

## 55th UPDATE – PRACTICE DIRECTION AMENDMENTS

The amendments to the Practice Directions supplementing the Civil Procedure Rules 1998 are made by the Master of the Rolls under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and are approved by [ ], Parliamentary Under Secretary of State, by the authority of the Lord Chancellor.

The amendments to the Pre Action Protocols are approved by the Master of the Rolls as Head of Civil Justice.

The amendments to the Practice Directions and the Pre-Action Protocols come into force as follows—	
PD5A – Court Documents	6th April 2011
PD6B – Service out of the Jurisdiction	6th April 2011
PD7C – Production Centre	6th April 2011
PD7E – Money Claim Online	6th April 2011
PD16 – Statements of Case	6th April 2011
PD42 – Change of Solicitor	6th April 2011
PD43-48 - Costs Practice Direction	6th April 2011
PD51D – Defamation Proceedings Costs Management Scheme	1st March 2011
PD53 – Defamation Claims	6th April 2011
PD55B – Possession Claims Online	6th April 2011
PD65 – Anti-Social Behaviour and Harassment	— the insertion of paragraph 1A.1 comes into force on the date that section 39 of the Crime and Security Act 2010 comes into force; and — the amendment to paragraph 13.2 and the omission of paragraph 13.3

	come into force on 6th April 2011.
PD78 – European Orders for Payment and European Small Claims Procedures	6th April 2011
Pre-Action Protocol for Resolution of Clinical Disputes	6th April 2011
Pre-Action Protocol for Disease and Illness Claims	6th April 2011
Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property	6th April 2011

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The Right Honourable The Lord Neuberger of Abbotsbury  
Master of the Rolls and Head of Civil Justice

Signed by authority of the Lord Chancellor:

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Parliamentary Under Secretary of State  
Ministry of Justice

#### **PRACTICE DIRECTION 5A – COURT DOCUMENTS**

In paragraph 4.3, after “5.4B(2)”, insert “5.4C(1B)”.

#### **PRACTICE DIRECTION 6B – SERVICE OUT OF THE JURISDICTION**

For paragraph 4.1 substitute—

**“4.1** A party must provide the following documents for each party to be served out of the jurisdiction—

- (1) a copy of the particulars of claim if not already contained in or served with the claim form and any other relevant documents;
- (2) a duplicate of the claim form, a duplicate of the particulars of claim (if not already contained in or served with the claim form), copies of any documents accompanying the claim form and copies of any other relevant documents;
- (3) forms for responding to the claim; and
- (4) any translation required under rule 6.45 in duplicate.”

#### **PRACTICE DIRECTION 7C – PRODUCTION CENTRE**

For paragraph 2.3(7) substitute—

“(7) a claim where a party’s address for service is not in England and Wales.”

#### **PRACTICE DIRECTION 7E – MONEY CLAIM ONLINE**

In paragraph 4(6), for “the defendant’s” substitute “each party’s”.

#### **PRACTICE DIRECTION 16 – STATEMENTS OF CASE**

In paragraph 2.4—

- (a) after “include a postcode”, insert “or its equivalent in any EEA state (if applicable)”; and
- (b) after “Postcode information” insert “for the United Kingdom”.

#### **PRACTICE DIRECTION 42 – CHANGE OF SOLICITOR**

In paragraph 5.1, in the first set of words in parentheses at the end, for “6.23” substitute “6.23(2)(a)”.

#### **PRACTICE DIRECTIONS 43-48 – COSTS PRACTICE DIRECTION**

1. For paragraph 5.11, and the heading to that paragraph, substitute—

## **“Disbursements not classified as such for VAT purposes**

### **5.11**

- (1) Legal representatives often make payments to third parties for the supply of goods or services where no VAT was chargeable on the supply by the third party: for example, the cost of meals taken and travel costs. The question whether legal representatives should include VAT in respect of these payments when invoicing their clients or in claims for costs between litigants should be decided in accordance with this Direction and with the criteria set out in the VAT Guide (Notice 700) published by HM Revenue and Customs.
- (2) Payments to third parties which are normally treated as part of the legal representative's overheads (for example, postage costs and telephone costs) will not be treated as disbursements. The third party supply should be included as part of the costs of the legal representatives' legal services and VAT must be added to the total bill charged to the client.
- (3) Disputes may arise in respect of payments made to a third party which the legal representative shows as disbursements in the invoice delivered to the receiving party. Some payments, although correctly described as disbursements for some purposes, are not classified as disbursements for VAT purposes. Items not classified as disbursements for VAT purposes must be shown as part of the services provided by the legal representative and, therefore, VAT must be added in respect of them whether or not VAT was chargeable on the supply by the third party.
- (4) Guidance as to the circumstances in which disbursements may or may not be classified as disbursements for VAT purposes is given in the VAT Guide (Notice 700, paragraph 25.1). One of the key issues is whether the third party supply (i) was made to the legal representative (and therefore subsumed in the onward supply of legal services), or (ii) was made direct to the receiving party (the third party having no right to demand payment from the legal representative, who makes the payment only as agent for the receiving party).
- (5) Examples of payments under (i) are: travelling expenses, such as an airline ticket, and subsistence expenses, such as the cost of meals, where the person travelling and receiving the meals is the legal representative. The

supplies by the airline and the restaurant are supplies to the legal representative, not to the client.

- (6) Payments under (ii) are classified as disbursements for VAT purposes and, therefore, the legal representative need not add VAT in respect of them. Simple examples are payments by a legal representative of court fees and payment of fees to an expert witness.”

2. Omit paragraph 5.12.

## **PRACTICE DIRECTION 51D – DEFAMATION PROCEEDINGS COSTS MANAGEMENT SCHEME**

In paragraph 1.1(1), for “31 March 2011” substitute “30 September 2011”.

## **PRACTICE DIRECTION 53 – DEFAMATION CLAIMS**

In paragraph 6.1—

- (1) in sub-paragraph (2), for “.” substitute “;”; and
- (2) after sub-paragraph (2) insert—
  - “(3) malicious falsehood;
  - (4) misuse of private or confidential information.”.

## **PRACTICE DIRECTION 55B – POSSESSION CLAIMS ONLINE**

In paragraph 5.1(4), for “the defendant” substitute “each party”.

## **PRACTICE DIRECTION 65 – ANTI-SOCIAL BEHAVIOUR AND HARASSMENT**

1. After paragraph 1.1 insert  
**“Application for an injunction against a child**  
**1A.1**

- (1) Attention is drawn to the provisions of Part 21 and its practice direction: in particular to the requirement for a child to have a litigation friend unless the court makes an order under rule 21.2(3), and the procedure for appointment of a litigation friend. The Official Solicitor

may be invited to act as litigation friend where there is no other willing and suitable person.

(2) When an application for an injunction is made without notice in accordance with rule 65.43(4) and the court grants permission for the application to be heard without the child having a litigation friend, the court will consider whether to direct the applicant to—

- (a) make an application for a litigation friend at the earliest opportunity after the child is served with the injunction;
- (b) ensure that the terms of the injunction and the consequences resulting from any breach of those terms are explained to the child at the time the injunction is served;
- (c) ensure that an appropriate and responsible adult is present at the time the injunction is served;
- (d) file a witness statement confirming compliance with any such directions.”.

2. In paragraph 13.2, for “Except as provided in paragraph 13.3, an” substitute “An”.

3. Omit paragraph 13.3 and the heading to that paragraph.

#### **PRACTICE DIRECTION 78 – EUROPEAN ORDER FOR PAYMENT AND EUROPEAN SMALL CLAIMS PROCEDURES**

1. In the title to the practice direction, omit “Order for Payment and European Small Claims”.

2. After paragraph 21.4, insert—

**“Rule 78.24 Making a mediation settlement enforceable (mediation settlement enforcement orders)**

- 22.1 Where an application for a mediation settlement enforcement order is made under rule 78.24(1)(a) in accordance with Part 23, a copy of the application notice, mediation settlement agreement and evidence of explicit consent must be served on all parties to the mediation settlement agreement who are not also parties to the application.
- 22.2 Where an application for a mediation settlement enforcement order is made under rule 78.24(1)(b) by the Part 8 procedure—
- (1) the claim form may be issued without naming a defendant; and
  - (2) a copy of the claim form, mediation settlement agreement and evidence of explicit consent must be served on all parties to the mediation settlement agreement who are not also parties to the application.
- 22.3 No document relating to an application for a mediation settlement enforcement order may be inspected by a person who is not a party to the proceedings under rule 5.4C without the permission of the court.
- 22.4 Where the application is supported by evidence of explicit consent to the application by a party to the mediation settlement agreement, the evidence must be in English or accompanied by a translation into English.
- 22.5 Where a party to the mediation settlement agreement writes to the court consenting to the making of the mediation settlement enforcement order, the correspondence must be in English or accompanied by a translation into English.
- 22.6 Where the parties to pending proceedings agree to apply for a mediation settlement enforcement order, they must inform the court immediately.”.

## **PRE-ACTION PROTOCOL FOR THE RESOLUTION OF CLINICAL DISPUTES**

In paragraph 3.21, for “three” substitute “four”.

## PRE-ACTION PROTOCOL FOR DISEASE AND ILLNESS CLAIMS

1. In the table of contents, after “TEMPLATE FOR LETTER OF CLAIM B”, insert—

GUIDANCE FOR CASES INVOLVING MESOTHELIOMA – EARLY NOTIFICATION LETTER	C
EARLY NOTIFICATION LETTER FOR USE IN CASES INVOLVING MESOTHELIOMA	D

2. In paragraph 1.1—

- (1) for “settlement” substitute “settlements”; and
- (2) after “both parties to” insert “a”.

3. Renumber paragraph “2.3” as paragraph “2.4”.

4. After paragraph 2.2 insert—

**“2.3** In appropriate cases it may be agreed between the parties that this protocol can be applied rather than the Pre-Action Protocol for Personal Injury Claims where a single event occurs but causes a disease or illness.”

5. Renumber paragraph “2.4” as paragraph “2.5”.

6. In renumbered paragraph 2.5, for “personal injury protocol” substitute “Pre-Action Protocol for Personal Injury Claims”

7. Renumber paragraph “2.5” as paragraph “2.6”.

8. In renumbered paragraph 2.6, omit the words from “In a terminal disease claim” to the end of that paragraph.

9. After renumbered paragraph 2.6 insert—

**“2.7** In a terminal disease claim with short life expectancy, for instance where a claimant has a disease such as mesothelioma, the time scale of the protocol is likely to be too long. In such a claim, the claimant may not be able to follow



the protocol and the defendant would be expected to treat the claim with urgency including any request for an interim payment.

**2.8** In a claim for mesothelioma, additional provisions apply, which are set out in Annex C of this protocol.”.

10. In paragraph 2A.2—

(1) in the final bullet point for “.” Substitute “,”; and

(2) after the final bullet point insert—

- “• Arbitration (where an independent person or body makes a binding decision).”.

11. In paragraph 2A.3, for “[www.clsdirect.org.uk/legalhelp/leaflet23.jsp](http://www.clsdirect.org.uk/legalhelp/leaflet23.jsp)” substitute “<http://www.communitylegaladvice.org.uk/media/808/FD/leaflet23e.pdf>”.

12. In paragraph 2A.4, after “any form of ADR” insert “, but the parties should continue to consider the possibility of reaching a settlement at all times”.

13. In paragraph 3.2—

(1) for the fourth bullet point below “TIMELINESS” substitute—

- “• to ensure that relevant records which are in the claimant’s possession including where appropriate GP and hospital records are made available to the defendant or to the nominated insurance manager or solicitor representing the defendant by claimants or their advisers at an appropriate stage;”;

(2) at the end of the seventh bullet point below “TIMELINESS”, for “.” substitute “,”;

(3) in the eighth bullet point below “TIMELINESS”—

- (a) for “To” substitute “to”; and
- (b) for “.” substitute “,”.

(4) after the eighth bullet point below “TIMELINESS” insert—

- “• to promote the provision of medical or rehabilitation treatment in appropriate cases to address the needs of the claimant.”.

14. In paragraph 4, after the first unnumbered paragraph insert—

**“This protocol must be read in conjunction with the Practice Direction on Pre-Action Conduct.”**

15. For paragraph 4.4 substitute—

**“4.4** Where the **potential defendant** or his insurer has difficulty in providing information quickly (in particular where the information is, or may be, held by someone else such as the Health and Safety Executive) details should be provided of steps being taken to resolve this problem together with a reasonable time estimate for doing so.”.

16. In paragraph 5.1, for “general practitioner” substitute “GP and hospital”.

17. In paragraph 5.2, for “General practitioner” substitute “GP and hospital”.

18. In paragraph 5.3, after “notify that **potential defendant**” insert “in writing”.

19. In paragraph 6.2, after “illness” insert “or disease”.

20. Renumber paragraph “6.3” as paragraph “6.4”.

21. After paragraph 6.2 insert—

**“6.3** Where the funding arrangement is an insurance policy the party must state—

- (1) the name and address of the insurer;
- (2) the policy number;
- (3) the date of the policy;
- (4) the claim or claims to which it relates (including Part 20 claims if any);
- (5) the level of cover; and
- (6) whether the premiums are staged and if so the points at which the increased premiums are payable.”.

22. Renumber paragraph “6.4” as paragraph “6.5”.
23. In the paragraph renumbered as “6.5”, after “should also be provided” insert “(with a work history from HM Revenue and Customs),”.
24. At the end of the paragraph renumbered as “6.5” insert—  
“Where there is more than one employer the chronology should state if there was any relevant exposure during each of those different periods of employment. Details should also be given about any periods of self-employment during which there was any relevant exposure and whether any claims have been made and payments received under the Pneumoconiosis etc (Workers’ Compensation) Act 1979.”.
25. Renumber paragraph “6.5” as paragraph “6.6”.
26. In the paragraph renumbered as “6.6”, for “general practitioner” substitute “GP and hospital”.
27. Renumber paragraph “6.6” as paragraph “6.7”.
28. At the end of the paragraph renumbered as “6.7” insert—  
“Copies of any relevant result from the Association of British Insurers Employers’ Liability Tracing Service, both positive and negative, should be attached to the letter of claim. If the claimant receives any insurance database results after sending the letter of claim those results should be forwarded to the defendant as soon as is reasonably practicable.”.
29. Renumber paragraph “6.7” as paragraph “6.8”.
30. Renumber paragraph “6.8” as paragraph “6.9”.
31. Renumber paragraph “6.9” as paragraph “6.10”.
32. In the paragraph renumbered as “6.10”, for “three month” substitute “90 day”.
33. Renumber paragraph “6.10” as paragraph “6.11”.

34. In the paragraph renumbered as “6.11”—

(1) for “three months” substitute “90 days”; and

(2) for “paragraph 2.5” substitute “paragraphs 2.6 and 2.7”.

35. In paragraph 7.1 omit “calendar”.

36. In paragraph 7.2 for “one calendar month” substitute “30 days”.

37. At the end of paragraph 7.2 insert—

“For claims with a long latency period it is recognised that it may not be possible to identify the full insurance history within 30 days. In these circumstances the insurer or defendant should notify the claimant in writing as soon as possible. In any event, within 30 days the insurer or the defendant should state which other insurers have been identified. Where insurers have not been identified the defendant or insurer should state what steps have been taken to determine this information.”.

38. In paragraph 7.3, for “three months” substitute “90 days”.

39. In paragraph 7.5—

(1) for “3 months” substitute “90 days”; and

(2) and for “3 month” substitute “90 day”.

40. In paragraph 7.6—

for “three months” substitute “90 days”; and

for “six months” substitute “180 days”.

41. For paragraph 9.1 substitute—

**“9.1** In disease claims expert opinions may be needed on one or more of the following—

- knowledge, fault, causation and apportionment;
- condition and prognosis;
- valuing aspects of the claim.”.

42. For paragraph 9.12 substitute—
- “9.12** Where the defendant obtains a medical report on which he seeks to rely this should be disclosed to the claimant.
- 9.13** For further guidance see Part 35 of the CPR, Practice Direction 35 and the Protocol for the Instruction of Experts to give Evidence in Civil Claims which is annexed to that Practice Direction.”.
43. In paragraph 10.5 in the two places that it occurs, for “act in the” substitute “accept service of”.
44. In Annex B (Template for Letter of Claim)—
- (1) in the fifth paragraph, after “***Give chronology of events***” insert “***(and in appropriate cases attach a work history from H M Revenue and Customs)***”;
  - (2) after the twelfth paragraph ending “broad value on the claim” insert—  
“*(For appropriate cases)* Our client is still suffering from the effect of his/her condition. We invite you to participate with us in addressing his/her immediate needs by use of rehabilitation.”; and
  - (3) in the penultimate paragraph after “***insurance policy dated with (name)***” insert “***and address***”; and
  - (4) At the end of the penultimate paragraph insert—  
“***The policy number is [insert], the policy is dated [insert] and the level of cover is [insert]. The premiums payable under the insurance policy [are not] [are] staged [and the points at which the increase premiums are payable are as follows:].***”
45. After Annex B insert Annexes C and D at Annex 1 of this Practice Direction Making Document.

**PRE-ACTION PROTOCOL FOR POSSESSION CLAIMS BASED ON MORTGAGE OR HOME PURCHASE PLAN ARREARS IN RESPECT OF RESIDENTIAL PROPERTY**

1. In the table of contents, for “Alternative dispute resolution” substitute “Further matters to consider before starting a possession claim”.
2. In paragraph 5.1, in the first place that it occurs, for “should” substitute “must”.
3. In paragraph 5.2, in the first place that it occurs, for “should” substitute “must”.
4. In paragraph 5.3, in the first place that it occurs, for “should” substitute “must”.
5. In paragraph 5.4, in the three places that it occurs, for “should” substitute “must”.
6. In paragraph 5.5, in the first place that it occurs, for “should” substitute “must”.
7. In paragraph 5.6, in the two places that it occurs, for “should” substitute “must”.
8. In paragraph 6.1, for “should” substitute “must”.
9. In paragraph 6.2, for “should” substitute “must”.
10. In paragraph 6.3, for “Home Information Pack” substitute “Energy Performance Certificate (EPC) or proof that an EPC has been commissioned”.
11. In paragraph 6.4, for “should” substitute “must”.
12. For paragraph 7.1 and the heading to that paragraph substitute—

**“Further matters to consider before starting a possession claim**

Starting a possession claim should normally be a last resort and such a claim must not normally be started unless all other reasonable attempts to resolve the position have failed. The parties should consider whether, given the individual circumstances of the borrower and the form of the agreement, it is reasonable and appropriate to do one or more of the following—

- (1) extend the term of the mortgage;
- (2) change the type of mortgage;
- (3) defer payment of interest due under the mortgage;
- (4) capitalise the arrears; or

- (5) make use of any Government forbearance initiatives in which the lender chooses to participate.”.
- 13. In paragraph 8.1, for “should” substitute “must”.
- 14. In paragraph 8.2, for “should” substitute “must”.
- 15. In paragraph 9.1—
  - (1) for “should” substitute “must”; and
  - (2) omit “, if requested by the court,”.

## **ANNEX 1**

### **PRE-ACTION PROTOCOL FOR DISEASE AND ILLNESS CLAIMS**

#### **Annex C**

#### **Guidance for cases involving mesothelioma – Early Notification Letter**

##### **Purpose**

1. The purpose of the early notification letter is twofold. First, the intention is to give defendants and their insurers as much advance warning as possible about the possibility of a claim so that they can begin to investigate the matter. This is particularly so where relevant information may be decades old and may take time to locate and retrieve. Second, where the claimant has severely limited life expectancy it gives advance warning to defendants of the need for urgency in locating relevant information.
2. It is intended that the early notification letter will be sent before the letter of claim and will not start the timetable for response as set out in paragraph 7 of this protocol.
3. As soon as sufficient information is available to identify a proposed defendant, the claimant should send to the proposed defendant two copies of the early notification letter. One copy is for the defendant, the second for passing on to the defendant's insurers. The claimant should also send a further copy of the same letter directly to the defendant's insurer, where known. In the case of a defunct company the further copy of the letter should be sent to the relevant insurer or handler of that defunct company.

##### **Content of Early Notification Letter**

4. All copies of the early notification letter should be clearly marked 'MESOTHELIOMA CLAIM'.
5. The early notification letter should contain basic information sufficient to identify the claimant, the periods of relevant exposure and the potential defendants. As a minimum, the early notification letter should contain the following information:
  - (a) name and address of the claimant/deceased;
  - (b) national insurance number of the claimant/deceased (if known);
  - (c) claimant/deceased's date of birth;



- (e) employers, where known, of relevant employment and or exposure;
  - (f) occupiers of premises, where known, of relevant employment and/or exposure;
  - (g) date or approximate dates, where known, of relevant employment and or exposure;
  - (h) direct contact details, including e-mail address, for the claimant's legal representative;
  - (i) marital status;
  - (j) details of dependents; and
  - (k) date of diagnosis.
6. Solicitors are recommended to use a standard format for the early notification letter. An example is set out in Annex D. This can be amended to suit the particular case.
7. The early notification letter should indicate whether a claim is also being made against any other potential defendant and identify any known insurer involved.
8. The early notification letter is not intended to have the same status as a statement of case in proceedings. Matters may come to light as a result of investigation after the letter of claim has been sent.

### **Employment and Exposure History**

9. In view of the joint and several liability provided for in the Compensation Act 2006 in mesothelioma cases the information set out in paragraph 6.5 of this protocol is particularly relevant.

### **Defendant's response**

10. The defendant should respond within 14 days of the date of the letter confirming that the matter is receiving urgent attention.

### **Compliance with this protocol**

11. Attention is drawn to paragraph 9.1 of Practice Direction 3D (Mesothelioma Claims) which provides that in Living Mesothelioma Claims (normally where the claimant has severely limited life expectancy) strict adherence to this protocol may not be required. The issue of compliance with this protocol in relation to certain mesothelioma claims is also recognised at paragraph 2.7 of this protocol.

## **ANNEX D**

### **Early notification letter for use in cases involving mesothelioma**

#### **URGENT – MESOTHELIOMA CLAIM**

#### **YOU MUST DEAL WITH THIS LETTER IMMEDIATELY**

Dear Sirs,

We are acting on behalf of the above-named who has developed mesothelioma. We are investigating whether this disease may have been caused:

**during the course of his employment with you / name of employer if different whilst at your premises at (address)**

**between the approximate dates of: (insert relevant dates of employment/at the premises)**

**as a result of your product (name)**

**Please note your insurers will require you to advise them of this letter. You must pass a copy of this letter to your insurer immediately.**

We are writing this letter in accordance with the Pre-Action Protocol for Disease and Illness Claims.

Our client's details are as follows:

Name:

Address:

National Insurance Number (if known)

Date of Birth:

Marital status:

Details of dependents:

Date of diagnosis.

**We require a response from you confirming this matter is receiving urgent attention with 14 days of the date of this letter.**

The direct e-mail address, which you may use for urgent communications and which should be followed up with paper copies, is: (insert e-mail address)

Yours faithfully