

# PRACTICE DIRECTION – MISCELLANEOUS PROVISIONS RELATING TO HEARINGS

## THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 39

### HEARINGS

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- 1.1 In Part 39, reference to a hearing includes reference to the trial<sup>1</sup>.
- 1.2 The general rule is that a hearing is to be in public<sup>2</sup>.
- 1.3 Rule 39.2(3) sets out the type of proceedings which may be dealt with in private.
- 1.4 The decision as to whether to hold a hearing in public or in private must be made by the judge conducting the hearing having regard to any representations which may have been made to him.
- 1.4A The judge should also have regard to Article 6(1) of the European Convention for Human Rights. This requires that, in general, court hearings are to be held in public, but the press and public may be excluded in the circumstances specified in that Article. Article 6(1) will usually be relevant, for example, where a party applies for a hearing which would normally be held in public to be held in private as well as where a hearing would normally be held in private. The judge may need to consider whether the case is within any of the exceptions permitted by Article 6(1).
- 1.5 The hearings set out below shall in the first instance be listed by the court as hearings in private under rule 39.2(3)(c), namely:
  - (1) a claim by a mortgagee against one or more individuals for an order for possession of land,
  - (2) a claim by a landlord against one or more tenants or former tenants for the repossession of a dwelling house based on the non-payment of rent,
  - (3) an application to suspend a warrant of execution or a warrant of possession or to stay execution where the court is being invited to consider the ability of a party to make payments to another party,
  - (4) a redetermination under rule 14.13 or an application to vary or suspend the payment of a judgment debt by instalments,
  - (5) an application for a charging order (including an application to enforce a charging order), garnishee order, attachment of earnings order, administration order, or the appointment of a receiver,
  - (6) an oral examination,

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1 Rule 39.1.  
2 Rule 39.2(1).

- (7) the determination of the liability of an LSC funded client under regulations 9 and 10 of the Community Legal Service (Costs) Regulations 2000, or of an assisted person's liability for costs under regulation 127 of the Civil Legal Aid (General) Regulations 1989,
  - (8) an application for security for costs under section 726(1) of the Companies Act 1985, and
  - (9) proceedings brought under the Consumer Credit Act 1974, the Inheritance (Provision for Family and Dependents) Act 1975 or the Protection from Harassment Act 1997,
  - (10) an application by a trustee or personal representative for directions as to bringing or defending legal proceedings, and
  - (11) an application under the Variation of Trusts Act 1958 where there are no facts in dispute.
- 1.6 Rule 39.2(3)(d) states that a hearing may be in private where it involves the interests of a child or patient. This includes the approval of a compromise or settlement on behalf of a child or patient or an application for the payment of money out of court to such a person.
  - 1.7 Attention is drawn to paragraph 5.1 of the practice direction which supplements Part 27 (relating to the hearing of claims in the small claims track), which provides that the judge may decide to hold a small claim hearing in private if the parties agree or if a ground mentioned in rule 39.2(3) applies. A hearing of a small claim in premises other than the court will not be a hearing in public.
  - 1.8 Nothing in this practice direction prevents a judge ordering that a hearing taking place in public shall continue in private, or vice-versa.
  - 1.9 If the court or judge's room in which the proceedings are taking place has a sign on the door indicating that the proceedings are private, members of the public who are not parties to the proceedings will not be admitted unless the court permits.
  - 1.10 Where there is no such sign on the door of the court or judge's room, members of the public will be admitted where practicable. The judge may, if he thinks it appropriate, adjourn the proceedings to a larger room or court.
  - 1.11 When a hearing takes place in public, members of the public may obtain a transcript of any judgment given or a copy of any order made, subject to payment of the appropriate fee.
  - 1.12 When a judgment is given or an order is made in private, if any member of the public who is not a party to the proceedings seeks a transcript of the judgment or a copy of the order, he must seek the leave of the judge who gave the judgment or made the order.
  - 1.13 A judgment or order given or made in private, when drawn up, must have clearly marked in the title:

‘Before [*title and name of judge*] sitting in Private’

- 1.14 References to hearings being in public or private or in a judge’s room contained in the Civil Procedure Rules (including the Rules of the Supreme Court and the County Court Rules scheduled to Part 50) and the practice directions which supplement them do not restrict any existing rights of audience or confer any new rights of audience in respect of applications or proceedings which under the rules previously in force would have been heard in court or in chambers respectively.
- 1.15 Where the court lists a hearing of a claim by a mortgagee for an order for possession of land under paragraph 1.5(1) above to be in private, any fact which needs to be proved by the evidence of witnesses may be proved by evidence in writing.

(CPR rule 32.2 sets out the general rule as to how evidence is to be given and facts are to be proved.)

## **FAILURE TO ATTEND THE TRIAL**

- 2.1 Rule 39.3 sets out the consequences of a party’s failure to attend the trial.
- 2.2 The court may proceed with a trial in the absence of a party<sup>3</sup>. In the absence of:
- (1) the defendant, the claimant may –
    - (a) prove his claim at trial and obtain judgment on his claim and for costs, and
    - (b) seek the striking out of any counterclaim,
  - (2) the claimant, the defendant may –
    - (a) prove any counterclaim at trial and obtain judgment on his counterclaim and for costs, and
    - (b) seek the striking out of the claim, or
  - (3) both parties, the court may strike out the whole of the proceedings.
- 2.3 Where the court has struck out proceedings, or any part of them, on the failure of a party to attend, that party may apply in accordance with Part 23 for the proceedings, or that part of them, to be restored and for any judgment given against that party to be set aside<sup>4</sup>.
- 2.4 The application referred to in paragraph 2.3 above must be supported by evidence giving reasons for the failure to attend court and stating when the applicant found out about the order against him.

<sup>3</sup> Rule 39.3(1).

<sup>4</sup> Rule 39.3(2) and (3).

## BUNDLES OF DOCUMENTS FOR HEARINGS OR TRIAL

- 3.1 Unless the court orders otherwise, the claimant must file the trial bundle not more than 7 days and not less than 3 days before the start of the trial.
- 3.2 Unless the court orders otherwise, the trial bundle should include a copy of:
  - (1) the claim form and all statements of case,
  - (2) a case summary and/or chronology where appropriate,
  - (3) requests for further information and responses to the requests,
  - (4) all witness statements to be relied on as evidence,
  - (5) any witness summaries,
  - (6) any notices of intention to rely on hearsay evidence under rule 32.2,
  - (7) any notices of intention to rely on evidence (such as a plan, photograph etc.) under rule 33.6 which is not –
    - (a) contained in a witness statement, affidavit or experts report,
    - (b) being given orally at trial,
    - (c) hearsay evidence under rule 33.2,
  - (8) any medical reports and responses to them,
  - (9) any experts' reports and responses to them,
  - (10) any order giving directions as to the conduct of the trial, and
  - (11) any other necessary documents.
- 3.3 The originals of the documents contained in the trial bundle, together with copies of any other court orders should be available at the trial.
- 3.4 The preparation and production of the trial bundle, even where it is delegated to another person, is the responsibility of the legal representative<sup>5</sup> who has conduct of the claim on behalf of the claimant.
- 3.5 The trial bundle should be paginated (continuously) throughout, and indexed with a description of each document and the page number. Where the total number of pages is more than 100, numbered dividers should be placed at intervals between groups of documents.
- 3.6 The bundle should normally be contained in a ring binder or lever arch file. Where more than one bundle is supplied, they should be clearly distinguishable, for example, by different colours or letters. If there are numerous bundles, a core bundle should be prepared containing the core documents essential to the proceedings, with references to the supplementary documents in the other bundles.

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<sup>5</sup> For the definition of legal representative see rule 2.3.

- 3.7 For convenience, experts' reports may be contained in a separate bundle and cross referenced in the main bundle.
- 3.8 If a document to be included in the trial bundle is illegible, a typed copy should be included in the bundle next to it, suitably cross-referenced.
- 3.9 The contents of the trial bundle should be agreed where possible. The parties should also agree where possible:
  - (1) that the documents contained in the bundle are authentic even if not disclosed under Part 31, and
  - (2) that documents in the bundle may be treated as evidence of the facts stated in them even if a notice under the Civil Evidence Act 1995 has not been served.

Where it is not possible to agree the contents of the bundle, a summary of the points on which the parties are unable to agree should be included.
- 3.10 The party filing the trial bundle should supply identical bundles to all the parties to the proceedings and for the use of the witnesses.

## **SETTLEMENT OR DISCONTINUANCE AFTER THE TRIAL DATE IS FIXED**

- 4.1 Where:
  - (1) an offer to settle a claim is accepted,
  - (2) or a settlement is reached, or
  - (3) a claim is discontinued,

which disposes of the whole of a claim for which a date or 'window' has been fixed for the trial, the parties must ensure that the listing officer for the trial court is notified immediately.
- 4.2 If an order is drawn up giving effect to the settlement or discontinuance, a copy of the sealed order should be filed with the listing officer.

## **REPRESENTATION AT HEARINGS**

- 5.1 At any hearing, a written statement containing the following information should be provided for the court:
  - (1) the name and address of each advocate,
  - (2) his qualification or entitlement to act as an advocate, and
  - (3) the party for whom he so acts.
- 5.2 Where a party is a company or other corporation and is to be represented at a hearing by an employee the written statement should contain the following additional information:

- (1) The full name of the company or corporation as stated in its certificate of registration.
  - (2) The registered number of the company or corporation.
  - (3) The position or office in the company or corporation held by the representative.
  - (4) The date on which and manner in which the representative was authorised to act for the company or corporation, e.g. \_\_\_\_\_19\_\_\_\_: written authority from managing director; or \_\_\_\_\_19\_\_\_\_: Board resolution dated \_\_\_\_\_19\_\_\_\_\_.
- 5.3 Rule 39.6 is intended to enable a company or other corporation to represent itself as a litigant in person. Permission under rule 39.6(b) should therefore be given by the court unless there is some particular and sufficient reason why it should be withheld. In considering whether to grant permission the matters to be taken into account include the complexity of the issues and the experience and position in the company or corporation of the proposed representative.
- 5.4 Permission under rule 39.6(b) should be obtained in advance of the hearing from, preferably, the judge who is to hear the case, but may, if it is for any reason impracticable or inconvenient to do so, be obtained from any judge by whom the case could be heard.
- 5.5 The permission may be obtained informally and without notice to the other parties. The judge who gives the permission should record in writing that he has done so and supply a copy to the company or corporation in question and to any other party who asks for one.
- 5.6 Permission should not normally be granted under Rule 39.6:
- (a) in jury trials;
  - (b) in contempt proceedings.

## RECORDING OF PROCEEDINGS

- 6.1 At any hearing, whether in the High Court or a county court, the judgment (and any summing up given by the judge) will be recorded unless the judge directs otherwise. Oral evidence will normally be recorded also.
- 6.2 No party or member of the public may use unofficial recording equipment in any court or judge's room without the permission of the court. To do so without permission constitutes a contempt of court<sup>6</sup>.
- 6.3 Any party or person may require a transcript or transcripts of the recording of any trial or hearing to be supplied to him, upon payment of the charges authorised by any scheme in force for the making of the recording or the transcript.

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6 Section 9 of the Contempt of Court Act 1981.

- 6.4 Where the person requiring the transcript or transcripts is not a party to the proceedings and the trial or hearing or any part of it was held in private under CPR rule 39.2, paragraph 6.3 does not apply unless the court so orders.
- 6.5 Attention is drawn to paragraph 7.9 of the Court of Appeal (Civil Division) Practice Direction which deals with the provision of transcripts for use in the Court of Appeal at public expense.

## **EXHIBITS AT TRIAL**

- 7 Exhibits which are handed in and proved during the course of the trial should be recorded on an exhibit list and kept in the custody of the court until the conclusion of the trial, unless the judge directs otherwise. At the conclusion of the trial it is the parties' responsibility to obtain the return of those exhibits which they handed in and to preserve them for the period in which any appeal may take place.