

## PRACTICE DIRECTION

# MISCELLANEOUS PROVISIONS ABOUT PAYMENTS INTO COURT

## This Practice Direction supplements CPR Part 37

For information about payments into and out of court in relation to offers to settle see Part 36 and the practice direction which supplements it.

## PAYMENT INTO COURT UNDER AN ORDER

- 1.1** Except where paragraph 1.2 applies a party paying money into any court under an order must –
- (1)** send to the Court Funds Office –
    - (a) the payment, usually a cheque made payable to the Accountant General of the Supreme Court;
    - (b) a sealed copy of the order; and
    - (c) a completed Court Funds Office form 100;
  - (2)** serve notice of payment on the other parties; and
  - (3)** file at the court –
    - (a) a copy of the notice of payment; and
    - (b) a certificate of service confirming service of the notice on each party served.
- 1.2** A litigant in person without a current account may, in a claim proceeding in a county court or District Registry, make a payment into court by –
- (1)** lodging the payment in cash with the court; and
  - (2)** filing at the court –
    - (a) a notice of payment; and
    - (b) Court Funds Office form 100.

## DEFENCE OF TENDER

- 2.1** Except where paragraph 2.1A applies, a defendant who wishes to pay a sum of money into court in support of a defence of tender should –
- (1)** send to the Court Funds Office –
    - (a) the payment, usually a cheque made payable to the Accountant General of the Supreme Court;
    - (b) a sealed copy of the claim form; and
    - (c) a completed Court Funds Office form 100;
  - (2)** file at the court with his defence –
    - (a) a notice of payment into court; and
    - (b) a certificate of service confirming service of the notice on the claimant and his defence; and
  - (3)** serve a copy of the notice of payment into court on the claimant.
- 2.1A** A litigant in person without a current account may, in a claim proceeding in a county court or District Registry, pay a sum of money into court in support of a defence of tender by –
- (1)** lodging the payment in cash with the court; and
  - (2)** filing with the court –
    - (a) a notice of payment with his defence; and
    - (b) Court Funds Office form 100.

- 2.2** A defence of tender will not be available to a defendant until he has complied with paragraph 2.1.

## GENERAL

- 3.1** Where money is paid into court:

- (1)** under an order permitting a defendant to defend or to continue to defend under rule 37.2(1), or
- (2)** in support of a defence of tender under rule 37.3, the party making the payment may, if a defendant, choose to treat the whole or any part of the money as a Part 36 payment<sup>1</sup>.

- 3.2** In order to do so the defendant must file a Part 36 payment notice in accordance with rule 36.6 (see also paragraph 6 of the practice direction which supplements Part 36).

- 3.3** Rule 37.4 deals with the apportionment of money paid into court in respect of claims arising under:

- (1)** the Fatal Accidents Act 1976, and
- (2)** the Law Reform (Miscellaneous Provisions) Act 1934.

(See also paragraph 7.8 of the practice direction supplementing Part 36.)

## PAYMENT OUT OF COURT

- 4.1** Except where money which has been paid into court is treated as a Part 36 payment and can be accepted by the claimant without needing the court's permission, the court's permission is required to take the money out of court.
- 4.2** Permission may be obtained by making an application in accordance with Part 23. The application notice must state the grounds on which the order for payment out is sought. Evidence of any facts on which the applicant relies may also be necessary.
- 4.3** To obtain the money out of court the applicant must comply with the provisions of paragraph 8 of the practice direction supplementing Part 36 where they apply.

## FOREIGN CURRENCY

- 5** For information on payments into court made in a foreign currency, see paragraph 9 of the practice direction supplementing Part 36.

## APPLICATIONS RELATING TO FUNDS IN COURT

- 6.1** Subject to paragraph 6.2, any application relating to money or securities which have been paid into court, other than an application for the payment out of the money or securities (for example, an application for money to be invested, or for payment of interest to any person) –
- (1)** must be made in accordance with Part 23; and
  - (2)** may be made without notice, but the court may direct notice to be served on any person.
- 6.2** Where money paid into court is accepted by or on behalf of a child or patient, rule 21.11(1)(b) provides that the money shall be dealt with in accordance with directions given by the court

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<sup>1</sup> Rules 37.2(2) and 37.3(3).

under that rule and not otherwise. In relation to such cases, reference should be made to paragraphs 8 to 12 of the practice direction supplementing Part 21.

## PAYMENT INTO COURT BY LIFE ASSURANCE COMPANY

- 7.1** A company wishing to make a payment into court under the Life Assurance Companies (Payment into Court) Act 1896 ('the 1896 Act') must file a witness statement or an affidavit setting out –
- (1) a short description of the policy under which money is payable;
  - (2) a statement of the persons entitled under the policy, including their names and addresses so far as known to the company;
  - (3) a short statement of –
    - (a) the notices received by the company making any claim to the money assured, or withdrawing any such claim;
    - (b) the dates of receipt of such notices; and
    - (c) the names and addresses of the persons by whom they were given;
  - (4) a statement that, in the opinion of the board of directors of the company, no sufficient discharge can be obtained for the money which is payable, other than by paying it into court under the 1896 Act;
  - (5) a statement that the company agrees to comply with any order or direction the court may make –
    - (a) to pay any further sum into court; or
    - (b) to pay any costs;
  - (6) an undertaking by the company immediately to send to the Accountant General at the Court Funds Office any notice of claim received by the company after the witness statement or affidavit has been filed, together with a letter referring to the Court Funds Office reference number; and
  - (7) the company's address for service.
- 7.2** The witness statement or affidavit must be filed at –
- (1) Chancery Chambers at the Royal Courts of Justice, or
  - (2) a Chancery district registry of the High Court.
- 7.3** The company must not deduct from the money payable by it under the policy any costs of the payment into court, except for any court fee.
- 7.4** If the company is a party to any proceedings issued in relation to the policy or the money assured by it, it may not make a payment into court under the 1896 Act without the permission of the court in those proceedings.
- 7.5** If a company pays money into court under the 1896 Act, unless the court orders otherwise it must immediately serve notice of the payment on every person who is entitled under the policy or has made a claim to the money assured.

## APPLICATION FOR PAYMENT OUT OF MONEY PAID INTO COURT BY LIFE ASSURANCE COMPANY

- 8.1** Any application for the payment out of money which has been paid into court under the 1896 Act must be made in accordance with paragraph 4.2 of this practice direction.

**8.2** The application must be served on –

- (1) every person stated in the written evidence of the company which made the payment to be entitled to or to have an interest in the money;
- (2) any other person who has given notice of a claim to the money; and
- (3) the company which made the payment, if an application is being made for costs against it, but not otherwise.

## PAYMENT INTO COURT UNDER TRUSTEE ACT 1925

**9.1** A trustee wishing to make a payment into court under section 63 of the Trustee Act 1925 must file a witness statement or an affidavit setting out –

- (1) a short description of –
  - (a) the trust; and
  - (b) the instrument creating the trust, or the circumstances in which the trust arose;
- (2) the names of the persons interested in or entitled to the money or securities to be paid into court, with their address so far as known to him;
- (3) a statement that he agrees to answer any inquiries which the court may make or direct relating to the application of the money or securities; and
- (4) his address for service.

**9.2** The witness statement or affidavit must be filed at –

- (1) Chancery Chambers at the Royal Courts of Justice;
- (2) a Chancery district registry of the High Court; or
- (3) a county court.

**9.3** If a trustee pays money or securities into court, unless the court orders otherwise he must immediately serve notice of the payment into court on every person interested in or entitled to the money or securities.

## APPLICATION FOR PAYMENT OUT OF FUNDS PAID INTO COURT BY TRUSTEE

**10.1** An application for the payment out of any money or securities paid into court under section 63 of the Trustee Act 1925 must be made in accordance with paragraph 4.2 of this practice direction.

**10.2** The application may be made without notice, but the court may direct notice to be served on any person.

## PAYMENT INTO COURT UNDER VEHICULAR ACCESS ACROSS COMMON AND OTHER LAND (ENGLAND) REGULATIONS 2002

**11.1** In this section of this Practice Direction –

- (1) expressions used have the meanings given by the Vehicular Access Across Common and Other Land (England) Regulations 2002; and
- (2) a regulation referred to by number alone means the regulation so numbered in those Regulations.

- 11.2** Where the applicant wishes to pay money into a county court under regulation 14 he must file a witness statement or an affidavit when he lodges the money.
- 11.3** The witness statement or affidavit must –
- (1) state briefly why the applicant is making the payment into court; and
  - (2) be accompanied by copies of –
    - (a) the notice served under regulation 6;
    - (b) any counter-notice served under regulation 8;
    - (c) any amended notice or counter-notice served under regulation 9;
    - (d) any determination of the Lands Tribunal of a matter referred to it under regulation 10; and
    - (e) any determination of the value of the premises by a chartered surveyor following the service of a valuation notice under regulation 12.
- 11.4** If an applicant pays money into court under regulation 14, he must immediately serve notice of the payment and a copy of the witness statement or affidavit on the land owner.
- 11.5** An application for payment out of the money must be made in accordance with paragraph 4 of this practice direction.

