

PRACTICE DIRECTION – ACCOUNTS, INQUIRIES ETC.

THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 40

ACCOUNTS AND INQUIRIES: GENERAL

- 1.1 Where the court orders any account to be taken or any inquiry to be made, it may, by the same or a subsequent order, give directions as to the manner in which the account is to be taken and verified or the inquiry is to be conducted.
- 1.2 In particular, the court may direct that in taking an account, the relevant books of account shall be evidence of their contents but that any party may take such objections to the contents as he may think fit.
- 1.3 Any party may apply to the court in accordance with CPR Part 23 for directions as to the taking of an account or the conduct of an inquiry or for the variation of directions already made.
- 1.4 Every direction for the taking of an account or the making of an inquiry shall be numbered in the order so that, as far as possible, each distinct account and inquiry is given its own separate number.

VERIFYING THE ACCOUNT

2. Subject to any order to the contrary:
 - (1) the accounting party must make out his account and verify it by an affidavit or witness statement to which the account is exhibited,
 - (2) the accounting party must file the account with the court and at the same time notify the other parties that he has done so and of the filing of any affidavit or witness statement verifying or supporting the account.

OBJECTIONS

- 3.1 Any party who wishes to contend:
 - (a) that an accounting party has received more than the amount shown by the account to have been received, or
 - (b) that the accounting party should be treated as having received more than he has actually received, or
 - (c) that any item in the account is erroneous in respect of amount, or
 - (d) that in any other respect the account is inaccurate, must, unless the court directs otherwise, give written notice to the accounting party of his objections.
- 3.2 The written notice referred to in paragraph 3.1 must, so far as the objecting party is able to do so:

- (a) state the amount by which it is contended that the account understates the amount received by the accounting party,
- (b) state the amount which it is contended that the accounting party should be treated as having received in addition to the amount he actually received,
- (c) specify the respects in which it is contended that the account is inaccurate, and
- (d) in each case, give the grounds on which the contention is made.

3.3 The contents of the written notice must, unless the notice contains a statement of truth, be verified by either an affidavit or a witness statement to which the notice is an exhibit.

(Part 22 and the Practice Direction that supplements it contain provisions about statements of truth).

ALLOWANCES

- 4. In taking any account all just allowances shall be made without any express direction to that effect.

Management of Proceedings

- 5. The court may at any stage in the taking of an account or in the course of an inquiry direct a hearing in order to resolve an issue that has arisen and for that purpose may order that points of claim and points of defence be served and give any necessary directions.

DELAY

- 6.1 If it appears to the court that there is undue delay in the taking of any account or the progress of any inquiry the court may require the accounting party or the party with the conduct of the inquiry, as the case may be, to explain the delay and may then make such order for the management of the proceedings (including a stay) and for costs as the circumstances may require.
- 6.2 The directions the court may give under paragraph 6.1 include a direction that the Official Solicitor take over the conduct of the proceedings and directions providing for the payment of the Official Solicitor's costs.

DISTRIBUTION

- 7. Where some of the persons entitled to share in a fund are known but there is, or is likely to be, difficulty or delay in ascertaining other persons so entitled, the court may direct, or allow, immediate payment of their shares to the known persons without reserving any part of those shares to meet the subsequent costs of ascertaining the other persons.

GUARDIAN'S ACCOUNTS

8. The accounts of a person appointed guardian of the property of a child (defined in CPR 21.1(2)) must be verified and approved in such manner as the court may direct.

ACCOUNTS AND INQUIRIES TO BE CONDUCTED BEFORE MASTER OR DISTRICT JUDGE

- 9 Unless the court orders otherwise, an account or inquiry will be taken or made –
 - (1) by a Master or district judge, if the proceedings are in the High Court; and
 - (2) by a district judge, if the proceedings are in a county court.

ADVERTISEMENTS

- 10 The court may –
 - (1) direct any necessary advertisement; and
 - (2) fix the time within which the advertisement should require a reply.

EXAMINATION OF CLAIMS

- 11.1 Where the court orders an account of debts or other liabilities to be taken, it may direct any party, within a specified time, to –
 - (1) examine the claims of persons claiming to be owed money out of the estate or fund in question.
 - (2) determine, so far as he is able, which of them are valid; and
 - (3) file written evidence –
 - (a) stating his findings and his reasons for them; and
 - (b) listing any other debts which are or may be owed out of the estate or fund.
- 11.2 Where the court orders an inquiry for next of kin or other unascertained claimants to an estate or fund, it may direct any party, within a specified time, to –
 - (1) examine the claims that are made;
 - (2) determine, so far as he is able, which of them are valid; and
 - (3) file written evidence stating his findings and his reasons for them.
- 11.3 If the personal representatives or trustees concerned are not the parties directed by the court to examine claims, the court may direct them to join with the party directed to examine claims in producing the written evidence required by this rule.

CONSIDERATION OF CLAIMS BY THE COURT

- 12 For the purpose of considering a claim the court may –
- (1) direct it to be investigated in any manner;
 - (2) direct the person making the claim to give further details of it; and
 - (3) direct that person to –
 - (a) file written evidence; or
 - (b) attend court to give evidence,
to support his claim.

NOTICE OF DECISION

- 13 If –
- (1) the court has allowed or disallowed any claim or part of a claim; and
 - (2) the person making the claim was not present when the decision was made,
the court will serve on that person a notice informing him of its decision.

INTEREST ON DEBTS

- 14 (1) Where an account of the debts of a deceased person is directed by any judgment, unless the deceased's estate is insolvent or the court orders otherwise, interest shall be allowed –
- (a) on any debt which carries interest, at the rate it carries, and
 - (b) on any other debt, from the date of the judgment, at the rate payable on judgment debts at that date.
- (2) Where interest on a debt is allowed under paragraph (1)(b), it shall be paid out of any assets of the estate which remain after payment of –
- (a) any costs of the proceedings directed to be paid out of the estate;
 - (b) all the debts which have been established; and
 - (c) the interest on such of those debts as by law carry interest.
- (3) For the purpose of this rule –
- (a) 'debt' includes funeral, testamentary or administration expenses; and
 - (b) in relation to any expenses incurred after the judgment, paragraph (1)(b) applies as if, instead of the date of the judgment, it referred to the date when the expenses became payable.

INTEREST ON LEGACIES

- 15 Where an account of legacies is directed by any judgment, then, subject to –
- (a) any directions contained in the will or codicil in question; and
 - (b) any order made by the court,
- interest shall be allowed on each legacy at the basic rate payable for the time being on funds in court or at such other rate as the court shall direct, beginning one year after the testators death.