

NEW PRACTICE DIRECTION SUPPLEMENTING THE CIVIL PROCEDURE RULES 1998

The new Practice Direction 51D (Defamation Proceedings Costs Management Scheme) supplementing Parts 29 and 44 of the Civil Procedure Rules 1998 and set out below is 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 is approved by [], Parliamentary Under Secretary of State, by the authority of the Lord Chancellor.

The new Practice Direction will come into force on 1st October 2009.

The Right Honourable The Lord Clarke of Stone-cum-Ebony
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 51D – DEFAMATION PROCEEDINGS COSTS MANAGEMENT SCHEME

This Practice Direction supplements CPR Parts 29 and 44

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General

1.1 This Practice Direction is made under rule 51.2. It provides for a pilot scheme (the Defamation Proceedings Costs Management Scheme) to—

- (1) operate from 1 October 2009 to 30 September 2010;
- (2) operate in the Royal Courts of Justice and the District Registry at Manchester;
- (3) apply to proceedings in which the claim was started on or after 1 October 2009.

(Rule 30.2(4) enables cases issued at other district registries to be transferred to London or Manchester if those court centres are more appropriate.)

1.2 The Defamation Proceedings Costs Management Scheme will apply to proceedings which include allegations of—

- (1) libel;
- (2) slander; and/or
- (3) malicious falsehood.

1.3 The Defamation Proceedings Costs Management Scheme provides for costs management based on the submission of detailed estimates of future base costs. The objective is to manage the litigation so that the costs of each party are proportionate to the value of the claim and the reputational issues at stake and so that the parties are on an equal footing. Solicitors are already required by paragraph 2.03 of the Solicitors Code of Conduct 2007 to provide costs budgets to their clients.

Accordingly, it should not be necessary for solicitors to incur substantial additional costs in providing costs budgets to the court.

Modifications of relevant practice directions

2 During the operation of the Defamation Proceedings Costs Management Scheme—

Use of costs budgets in case and costs management

- (1) The practice direction supplementing Part 29 is modified by inserting after paragraph 3A—

“Case management and costs in defamation proceedings

- 3B** In cases within the scope of the Defamation Proceedings Costs Management Scheme provided for in practice direction 51D, the court will manage the costs of the litigation as well as the case itself, making use of case management conferences and costs management conferences in accordance with that practice direction.”

Estimates of costs to be detailed budgets

- (2) Paragraph 6.4(1)(a) of the Costs Practice Direction does not apply to proceedings within the scope of the Defamation Proceedings Costs Management Scheme.
- (3) Section 6 of the costs practice direction is modified by substituting for paragraph 6.5 the following—

“Costs budgets in defamation proceedings

- 6.5** In proceedings within the scope of the Defamation Proceedings Costs Management Scheme provided for in practice direction 51D the estimate of costs must be presented as a detailed budget setting out the estimated costs for the entire proceedings, in a standard template form following the precedent described as Precedent HA and annexed to that practice direction.”

Preparation of the costs budget

3.1 Each party must prepare a costs budget or revised costs budget in the form of Precedent HA—

- (1) in advance of any case management conference or costs management conference;

- (2) for service with the pre-trial checklist;
- (3) at any time as ordered to by the court.

3.2 A litigant in person shall not be required to prepare a costs budget unless the court otherwise orders.

3.3 Each party will include separately in its costs budget reasonable allowances for—

- (1) intended activities, for example: disclosure, preparation of witness statements, obtaining expert reports, mediation or any other steps which are deemed necessary for the particular case;
- (2) specified contingencies, for example: any application on meaning (if required); specific disclosure applications (if an opponent fails to give proper disclosure); resisting applications (if made inappropriately by opponent);
- (3) disbursements, in particular, court fees, counsel's fees and any mediator or expert fees.

3.4 Each party must update its budget for each subsequent case management conference or costs management conference and for the pre-trial review. This should enable the judge to review the updated figures, in order to ascertain what departures have occurred from each side's budget and why.

Discussions between parties and exchange of budgets

4.1 During the preparation of costs budgets the parties should discuss the assumptions and the timetable upon which their respective costs budgets are based.

4.2 The parties must exchange and lodge with the court their costs budgets in the form of Precedent HA not less than 7 days before the date of the hearing for which the costs budgets are required.

4.3 A budget provided to the court will not (unless the providing party consents) be released to any other party (except a litigant in person) until that party is ready to exchange.

Effect of budget on case management and costs

5.1 The court will manage the costs of the litigation as well as the case itself in a manner which is proportionate to the value of the claim and the reputational issues at stake. For this purpose, the court may order attendance at regular hearings ("costs

management conferences”) by telephone wherever possible, in order to monitor expenditure.

- 5.2** At any case management conference, costs management conference or pre-trial review, the court will have before it the detailed costs budgets of both parties for the litigation, updated as necessary, and will take into account the costs involved in each proposed procedural step when giving case management directions.
- 5.3** At any case management conference, costs management conference or pre-trial review, the court will, either by agreement between the parties or after hearing argument, record approval or disapproval of each side's budget and, in the event of disapproval, will record the court's view.
- 5.4** Directions orders produced at the end of case management conferences and/or costs management conferences must be given to the parties on each side by their respective lawyers, together with copies of the budgets which the court has approved or disapproved.
- 5.5** Solicitors must liaise monthly to check that the budget is not being exceeded. In the event that the budget is exceeded, either party may apply to the court to fix a costs management conference as described in paragraph 5.1 above.
- 5.6** The judge conducting a detailed or summary assessment will have regard to the budget estimates of the receiving party and to any view previously expressed by the court pursuant to paragraph 5.3. Unless there has been a significant change in circumstances the judge will approve as reasonable and proportionate any costs claimed which fall within the last previously approved budget. Save in exceptional circumstances the judge will not approve as reasonable and proportionate any costs claimed which do not fall within the last previously approved budget.

ANNEX

PRECEDENT HA