

OTHER APPLICATIONS IN PROCEEDINGS

This Practice Direction supplements FPR Part 18

Application of Part 18

- 1.1** Part 18 makes general provision for a procedure for making applications. All applications for the court's permission should be made under this Part, with the exception of applications for permission for which specific provision is made in other Parts of the FPR, in which case the application should be made under the specific provision. Examples of where specific provision has been made in another Part of the FPR for applications for permission are rule 11.3 (Permission to apply for a forced marriage protection order) and rule 30.3 (Permission to appeal).

Reference to a judge

- 2.1** In the High Court or a county court a district judge may refer to a judge any matter which the district judge thinks should properly be decided by a judge, and the judge may either dispose of the matter or refer it back to the district judge.

Additional requirements in relation to application notices

- 3.1** In addition to the requirements set out in rule 18.7, the following requirements apply to the applications to which the respective paragraph refers.
- 3.2** An application notice must be signed and include –
- (a) the title of the case (if available);
 - (b) the reference number of the case (if available);
 - (c) the full name of the applicant;
 - (d) where the applicant is not already a party, the applicant's address for service, including a postcode. Postcode information may be obtained from www.royalmail.com or the Royal Mail Address Management Guide; and
 - (e) either a request for a hearing or a request that the application be dealt with without a hearing.
- 3.3** An application notice relating to an application under section 42(6) of the Adoption and Children Act 2002 (permission to apply for an adoption order) must include –
- (a) the child's name, sex, date of birth and nationality;
 - (b) in relation to each of the child's parents or guardians, their name, address and nationality;
 - (c) the length of time that the child has had his or her home with the applicant;

- (d) the reason why the child has had his or her home with the applicant;
 - (e) details of any local authority or adoption agency involved in placing the child in the applicant's home; and
 - (f) if there are or have been other court proceedings relating to the child, the nature of those proceedings, the name of the court in which they are being or have been dealt with, the date and type of any order made and, if the proceedings are still ongoing, the date of the next hearing.
- 3.4** An application notice relating to an application in the High Court by a local authority for permission under section 100(3) of the Children Act 1989 must include a draft of the application form.
- 3.5** Where permission is required to take any step under the Children Act 1989 (for example an application to be joined as a party to the proceedings) the application notice must include a draft of the application for the making of which permission is sought together with sufficient copies for one to be served on each respondent.
- 3.6** In an application for permission to bring proceedings under Schedule 1 of the Children Act 1989, the draft application for the making of which permission is sought must be accompanied by a statement setting out the financial details which the person seeking permission believes to be relevant to the request and contain a declaration that it is true to the maker's best knowledge and belief, together with sufficient copies for one to be served on each respondent.
- 3.7** The provisions in Schedule 1 which require an application for permission to bring proceedings are –
- (a) paragraph 7(2) – permission is required to make an application for variation of a secured periodical payments order after the death of the parent liable to make the payments if a period of 6 months has passed from the date on which representation in regard to that parent's estate is first taken out; and
 - (b) paragraph 11(3) – permission is required to make an application to alter a maintenance agreement following the death of one of the parties if a period of 6 months has passed beginning with the day on which representation in regard to the estate of the deceased is first taken out.

Other provisions in relation to application notices

- 4.1** On receipt of an application notice containing a request for a hearing, unless the court considers that the application is suitable for consideration without a hearing, the court officer will, if serving a copy of the application notice, notify the applicant of the time and date fixed for the hearing of the application.
- 4.2** On receipt of an application notice containing a request that the application be dealt with without a hearing, the court will decide whether the application is suitable for consideration without a hearing.
- 4.3** Where the court –
- (a) considers that the application is suitable for consideration without a hearing; but
 - (b) is not satisfied that it has sufficient material to decide the application immediately,

it may give directions for the filing of evidence and will inform the applicant and the respondent(s) of its decision. (Rule 18.11 enables a party to apply for an order made without notice to be set aside or varied.)

- 4.4** Where the court does not consider that the application is suitable for consideration without a hearing –
- (a) it may give directions as to the filing of evidence; and
 - (b) the court officer will notify the applicant and the respondent of the time, date and place for the hearing of the application and any directions given.
- 4.5** In the High Court or a county court if the application is intended to be made to a judge, the application notice should so state. In that case, paragraphs 4.2, 4.3 and 4.4 will apply as though references to the court were references to a judge.
- 4.6** Every application should be made as soon as it becomes apparent that it is necessary or desirable to make it.
- 4.7** Applications should, wherever possible, be made so that they are considered at any directions hearing or other hearing for which a date has been fixed or for which a date is about to be fixed.
- 4.8** The parties must anticipate that at any hearing (including any directions hearing) the court may wish to review the conduct of the case as a whole and give any necessary directions. They should be ready to assist the court in doing so and to answer questions the court may ask for this purpose.
- 4.9** Where a date for a hearing has been fixed, a party who wishes to make an application at that hearing but does not have sufficient time to file an application notice should as soon as possible inform the court (if possible in writing) and, if possible, the other parties of the nature of the application and the reason for it. That party should then make the application orally at the hearing.

Applications without service of application notice

- 5.1** An application may be made without service of an application notice only –
- (a) where there is exceptional urgency;
 - (b) where the overriding objective is best furthered by doing so;
 - (c) by consent of all parties;
 - (d) with the permission of the court;
 - (e) where paragraph 4.9 applies; or
 - (f) where a court order, rule or practice direction permits.

Giving notice of an application

- 6.1** Unless the court otherwise directs or paragraph 5.1 of this practice direction applies, the application notice must be served as soon as practicable after it has been issued and, if there is to be a hearing, at least 7 days before the hearing date.

- 6.2** Where an application notice should be served but there is not sufficient time to do so, informal notification of the application should be given unless the circumstances of the application require no notice of the application to be given.

Pre-action applications

- 7.1** All applications made before proceedings are commenced should be made under this Part.

Telephone hearings

- 8.1** The court may direct that an application be dealt with by a telephone hearing.
- 8.2** The applicant should, if seeking a direction under paragraph 8.1, indicate this on the application notice. Where the applicant has not indicated such an intention but nevertheless wishes to seek a direction the request should be made as early as possible.
- 8.3** A direction under paragraph 8.1 will not normally be made unless every party entitled to be given notice of the application and to be heard at the hearing has consented to the direction.
- 8.4** No representative of a party to an application being heard by telephone may attend the court in person while the application is being heard unless the other party to the application has agreed that the representative may do so.
- 8.5** If an application is to be heard by telephone the following directions will apply, subject to any direction to the contrary –
- (a)** the applicant's legal representative is responsible for arranging the telephone conference for precisely the time fixed by the court. The telecommunications provider used must be one of the approved panel of service providers (see HMCS website at www.hmcourts-service.gov.uk);
 - (b)** the applicant's legal representative must tell the operator the telephone numbers of all those participating in the conference call and the sequence in which they are to be called;
 - (c)** it is the responsibility of the applicant's legal representative to ascertain from all the other parties whether they have instructed counsel and, if so the identity of counsel, and whether the legal representative and counsel will be on the same or different telephone numbers;
 - (d)** the sequence in which those involved are to be called will be –
 - (i)** the applicant's legal representative and (if on a different number) his counsel;
 - (ii)** the legal representative (and counsel) for all other parties; and
 - (iii)** the judge or justices, as the case may be;
 - (e)** each speaker is to remain on the line after being called by the operator setting up the conference call. The call may be 2 or 3 minutes before the time fixed for the application;
 - (f)** when the judge has or justices have been connected the applicant's legal representative (or counsel) will introduce the parties in the usual way;
 - (g)** if the use of a 'speakerphone' by any party causes the court or any other party any difficulty in hearing what is said the judge or justices may require that party to use a hand held telephone;
 - (h)** the telephone charges debited to the account of the party initiating the conference call will be treated as part of the costs of the application.

Video conferencing

- 9.1** Where the parties to a matter wish to use video conferencing facilities, and those facilities are available in the relevant court, the parties should apply to the court for directions. (Practice Direction 22A provides guidance on the use of video conferencing)

Note of proceedings

- 10.1** The court or court officer should keep, either by way of a note or a tape recording, brief details of all proceedings before the court, including the dates of the proceedings and a short statement of the decision taken at each hearing.

Evidence

- 11.1** The requirement for evidence in certain types of applications is set out in some of the rules in the FPR and practice directions. Where there is no specific requirement to provide evidence it should be borne in mind that, as a practical matter, the court will often need to be satisfied by evidence of the facts that are relied on in support of or for opposing the application.
- 11.2** The court may give directions for the filing of evidence in support of or opposing a particular application. The court may also give directions for the filing of evidence in relation to any hearing that it fixes on its own initiative. The directions may specify the form that evidence is to take and when it is to be served.
- 11.3** Where it is intended to rely on evidence which is not contained in the application itself, the evidence, if it has not already been served, should be served with the application.
- 11.4** Where a respondent to an application wishes to rely on evidence, that evidence must be filed in accordance with any directions the court may have given and a court officer will serve the evidence on the other parties, unless the court directs otherwise.
- 11.5** If it is necessary for the applicant to serve any evidence in reply the court officer will serve it on the other parties unless the court directs otherwise.
- 11.6** Evidence must be filed with the court as well as served on the parties.
- 11.7** The contents of an application notice may be used as evidence provided the contents have been verified by a statement of truth.

Consent orders

- 12.1** The parties to an application for a consent order must ensure that they provide the court with any material it needs to be satisfied that it is appropriate to make the order. Subject to any rule in the FPR or practice direction a letter will generally be acceptable for this purpose.
- 12.2** Where a judgment or order has been agreed in respect of an application where a hearing date has been fixed, the parties must inform the court immediately.

Other applications considered without a hearing

- 13.1** Where rule 18.9(1)(b) applies the court will treat the application as if it were proposing to make an order on its own initiative.

- 13.2** Where the parties agree that the court should dispose of the application without a hearing they should so inform the court in writing and each should confirm that all evidence and other material on which he or she relies has been disclosed to the other parties to the application.

Miscellaneous

- 14.1** If the case is proceeding in the High Court and the draft order is unusually long or complex it should also be supplied in electronic form on such storage medium as shall be agreed with the judge or court staff, for use by the court office.
- 14.2** Where rule 18.12 applies the power to re-list the application in rule 18.12(2) is in addition to any other powers of the court with regard to the order (for example to set aside, vary, discharge or suspend the order).

Costs

- 15.1** Attention is drawn to the CPR costs practice direction and, in particular, to the court's power to make a summary assessment of costs.
- 15.2** Attention is also drawn to rule 44.13(1) of the CPR which provides that if an order makes no mention of costs, none are payable in respect of the proceedings to which it relates.