

Blackstone's Civil Practice Update 51

This note brings the work up to date to 14 January 2010. It incorporates changes made by the Civil Procedure (Amendment No. 2) Rules 2009 (SI 2009/3390), and the Civil Jurisdiction and Judgments Regulations 2009 (SI 2009/3130), and also changes in the practice directions and pre-action protocols through to the Ministry of Justice's Update 51.

The amendments made by the Civil Jurisdiction and Judgments Regulations 2009 (Chapter 16 of *Blackstone's Civil Practice*) came into force on 1 January 2010. The amendments made by the Civil Procedure (Amendment No. 2) Rules 2009 and Update 51 come into effect on 6 April 2010.

Chapter 15 Filing and Service SERVICE OF CLAIM FORM

On whom may a claim form be served?

15.9 Service on the defendant's solicitor

For the purposes of service in CPR, Part 6, and in particular service on a solicitor in r. 6.7, 'solicitor' includes any other person authorised to conduct litigation by the Legal Services Act 2007 (r. 6.2(d)). Subject to the rules on service outside the jurisdiction in rr. 6.30 to 6.47, to comply with EC Directive 2006/123/EC, service is effective if made for service on a solicitor with a business address in an European Economic Area ('EEA') state (r. 6.7(2)) in addition to the existing position in r. 6.7 which allows service at the address of a solicitor with an address within the jurisdiction.

15.14 Where the claim form must be served

End of 1st para:

Rule 6.7 becomes r. 6.7(1), and service may be at the defendant's solicitor's address also if that address is within the EEA (r. 6.7(2)).

FILING DOCUMENTS

15.56 Electronic Working in Specialist Courts

With effect from 1 April 2010 (and continuing the Electronic Working Pilot Scheme, PD 51C), electronic filing will be available in the Rolls Building courts (Admiralty, Commercial and London Mercantile Courts, and the Technology and Construction Court), and the Chancery Division of the High Court at the Royal Courts of Justice (including the Patents Court and the Bankruptcy and Companies courts). This applies to starting claims under Part 7, Part 8, Part 20, Arbitration and Admiralty claims (PD 5C, para. 5), so petitions and originating applications in insolvency proceedings are only covered if a particular case is converted to the electronic format under para. 1.2(1)(b).

All documents in cases covered by PD 5C are filed in PDF format (para. 4). Claim forms are given an issue date based on the date (up to midnight) they are received by the court (para. 6.4). Other documents are treated as filed on the date they are received by the court (para. 7.2(a)), and an automated receipt is sent to the party by the court (para. 7.3). Signatures, for example on statements of truth (other than for affidavits), are by typing the name on an

electronic version of the document (para. 9). Most documents are filed without hard copies, but allocation questionnaires (para 13.1), application bundles (para. 12) and case management bundles (para. 13.2) must be filed both electronically and in paper copy. Very large electronic files need to be delivered on CD or DVD rather than email. Trial bundles are in paper copy only (para. 14.1).

Chapter 16 Service outside the jurisdiction CASES OUTSIDE THE GENERAL RULES

16.1 Introduction

4th para, last sentence, replace with:

An amended Lugano Convention, in similar terms to the Jurisdiction and Judgments Regulation, was agreed between the European Community, Iceland, Norway, Switzerland, and Denmark on 30 October 2007 in place of the original Lugano Convention. It was ratified by the Council of Ministers on 18 May 2009, and came into force with Norway on 1 January 2010 (with changes to the Civil Jurisdiction and Judgments Act 1982 implemented by the Civil Jurisdiction and Judgments Regulations 2009, SI 2009/3131).

16.42 Procedure on commencing proceedings pursuant to the Regulation or Conventions

Line 3: add “or Lugano Convention” after CJA 1982.

Chapter 20 Default Judgment APPLICATION FOR DEFAULT JUDGMENT

20.9 Application procedure

5th para, line 2: add “or Lugano Convention”.

Chapter 32 Applications and Interim Orders APPLICATIONS WITH NOTICE

32.24 Hearings by telephone

End of para 3:

Where there is to be a telephone hearing the application notice must be served as soon as practicable after it has been issued and in any event at least five days before the date of the hearing (PD 23A, para. 4.1A).

5th para line 6. The case summary and draft order used in telephone hearings must be filed by the designated representative at least two days before the hearing (PD 23A, paras 6.11 and 6.12).

Chapter 38 Freezing Injunctions CONTENTS OF A FREEZING INJUNCTION

38.29 Standard-form orders

With effect from 6 April 2010 the contact details for communications with the court in the ChD are changed:

for “Room TM 505” substitute “Room TM 5.07”; and

for “0207 947 6754” substitute “020 7947 6322”

Chapter 42 Case Management ALLOCATION

42.5 Allocation

In PD 43-48, para 6.4(1) the wording has been changed to replace “track” with “and fast tracks”. The effect is that costs schedules in the form of precedent H are required with the allocation questionnaire only in cases above the fast track upper threshold of £25,000.

Chapter 44 Fast Track STANDARD FAST TRACK TIMETABLE

44.14 Standard fast track timetable

Table 44.1

Entry 29 on costs schedules in fast track cases. Change the time this must be done to:
Not less than two days before trial.

COSTS IN FAST TRACK CASES

44.23 Costs in fast track trials

Costs schedules in fast track cases must be filed and served not less than two days before trial.

Chapter 63 Solicitor and Own Client Costs

63.19 Estimates

Para (a). Replace “track” with “and fast tracks” in line 2. The effect is that costs schedules in the form of precedent H are required with the allocation questionnaire only in cases above the fast track upper threshold of £25,000.

Chapter 68 Assessment of Costs INTRODUCTION

68.3 Summary assessment

Para 4. Costs schedules in fast track cases must be filed and served not less than two days before trial.

DETAILED ASSESSMENT

68.10 Appropriate office

2nd para: Change to “Clerkenwell and Shoreditch”, and delete Shoreditch in line 3.

Line 3: add “including” before “where”

Line 6: change reference to paras 23.2A and 31.1A.

However, default costs certificates should be issued and applications to set aside default costs certificates should be issued and heard in the relevant county court (para 31.1A(2)(i)) and appeals are lodged at the Central London Civil Justice Centre (para 31.1A(2)(ii), (iii)).

68.11 Commencement of detailed assessment proceedings

Line 9: The threshold for providing written evidence of disbursements in PD 43-48, para. 32.3, is raised to £500 from £250.

Para 2, line 8: change to: "The relevant papers in support of the bill described in PD 43-48, para. 40.12, only have to be lodged if requested by the costs officer (para 43.3)."

68.18 Assessment under the Solicitors Act 1974, part III

Line 11:

In Part 8 claims under s. 70 and 71, the court will fix a date for the hearing of the claim when the claim form is issued (PD 67, para. 2.2A).

AMOUNT TO BE ALLOWED

68.41

Table 68.4 Guideline hourly charging rates

add new final lines to each of the 3 Bands

Band one	A	B	C	D
January 2009:	213	189	158	116
Band two				
January 2009	198	174	144	109
Band three				
January 2009	198	174	144	109

Table 68.5 London hourly rates

	A	B	C	D
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[In the table, after the line under the A B C D, and above the line "City of London Jan 2003" insert:]

London 1

add new final line:

City of London Jan 2009	402	291	222	136
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[above the line "Central London Jan 2003" insert:]

London 2

add new final line:

Central London Jan 2009	312	238	193	124
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[above the line "Outer London Jan 2003" insert:]

London 3

add new final line:

Outer London Jan 2009	225-263	169-225	162	119
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68.45 Correspondence and attendances

In PD 43-48, from 6 April 2010 emails out are treated in the same way as letters out for costs assessment purposes. They will generally be regarded as one unit each, with the sum allowed being taken as including time for reading the relevant email in.

Further, the court may, in its discretion, allow an actual time charge for preparation of electronic communications other than e-mails sent by solicitors, which properly amount to attendances provided that the time taken has been recorded (para. 4.16(2)).

CONDITIONAL FEE AGREEMENTS

68.54 Assessing an insurance premium

Where there is a dispute about the insurance premium in a staged policy (within the meaning of PD 43-48 para. 19.4(3A)) it will normally be sufficient for the receiving party to set out in any reply (see 68.15) the reasons for choosing the particular insurance policy and the basis on which the insurance premium is rated whether block rated or individually rated (PD 43-48, para. 39.2).

Chapter 70 Alternative Dispute Resolution RELATIONSHIP BETWEEN THE COURTS AND ADR

70.21 ADR and case management conferences

The Pilot Scheme for Mediation in Central London County Court (PD 26B) was discontinued from 6 April 2010.

Chapter 71 The Appeals System APPLICATIONS WITHIN APPEALS

71.44 Applications within appeals

Para 3 for 1st sentence substitute:

The Master of the Rolls may designate an eligible officer to be the Court of Appeal master to exercise judicial authority under r. 52.16 to deal with matters incidental to appeals, matters where there is no substantial dispute, and dismissal of appeals and applications for procedural default (PD 52, para 5.15). There are also deputy masters.

Chapter 74 Judicial Review PROCEDURE ONCE PERMISSION HAS BEEN GRANTED

74.40 Defendant's evidence and evidence in reply

After 1st sentence:

Where the defendant or interested party is the Crown, service of the claim form must be effected on the solicitor acting for the relevant government department as set out in the list published under the Crown Proceedings Act 1947, s. 17 (see Annex B to PD 66; PD 54, para. 6.2(b)).