known as “Part 20 claims”. As a result of the amendments to Part 20, introduced by Civil Procedure (Amendment No.4) Rules 2005, they are now called "additional claims".

However, they are described as "Part 20 claims" on a number of court forms. For the present, some of those forms will continue to refer to Part 20 claims. These references should be construed as being additional claims under this Part. Any reference to a Part 20 claimant or a Part 20 defendant means a claimant or defendant in an additional claim under this Part.

Cases where court’s permission to make an additional claim is required

1.1 Rules 20.4(2)(b), 20.5(1) and 20.7(3)(b) set out the circumstances in which the court’s permission will be needed for making an additional claim.

1.2 Where an application is made for permission to make an additional claim the application notice should be filed together with a copy of the proposed additional claim.

Applications for permission to issue an additional claim

2.1 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.

(For further information regarding evidence see the practice direction which supplements Part 32).

2.2 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.

2.3 Where possible the applicant should provide a timetable of the proceedings to date.

2.4 Rules 20.5(2) and 20.7(5) allow applications to be made to the court without notice unless the court directs otherwise.

General

3. 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

4.1 The contents of an additional claim should be verified by a statement of truth. Part 22 requires a statement of case to be verified by a statement of truth.

4.2 The form of the statement of truth should be as required by paragraph 2.1 of the practice direction supplementing Part 22.

4.3 Attention is drawn to rule 32.14 which sets out the consequences of verifying a statement of case containing a false statement without an honest belief in its truth.

Case management where there is a defence to an additional claim

5.1 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.

5.2 The court will give notice of the hearing to each party likely to be affected by any order made at the hearing.

5.3 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.

5.4 The court may make any of the orders in 5.3(1) to (5) either before or after any judgment in the claim has been entered by the claimant against the defendant.

Form of counterclaim

6.1 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.

6.2 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

7.1 Paragraph 4 of the practice direction supplementing Part 7 contains directions regarding the title to proceedings.

7.2 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 7.11, this identification should be used throughout.

7.3 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.

7.4 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”.

7.5 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”.

7.6 In group litigation, the court should give directions about the designation of parties.

7.7 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.

7.8 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.

7.9 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.

7.10 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".

7.11 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.

Annex 2 – Costs Practice Direction – New Section 49A

SECTION 49A COSTS PAYABLE BY THE TRUSTEE FOR CIVIL RECOVERY UNDER A RECOVERY ORDER

49A.1 In this section—
"the Act" means the Proceeds of Crime Act 2002;
"the Order in Council" means the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005; and
"the Regulations" means the Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings) Regulations 2005.

49A.2 This section applies to the assessment of costs where the court has made a recovery order which provides for the payment by the trustee for civil recovery of a person's reasonable legal costs in respect of civil recovery proceedings. Such an order may be made under section 266(8A) of the Act or article 177(10) of the Order in Council. The procedure for obtaining a recovery order is set out in the Act and Order in Council, together with the Civil Recovery Proceedings Practice Direction.

49A.3 Where this section applies, costs are to be assessed in accordance with the procedure for detailed assessment under Part 47, subject to the modifications set out in Parts 4 and 5 of the Regulations.

49A.4 The detailed assessment will normally be made by a costs judge, even if the costs are within the authorised amounts specified in paragraph 30.1(1). The appropriate office for the purpose of rule 47.4(1) is the Supreme Court Costs Office.

49A.5 In detailed assessment proceedings to which this section applies—
(1) the paying party is the trustee for civil recovery;
(2) the receiving party is the person whose reasonable legal costs are payable pursuant to provision made in the recovery order under section 266(8A) of the Act or article 177(10) of the Order in Council; and
(3) the relevant persons for the purpose of rule 47.6(2) include the Director of the Assets Recovery Agency in addition to the persons referred to in paragraph 32.10.

49A.6 On commencing detailed assessment proceedings, the receiving party must, in addition to serving the documents listed in paragraph 32.3 on the paying party and all other relevant persons, serve a statement giving the date, amount and source of all interim payments which have been released in respect of any of those costs under Part 3 of the Regulations.

49A.7 By virtue of regulation 13(2) of the Regulations, detailed assessment proceedings must be commenced not later than 2 months after the date of the recovery order, and a request for a detailed assessment hearing must be filed not later than 2 months after the expiry of the period for commencing the detailed assessment proceedings.

49A.8 The documents which must accompany the request for a detailed assessment hearing shall include copies of all exclusions from property freezing orders or interim receiving orders made by the court for the purpose of enabling the receiving party to meet the costs which are to be assessed, and of every estimate of costs filed by the receiving party in support of an application for such an exclusion.

49A.9 The receiving party's costs will be assessed on the standard basis, subject to Part 5 of the Regulations (and in particular regulation 17, which specifies the hourly rates which may be allowed). Attention is also drawn to regulation 14, which provides that the amounts of any interim payments released in respect of the receiving party's costs will be deducted from the costs allowed in accordance with Part 5 of the Regulations.

Annex 3 – Practice Direction supplementing Part 52

ROUTES OF APPEAL

2A.1 The court or judge to which an appeal is to be made (subject to obtaining any necessary permission) is set out in the tables below:

Table 1[1] addresses appeals in cases other than insolvency proceedings and those cases to which Table 3 applies;

Table 2 addresses insolvency proceedings; and

Table 3 addresses certain family cases to which CPR Part 52 may apply.

The tables do not include so-called "leap frog" appeals either to the Court of Appeal pursuant to s. 57 of the Access to Justice Act 1999 or to the House of Lords pursuant to s 13 of the Administration of Justice Act 1969.

(An interactive routes of appeal guide can be found on the Court of Appeal's website at http://www.hmcourts-service.gov.uk/infoabout/coa_civil/routes_app/index.htm)

Table 1

In this Table references to a "Circuit judge" include a recorder or a district judge who is exercising the jurisdiction of a circuit judge with the permission of the designated civil judge in respect of that case (see: Practice Direction 2B, paragraph 11.1(d)).

For the meaning of "final decision" for the purposes of this table see paragraphs 2A.2 and 2A.3 below.

COURT	TRACK/NATURE OF CLAIM	JUDGE WHO MADE DECISION	NATURE OF DECISION UNDER APPEAL	APPEAL COURT
County	Unallocated	District judge	Any	Circuit judge

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	Small Fast			in county court
County	CPR Pt 8 (if not allocated to any track or if simply treated as allocated to the multi-track under CPR 8.9(c))	District judge	Final	Circuit judge in county court
County	Multi-track	District judge	Any decision other than a final decision	Circuit judge in county court
County	Multi-track	District judge	Final decision	Court of Appeal
County	Specialist Proceedings (under the Companies Acts 1985 or 1989 or to which sections I, II or III of Part 57 or any of Parts 59, 60, 62 or 63 apply)	District judge	Any decision other than a final decision	Circuit judge in county court
County	Specialist Proceedings (under the Companies Acts 1985 or 1989 or to which sections I, II or III Part 57 or any of Parts 59, 60, 62 or 63 apply)	District judge	Final decision	Court of Appeal
County	Unallocated Small	Circuit judge	Any (except final decision in specialist	Single judge of the High Court

	Fast		in specialist proceedings; see below)	Court
County	Multi-track	Circuit judge	Any decision other than a final decision	Single judge of the High Court
County	CPR Pt 8 (if not allocated to any track or if simply treated as allocated to the multi-track under CPR 8.9(c))	Circuit judge	Final	Single judge of the High Court
County	Specialist Proceedings (under the Companies Acts 1985 or 1989 or to which sections I, II or III of Part 57 or any of Parts 59, 60, 62 or 63 apply)	Circuit judge	Final	Court of Appeal
County	Multi-track	Circuit judge	Final decision	Court of Appeal
High Court	Multi-track	Master or district judge sitting in a District Registry	Any decision other than a final decision	Single judge of the High Court
High Court	CPR Pt 8 (if not allocated to any track or if simply treated as allocated to the multi-track	Master or district judge sitting in a District Registry	Final	Single judge of the High Court

	under CPR 8.9(c))			
High Court	Multi-track	Master or district judge sitting in a District Registry	Final	Court of Appeal
High Court	Specialist Proceedings (under the Companies Acts 1985 or 1989 or to which sections I, II or III of Part 57 or any of Parts 58 to 63 apply)	Master or district judge sitting in a District Registry	Any decision other than a final decision	High Court
High Court	Specialist Proceedings (under the Companies Acts 1985 or 1989 or to which sections I, II or III of Part 57 or any of Parts 58 to 63 apply)	Master or district judge sitting in a District Registry	Final decision	Court of Appeal
High Court	Any	High Court judge	Any	Court of Appeal

Table 2: Insolvency proceedings

In this Table references to a "Circuit judge" include a recorder or a district judge who is exercising the jurisdiction of a circuit judge with the permission of the designated civil judge in respect of that case (see: Practice Direction 2B, paragraph 11.1(d)).

COURT	TRACK/NATURE	JUDGE WHO	NATURE OF	APPEAL

	OF CLAIM	MADE DECISION	DECISION UNDER APPEAL	COURT
County	Insolvency	District judge or circuit judge	Any	Single judge of the High Court
High Court	Insolvency	Registrar	Any	Single judge of the High Court
High Court	Insolvency	High Court judge	Any	Court of Appeal

Table 3: Proceedings which may be heard in the Family Division of the High Court and to which the CPR may apply.

The proceedings to which this table will apply include proceedings under the Inheritance (Provision for Family and Dependants) Act 1975 and proceedings under the Trusts of Land and Appointment of Trustees Act 1996.

For the meaning of "final decision" for the purposes of this table see paragraphs 2A.2 and 2A.3 below.

COURT	JUDGE WHO MADE DECISION	TRACK/ NATURE OF CLAIM	NATURE OF DECISION UNDER APPEAL	APPEAL COURT
High Court Principal Registry of the Family Division	District judge	Proceedings under CPR Pt 8 (if not allocated to any track or if simply treated	Any decision	High Court judge of the Family Division

		as allocated to the multi-track under CPR 8.9(c))		
High Court Principal Registry of the Family Division	District judge	Proceedings under CPR Pt 8 specifically allocated to the multi-track by an order of the court.	Any decision	High Court judge of the Family Division
High Court Principal Registry of the Family Division	District judge	Proceedings under CPR Part 7	Any decision other than a final decision	High Court judge of the Family Division
High Court Principal Registry of the Family Division	District judge	Proceedings under CPR Part 7 and allocated to the multi-track	Final decision	Court of Appeal
High Court Family Division	High Court Judge	Proceedings under CPR Part 7 or 8	Any	Court of Appeal

2A.2 A “final decision” is a decision of a court that would finally determine (subject to any possible appeal or detailed assessment of costs) the entire proceedings whichever way the court decided the issues before it. Decisions made on an application to strike-out or for summary judgment are not final decisions for the purpose of determining the appropriate route of appeal (Art. 1 Access to Justice Act 1999 (Destination of Appeals) Order 2000). Accordingly:

(1) a case management decision;

(2) the grant or refusal of interim relief;

(3) a summary judgment;

(4) a striking out,

are not final decisions for this purpose.

2A.3 A decision of a court is to be treated as a final decision for routes of appeal purposes where it:

(1) is made at the conclusion of part of a hearing or trial which has been split into parts; and

(2) would, if it had been made at the conclusion of that hearing or trial, have been a final decision.

Accordingly, a judgment on liability at the end of a split trial is a “final decision” for this purpose and the judgment at the conclusion of the assessment of damages following a judgment on liability is also a “final decision” for this purpose.

2A.4 An order made:

(1) on a summary or detailed assessment of costs; or

(2) on an application to enforce a final decision,

is not a "final decision" and any appeal from such an order will follow the routes of appeal set out in the tables above.

(Section 16(1) of the Supreme Court Act 1981 (as amended); section 77(1) of the County Courts Act 1984 (as amended); and the Access to Justice Act 1999 (Destination of Appeals) Order 2000 set out the provisions governing routes of appeal).

Annex 4 – Civil Recovery Proceedings Practice Direction – Section II

SECTION II – CIVIL RECOVERY PROCEEDINGS UNDER PART 5 OF THE ACT OR PART 5 OF THE ORDER IN COUNCIL

Claim for a recovery order

4.1 A claim by the Director for a recovery order must be made using the CPR Part 8 procedure.

4.2 In a claim for a recovery order based on an external order, the claim must include an application to register the external order.

4.3 The claim form must—

(1) identify the property in relation to which a recovery order is sought;

(2) state, in relation to each item or description of property—

(a) whether the property is alleged to be recoverable property or associated property; and

(b) either—

(i) who is alleged to hold the property; or

(ii) where the Director is unable to identify who holds the property, the steps that have been taken to try to establish their identity;

(3) set out the matters relied upon in support of the claim;

(4) give details of the person nominated by the Director to act as trustee for civil recovery in accordance with section 267 of the Act or article 178 of the Order in Council; and

(5) in a claim which includes an application to register an external order, be accompanied by a copy of the external order.

4.4 The evidence in support of the claim must include the signed, written consent of the person nominated by the Director to act as trustee for civil recovery if appointed by the court.

4.5 In a claim which includes an application to register an external order, where—

(1) the sum specified in the external order is expressed in a currency other than sterling; and

(2) there are not funds held in the United Kingdom in the currency in which the sum specified is expressed sufficient to satisfy the external order,

the claim form, or particulars of claim if served subsequently, must state the sterling equivalent of the sum specified.
(Article 145(2) of the Order in Council provides that the sterling equivalent is to be calculated in accordance with the exchange rate prevailing at end of the day on which the external order is made.)

Application for property freezing order or interim receiving order

5.1 An application for a property freezing order or an interim receiving order must be made—
(1) to a High Court judge; and
(2) in accordance with Part 23.

5.2 Rule 23.10(2) and Section I of Part 25 do not apply to applications for property freezing orders and interim receiving orders.

5.3 The application may be made without notice in the circumstances set out in—
(1) section 245A(3) of the Act and Article 147(3) of the Order in Council (in the case of an application for a property freezing order); and
(2) section 246(3) of the Act and Article 151(3) of the Order in Council (in the case of an application for an interim receiving order).

5.4 An application for a property freezing order must be supported by written evidence which must—
(1) set out the grounds on which the order is sought; and
(2) give details of each item or description of property in respect of which the order is sought, including—
(a) an estimate of the value of the property; and
(b) the additional information referred to in paragraph 5.5(2).

5.5 Part 69 (court's power to appoint a receiver) and its practice direction apply to an application for an interim receiving order with the following modifications—
(1) paragraph 2.1 of the practice direction supplementing Part 69 does not apply;
(2) the Director's written evidence must, in addition to the matters required by paragraph 4.1 of that practice direction, also state in relation to each item or description of property in respect of which the order is sought –
(a) whether the property is alleged to be—
(i) recoverable property; or

(ii) associated property,

and the facts relied upon in support of that allegation; and

(b) in the case of any associated property—

(i) who is believed to hold the property; or

(ii) if the Director is unable to establish who holds the property, the steps that have been taken to establish their identity; and

(3) the Director's written evidence must always identify a nominee and include the information in paragraph 4.2 of that practice direction.

5.6 A draft of the order which is sought must be filed with the application notice. This should if possible also be supplied to the court in an electronic form compatible with the word processing software used by the court.

Property freezing order or interim receiving order made before commencement of claim for recovery order

5A. A property freezing order or interim receiving order which is made before a claim for a recovery order has been commenced shall—

(1) specify a period within which the Director must either start the claim or apply for the continuation of the order while he carries out his investigation; and

(2) provide that the order shall be set aside if the Director does not start the claim or apply for its continuation before the end of that period.

Exclusions when making property freezing order or interim receiving order

5B.1. When the court makes a property freezing order or interim receiving order on an application without notice, it will normally make an initial exclusion from the order for the purpose of enabling the respondent to meet his reasonable legal costs so that he may—

(1) take advice in relation to the order;

(2) prepare a statement of assets in accordance with paragraph 7A.3; and

(3) if so advised, apply for the order to be varied or set aside.

The total amount specified in the initial exclusion will not normally exceed £3,000.

5B.2 When it makes a property freezing order or interim receiving order before a claim for a recovery order has been commenced, the court may also make an exclusion to enable the respondent to meet his reasonable legal costs so that (for example) when the claim is commenced—

(1) he may file an acknowledgment of service and any written evidence on which he intends to rely; or
(2) he may apply for a further exclusion for the purpose of enabling him to meet his reasonable costs of the proceedings.

5B.3 Paragraph 7A contains general provisions about exclusions made for the purpose of enabling a person to meet his reasonable legal costs.

Interim receiving order: application for directions

6.1 An application for directions as to the exercise of the interim receiver's functions may, under section 251 of the Act or article 156 of the Order in Council, be made at any time by—
(1) the interim receiver;
(2) any party to the proceedings; and
(3) any person affected by any action taken by the interim receiver, or who may be affected by any action proposed to be taken by him.

6.2 The application must always be made by application notice, which must be served on—
(1) the interim receiver (unless he is the applicant);
(2) every party to the proceedings; and
(3) any other person who may be interested in the application.

Application to vary or set aside property freezing order or interim receiving order

7.1 An application to vary or set aside a property freezing order or an interim receiving order (including an application for, or relating to, an exclusion from the order) may be made at any time by—
(1) the Director; or
(2) any person affected by the order.

7.2 Unless the court otherwise directs or exceptional circumstances apply, a copy of the application notice must be served on—
(1) every party to the proceedings;
(2) in the case of an application to vary or set aside an interim receiving order, the interim receiver; and
(3) any other person who may be affected by the court's decision.

7.3 The evidence in support of an application for an exclusion from a property freezing order or interim receiving order for the purpose of enabling a person to meet his reasonable legal costs must—

(1) contain full details of the stage or stages in civil recovery proceedings in respect of which the costs in question have been or will be incurred;

(2) include an estimate of the costs which the person has incurred and will incur in relation to each stage to which the application relates, substantially in the form illustrated in Precedent H in the Schedule of Costs Precedents annexed to the Practice Direction about Costs;

(3) include a statement of assets containing the information set out in paragraph 7A.3 (unless the person has previously filed such a statement in the same civil recovery proceedings and there has been no material change in the facts set out in that statement);

(4) where the court has previously made an exclusion in respect of any stage to which the application relates, explain why the person's costs will exceed the amount specified in the exclusion for that stage; and

(5) state whether the terms of the exclusion have been agreed with the Director.

Exclusions for the purpose of meeting legal costs: general provisions

7A.1 Subject to paragraph 7A.2, when the court makes an order or gives directions in civil recovery proceedings it will at the same time consider whether it is appropriate to make or vary an exclusion for the purpose of enabling any person affected by the order or directions to meet his reasonable legal costs.

7A.2 The court will not make an exclusion for the purpose of enabling a person to meet his reasonable legal costs, other than an exclusion to meet the costs of taking any of the steps referred to in paragraph 5B.1, unless that person has made and filed a statement of assets.

7A.3 A statement of assets is a witness statement which sets out all the property which the maker of the statement owns, holds or controls, or in which he has an interest, giving the value, location and details of all such property. Information given in a statement of assets under this practice direction will be used only for the purpose of the civil recovery proceedings.

7A.4 The court—

(1) will not make an exclusion for the purpose of enabling a person to meet his reasonable legal costs (including an initial exclusion under paragraph 5B.1); and
(2) may set aside any exclusion which it has made for that purpose or reduce any amount specified in such an exclusion,
if it is satisfied that the person has property to which the property freezing order or interim receiving order does not apply from which he may meet those costs.

7A.5 The court will normally refer to a costs judge any question relating to the amount which an exclusion should allow for reasonable legal costs in respect of proceedings or a stage in proceedings.

7A.6 Attention is drawn to section 245C of the Act and article 149 of the Order in Council (in relation to exclusions from property freezing orders) and to section 252 of the Act and article 157 of the Order in Council (in relation to exclusions from interim receiving orders). An exclusion for the purpose of enabling a person to meet his reasonable legal costs must be made subject to the 'required conditions' specified in Part 2 of the Regulations.

7A.7 An exclusion made for the purpose of enabling a person to meet his reasonable legal costs will specify—
(1) the stage or stages in civil recovery proceedings to which it relates;
(2) the maximum amount which may be released in respect of legal costs for each specified stage; and
(3) the total amount which may be released in respect of legal costs pursuant to the exclusion.

7A.8 A person who becomes aware that his legal costs—
(1) in relation to any stage in civil recovery proceedings have exceeded or will exceed the maximum amount specified in the exclusion for that stage; or
(2) in relation to all the stages to which the exclusion relates have exceeded or will exceed the total amount that may be released pursuant to the exclusion,
should apply for a further exclusion or a variation of the existing exclusion as soon as reasonably practicable.

Assessment of costs where recovery order is made

7B.1 Where the court—

(1) makes a recovery order in respect of property which was the subject of a property freezing order or interim receiving order; and
(2) had made an exclusion from the property freezing order or interim receiving order for the purpose of enabling a person to meet his reasonable legal costs,
the recovery order will make provision under section 266(8A) of the Act or article 177(10) of the Order in Council (as appropriate) for the payment of those costs.

7B.2 Where the court makes a recovery order which provides for the payment of a person's reasonable legal costs in respect of civil recovery proceedings, it will at the same time order the detailed assessment of those costs. Parts 4 and 5 of the Regulations, Part 47 of the Civil Procedure Rules and Section 49A of the Practice Direction about Costs apply to a detailed assessment pursuant to such an order.

Registers

7C. There will be kept in the Central Office of the Supreme Court at the Royal Courts of Justice, under the direction of the Senior Master, a register of external orders which the High Court has ordered to be registered.

Annex 5 – Revised Textual Changes to Pre-Action Protocols

*In the **Defamation Pre-Action Protocol,** delete existing paragraph 3.7, and replace with the following;*

ALTERNATIVE DISPUTE RESOLUTION

3.7 The parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation, and if so, endeavour to agree which form to adopt. Both the Claimant and Defendant may be required by the Court to provide evidence that alternative means of resolving their dispute were considered. The Courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still actively being explored. Parties are warned that if the protocol is not followed (including this paragraph) then the Court must have regard to such conduct when determining costs.

3.8 It is not practicable in this protocol to address in detail how the parties might decide which method to adopt to resolve their particular dispute. However, summarised below are some of the options for resolving disputes without litigation:

- Discussion and negotiation.
- Early neutral evaluation by an independent third party (for example, a lawyer experienced in the field of defamation or an individual experienced in the subject matter of the claim).
- Mediation - a form of facilitated negotiation assisted by an independent neutral party.
- Reference to the Press Complaints Commission (an independent body which deals with complaints from members of the public about the editorial content of newspapers and magazines)

3.8 The Legal Services Commission has published a booklet on "Alternatives to Court", CLS Direct Information Leaflet 23 (www.clsdirect.org.uk/legalhelp/leaflet23.jsp), which lists a number of organisations that provide alternative dispute resolution services.

3.9 It is expressly recognised that no party can or should be forced to mediate or enter into any form of ADR.

*In the **Pre-Action Protocol for Personal Injury Claims**, delete the existing 2.16 and replace with;*

ALTERNATIVE DISPUTE RESOLUTION

2.16 The parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation, and if so, endeavour to agree which form to adopt. Both the Claimant and Defendant may be required by the Court to provide evidence that alternative means of resolving their dispute were considered. The Courts take the view that litigation should be a last resort, and that claims should not be issued

prematurely when a settlement is still actively being explored. Parties are warned that if the protocol is not followed (including this paragraph) then the Court must have regard to such conduct when determining costs.

2.17 It is not practicable in this protocol to address in detail how the parties might decide which method to adopt to resolve their particular dispute. However, summarised below are some of the options for resolving disputes without litigation:

- Discussion and negotiation.

- Early neutral evaluation by an independent third party (for example, a lawyer experienced in the field of personal injury or an individual experienced in the subject matter of the claim).

- Mediation - a form of facilitated negotiation assisted by an independent neutral party.

2.18 The Legal Services Commission has published a booklet on "Alternatives to Court", CLS Direct Information Leaflet 23 (www.clsdirect.org.uk/legalhelp/leaflet23.jsp), which lists a number of organisations that provide alternative dispute resolution services.

2.19 It is expressly recognised that no party can or should be forced to mediate or enter into any form of ADR.

The existing 2.17 ('Stocktake') is renumbered to 2.20.

*In the **Pre-Action Protocol for the Resolution of Clinical Disputes**, delete the existing Section 5 and replace with;*

5. ALTERNATIVE DISPUTE RESOLUTION

5.1 The parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation, and if so, endeavour to agree which form to adopt. Both the Claimant and Defendant may be required by the Court to provide evidence that alternative means of resolving their dispute were considered. The Courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still actively being explored. Parties are warned that if the protocol is not followed (including this paragraph) then the Court must have regard to such conduct when determining costs.

5.2 It is not practicable in this protocol to address in detail how the parties might decide which method to adopt to resolve their particular dispute. However, summarised below are some of the options for resolving disputes without litigation:

- Discussion and negotiation. Parties should bear in mind that carefully planned face-to-face meetings may be particularly helpful in exploring further treatment for the patient, in reaching understandings about what happened, and on both parties' positions, in narrowing the issues in dispute and, if the timing is right, in helping to settle the whole matter especially if the patient wants an apology, explanation, or assurances

about how other patients will be affected.

- Early neutral evaluation by an independent third party (for example, a lawyer experienced in the field of clinical negligence or an individual experienced in the subject matter of the claim).

- Mediation - a form of facilitated negotiation assisted by an independent neutral party. The Clinical Disputes Forum has published a Guide to Mediation which will assist - available on the Clinical Disputes Forum website at www.clinicaldisputesforum.org.uk.

- The **NHS Complaints Procedure** is designed to provide patients with an explanation of what happened and an apology if appropriate. It is not designed to provide compensation for cases of negligence. However, patients might choose to use the procedure if their only, or main, goal is to obtain an explanation, or to obtain more information to help them decide what other action might be appropriate.

5.3 The Legal Services Commission has published a booklet on "Alternatives to Court", CLS Direct Information Leaflet 23 (www.clsdirect.org.uk/legalhelp/leaflet23.jsp), which lists a number of organisations that provide alternative dispute resolution services.

5.4 It is expressly recognised that no party can or should be forced to mediate or enter into any form of ADR.

*In the **Professional Negligence Pre-Action Protocol**, delete the existing B6 and replace with;*

B6. ***Alternative Dispute Resolution***

B6.1 The parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation, and if so, endeavour to agree which form to adopt. Both the Claimant and professional may be required by the Court to provide evidence that alternative means of resolving their dispute were considered. The Courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still actively being explored. Parties are warned that if the protocol is not followed (including this paragraph) then the Court must have regard to such conduct when determining costs.

B6.2 It is not practicable in this protocol to address in detail how the parties might decide which method to adopt to resolve their particular dispute. However, summarised below are some of the options for resolving disputes without litigation:

- Discussion and negotiation.

- Early neutral evaluation by an independent third party (for example, a lawyer experienced in the field of professional negligence or an individual experienced in the subject matter of the claim).

- Mediation - a form of facilitated negotiation assisted by an independent

neutral party.

B6.3 The Legal Services Commission has published a booklet on "Alternatives to Court", CLS Direct Information Leaflet 23 (www.clsdirect.org.uk/legalhelp/leaflet23.jsp), which lists a number of organisations that provide alternative dispute resolution services.

B6.4 It is expressly recognised that no party can or should be forced to mediate or enter into any form of ADR.

In the **Pre-Action Protocol for Judicial Review**, delete the existing paragraph 3 of this introduction and replace with;

Alternative Dispute Resolution [as a sub-heading]

3.1 The parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation, and if so, endeavour to agree which form to adopt. Both the Claimant and Defendant may be required by the Court to provide evidence that alternative means of resolving their dispute were considered. The Courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still actively being explored. Parties are warned that if the protocol is not followed (including this paragraph) then the Court must have regard to such conduct when determining costs. However, parties should also note that a claim for judicial review "must be filed promptly and in any event not later than 3 months after the grounds to make the claim first arose".

3.2 It is not practicable in this protocol to address in detail how the parties might decide which method to adopt to resolve their particular dispute. However, summarised below are some of the options for resolving disputes without litigation:

- Discussion and negotiation.

- Ombudsmen – the Parliamentary and Health Service and the Local Government Ombudsmen have discretion to deal with complaints relating to maladministration. The British and Irish Ombudsman Association provide information about Ombudsman schemes and other complaint handling bodies and this is available from their website at www.bioa.org.uk . Parties may wish to note that the Ombudsmen are not able to look into a complaint once court action has been commenced.

- Early neutral evaluation by an independent third party (for example, a lawyer experienced in the field of administrative law or an individual experienced in the subject matter of the claim).

- Mediation - a form of facilitated negotiation assisted by an independent neutral party.

3.3 The Legal Services Commission has published a booklet on "Alternatives to Court", CLS Direct Information Leaflet 23 (www.clsdirect.org.uk/legalhelp/leaflet23.jsp), which lists a number of organisations that provide alternative dispute resolution services.

3.4 It is expressly recognised that no party can or should be forced to mediate or enter into any form of ADR.

In the **Pre-Action Protocol for Disease and Illness Claims**, insert the following before Section 3;

2A ALTERNATIVE DISPUTE RESOLUTION

2A.1 The parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation, and if so, endeavour to agree which form to adopt. Both the Claimant and Defendant may be required by the Court to provide evidence that alternative means of resolving their dispute were considered. The Courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still actively being explored. Parties are warned that if the protocol is not followed (including this paragraph) then the Court must have regard to such conduct when determining costs.

2A.2 It is not practicable in this protocol to address in detail how the parties might decide which method to adopt to resolve their particular dispute. However, summarised below are some of the options for resolving disputes without litigation:

- Discussion and negotiation.
- Early neutral evaluation by an independent third party (for example, a lawyer experienced in the field of disease or illness, or an individual experienced in the subject matter of the claim).
- Mediation - a form of facilitated negotiation assisted by an independent neutral party.

2A.3 The Legal Services Commission has published a booklet on "Alternatives to Court", CLS Direct Information Leaflet 23 (www.clsdirect.org.uk/legalhelp/leaflet23.jsp), which lists a number of organisations that provide alternative dispute resolution services.

2A.4 It is expressly recognised that no party can or should be forced to mediate or enter into any form of ADR.

*In the **Pre-Action Protocol for Housing Disrepair Cases**, delete the existing section 4 and insert the following;*

4.1 ALTERNATIVE DISPUTE RESOLUTION

(a) The parties should consider whether some form of alternative dispute resolution procedure (see paragraph 4.10 for a definition of alternative dispute resolution) would be more suitable than litigation, and if so, endeavour to agree which form to adopt. Both the Claimant and Defendant may be required by the Court to provide evidence that alternative means of resolving their dispute were considered. The Courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when a

settlement is still actively being explored. Parties are warned that if the protocol is not followed (including this paragraph) then the Court must have regard to such conduct when determining costs.

(b) It is not practicable in this protocol to address in detail how the parties might decide which method to adopt to resolve their particular dispute. However, summarised below are some of the options for resolving disputes without litigation:

- Discussion and negotiation.

- Early neutral evaluation by an independent third party (for example, a lawyer experienced in the field of housing disrepair or an individual experienced in the subject matter of the claim).

- Mediation - a form of facilitated negotiation assisted by an independent neutral party.

- Other options in respect of the following specific categories:-

  (i) For council tenants:–

    - local authority repairs, complaints and/or arbitration procedures.

    - the Right to Repair Scheme. The scheme is only suitable for small, urgent repairs of less than £250 in value.

      Information and leaflets about the scheme in England can be obtained from the Office of the Deputy Prime Minister, Eland House, Bressenden Place, London SW1E 5DU. Tel: 020 7944 3672.

      Information about the scheme in Wales can be obtained from the National Assembly for Wales, Cathays Park, Cardiff, CF10 3NQ. Tel. 029 2082 5111.

    - Commission for Local Administration in England. Tel. 0845 602 1983.

    - the Local Government Ombudsman for Wales. Tel. 01656 661325.

  (ii) For tenants of social landlords who are not council tenants, and for tenants of qualifying private landlords:-

    - In England, the Independent Housing Ombudsman. 3rd Floor, Norman House, 105-109 Strand, London WC2R 0AA. Tel 020 7836 3630.

      In Wales, the National Assembly for Wales, Cathays Park, Cardiff CF10 3NQ. Tel. 029 2082 5111.

    - Local authority environmental health officers.

(iii) For private tenants:–

- Local authority environmental health officers.

(c) The Legal Services Commission has published a booklet on "Alternatives to Court", CLS Direct Information Leaflet 23 (www.clsdirect.org.uk/legalhelp/leaflet23.jsp), which lists a number of organisations that provide alternative dispute resolution services.

(d) It is expressly recognised that no party can or should be forced to mediate or enter into any form of ADR.

(e) Information about repair rights generally is available free of charge from the following web pages: www.shelter.org.uk/housingadvice/index.asp and www.legalservices.gov.uk/leaflets/cls/index.htm.

(f) The former Department for Transport, Local Government and the Regions issued Good Practice Guidance on Housing Disrepair Legal Obligations in January 2002. Copies of the Guidance (ISBN 185112 523X) can be obtained from ODPM Publications Sales Centre, Cambertown House, Goldthorpe Industrial Estate, Rotherham, S63 9BL. A summary, Housing Research Summary No. 154, is available free from the Housing Support Unit, ODPM, Zone 2/C6, Eland House, Bressenden Place, London SW1E 5DU (Fax 020 7944 4527). The ODPM housing website www.housing.odpm.gov.uk is a general source of information for landlords and tenants.