

GROUP LITIGATION

This Practice Direction supplements Section III of Part 19

INTRODUCTION

- 1** This practice direction deals with group litigation where the multiple parties are claimants. Section III of Part 19 (group litigation orders) also applies where the multiple parties are defendants. The court will give such directions in such a case as are appropriate.

PRELIMINARY STEPS

- 2.1** Before applying for a Group Litigation Order ('GLO') the solicitor acting for the proposed applicant should consult the Law Society's Multi Party Action Information Service in order to obtain information about other cases giving rise to the proposed GLO issues.
- 2.2** It will often be convenient for the claimants' solicitors to form a Solicitors' Group and to choose one of their number to take the lead in applying for the GLO and in litigating the GLO issues. The lead solicitor's role and relationship with the other members of the Solicitors' Group should be carefully defined in writing and will be subject to any directions given by the court under CPR 19.13(c).
- 2.3** In considering whether to apply for a GLO, the applicant should consider whether any other order would be more appropriate. In particular he should consider whether, in the circumstances of the case, it would be more appropriate for –
- (1) the claims to be consolidated; or
 - (2) the rules in Section II of Part 19 (representative parties) to be used.

APPLICATION FOR A GLO

- 3.1** An application for a GLO must be made in accordance with CPR Part 23, may be made at any time before or after any relevant claims have been issued and may be made either by a claimant or by a defendant.
- 3.2** The following information should be included in the application notice or in written evidence filed in support of the application:
- (1) a summary of the nature of the litigation;
 - (2) the number and nature of claims already issued;
 - (3) the number of parties likely to be involved;
 - (4) the common issues of fact or law (the 'GLO issues') that are likely to arise in the litigation; and
 - (5) whether there are any matters that distinguish smaller groups of claims within the wider group.
- 3.3** A GLO may not be made –

- (1) in the Queen's Bench Division, without the consent of the Lord Chief Justice,
- (2) in the Chancery Division, without the consent of the Vice-Chancellor, or
- (3) in a county court, without the consent of the Head of Civil Justice.

3.4 The court to which the application for a GLO is made will, if minded to make the GLO, send to the Lord Chief Justice, the Vice-Chancellor, or the Head of Civil Justice, as appropriate –

- (1) a copy of the application notice,
- (2) a copy of any relevant written evidence, and
- (3) a written statement as to why a GLO is considered to be desirable.

These steps may be taken either before or after a hearing of the application.

High Court in London

3.5 The application for the GLO should be made to the Senior Master in the Queen's Bench Division or the Chief Chancery Master in the Chancery Division. For claims that are proceeding or are likely to proceed in a specialist list, the application should be made to the senior judge of that list.

High Court outside London

3.6 Outside London, the application should be made to a Presiding Judge or a Chancery Supervising Judge of the Circuit in which the District Registry which has issued the application notice is situated.

County courts

- 3.7** The application should be made to the Designated Civil Judge for the area in which the county court which has issued the application notice is situated.
- 3.8** The applicant for a GLO should request the relevant court to refer the application notice to the judge by whom the application will be heard as soon as possible after the application notice has been issued. This is to enable the judge to consider whether to follow the practice set out in paragraph 3.4 above prior to the hearing of the application.
- 3.9** The directions under paragraphs 3.5, 3.6 and 3.7 above do not prevent the judges referred to from making arrangements for other judges to hear applications for GLOs when they themselves are unavailable.

GLO MADE BY COURT OF ITS OWN INITIATIVE

- 4** Subject to obtaining the appropriate consent referred to in paragraph 3.3 and the procedure set out in paragraph 3.4, the court may make a GLO of its own initiative.

(CPR 3.3 deals with the procedure that applies when a court proposes to make an order of its own initiative)

THE GLO

- 5** CPR 19.11(2) and (3) set out rules relating to the contents of GLOs.

THE GROUP REGISTER

6.1 Once a GLO has been made a Group Register will be established on which will be entered such details as the court may direct of the cases which are to be subject to the GLO.

6.1A A claim must be issued before it can be entered on a Group Register.

6.2 An application for details of a case to be entered on a Group Register may be made by any party to the case.

6.3 An order for details of the case to be entered on the Group Register will not be made unless the case gives rise to at least one of the GLO issues.

(CPR 19.10 defines GLO issues)

6.4 The court, if it is not satisfied that a case can be conveniently case managed with the other cases on the Group Register, or if it is satisfied that the entry of the case on the Group Register would adversely affect the case management of the other cases, may refuse to allow details of the case to be entered on the Group Register, or order their removal from the Register if already entered, although the case gives rise to one or more of the Group issues.

6.5 The Group Register will normally be maintained by and kept at the court but the court may direct this to be done by the solicitor for one of the parties to a case entered on the Register.

6.6

(1) Rules 5.4 (Register of Claims), 5.4B (Supply of documents from court records – a party) and 5.4C (supply of documents from court records – a non-party) apply where the register is maintained by the court. A party to a claim on the group register may request documents relating to any other claim on the group register in accordance with rule 5.4 as if he were a party to those proceedings.

(2) Where the register is maintained by a solicitor, any person may inspect the Group Register during normal business hours and upon giving reasonable notice to the solicitor; the solicitor may charge a fee not exceeding the fee prescribed for a search at the court office.

6.7 In this paragraph, ‘the court’ means the management court specified in the GLO.

ALLOCATION TO TRACK

7 Once a GLO has been made and unless the management court directs otherwise:

(1) every claim in a case entered on the Group Register will be automatically allocated, or re-allocated (as the case may be), to the multi-track;

(2) any case management directions that have already been given in any such case otherwise than by the management court will be set aside; and

(3) any hearing date already fixed otherwise than for the purposes of the group litigation will be vacated.

MANAGING JUDGE

8 A judge (‘the managing judge’) will be appointed for the purpose of the GLO as soon as possible. He will assume overall responsibility for the management of the claims and will generally hear the GLO issues. A Master or a District Judge may be appointed to deal with procedural matters, which he will do in accordance with any directions given by the managing

judge. A costs judge may be appointed and may be invited to attend case management hearings.

CLAIMS TO BE STARTED IN MANAGEMENT COURT

- 9.1** The management court may order that as from a specified date all claims that raise one or more of the GLO issues shall be started in the management court.
- 9.2** Failure to comply with an order made under paragraph 9.1 will not invalidate the commencement of the claim but the claim should be transferred to the management court and details entered on the Group Register as soon as possible. Any party to the claim may apply to the management court for an order under CPR 19.14 removing the case from the Register or, as the case may be, for an order that details of the case be not entered on the Register.

TRANSFER

- 10** Where the management court is a county court and a claim raising one or more of the GLO issues is proceeding in the High Court, an order transferring the case to the management court and directing the details of the case to be entered on the Group Register can only be made in the High Court.

PUBLICISING THE GLO

- 11** After a GLO has been made, a copy of the GLO should be supplied –
 - (1)** to the Law Society, 113 Chancery Lane, London WC2A 1PL; and
 - (2)** to the Senior Master, Queen's Bench Division, Royal Courts of Justice, Strand, London WC2A 2LL.

CASE MANAGEMENT

- 12.1** The management court may give case management directions at the time the GLO is made or subsequently. Directions given at a case management hearing will generally be binding on all claims that are subsequently entered on the Group Register (see CPR 19.12(1)).
- 12.2** Any application to vary the terms of the GLO must be made to the management court.
- 12.3** The management court may direct that one or more of the claims are to proceed as test claims.
- 12.4** The management court may give directions about how the costs of resolving common issues or the costs of claims proceeding as test claims are to be borne or shared as between the claimants on the Group Register.

CUT-OFF DATES

- 13** The management court may specify a date after which no claim may be added to the Group Register unless the court gives permission. An early cut-off date may be appropriate in the case of 'instant disasters' (such as transport accidents). In the case of consumer claims, and particularly pharmaceutical claims, it may be necessary to delay the ordering of a cut-off date.

STATEMENTS OF CASE

- 14.1** The management court may direct that the GLO claimants serve 'Group Particulars of Claim' which set out the various claims of all the claimants on the Group Register at the time the particulars are filed. Such particulars of claim will usually contain –
- (1) general allegations relating to all claims; and
 - (2) a schedule containing entries relating to each individual claim specifying which of the general allegations are relied on and any specific facts relevant to the claimant.
- 14.2** The directions given under paragraph 14.1 should include directions as to whether the Group Particulars should be verified by a statement or statements of truth and, if so, by whom.
- 14.3** The specific facts relating to each claimant on the Group Register may be obtained by the use of a questionnaire. Where this is proposed, the management court should be asked to approve the questionnaire. The management court may direct that the questionnaires completed by individual claimants take the place of the schedule referred to in paragraph 14.1(2).
- 14.4** The management court may also give directions about the form that particulars of claim relating to claims which are to be entered on the Group Register should take.

THE TRIAL

- 15.1** The management court may give directions –
- (1) for the trial of common issues; and
 - (2) for the trial of individual issues.
- 15.2** Common issues and test claims will normally be tried at the management court. Individual issues may be directed to be tried at other courts whose locality is convenient for the parties.

COSTS

- 16.1** CPR 48 contains rules about costs where a GLO has been made.
- 16.2** Where the court has made an order about costs in relation to any application or hearing which involved both –
- (1) one or more of the GLO issues; and
 - (2) an issue or issues relevant only to individual claims;
- and the court has not directed the proportion of the costs that is to relate to common costs and the proportion that is to relate to individual costs in accordance with rule 48.6A(5), the costs judge will make a decision as to the relevant proportions at or before the commencement of the detailed assessment of costs.

