

PRACTICE DIRECTION

THE SUMMARY DISPOSAL OF CLAIMS

This Practice Direction supplements CPR Part 24

APPLICATIONS FOR SUMMARY JUDGMENT UNDER PART 24

- 1.1** Attention is drawn to Part 24 itself and to:
 Part 3, in particular rule 3.1(3) and (5),
 Part 22, Part 23, in particular rule 23.6,
 Part 32, in particular rule 32.6(2).
- 1.2** In this paragraph, where the context so admits, the word 'claim' includes:
 (1) a part of a claim, and
 (2) an issue on which the claim in whole or part depends.
- 1.3** An application for summary judgment under rule 24.2 may be based on:
 (1) a point of law (including a question of construction of a document),
 (2) the evidence which can reasonably be expected to be available at trial or the lack of it, or
 (3) a combination of these.
- 1.4** Rule 24.4(1) deals with the stage in the proceedings at which an application under Part 24 can be made (but see paragraph 7.1 below).

PROCEDURE FOR MAKING AN APPLICATION

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- (1) Attention is drawn to rules 24.4(3) and 23.6.
- (2) The application notice must include a statement that it is an application for summary judgment made under Part 24.
- (3) The application notice or the evidence contained or referred to in it or served with it must –
 (a) identify concisely any point of law or provision in a document on which the applicant relies, and/or
 (b) state that it is made because the applicant believes that on the evidence the respondent has no real prospect of succeeding on the claim or issue or (as the case may be) of successfully defending the claim or issue to which the application relates, and in either case state that the applicant knows of no other reason why the disposal of the claim or issue should await trial.
- (4) Unless the application notice itself contains all the evidence (if any) on which the applicant relies, the application notice should identify the written evidence on which the applicant relies. This does not affect the applicant's right to file further evidence under rule 24.5(2).
- (5) The application notice should draw the attention of the respondent to rule 24.5(1).
- (6) Where the claimant has failed to comply with any relevant pre-action protocol, an action for summary judgment will not normally be entertained before the defence has been filed or, alternatively, the time for doing so has expired.

THE HEARING

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- (1) The hearing of the application will normally take place before a Master or a district judge.
- (2) The Master or district judge may direct that the application be heard by a High Court Judge (if the case is in the High Court) or a circuit judge (if the case is in a county court).

THE COURT'S APPROACH

- 4 Where it appears to the court possible that a claim or defence may succeed but improbable that it will do so, the court may make a conditional order, as described below.

ORDERS THE COURT MAY MAKE

5.1 The orders the court may make on an application under Part 24 include:

- (1) judgment on the claim,
- (2) the striking out or dismissal of the claim,
- (3) the dismissal of the application,
- (4) a conditional order.

5.2 A conditional order is an order which requires a party:

- (1) to pay a sum of money into court, or
- (2) to take a specified step in relation to his claim or defence, as the case may be, and provides that that party's claim will be dismissed or his statement of case will be struck out if he does not comply.

(Note – the court will not follow its former practice of granting leave to a defendant to defend a claim, whether conditionally or unconditionally.)

ACCOUNTS AND INQUIRIES

- 6 If a remedy sought by a claimant in his claim form includes, or necessarily involves, taking an account or making an inquiry, an application can be made under Part 24 by any party to the proceedings for an order directing any necessary accounts or inquiries to be taken or made.

(The Accounts practice direction supplementing Part 40 contains further provisions as to orders for accounts and inquiries.)

SPECIFIC PERFORMANCE

7.1

- (1) If a remedy sought by a claimant in his claim form includes a claim –
 - (a) for specific performance of an agreement (whether in writing or not) for the sale, purchase, exchange, mortgage or charge of any property, or for the grant or assignment of a lease or tenancy of any property, with or without an alternative claim for damages, or
 - (b) for rescission of such an agreement, or
 - (c) for the forfeiture or return of any deposit made under such an agreement,the claimant may apply under Part 24 for judgment.

- (2) The claimant may do so at any time after the claim form has been served, whether or not the defendant has acknowledged service of the claim form, whether or not the time for acknowledging service has expired and whether or not any particulars of claim have been served.
- 7.2** The application notice by which an application under paragraph 7.1 is made must have attached to it the text of the order sought by the claimant.
- 7.3** The application notice and a copy of every affidavit or witness statement in support and of any exhibit referred to therein must be served on the defendant not less than 4 days before the hearing of the application. (Note – the 4 days replaces for these applications the 14 days specified in rule 24.4(3). Rule 24.5 cannot, therefore apply.)

(This paragraph replaces RSC Order 86, rules 1 and 2 but applies to county court proceedings as well as to High Court proceedings.)

SETTING ASIDE ORDER FOR SUMMARY JUDGMENT

- 8.1** If an order for summary judgment is made against a respondent who does not appear at the hearing of the application, the respondent may apply for the order to be set aside or varied (see also rule 23.11).
- 8.2** On the hearing of an application under paragraph 8.1 the court may make such order as it thinks just.

COSTS

- 9.1** Attention is drawn to Part 45 (fixed costs).
- 9.2** Attention is drawn to the Costs Practice Direction and in particular to the court's power to make a summary assessment of costs.
- 9.3** Attention is also drawn to rule 44.13(1) which provides that if an order does not mention costs no party is entitled to costs relating to that order.

CASE MANAGEMENT

- 10** Where the court dismisses the application or makes an order that does not completely dispose of the claim, the court will give case management directions as to the future conduct of the case.

