

# ESTATES, TRUSTS AND CHARITIES

**This Practice Direction supplements Part 64**

## I CLAIMS RELATING TO THE ADMINISTRATION OF ESTATES AND TRUSTS

### Examples of claims under rule 64.2(a)

- 1** The following are examples of the types of claims which may be made under rule 64.2(a) –
  - (1)** a claim for the determination of any of the following questions –
    - (a) any question as to who is included in any class of persons having –
      - (i) a claim against the estate of a deceased person;
      - (ii) a beneficial interest in the estate of such a person; or
      - (iii) a beneficial interest in any property subject to a trust;
    - (b) any question as to the rights or interests of any person claiming –
      - (i) to be a creditor of the estate of a deceased person;
      - (ii) to be entitled under a will or on the intestacy of a deceased person; or
      - (iii) to be beneficially entitled under a trust;
  - (2)** a claim for any of the following remedies –
    - (a) an order requiring a trustee –
      - (i) to provide and, if necessary, verify accounts;
      - (ii) to pay into court money which he holds in that capacity; or
      - (iii) to do or not to do any particular act;
    - (b) an order approving any sale, purchase, compromise or other transaction by a trustee; or
    - (c) an order directing any act to be done which the court could order to be done if the estate or trust in question were being administered or executed under the direction of the court.

### Applications by trustees for directions

- 2** A separate practice direction contains guidance about applications by trustees for directions.

### Administration orders – rule 64.2(b)

- 3.1** The court will only make an administration order if it considers that the issues between the parties cannot properly be resolved in any other way.
- 3.2** If, in a claim for an administration order, the claimant alleges that the trustees have not provided proper accounts, the court may –
  - (1)** stay the proceedings for a specified period, and order them to file and serve proper accounts within that period; or
  - (2)** if necessary to prevent proceedings by other creditors or persons claiming to be entitled to the estate or fund, make an administration order and include in it an order that no such proceedings are to be taken without the court's permission.

- 3.3** Where an administration order has been made in relation to the estate of a deceased person, and a claim is made against the estate by any person who is not a party to the proceedings –
- (1)** no party other than the executors or administrators of the estate may take part in any proceedings relating to the claim without the permission of the court; and
  - (2)** the court may direct or permit any other party to take part in the proceedings, on such terms as to costs or otherwise as it thinks fit.
- 3.4** Where an order is made for the sale of any property vested in trustees, those persons shall have the conduct of the sale unless the court directs otherwise.

#### **Applications under the Variation of Trusts Act 1958 – rule 64.2(c)**

- 4.1** Where children or unborn beneficiaries will be affected by a proposed arrangement under the Act, the evidence filed in support of the application must –
- (1)** show that their litigation friends or the trustees support the arrangements as being in the interests of the children or unborn beneficiaries; and
  - (2)** unless paragraph 4.3 applies or the court orders otherwise, be accompanied by a written opinion to this effect by the advocate who will appear on the hearing of the application.
- 4.2** A written opinion filed under paragraph 4.1(2) must –
- (1)** if it is given on formal instructions, be accompanied by a copy of those instructions; or
  - (2)** otherwise, state fully the basis on which it is given.
- 4.3** No written opinion needs to be filed in support of an application to approve an arrangement under section 1(1)(d) of the Act (discretionary interests under protective trusts).
- 4.4** Where the interests of two or more children, or two or more of the children and unborn beneficiaries, are similar, only a single written opinion needs to be filed.

#### **Applications under section 48 of the Administration of Justice Act 1985 – rule 64.2(d)**

- 5** A Part 8 claim form for an application by trustees under section 48 of the Administration of Justice Act 1985 (power of High Court to authorise action to be taken in reliance on legal opinion) may be issued without naming a defendant, under rule 8.2A. No separate application for permission under rule 8.2A need be made.

#### **Prospective costs orders**

- 6.1** These paragraphs are about the costs of applications under rule 64.2(a).
- 6.2** Where trustees have power to agree to pay the costs of a party to such an application, and exercise such a power, rule 48.3 applies. In such a case, an order is not required and the trustees are entitled to recover out of the trust fund any costs which they pay pursuant to the agreement made in the exercise of such power.
- 6.3** Where the trustees do not have, or decide not to exercise, a power to make such an agreement, the trustees or the party concerned may apply to the court at any stage of proceedings for an order that the costs of any party (including the costs of the trustees) shall be paid out of the fund (a ‘prospective costs order’).
- 6.4** The court, on an application for a prospective costs order, may –

- (a) in the case of the trustees' costs, authorise the trustees to raise and meet such costs out of the fund;
  - (b) in the case of the costs of any other party, authorise or direct the trustees to pay such costs (or any part of them, or the costs incurred up to a particular time) out of the trust fund to be assessed, if not agreed by the trustees, on the indemnity basis or, if the court directs, on the standard basis, and to make payments from time to time on account of such costs. A model form of order is annexed to this Practice Direction.
- 6.5** The court will always consider whether it is possible to deal with the application for a prospective costs order on paper without a hearing and in an ordinary case would expect to be able to do so. The trustees must consider whether a hearing is needed for any reason. If they consider that it is they should say so and explain why in their evidence. If any party to the application referred to in paragraph 6.1 above (or any other person interested in the trust fund) considers that a hearing is necessary (for instance because he wishes to oppose the making of a prospective costs order) this should be stated, and the reasons explained, in his evidence, if any, or otherwise in a letter to the court.
- 6.6** If the court would be minded to refuse the application on a consideration of the papers alone, the parties will be notified and given the opportunity, within a stated time, to ask for a hearing.
- 6.7** The evidence in support of an application for a prospective costs order should be given by witness statement. The trustees and the applicant (if different) must ensure full disclosure of the relevant matters to show that the case is one which falls within the category of case where a prospective costs order can properly be made.
- 6.8** The model form of order is designed for use in the more straightforward cases, where a question needs to be determined which has arisen in the administration of the trust, whether the claimants are the trustees or a beneficiary. The form may be adapted for use in less straightforward cases, in particular where the proceedings are hostile, but special factors may also have to be reflected in the terms of the order in such a case.

## II CHARITY PROCEEDINGS

### **Role of Attorney-General**

- 7** The Attorney-General is a necessary party to all charity proceedings, other than any commenced by the Charity Commissioners, and must be joined as a defendant if he is not a claimant.

### **Service on Charity Commissioners or Attorney-General**

- 8** Any document required or authorised to be served on the Commissioners or the Attorney-General must be served on the Treasury Solicitor in accordance with RSC Order 77, rule 4(2).

### **Applications for permission to take charity proceedings – rule 64.6**

- 9.1** The claim form for an application under section 33(5) of the Act must state –
- (1) the name, address and description of the applicant;
  - (2) details of the proceedings which he wishes to take;
  - (3) the date of the Commissioners' refusal to grant an order authorising the taking of proceedings;

- (4) the grounds on which the applicant alleges that it is a proper case for taking proceedings; and
  - (5) if the application is made with the consent of any other party to the proposed proceedings, that fact.
- 9.2** If the Commissioners have given reasons for refusing to grant an order, a copy of their reasons must be filed with the claim form.

### **Appeals against orders of the Charity Commissioners**

- 10.** Part 52 applies to any appeal against an order of the Charity Commissioners. Section III of the practice direction supplementing Part 52 contains special provisions about such appeals.

# Appendix

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## Model form of prospective costs order

UPON THE APPLICATION etc.

AND UPON HEARING etc.

AND UPON READING etc.

AND UPON the Solicitors for the ..... Defendant undertaking to make the repayments mentioned in paragraph 2 below in the circumstances there mentioned

IT IS [BY CONSENT] ORDERED THAT:

1. The Claimants as trustees of ..... (“the [Settlement/Scheme]”) do-
  - (a) pay from the assets of the [Settlement/Scheme] the costs of and incidental to these proceedings incurred by the ..... Defendant such costs to be subject to a detailed assessment on the indemnity basis if not agreed and (for the avoidance of doubt) to-
    - (i) include costs incurred by the ..... Defendant from and after [date] in anticipation of being appointed to represent any class of persons presently or formerly beneficially interested under the trusts of the [Settlement/Scheme] irrespective of whether [he/she] is in fact so appointed; and
    - (ii) exclude (in the absence of any further order) costs incurred in prosecuting any Part 20 claim or any appeal;
  - (b) indemnify the ..... Defendant in respect of any costs which he may be ordered to pay to any other party to these proceedings in connection therewith.
2. Until the outcome of the detailed assessment (or the agreement regarding costs) contemplated in paragraph 1 above, the Claimants as trustees do pay from the assets of the [Settlement/Scheme] to the Solicitors for the ..... Defendant monthly (or at such other intervals as may be agreed) such sums on account of the costs referred to in paragraph 1(a) of this Order as the Solicitors for the ..... Defendant shall certify-
  - (i) to have been reasonably and properly incurred and not to exceed such amount as is likely in their opinion to be allowed on a detailed assessment on the indemnity basis; and
  - (ii) to have accrued on account of the present proceedings in the period prior to the date of such certificate and not to have been previously provided for under this Order.PROVIDED ALWAYS that the Solicitors for the ..... Defendant shall repay such sums (if any) as, having been paid to them on account, are disallowed on a detailed assessment or are otherwise agreed to be repaid and any such sums shall be repaid together with interest at 1% above the base rate for the time being of [Barclays] Bank plc from and including the date of payment to those Solicitors up to and including the date of repayment, such interest to accrue daily.
3. Any party may apply to vary or discharge paragraphs 1 and 2 of this Order but only in respect of costs to be incurred after the date of such application.

*Note: this form of order assumes that the trustees are the claimants. If the claimant is a beneficiary and the trustees are defendants, references to the parties need to be adapted accordingly.*

