

PRACTICE DIRECTION –

1. COURT’S POWERS IN RELATION TO LAND.

2. CONVEYANCING COUNSEL OF THE COURT.

THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 40.

PART 1 - COURT’S POWERS IN RELATION TO LAND

APPLICATION TO THE COURT WHERE LAND SUBJECT TO AN INCUMBRANCE

- 1.1 In this paragraph ‘incumbrance’ has the same meaning as it has in section 205(1) of the Law of Property Act 1925.
- 1.2 Where land subject to any incumbrance is sold or exchanged any party to the sale or exchange may apply to the court for a direction under section 50 of the Law of Property Act 1925 (discharge of incumbrances by the court on sales or exchanges).
- 1.3 The directions a court may give on such an application include a direction for the payment into court of a sum of money that the court considers sufficient to meet-
 - (1) the value of the incumbrance; and
 - (2) further costs, expenses and interest that may become due on or in respect of the incumbrance.

(Section 50(1) of the Law of Property Act 1925 contains provisions relating to the calculation of these amounts)
- 1.4 Where a payment into court has been made in accordance with a direction under section 50(1) the court may-
 - (1) declare the land to be freed from the incumbrance; and
 - (2) make any order it considers appropriate for giving effect to an order made under rule 40.16 or relating to the money in court and the income thereof.
- 1.5 An application under section 50 should
 - (1) if made in existing proceedings, be made in accordance with CPR Part 23;
 - (2) otherwise, be made by claim form under CPR Part 8.

DIRECTIONS ABOUT THE SALE ETC.

- 2 Where the court has made an order under rule 40.16 it may give any other directions it considers appropriate for giving effect to the order. In particular the court may give directions–
 - (1) appointing a party or other person to conduct the sale;
 - (2) for obtaining evidence of the value of the land;
 - (3) as to the manner of sale;
 - (4) settling the particulars and conditions of the sale;
 - (5) fixing a minimum or reserve price;
 - (6) as to the fees and expenses to be allowed to an auctioneer or estate agent;
 - (7) for the purchase money to be paid
 - (a) into court;
 - (b) to trustees; or
 - (c) to any other person;
 - (8) for the result of a sale to be certified;
 - (9) under rule 40.18.

APPLICATION FOR PERMISSION TO BID

- 3.1 Where–
 - (1) the court has made an order under rule 40.16 for land to be sold; and
 - (2) a party wishes to bid for the land,
 he should apply to the court for permission to do so.
- 3.2 An application for permission to bid must be made before the sale takes place.
- 3.3 If the court gives permission to all the parties to bid, it may appoint an independent person to conduct the sale.
- 3.4 “Bid” in this paragraph includes submitting a tender or other offer to buy.

CERTIFYING SALE RESULT

- 4.1 If–
 - (1) the court has directed the purchase money to be paid into court; or

(2) the court has directed that the result of the sale be certified

the result of the sale must be certified by the person having conduct of the sale.

4.2 Unless the court directs otherwise, the certificate must give details of

(1) the amount of the purchase price;

(2) the amount of the fees and expenses payable to any auctioneer or estate agent;

(3) the amount of any other expenses of the sale;

(4) the net amount received in respect of the sale;

and must be verified by a statement of truth.

(Part 22 sets out requirements about statements of truth)

4.3 The certificate must be filed

(1) if the proceedings are being dealt with in the Royal Courts of Justice, in Chancery Chambers;

(2) if the proceedings are being dealt with anywhere else, in the court where the proceedings are being dealt with.

FEES AND EXPENSES OF AUCTIONEERS AND ESTATE AGENTS

5.1 (1) Where the court has ordered the sale of land under rule 40.16, auctioneer's and estate agent's charges may, unless the court orders otherwise, include

(a) commission;

(b) fees for valuation of the land;

(c) charges for advertising the land;

(d) other expenses and disbursements but not charges for surveys.

(2) The court's authorisation is required for charges relating to surveys.

5.2 If the total amount of the auctioneer's and estate agent's charges authorised under paragraph 5.1(1)

(1) does not exceed 2.5% of the sale price; and

(2) does not exceed the rate of commission that that agent would normally charge on a sole agency basis

the charges may, unless the court orders otherwise and subject to paragraph 5.3(3) and (4), be met by deduction of the amount of the charges from the proceeds of sale without the need for any further authorisation from the court.

5.3 If–

- (1) a charge made by an auctioneer or estate agent (whether in respect of fees or expenses or both) is not authorised under paragraph 5.1(1);
- (2) the total amount of the charges so authorised exceeds the limits set out in paragraph 5.2;
- (3) the land is sold in lots or by valuation; or
- (4) the sale is of investment property, business property or farm property

an application must be made to the court for approval of the fees and expenses to be allowed.

- 5.4 An application under paragraph 5.3 may be made by any party or, if he is not a party, by the person having conduct of the sale, and may be made either before or after the sale has taken place.

PART 2 - CONVEYANCING COUNSEL OF THE COURT

REFERENCE TO CONVEYANCING COUNSEL

- 6.1 When the court refers a matter under rule 40.18, the court may specify a particular conveyancing counsel.
- 6.2 If the court does not specify a particular conveyancing counsel, references will be distributed among conveyancing counsel in accordance with arrangements made by the Chief Chancery Master.
- 6.3 Notice of every reference under rule 40.18 must be given to the Chief Chancery Master.
- 6.4 The court will send a copy of the order, together with all other necessary documents, to conveyancing counsel.
- 6.5 A court order sent to conveyancing counsel under paragraph 6.4 will be sufficient authority for him to prepare his report or draft the document.
- 6.6 (1) An objection under rule 40.19 to a report on title prepared by conveyancing counsel must be made by application notice.
(2) The application notice must state-
 - (a) the matters the applicant objects to; and
 - (b) the reason for the objection.