

PRACTICE DIRECTION – COURT’S POWER TO APPOINT A RECEIVER

THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 69

COURT’S POWER TO APPOINT RECEIVER

- 1.1 The court’s powers to appoint a receiver are set out in –
 - (1) section 37 of the Supreme Court Act 1981 (powers of the High Court with respect to injunctions and receivers);
 - (2) section 38 of the County Courts Act 1984 (remedies available in county courts); and
 - (3) section 107 of the County Courts Act 1984 (receivers by way of equitable execution).

APPLICATIONS BEFORE PROCEEDINGS ARE STARTED – RULE 69.2(1)(A)

- 2.1 The court will normally only consider an application for the appointment of a receiver before proceedings are started after notice of the application has been served.
- 2.2 Rule 25.2(2) contains provisions about the grant of an order before proceedings are started.

RELATED INJUNCTIONS

- 3.1 If a person applies at the same time for –
 - (1) the appointment of a receiver; and
 - (2) a related injunction,he must use the same claim form or application notice for both applications.
- 3.2 The second practice direction supplementing Part 2 (Allocation of Cases to Levels of Judiciary) sets out who may grant injunctions. Among other things, it provides that a Master or a District Judge may grant an injunction related to an order appointing a receiver by way of equitable execution.

EVIDENCE IN SUPPORT OF AN APPLICATION – RULE 69.3

- 4.1 The written evidence in support of an application for the appointment of a receiver must –
 - (1) explain the reasons why the appointment is required;
 - (2) give details of the property which it is proposed that the receiver should get in or manage, including estimates of –

- (a) the value of the property; and
 - (b) the amount of income it is likely to produce;
- (3) if the application is to appoint a receiver by way of equitable execution, give details of –
 - (a) the judgment which the applicant is seeking to enforce;
 - (b) the extent to which the debtor has failed to comply with the judgment;
 - (c) the result of any steps already taken to enforce the judgment; and
 - (d) why the judgment cannot be enforced by any other method; and
- (4) if the applicant is asking the court to allow the receiver to act –
 - (a) without giving security; or
 - (b) before he has given security or satisfied the court that he has security in place,
 explain the reasons why that is necessary.
- 4.2 In addition, the written evidence should normally identify an individual whom the court is to be asked to appoint as receiver ('the nominee'), and should –
 - (1) state the name, address and position of the nominee;
 - (2) include written evidence by a person who knows the nominee, stating that he believes the nominee is a suitable person to be appointed as receiver, and the basis of that belief; and
 - (3) be accompanied by written consent, signed by the nominee, to act as receiver if appointed.
- 4.3 If the applicant does not nominate a person to be appointed as receiver, or if the court decides not to appoint the nominee, the court may –
 - (1) order that a suitable person be appointed as receiver; and
 - (2) direct any party to nominate a suitable individual to be appointed.
- 4.4 A party directed to nominate a person to be appointed as receiver must file written evidence containing the information required by paragraph 4.2 and accompanied by the written consent of the nominee.

APPOINTMENT OF RECEIVER TO ENFORCE A JUDGMENT

- 5. Where a judgment creditor applies for the appointment of a receiver as a method of enforcing a judgment, in considering whether to make the appointment the court will have regard to –
 - (1) the amount claimed by the judgment creditor;
 - (2) the amount likely to be obtained by the receiver; and
 - (3) the probable costs of his appointment.

COURT'S DIRECTIONS

- 6.1 The court may give directions to the receiver when it appoints him or at any time afterwards.
- 6.2 The court will normally, when it appoints a receiver, give directions in relation to security – see paragraph 7 below.
- 6.3 Other matters about which the court may give directions include –
 - (1) whether, and on what basis, the receiver is to be remunerated for carrying out his functions;
 - (2) the preparation and service of accounts – see rule 69.8(1) and paragraph 10 below;
 - (3) the payment of money into court; and
 - (4) authorising the receiver to carry on an activity or incur an expense.

DIRECTIONS RELATING TO SECURITY – RULE 69.5

- 7.1 An order appointing a receiver will normally specify the date by which the receiver must –
 - (1) give security; or
 - (2) file and serve evidence to satisfy the court that he already has security in force.
- 7.2 Unless the court directs otherwise, security will be given –
 - (1) if the receiver is a licensed insolvency practitioner, by the bond provided by him under the Insolvency Practitioner Regulations 1990 extended to cover appointment as a court appointed receiver; or
 - (2) in any other case, by a guarantee.
- 7.3 Where the court has given directions about giving security, then either –
 - (1) written evidence of the bond, the sufficiency of its cover and that it includes appointment as a court appointed receiver must be filed at court; or
 - (2) a guarantee should be prepared in a form, and entered into with a clearing bank or insurance company, approved by the court.

RECEIVER'S APPLICATION FOR DIRECTIONS – RULE 69.6

- 8.1 An application by a receiver for directions may be made by filing an application notice in accordance with Part 23.
- 8.2 If the directions sought by the receiver are unlikely to be contentious or important to the parties, he may make the application by letter, and the court may reply by letter. In such cases the receiver need not serve his letter or the court's reply on the parties, unless the court orders him to do so.

- 8.3 Where a receiver applies for directions by letter, the court may direct him to file and serve an application notice.

RECEIVER'S REMUNERATION – RULE 69.7

- 9.1 A receiver may only charge for his services if the court gives directions permitting it and specifying how the remuneration is to be determined.
- 9.2 The court will normally determine the amount of the receiver's remuneration on the basis of the criteria in rule 69.7(4). Parts 43 to 48 (costs) do not apply to the determination of the remuneration of a receiver.
- 9.3 Unless the court orders otherwise, the receiver will only be paid or be able to recover his remuneration after the amount of it has been determined.
- 9.4 An application by a receiver for the amount of his remuneration to be determined must be supported by –
- (1) written evidence showing –
 - (a) on what basis the remuneration is claimed; and
 - (b) that it is justified and in accordance with this Part; and
 - (2) a certificate signed by the receiver that he considers that the remuneration he claims is reasonable and proportionate.
- 9.5 The court may, before determining the amount of a receiver's remuneration –
- (1) require the receiver to provide further information in support of his claim; and
 - (2) appoint an assessor under rule 35.15 to assist the court.
- 9.6 Paragraphs 9.1 to 9.5 do not apply to expenses incurred by a receiver in carrying out his functions. These are accounted for as part of his account for the assets he has recovered, and not dealt with as part of the determination of his remuneration.

ACCOUNTS – RULE 69.8

- 10.1 When the court gives directions under rule 69.8(1) for the receiver to prepare and serve accounts, it may –
- (1) direct the receiver to prepare and serve accounts either by a specified date or at specified intervals; and
 - (2) specify the persons on whom he must serve the accounts.
- 10.2 A party should not apply for an order under rule 69.8(2) permitting him to inspect documents in the possession of the receiver, without first asking the receiver to permit such inspection without an order.
- 10.3 Where the court makes an order under rule 69.8(2), it will normally direct that the receiver must –

- (1) permit inspection within 7 days after being served with the order; and
- (2) provide a copy of any documents the subject of the order within 7 days after receiving a request for a copy from the party permitted to inspect them, provided that party has undertaken to pay the reasonable cost of making and providing the copy.