CIRCUIT COMMERCIAL (MERCANTILE) COURT GUIDE

This Guide is published with the approval of the Lord Chief Justice.

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Appendices B-C may be downloaded from the Circuit Commercial Court website at: https://www.gov.uk/courts-tribunals/mercantile-court

1. Introduction

1.1 The Circuit Commercial Courts (formerly the Mercantile Courts) operate in eight regional centres throughout England and Wales as part of the Queens Bench Division of the High Court. They decide business disputes of all kinds apart from those which, because of their size, value or complexity, will be dealt with by the Commercial Court. As well as large cases, the Circuit Commercial Courts decide smaller disputes and recognise the importance of these, particularly to small and medium sized businesses. They form part of the Business and Property Courts of England and Wales.

1.2 This Guide explains how to conduct business cases in the Circuit Commercial Courts and it therefore concentrates on the distinctive features of litigation in these Courts. It is not a summary of or a substitute for the Civil Procedure Rules (CPR) which govern all civil cases. Nor does it replace Part 59 of the CPR which deals specifically with Circuit Commercial Courts, or its Practice Direction ("PD59"). But it is a guide to the practice of these Courts and may be cited, as appropriate, in any Circuit Commercial case.

1.3 By Part 59.1(2) a Circuit Commercial claim is one which "relates to a commercial or business matter in a broad sense". This covers most business disputes including cases about:

(a) business documents and contracts;
(b) the export, import, carriage and sale of goods;
(c) insurance and re-insurance;
(c) banking and financial services; guarantees;
(d) markets and exchanges; sale of commodities;
(e) share sale agreements;
(f) professional negligence in a commercial context (e.g. accountants, financial intermediaries and advisors and solicitors);
(g) business agency and management agreements;
(h) restraint of trade;
(i) injunctions affecting commercial matters, including post-termination of employment restrictions;
(j) confidential information;
(k) freezing and search orders; and
(1) arbitration claims, in particular appeals on points of law from, and challenges to, arbitration awards made under the Arbitration Act 1996 and the enforcement of such awards.

1.4 It follows that the range of cases heard in the Circuit Commercial Court is wide. Provided that a case involves a dispute of a genuinely business nature which is fit for the High Court, the Circuit Commercial Court will usually accommodate it. All Circuit Commercial judges are authorised to try civil High Court cases generally and will usually accept actions at the margins of the Circuit Commercial definition into their courts.

1.5 Generally, cases in the Circuit Commercial Courts are heard by designated Circuit Commercial judges. Other judges with business experience also sit in the Circuit Commercial Courts. Details of each court and each judge are set out in Appendix A. As these details change please check the online version of this Guide before relying on them.

1.6 Circuit Commercial judges manage Circuit Commercial cases and deal with all interlocutory (ie pre-trial) applications. These are not heard by Masters or District judges (PD59 para.1.3(1)). Wherever possible, the trial judge will have dealt with the case at some or all of its earlier stages. This provides continuity and consistency. Once a judgment is obtained, enforcement applications are heard by Masters or District judges (PD59 para.1.3)

1.7 The Judge in charge of the Commercial Court is also the Judge in charge of the Circuit Commercial Courts. The Commercial Courts Guide may often be of relevance to a claim in the Circuit Commercial Court and supplements it. If a point is not specifically covered in this Guide, reference should be made to the Commercial Court Guide. However, practitioners should bear in mind that some parts of the Commercial Court Guide are only appropriate for very large cases and there is a particular need to be proportionate in a Circuit Commercial case. Sometimes, the rules governing the two courts are different and these will be identified in this Guide.

1.8 A table of cross-references to relevant Rules, Practice Directions and the Commercial Court Guide is at Appendix E.

1.9 The Court's ability to meet the changing needs of the commercial community depends in part upon a steady flow of information and constructive suggestions between the Court, litigants and professional advisers. Each Circuit Commercial Court has a Users Committee. Users are encouraged to make the fullest use of this important channel of communication. Details of local users committees appear in Appendix A.

1.10 Although the Circuit Commercial Courts serve different regions in England and Wales, their practices and approach are the same. There are some practical differences in their administration (for example listing) and these are explained in Appendix A.

1.11 The Circuit Commercial Courts seek to operate in a way which gives effect to the overriding objective of dealing with cases justly and at proportionate cost, , is streamlined, accessible to non-lawyers, promotes the early resolution of disputes wherever possible and actively manages through to trial those cases which do not settle.

1.12 It is incumbent upon the parties to help the Court to achieve the overriding objective. They should co-operate courteously to achieve resolution at the lowest feasible cost and in the shortest practicable time. They should put their cards on the table from the outset. The Court expects a high level of co-operation and realism from their legal representatives. It discourages over-lengthy or argumentative correspondence. Parties who fail to observe these and other requirements of the overriding objective can expect to be ordered to pay the unnecessary costs incurred. They must also respect and comply with the rules, practice directions and orders of the Court. They will face sanctions if they do not.

2. Pre-Action Correspondence

2.1 The Practice Direction entitled "Pre-Action Conduct" (within White Book Vol.1 Section C "Pre-Action Conduct and Protocols) applies to actions in the Circuit Commercial Court. It should be observed, although it is sometimes necessary or appropriate to start proceedings without following the procedures set out there, for example, where there is urgency. There is no specific Pre-Action Protocol for the Circuit Commercial Court but some cases which may proceed in that court are covered by an approved protocol, such as the Professional Negligence Pre-Action Protocol. Subject to complying with the Practice Direction and any applicable protocol, the parties to proceedings in the Circuit Commercial Court are not required or expected, to engage in elaborate pre-action procedures, and restraint is encouraged.

2.2 Thus, the letter of claim should be concise and it is usually sufficient to explain the proposed claim and identify key dates and matters, so that the potential defendant can understand and investigate the allegations. Only essential documents need be supplied. A potential defendant should respond to a letter of claim concisely and again, only essential documents need be supplied.

3. Commencement and Transfer

STARTING A CASE IN THE CIRCUIT COMMERCIAL COURT

3.1 Except for arbitration applications which are governed by the provisions of Part 62, the case will be begun by a claim form under Part 7 or Part 8. All claim forms should be marked "CIRCUIT COMMERCIAL COURT" (outside London, and after the reference to the appropriate registry) or "LONDON CIRCUIT COMMERCIAL COURT". Failure to do this may result in non-allocation to that Court or delay in processing the claim. The claim form should be verified by a statement of truth.

3.2 Part8 Claims
These are appropriate only where there is no substantial dispute of fact, for example where the case turns on a pure point of law or the interpretation of a contract. All Part 8 Claims should be marked as such.

3.3 Issue of Claim Forms
In every Court a party may request it to issue the Claim Form by attending in person or by post. In addition, in the London Circuit Commercial Court, a party may request it to issue the claim form electronically. This procedure, called CE-Filing, is accessed by going to the CE-Filing website at “http://www.ce-file.uk/” In order to use this system it is necessary to become a registered user first. Instructions for this and subsequent lodging of claim forms etc appear on the website. When issuing a claim form, please select the Business and Property Court dialog box first. Thereafter it will be possible to select the London Circuit Commercial Court option. Practitioners are encouraged to use this method of issue wherever possible. Further guidance is available in the User Guide accessible from the website along with PD51O also available on the website.

3.4 Particulars of claim and the claim form
Although particulars of claim may be served with the claim form, this is not a requirement in the Circuit Commercial Court. However, if they are not contained in or served with the claim form, (a) they must contain a statement that if an acknowledgment of service is filed indicating an intention to defend the claim, particulars of claim will follow and (b) the particulars of claim must be served within

28 days after the defendant has filed an acknowledgment of service indicating an intention to defend the claim: rule 59.4.

3.5 Service of the claim form
Claim forms issued in the Circuit Commercial Court are, as elsewhere in the High Court, served by the parties, not by the Court. Methods of service are set out in Part 6, which is supplemented by PD6A and 6B.

3.6 Applications for an extension of time in which to serve a claim form are governed by rule 7.6. The evidence required on such an application is set out in PD7A para.8.2. In an appropriate case it may be presented by an application notice verified by a statement of truth and without a separate witness statement: rule 32.6(2).

3.7 When the claimant has served the claim form he must file a certificate of service: rule 6.17(2). This is required before a claimant can obtain judgment in default (see Part 12).

3.8 Acknowledgment of service
A defendant must file an acknowledgment of service in every case: rule 59.5. The period for filing an acknowledgment of service is calculated from the service of the claim form, whether or not particulars of claim are contained in or accompany the claim form or are to follow service of the claim form. Rule 9.1(2), which provides that in certain circumstances the defendant need not respond to the claim until particulars of claim have been served on him, does not apply: rule 59.5.

3.9 The period for filing an acknowledgment of service is 14 days after service of the claim form unless the claim form has been served abroad If it has been served out of the jurisdiction without the permission of the court under rules 6.32 and 33 the time for filing an acknowledgment of service is governed by rule 6.35. If the claim form has been served out of the jurisdiction with the permission of the court under rule 6.36 the time for filing an acknowledgment of service is governed by rule 6.37(5), See PD6B and the table to which it refers: rule 59.5 (3).

3.10 Service of the claim form out of the jurisdiction
Service of claim forms outside the jurisdiction without permission is governed by rules 6.32-6.35, and, where rule 6.35(5) applies, by PD6B. Applications for permission to serve a claim form out of the jurisdiction are governed by rules 6.36 and 6.37 and PD6B. A guide to the appropriate practice is set out in Appendix 9 of the Commercial Court Guide. Service of process in some foreign countries may take a long time to complete; it is therefore important that solicitors take prompt steps to effect service.

3.11 If the defendant intends to dispute the court's jurisdiction or to contend that the court should not exercise its jurisdiction he must file an acknowledgment of service (see rule 11(2) and issue an application notice. An application to dispute the court's jurisdiction must be made within 28 days after filing an acknowledgment of service: rule 59.6. If the defendant wishes to rely on written evidence in support of that application, he must file and serve that evidence when he issues the application. In an appropriate case it may be presented by an application notice verified by a statement of truth and without a separate witness statement: rule 32.6(2).

3.12 If the defendant makes an application under rule 11(1), the claimant is not bound to serve particulars of claim until that application has been disposed of: rule 59.6(3).

3.13 Effect of an application challenging the jurisdiction
An acknowledgment of service of a Part 7 or Part 8 claim form which is followed by an application challenging the jurisdiction under Part 11 does not constitute a submission by the defendant to the jurisdiction: rules 11(3) and 11(7).

3.14 Default judgment
Default judgment is governed by Part 12 and PD12. However, because in the Circuit Commercial Court the period for filing the acknowledgment of service is calculated from service of the claim form (PD59 para.5(2)), the reference to "particulars of claim" in PD12 para.4.1(l) should be read as referring to the claim form. In addition, if particulars of claim were not served with the claim form and the defendant then fails to acknowledge service, default judgment must be the subject of an application, not a request. It can be made without notice but the Court may direct its service on the defendant: rule 59.7.

TRANSFER OF CASES TO AND FROM A CIRCUIT COMMERCIAL COURT

3.15 The procedure for transfer into the Circuit Commercial Court is set out in rule 59.3 and PD59 para.4. In respect of applications to transfer other than from the Commercial Court, these can be dealt with only by Circuit Commercial judges. A Circuit Commercial judge also has the power to transfer such a case into the Circuit Commercial Court of his own motion. If both parties consent to a such transfer into the Circuit Commercial Court, the application may be made by letter. Such applications should be made early in the proceedings.

3.16 If a party wishes to transfer the case from a Circuit Commercial Court to different specialist list other than the Commercial Court, only a judge of that specialist list may grant such transfer. The party seeking transfer should refer the matter first to the Circuit Commercial judge because if he considers that transfer is appropriate the judge of the relevant specialist list to which transfer is sought can be informed. In some cases (for example transfer to the TCC) the Circuit Commercial judge may also sit as a TCC judge and can permit the transfer directly.

3.17 Permission to transfer any case from the Commercial Court to the Circuit Commercial Court, or vice versa, may be granted only by a judge of the Commercial Court. Guidance about such transfers is contained in Guidance at Appendix 14 to the Commercial Court Guide.

3.18 In an appropriate case, it may be possible for a case commenced in a particular Circuit Commercial Court to be tried locally by a judge of the Commercial Court. If any party wishes the case to be so tried they should mention the matter to the Circuit Commercial judge at the earliest opportunity. The papers will thereafter be referred to the judge in charge of the Commercial Court together with any comments of the Circuit Commercial judge as to the appropriateness of trial before a Commercial Court judge. If the judge in charge agrees, the necessary arrangements will be made. In most cases, formal transfer into the Commercial Court (albeit with case management and trial locally) will not be required.

SHORTER AND FLEXIBLE TRIALS SCHEME

3.19 PD51N provides a procedure for shorter trials of no more than 4 days, with set, truncated directions and early hearing dates and for flexible trials with truncated directions agreed by the parties. Such directions include limited disclosure, witness statements which may be confined to particular matters and which in any event do not excess 25 pages without good reason, strictly controlled cross-examination at trial and judgment normally within 6 weeks. The purpose of both is to enable such disputes to be decided speedily and at lower cost. Such procedures are available in the London Circuit Commercial Court and may be particularly aposite for many claims in that court. A claimant wishing to start a claim within the Shorter Trials Scheme must mark the claim form “Queens Bench Division, London Circuit Commercial Court, Shorter Trials Scheme”. If the defendant objects, this will be dealt with at the CMC. It is also open to any party (or the Court) at a CMC to suggest that a claim started in the usual way is suitable for the Shorter Trial scheme.

3.20 Parties who have agreed that their dispute is suitable for the Flexible Trials Scheme must set out their proposal and agreed directions in advance of the first CMC.

3.21 Prior to the commencement of any claim in the Circuit Commercial court the parties should given consideration as to whether the case is suitable for either scheme.

4. Communicating with the Court

E-MAIL

4.1 Although there is no provision for the electronic filing of documents apart from at the London Circuit Commercial Court (see below), parties may communicate with the Court by e-mail where the Circuit Commercial Court concerned provides an e-mail address. Where a dedicated e-mail address is given in Appendix A to this Guide, it should be used in preference to any general court e-filing address. Any such e-mail communications should not be accompanied by lengthy documents which need to be filed separately. The size limit is 40 pages in total of normal typescript or 2 MB whichever is the smaller. Nor should evidence for a hearing be lodged in this way. For details of Court e-mail addresses, see Appendix A. All e-mails to the Court must be copied to the other parties at the same time.

4.2 In an appropriate case, the judge concerned may provide his own e-mail address so that the parties can communicate directly with him, for example in relation to the submission of skeleton arguments or on post-hearing matters. The judge may agree with the parties when they might use that address. The particular e-mail address provided must be treated as strictly confidential. Any communication to the judge must be copied both to the other parties and to the Court on its own e-mail address.

TELEPHONE HEARINGS AND PAPER APPLICATIONS

4.3 Even where there is an application to be decided by the Court it may not be necessary to have a full oral hearing. See section 8, Applications, below.

5. Particulars of Claim, Defence and Reply

FORM, CONTENT, SERVING AND FILING STATEMENTS OF CASE

5.1 Statements of case should be as succinct as possible. They should not set out evidence. They should be limited to 20 pages in length. The court will give permission for a longer statement of case to be served where a party shows good reasons for doing so. Any application to serve a statement of case longer than 20 pages should be made on paper to the court briefly stating the reasons for exceeding that limit. It will rarely be necessary to plead large parts of a lengthy document in the statement of case. If this is necessary the parts should be set out in a schedule not in the body of the case.

5.2 The requirements of PD16 paragraphs 7.4 - 8.1 (which relate to claims based upon oral agreements, agreements by conduct and Consumer Credit Agreements and to reliance upon evidence of certain matters under the Civil Evidence Act 1968) should be treated as applying to the defence and reply as well as to the particulars of claim.

5.3 Full and specific details must be given of any allegation of fraud, dishonesty, malice or illegality. Where an inference of fraud or dishonesty is alleged, the facts on the basis of which the inference is alleged must be fully set out.

5.4 Any legislative provision (including any provision of The Human Rights Act 1998 or the Convention), and any principle or provision of foreign law upon which an allegation is based should be clearly identified and the basis of its application explained.

5.5 If a defendant wishes to advance a positive case on causation, mitigation or quantification of damages, proper details of that case should be included in the defence or Part 20 defence at the outset

5.6 PD16.7 para.3 requiring a copy of the contract to be served with the Particulars of Claim in a claim based upon a written agreement should be treated as also applying to the defence, unless the claim and the defence are based on the same agreement.

5.7 But in most cases, attaching documents to or serving documents with a statement of case does not promote the efficient conduct of the proceedings and should be avoided. If documents are to be served at the same time as a statement of case they should normally be served separately from rather than attached to the statement of case. Only those documents which are obviously of critical importance and necessary for a proper understanding of the statement of case should be attached to or served with it. The statement of case should itself refer to the fact that documents are attached to or served with it.

5.8 All statements of case must be verified by a statement of truth.

SERVING AND FILING PARTICULARS OF CLAIM

5.9 Subject to any contrary order of the court and unless particulars of claim are contained in or accompany the claim form, the period for serving particulars of claim is 28 days after filing an acknowledgment of service: rule 59.4.(c). The parties may agree extensions of the period for serving the particulars of claim. However, any such agreement and brief reasons for it must be put in writing and notified to the court, addressed to the Court's Listing Office and the court may make an order overriding any agreement by the parties varying a time limit: PD59 para.6.

5.10 Unless the particulars of claim are contained in a claim form which the Court is to serve, the claimant must serve the particulars of claim on all other parties. A copy of the claim form will be filed at the Court on issue. If the claimant serves particulars of claim separately from the claim form he must file a copy within 7 days of service together with a certificate of service: rule 7.4(3).

SERVING AND FILING A DEFENCE

5.11 The defendant must serve the defence on all other parties and must at the same time file a copy with the court. If the defendant files an acknowledgment of service which indicates an intention to defend, the period for serving and filing a defence is 28 days after service of the particulars of claim, subject to the provisions of rule 15.4(2). (See 59.9(2) and also Appendix 9 to the Commercial Court Guide for cases where the claim form has been served out of the jurisdiction).

5.12 The defendant and the claimant may agree that the period for serving and filing a defence shall be extended by up to 28 days: rule 15.5(1). However, any such agreement and brief reasons must be in writing and notified to the court: PD59 para.6.2. An application to the court is required for any further extension. If the parties are able to agree a further extension, a draft consent order should be provided together with a brief explanation of the reasons for the extension.

SERVING AND FILING A REPLY

5.13 Any reply must be served and filed within 21 days after service of the defence: rule 59.9. A claimant who does not file a reply does not admit what is pleaded in the defence and a claimant who files a reply that does not deal with something pleaded in the defence is not taken to admit it. A reply is necessary when the Claimant wishes to allege facts (or rely upon a legal provision or argument) which have not been pleaded in the claim. Accordingly, it should not be served simply to repeat what is pleaded in the particulars of claim. Proper consideration should be given to the question of a reply as soon as the defence has been served. The reply should be served before case management information sheets are provided to the Court. This will enable the judge to see all the pleaded issues before the Case Management Conference ("CMC") and will assist the parties in preparing for it. In some cases, more than 21 days may be needed for the service and filing of a reply. In such cases an application should be made on paper for an extension of time (agreed if possible) and for a postponement of the CMC.

5.14 Any reply must be served by the claimant on all other parties: rule 59.9(1).

AMENDMENT

5.15 Although PD58 para.8 applies only to the Commercial Court, it (and section C5 of the Commercial Court Guide) should be followed in the Circuit Commercial Court. Accordingly, an amended statement of case should show the original text unless the Court orders otherwise. But amendments may be also be shown by using footnotes or marginal notes, provided they identify precisely where and when an amendment has been made. Unless the court so orders, there is no need to show amendments by colour-coding. If there have been extensive amendments it may be desirable to prepare a clean unmarked copy of the statement of case for ease of reading. However, a copy of the statement of case showing where and when amendments have been made must also be made available. All amendments must be verified by a statement of truth unless the court orders otherwise.

5.16 Questions of amendment, and consequential amendment, should wherever possible be dealt with by consent. A party should consent to a proposed amendment unless he has substantial grounds for objecting to it. A party which considers that an amendment is required should apply for it at the earliest opportunity. Late amendments (especially those sought shortly before, or at trial) should be avoided and may be disallowed.

6. Case Management in the Circuit Commercial Court

GENERAL PRINCIPLES OF CASE MANAGEMENT

6.1 The court will take an active role in the management of the case through to trial. Parties should be ready at all times to provide the court with such information and assistance as it may require for that purpose. They are also encouraged to ask the Court to decide applications on paper or by telephone where that is clearly appropriate and where the other party-has sufficient time to respond.

6.2 The CMC is a key event in the life of a case. The Court will wish to deal with as many issues as possible at that stage to save time and costs and the parties must be able and willing to assist the Court to achieve this.

6.3 Where parties fail to co-operate with each other (for example in failing to agree reasonable extensions of time) or take disproportionate steps or create delay, they may be penalised in costs.

FIXING THE CASE MANAGEMENT CONFERENCE

6.4 The Claimant must apply for a CMC within 14 days of service of the reply or confirmation by the Claimant that no reply is to be served in the case of a Part 7 claim, or within 14 days of service of the Defendant's evidence in a Part 8 claim, or within 14 days of notification of transfer by the receiving court. If the Claimant fails to apply for a CMC any other party may apply or the Court may order a CMC of its own motion. When the Court fixes the CMC it may give specific directions in relation to it which shall take precedence over any directions set out below.

6.5 Because all interlocutory applications and CMCs are dealt with by the judge, it is essential that practitioners do not seek to list the CMC or any other application before a

District Judge or Master as this will lead to delay. Equally, as all Circuit Commercial cases are allocated to the multi-track, no allocation questionnaire need be filed. The document relevant to a case's management in the Circuit Commercial court is the Case Management Information Sheet, dealt with in paragraph 6.15 below.

6.6 The CMC will be held at a hearing in the usual way unless a different order is made. Any party may apply in writing not later than **3** clear days before the hearing for the CMC to be held by telephone and the Court will then decide on paper whether to proceed in this way or not.

6.7 Where a party is represented, a legal representative familiar with the case and who has sufficient authority to deal with any issues likely to arise must attend. In a heavy or complex case, the retained advocate should attend if possible.

DOCUMENTS REQUIRED FOR THE CMC

6.8 Subject to any earlier order of the Court, not less than 7 days before the CMC the parties must file with the Court (a) a Case Management Information Sheet ("CMIS") in the form set in Appendix B and (b) an application notice for any application not covered by an order sought in the CMIS.

6.9 In addition, the Claimant (or other party applying for the CMC) shall also file and serve a case management file containing:

(a) statements of case;
(b) a brief summary of what the case is about;
(c) the list of issues;
(d) the CMISs;
(e) draft directions which should as far as possible be agreed with the other party and which may be based upon the template at Appendix C; such directions should also be e-mailed to the Court using the appropriate e-mail address contained in Appendix A;
(f) a costs budget in the form set out in Precedent H annexed to PD3E;
(g) a disclosure report;
(h) Where expert evidence is sought, a document identifying the field of expertise and the pleaded issues to which it relates, the estimated cost of the expert and (if possible) their identity;

6.10 If there is any significant dispute likely to arise at the CMC the parties should also serve written submissions in relation to it, 2 clear days before the hearing and file them by e-mail at the relevant address.

LIST OF ISSUES

6.11 The list of issues is intended to be an agreed record of the principal issues of fact and law arising in the case and must be prepared before the CMC and after service of the reply (if any). It should be a neutral document to assist the Court and the parties in the management of the case, for example in relation to preliminary issues, the scope of disclosure, witness statements, or expert evidence. Accordingly, it should not be heavily drafted, negotiated or slanted. It is not a statement of case or a substitute for one. The parties must make every effort to agree the list of issues.

6.12 If there is genuine disagreement over the list of issues the parties should produce their own rival lists if possible using one document with the differences highlighted;

6.13 The list(s) of issues should be e-mailed to the Court at the relevant address prior to the CMC and any later hearing where they may be relevant;

6.14 The Court may order the list of issues to be refined or clarified at or after the CMC.

THE CASE MANAGEMENT INFORMATION SHEET

6.15 This is an essential aid to the understanding by the Court (and the other side) as to one party's assessment of how the case is expected to progress to trial, and its cost, along with the evidence to be called. Parties who fail to lodge it can expected to be penalised in costs in an appropriate case. It is in the form at Appendix B.

COSTS BUDGET

6.16 Rules 3.12 to 3.18 together with PD3E have introduced a costs management scheme. This applies to all cases in the Circuit Commercial Court except where the amount of money claimed in the claim form is £10m or more or the value of the claim is stated to be such. However the Court has a discretion to make larger claims subject to costs management or exclude smaller claims from it. Rule 3.13 and PD3E require the parties (other than litigants in person) to file and exchange costs

budgets in Precedent H as directed by the Court and in any event 21 days before the first CMC and to file and exchange Budget Discussion Reports (preferably in Form R) 7 days before the CMC.

6.17 A costs budget is "an estimate of the reasonable and proportionate costs (including disbursements) which a party intends to incur in the proceedings" (see CPR Glossary). It is required in advance of the CMC so that the Court can consider whether or not to make a costs management order ("CMO"). Subject to paragraph 6.16 above, where costs budgets have been filed and exchanged the court will make a CMO unless the case can be conducted justly and at proportionate cost without one. Even in cases falling outside the scheme, the use of costs management should always be considered. The CMO is an important tool for the management of costs and the case generally.

6.18 A CMO is made when the Court either records the extent to which the costs budgets are agreed between the parties or where, in the case of a budget or part of budget which is not agreed, the court records its approval after making any appropriate revisions. When considering a costs budget for the first time, the Court may not approve the costs within any phase which have already been incurred. But it can record any comments on the proportionality or otherwise of such costs and take them into account when considering costs going forward. Incurred costs should where possible be allocated to the particular phase of litigation to which they relate. Nor may the Court at any stage retrospectively approve any change to the costs budget where the further costs have already been incurred. It is thus incumbent on parties to seeking approval for any variations before the relevant costs have been incurred. For the effect of a costs budget on the assessment of costs see paragraph 15.4 below.

THE CASE MANAGEMENT CONFERENCE

6.19 At the CMC the Court will give such directions for the management of the case as it considers appropriate. It will consider actively the exercise of its case management powers set out in rules 1.4 (2) and 3.1 and those attending must be prepared to assist in that exercise and be in a position to provide the Court with all necessary information. While the parties need not themselves attend, it may be very advantageous for them and their lawyers for them to do so especially in a substantial case. In all cases, clients must be easily contactable by their representatives at the time of the CMC.

6.20 The Court is likely to give particular consideration to

(a) whether any of the issues can be narrowed and if so how, and whether a split trial or trial of preliminary issue is appropriate;
(b) whether further information should be provided by a party where it has been requested within a reasonable period but declined and the parties' legal representatives have been unable to resolve the issue;
(c) the scope of disclosure, including electronic disclosure, and where relevant, a summary of the parties' discussions as to the disclosure and inspection of Electronic Documents (see paragraphs 10.5-10.6 below) and the use of information technology' in the management of documents generally;
(d) whether expert evidence is necessary and if so whether it may be adduced by a single joint expert or if not, by the parties' experts giving their evidence concurrently;
(e) the extent to which ADR has been considered or attempted;
(f) whether the case is appropriate for Early Neutral Evaluation;
(g) whether the parties have co-operated with each over the management of the case thus far;
(h) whether or not to make a costs management order under rule 3.15 and PD3E and if so what if any revisions are required to the parties' costs budgets where they have not been agreed.

6.21 Accordingly, the parties' representatives must be fully prepared and able, to discuss in detail with the Court the matters referred to above along with any other matters likely to arise. The aim of the Court, in all but the most substantial of cases, is to have one CMC only.

6.22 At the CMC, the Court may fix a trial date and pre-trial review ("PTR") (if appropriate). Parties must therefore have details of availability of witnesses and advocates to hand. Advocates must also be in a position to give a clear and reliable estimate of the length of trial.

6.23 The Court may also decide to fix a Progress Monitoring Date. If it does, it may after that date fix a further CMC or a PTR on its own initiative if no or insufficient information has been provided by the parties or it is otherwise appropriate.

6.24 The parties may not less than 7 days before the CMC submit agreed directions up to trial (in hard copy and by e-mail) and invite the Court to vacate the CMC on that basis. The Court will consider the position on paper and may vacate the hearing, order it to take place by telephone, maintain it or make any other appropriate order. Parties must assume that the hearing will proceed unless notified to the contrary.

6.25 Subject to the discretion of the judge dealing with the CMC, the Court may issue directions agreed and/or ordered at the CMC based upon the electronic version submitted beforehand. This may enable the directions to be issued and sealed at the conclusion of the CMC itself.

FURTHER CASE MANAGEMENT CONFERENCE

6.26 In some cases it may be necessary to hold a second CMC. In others, the judge may of his own motion wish to discuss some aspect of the case with the parties and may require a telephone or oral hearing. The parties should be prepared to accommodate such hearings.

COMPLIANCE WITH COURT ORDERS

6.27 Compliance with rules, practice directions and particular directions or orders made by the Court is part of the overriding objective. Serious sanctions may be prescribed by the rules or the Court for non-compliance. Applications by the party in breach for relief from such sanctions will be the subject of careful scrutiny by the Court.

7. Alternative Dispute Resolution

ADR GENERALLY

7.1 Business cases are often easier to settle than other disputes particularly when the relief sought is confined to the payment of money. Many businesses are able to settle a case by direct discussions or through their lawyers. If this does not work parties are encouraged to consider the use of ADR (such as, but not confined to, mediation) as an alternative means of resolving disputes or particular issues.

7.2 The settlement of disputes by means of ADR saves costs and avoids the delay inherent in litigation. It may also enable the parties to settle their dispute while preserving their existing commercial relationships and market reputation. ADR also provides parties with a wider range of solutions than those offered by litigation.

7.3 Lawyers should in all cases consider with their clients and the other parties concerned the possibility of attempting to resolve the dispute by ADR and should ensure that their clients are fully informed as to the most cost effective means of resolving their dispute.

7.4 Parties who consider that ADR might be an appropriate means of resolving the dispute or particular issues in it may apply for directions at any stage, including before service of the defence and before the CMC, for example to stay the proceedings pending mediation.

7.5 In any event, the Court will in appropriate cases invite the parties to consider whether their dispute, or particular issues in it, could be resolved through ADR, especially, but not only, at a CMC. Whenever there is a substantial application being heard by the Court the parties should be prepared to discuss ADR at the conclusion of the hearing.

7.6 The judge may, if he considers it appropriate, adjourn the case for a specified period of time to encourage and enable the parties to use ADR. He may for this purpose extend the time for compliance by the parties with any requirement under the rules, the Guide or any order of the Court. The judge in making an order providing for ADR, will normally take into account, when considering at what point in the pre-trial timetable there should be compliance with such an order, such matters as the costs likely to be incurred at each stage in the pre-trial timetable if the claim is not settled, the costs of a mediation or other means of dispute resolution, and how far the prospects of a successful mediation or other means of dispute resolution are likely to be enhanced by completion of pleadings, disclosure of documents, provision of further information under CPR 18, exchange of factual witness statements or exchange of experts' reports.

7.7 The judge may further consider in an appropriate case making an ADR Order in the terms set out in Appendix 3 of The Commercial Court Guide.

7.8 At the CMC the judge may consider that an order directed to encouraging bilateral negotiations between the parties' respective legal representatives is likely to be a more cost-effective and productive route to settlement then can be offered by a formal ADR Order. In such a case the court will set a date by which there is to be a meeting between respective solicitors and their respective clients' officials responsible for decision-taking in relation to the case in question.

EARLY NEUTRAL EVALUATION

7.9 In appropriate cases, and with the agreement of all parties the court will provide a without-prejudice, non-binding, early neutral evaluation ("ENE") of a dispute or particular issue. Any party may apply for an ENE and if a Circuit Commercial Judge considers that it is appropriate he will give such directions for its preparation and conduct as are appropriate. The judge who conducts the ENE will take no further part in the case, either for the purpose of the hearing of

applications or as the judge at trial, unless the parties agree otherwise. An ENE may be conducted entirely on paper, or after a hearing (with or without evidence) although in general such hearings will not be expected to last more than one day. The Judge conducting the ENE will give his conclusion with brief reasons, either orally or in writing. Parties are encouraged to consider ENE as one form of ADR especially where they feel unable to settle the dispute without some formal indication as to where the merits lie, and hence what might be the result at trial.

7.10 Whether it is practicable to make an ENE order at any given Circuit Commercial court may depend on the judicial resources available there, given that the judge hearing the ENE may thereafter be unable to hear the case.

8. Applications to the Court

GENERALLY

8.1 Applications are governed by Part 23 and PD23 as modified by rule 59 and PD59.9 and 10. Any application for an order should include a draft of the order sought. Where possible an electronic version of the Order in Word should be submitted as well. Once an application has been issued by the Court copies will be sent to the party making the application for service, unless the Court has agreed to effect service. The Circuit Commercial Court is conscious of the time and cost of an oral hearing. Accordingly it is willing to consider hearing applications by video-link, telephone or on paper in an appropriate case. It is unlikely to do so in the case of an application for summary judgment/strike out, interim payment, security for costs, injunction (save where it is without notice and urgency dictates it) or other substantial application. The form of application notice enables the applying party to select which mode of determination it seeks, subject thereafter to the agreement of the Court. All applications may be submitted by CE-Filing and practitioners are encouraged to so do. See paragraph 3.3 above.

TIME FOR SERVICE OF EVIDENCE

8.2 The time allowed for the service of evidence in relation to applications is governed by PD59.9.1 and 9.2. Broadly, except in applications which are going to last more than half a day, evidence in support of an application is to be served with that application, evidence in answer is due within 14 days of service and evidence in reply within 7 days after that.

APPLICATIONS WITHOUT NOTICE

8.3 All applications should be made with notice, even if that notice has to be short, unless a rule or Practice Direction provides that the application may be made without notice or there are good reasons for making the application without notice, for example, because notice might defeat the object of the application. Where an application without notice is otherwise appropriate and does not involve the grant of an injunction, it will normally be dealt with by the judge on paper, as, for example, with applications for permission to serve a claim form out of the jurisdiction, and applications for an extension of time in which to serve a claim form. But in any given case the judge may require the applicant to provide clarification or further information by telephone or at a brief hearing, or to serve the other party. .

8.4 On all applications without notice it is the duty of the applicant and those representing him to make full and frank disclosure of all matters relevant to the application.

EXPEDITED APPLICATIONS

8.5 The Court will expedite the hearing of an application on notice in cases of sufficient urgency and importance. Where a party wishes to make an expedited application a request should be made to the court on notice to all other parties.

VIDEO-CONFERENCING

8.6 Most Circuit Commercial Courts have facilities for video conferences. When an applicant wishes to have a matter heard in this way, it should say so in the application and explain why. The other parties should then indicate to the Court as soon as possible after being served whether they agree or riot, giving reasons. Even if the parties agree, the Court may still decide that a full oral hearing, or conversely a telephone hearing, is more appropriate. Information about each Court's video conferencing are in Appendix A.

TELEPHONE HEARINGS

8.7 If the Court agrees that an application may be dealt with by telephone, it will normally be for the applicant to arrange the telephone conference which should include the recording of the call.

PAPER APPLICATIONS

8.8 Attention is drawn to the provisions of rule 23.8 and PD23A.11. If the applicant considers that the application is suitable for determination on paper, he should ensure before lodging the papers with the court that (a) the application notice together with any supporting evidence has been served on the respondent; (b) the respondent has been allowed the appropriate period of time in which to serve evidence in opposition; (c) any evidence in reply has been served on the respondent; and (d) there is included in the papers the written consent of the respondent to the disposal of the application without a hearing; or a statement by the applicant of the grounds on which he seeks to have the application disposed of without a hearing, together with confirmation that the application and a copy of the grounds for disposing of without a hearing have been served on the respondent and a statement of when they were served.

8.9 The parties may ask the Court to deal with certain matters relating to the management of proceedings in correspondence without the need to issue an application notice. For example, this may be appropriate where the issue is costs only or the working out of figures or particular orders, following a hearing, the timing of certain directions where their substance is already agreed or has been determined or the identity of a single joint expert or mediator. The party making this request shall copy its request the other party at the same time. Subject to any other direction of the Court, the other party shall then have two clear days in which to indicate to the requesting party and to the Court its consent or opposition to matters proceeding in this way. If the Court decides to proceed in this way, it will inform the parties and they shall then make their representations on the matter in issue as directed by the Court. The Court will then decide the matter and issue the appropriate supplemental order.

BUNDLES AND SKELETON ARGUMENTS

8.10 An application bundle must be lodged with the Court 2 clear days before the date fixed for the hearing. The applicant should, as a matter of course, provide all other parties to the application with a copy of the application bundle. Appendix 7 of the Commercial Court Guide deals with in detail with the preparation of bundles.

8.11 Skeleton arguments must be provided by all parties. These must be lodged with the Court at least one clear day before the date fixed for the hearing together with an estimate of the reading time likely to be required by the court. Guidelines on the preparation of skeleton arguments are set out in Appendix 5 of the Commercial Court Guide. On some applications there will be key authorities that it would be useful for the judge to read before the oral hearing of the application. Copies of these authorities should be provided with the skeleton arguments. In any event, bundles of the authorities on which the parties wish to rely should be provided to the judge hearing the application as soon as possible after skeleton arguments have been exchanged.

8.12 Both the application bundle and the skeleton arguments are vital advance material for the judge who is to hear the application. If they are not filed, the hearing may be vacated or costs sanctions applied. If there is likely to be a problem with the delivery of the bundle, it is the responsibility of the applicant to inform the Court forthwith and to indicate when it will be filed. Equally it is the responsibility of Counsel to inform the Court if a skeleton argument cannot be filed on time, and why.

8.13 At any stage before the hearing of an application if it appears to the Court that the application bundle and/or skeleton arguments should be filed at an earlier stage it may issue directions to that effect.

8.14 If at any time either party considers that there is a material risk that the hearing of the application will exceed the time currently allowed it must inform the Court immediately. All time estimates should be given on the assumption that the judge will have read in advance the skeleton arguments and the documents identified in the reading list.

8.15 If it is found at the hearing that the time required for the hearing has been significantly underestimated, the judge hearing the application may adjourn the matter and may make any special costs orders (including orders for the immediate payment of costs and wasted costs orders) as may be appropriate.

8.16 On any hearing expected to take up to one day, the judge is likely to assess summarily any costs which a party has been ordered to pay. Such assessments, and related costs matters are dealt with in paragraphs 15.5 to 15.7 below.

9. Injunctions

GENERALLY

9.1 Applications for interim injunctions are governed by Part 25. They must be made on notice in accordance with the procedure set out in Part 23 unless there are good reasons for proceeding without notice. Except when the application is so urgent that there has not been any opportunity to do so, the applicant must issue his claim form and obtain the evidence on which he wishes to rely in support of the application before making the application.

9.2 On applications of any weight, and unless the urgency means that this is not possible, the applicant should provide the court at the earliest opportunity with a skeleton argument.

WITHOUT NOTICE INJUNCTIONS

9.3 If an injunction is sought without notice, the applicant will be expected the explain the basis for it. Any delay in seeking the injunction may prove fatal. Parties are reminded of the duty to make full and frank disclosure on such applications. If the injunction is granted, the Court will normally fix a return day within, not more than 7 days later. The applicant should endeavour to provide an electronic version of the order sought. It may then be possible for the Court to issue it (with appropriate amendments) at the conclusion of the hearing.

FORTIFICATION OF UNDERTAKINGS

9.4 Where the applicant for an interim injunction is not able to show sufficient assets within the jurisdiction of the Court to support the undertakings given, particularly the cross-undertaking in damages, he may be required to reinforce his undertakings by providing security. This will be ordered in such form as the judge decides is appropriate but may, for example, take the form of a payment into court, a bond issued by an insurance company or a demand or other guarantee or standby credit issued by a first-class bank. In an appropriate case the judge may order a payment to be made to the applicant's solicitors to be held by them as officers of the court pending further order. Sometimes the undertaking of a parent company may be acceptable. Accordingly, any party seeking an injunction must come prepared to deal with the question of providing security.

FREEZING INJUNCTIONS AND SEARCH ORDERS

9.5 The practice of the Circuit Commercial Court is to follow the practice and procedure of the Commercial Court. See section F15.8 - 15.15 of the Commercial Court Guide. Standard forms of wording for freezing injunctions and search orders are set out in Appendix 11 thereto. They should be followed in the Circuit Commercial Court unless the judge orders otherwise. Accordingly, any draft submitted should be in the form prescribed by Appendix 11. Any departure from the standard form must be specifically drawn to the judge's attention at the hearing.

9.6 Parties are reminded that an affidavit, and not a witness statement, is required on an application for a freezing injunction or a search order. (PD25A para.3.1) and that the duty of disclosure is especially important in this context.

10. Disclosure

GENERALLY

10.1 The court will only order such disclosure as is necessary and proportionate. Rule 31.5 (7) contains a list of different disclosure orders of which standard disclosure is only one. It is not to be regarded as the default option and in many cases a narrower and more tailored order will suffice. Usually, this will be disclosure of documents upon which each side relies together with a request of the specific disclosure which it requires from the other party. The Court may consider such a request at the CMC. The parties are required to state in their disclosure report and CMIS which particular order they seek and why.

10.2 If a party contends that standard disclosure is necessary and proportionate it must also set out the limits of any search required by such an order and why any wider such (for example for particular classes or categories of document) would be unreasonable (see rule 31.7).

10.3 It follows that a party's costs budget must reflect the particular disclosure order sought.

10.4 The parties are expected to discuss the appropriate disclosure order prior to submitting their disclosure reports and CMISs with a view to agreeing them subject to the approval of the Court. They should in any event be prepared to discuss with the Court at the CMC the proper

scope of disclosure and how it, and the consequent inspection, might most appropriately be made This may include using information technology (for example CDs, DVDs or memory sticks) to exchange copy documents and to access them thereafter and at trial.

ELECTRONIC DISCLOSURE

10.5 This is governed by PD31B. The extensive use of information technology in business dealings makes this a particularly relevant provision for Circuit Commercial cases. Para. 5 (3) defines an Electronic Document as "any document held in electronic form. It includes, for example, e-mail and other electronic communications, such as text messages and voicemail, word-processed documents and databases and documents stored on portable devices such as memory sticks and mobile phones. In addition to documents that are readily accessible from computer systems and other electronic devices and media, it includes documents that are stored on servers and back-up systems and electronic documents that have been deleted. It also includes Metadata and other embedded data which is not typically visible on screen or a print out." Para. 7 requires parties' legal advisers to notify their clients of the need to preserve disclosable documents which include Electronic Documents. Failure to observe this requirement, so that, for example, important documents only emerge at trial, may have serious consequences including the adjournment of a hearing and costs orders against the defaulting party, which may be awarded on an indemnity basis.

10.6 The parties should also, prior to the first CMC, discuss any issues that may arise regarding searches for and the preservation of electronic documents. This may involve the categories of Electronic Documents within their control, the computer systems, electronic devices and media on which any relevant documents may be held, the storage systems and document retention policies, the scope of the reasonable search for such documents, the means by which the burden and cost of disclosure might be reduced and the other matters referred to in PD31B para.9. In general the parties should provide the court with an explicit account of the issues as to retrieval and disclosure of electronic documents which have arisen and where proportionality is in issue each party should provide the court with an informed estimate of the volume of documents involved and the cost of their retrieval and disclosure. They should also co-operate at an early stage as to the format in which electronic copy documents are to be provided on inspection. They should also consider the use of information technology in the conduct of the proceedings generally including the disclosure and inspection and/or copying of non-Electronic Documents- see paragraph 8 above.

10.7 Para. 14 requires the parties to submit before the first CMC a document summarising the extent of the parties' agreement on such matters. Where there is disagreement the Court will make the appropriate orders which may include the holding of a further CMC on disclosure and/or the completion of an Electronic Documents Questionnaire.

SPECIFIC DISCLOSURE

10.8 An order for specific disclosure under rule 31.12 may direct a party to carry out a thorough search for any documents which it is reasonable to suppose may adversely affect his own case or support the case of the party applying for disclosure or which may lead to a train of enquiry which has either of these consequences and to disclose any documents located as a result of that search: PD31A para.5.5. Specific disclosure is normally the subject of a separate application but the parties should be prepared to discuss at the CMC whether such an application is likely and if it is, whether any issue relating to particular documents can be conveniently dealt with at the CMC.

11. Witness Statements

PREPARATION AND FORM OF WITNESS STATEMENTS

11.1 Witness statements must comply with the requirements of PD32. In addition,

(a) the function of a witness statement is to set out in writing the evidence in chief of the witness; as far as possible, therefore, the statement should be in the witness's own words;

(b) it should be as concise as the circumstances of the case allow without omitting any significant matters;

(c) it should not contain lengthy quotations from, or commentaries upon, documents;

(d) it is seldom necessary to exhibit documents to a witness statement;

(e) it should not engage in (legal or other) argument;

(f) it must indicate which of the statements made in it are made from the witness's own knowledge and which are made on information or belief, giving the source for any statement made on information or belief;

(g) it must contain a statement by the witness that he believes the matters stated in it are true;

(h) it is usually convenient for a witness statement to follow the chronological sequence of events or matters dealt with (PD32 para.19.2). It is also helpful for particular topics covered to be indicated by the appropriate heading.

11.2 Witness statements which do not comply with the above may face sanctions from the court including the striking-out of the offending passages and adverse costs orders.

11.3 The copies of witness statements to be inserted into the trial bundle must be annotated with the trial bundle references of the documents to which they refer.

FLUENCY OF WITNESSES

11.4 If a witness is not sufficiently fluent in English to give his evidence in English, the witness statement should be in the witness's own language and a translation provided. If a witness is not fluent in English but can make himself understood in broken English and can understand written English, the statement need not be in his own words provided that these matters are indicated in the statement itself. It must however be written so as to express as accurately as possible the substance of his evidence.

ADDITIONAL EVIDENCE FROM A WITNESS

11.5 A witness giving oral evidence at trial may with the permission of the court amplify his witness statement and give evidence in relation to new matters which have arisen since the witness statement was served: rule 32.5(3). Permission will be given only if the Court considers that there is good reason not to confine the evidence of the witness to the contents of his witness statement: rule 32.5(4).

WITNESS SUMMONSES

11.6 If a witness will not voluntarily provide a witness statement and agree to attend Court, the relevant party may wish to serve a summons for the witness to attend court or to produce documents in advance of the date fixed for trial. A witness summons is issued by the Court at the request of the relevant party who must then serve it; but if the summons is to be served within 7 days before the trial, the permission of the Court is needed. See rule 34.2-34.7 and also rule 32.9.

WITNESS SUMMARIES

11.7 Where a party cannot obtain a statement from an intended witness, he may apply to serve a witness summary instead which summarises the evidence which will be given (for example following issue of a witness summons) or if not known, the matters on which the witness will be questioned. See rule 32.9.

EVIDENCE TO BE GIVEN BY VIDEO-LINK

11.8 A witness may give evidence by video-link or by other means other than oral testimony when present at the trial, if the Court permits, (rule 32.3). The Courts which have video-link facilities are listed in Appendix A. Parties seeking to use such facilities should make application at an early stage, preferably at the CMC and in any event no later than the PTR. Detailed guidance is at PD32 Annex 3 and section H3 of the Commercial Court Guide.

12. Expert Evidence

GENERALLY

12.1 Any application for permission to call an expert witness or serve an expert's report should normally be made at the CMC when the party applying will be expected to have identified in advance the expert's field of expertise the issue to which the evidence relates, its cost and if possible the name of the expert.

12.2 However, the court will only make an order for expert evidence when satisfied that it is in fact reasonably required for the resolution of the case. The party seeking such evidence must demonstrate this by reference to the nature of the evidence to be given, the expertise of the proposed expert and the pleaded issues to which it is said to be relevant. Even if expert evidence is justified, in many cases this can be provided by a single joint expert (see below). If either or both parties seek a direction that each side is to have its own expert, this must be justified as necessary and proportionate. The court is unlikely to make such an order merely because both sides have agreed it.

12.3 The provisions set out in Appendix 8 to the Commercial Court Guide apply to all aspects of expert evidence (including expert reports, meetings of experts and expert evidence given orally) unless the court orders otherwise. Parties should ensure that they are drawn to the attention of any experts they instruct at the earliest opportunity.

SINGLE JOINT EXPERT

12.4 Such an expert may often be appropriate for example where the issue is self-contained or subsidiary or where it consists largely of testing or other analysis which can conveniently be done for all parties by one expert. The fact that the issue is complex or that one side has already instructed an expert does not necessarily mean that an order for a single joint expert is inappropriate.

12.5 When the use of a single joint expert is contemplated, the court will expect the parties to co-operate in developing, and agreeing terms of reference for that expert and his fees. In most cases the terms of reference will (in particular) identify in detail what the expert is asked to do, identify any documentary materials he is asked to consider and specify any assumptions he is asked to make.

EXCHANGE OF REPORTS

12.6 In appropriate cases the court will direct that the reports of expert witnesses be exchanged sequentially rather than simultaneously. This may in many cases save time and costs by helping to focus the contents of responsive reports upon true rather than assumed issues of expert evidence and by avoiding repetition of detailed factual material as to which there is no real issue. Sequential exchange is likely to be particularly effective where experts are giving evidence of foreign law or are forensic accountants. This is an issue that the court will normally wish to consider at the CMC. The Court will also consider whether it should provide at the outset for the service of supplemental reports where the initial reports were exchanged simultaneously.

CONCURRENT EVIDENCE

12.7 Para. 11 of PD35 provides for expert evidence at trial to be taken concurrently, that is to say with both experts in the witness box at the same time. This enables the judge and the trial advocates to receive the immediate view of both experts on a particular matter and the opportunity for the experts to make points to each other as well as answering questions. There remains the opportunity for the trial advocates to ask questions of the experts. In an appropriate case this procedure will lead to a saving of time and costs (for example by narrowing issues and avoiding repetition) and enabling the judge to have a clearer understanding of the real issues between the experts. Para. 11 sets out various forms of concurrent evidence and is accompanied by an extensive guidance note. Therefore, at the CMC or later hearing or at the PTR the parties and the judge will give careful consideration as to whether an order for concurrent evidence should be made.

MEETINGS OF EXPERT WITNESSES

12.8 The court will normally direct a meeting or meetings of expert witnesses before trial. This will normally follow the exchange of reports. However, in some cases it may be appropriate to direct an initial meeting of experts even before exchange of reports. This may narrow some assumed issues or ensure that both experts are addressing themselves to the precisely the same issues. Sometimes it may be useful for there to be further meetings during the trial itself.

12.9 The purposes of an experts' meeting are to give the experts the opportunity to discuss the expert issues and to decide, with the benefit of that discussion, on which expert issues they share or can come to share tire same expert opinion and on which expert issues there remains a difference of expert opinion between them (and what that difference is).

12.10 Unless the court orders otherwise, at or following any meeting the experts should prepare a joint memorandum for the court recording:

(a) the fact that they have met and discussed the expert issues;
(b) the issues on which they agree;
(c) the issues on which they disagree; and
(d) a brief summary of the reasons for their disagreement.

12.11 If the experts do reach agreement on an issue that agreement will not bind the parties unless they expressly agree to be bound by it.

WRITTEN QUESTIONS TO EXPERTS

12.12 Under rule 35.6 a party may, without the permission of the court, put written questions to an expert instructed by another party (or to a single joint expert) about his report. Unless the

court gives permission or the other party agrees, such questions should be for the purpose only of clarifying the report. The court will pay close attention to the use of this procedure (especially where separate experts are instructed) to ensure that it remains an instrument for the helpful exchange of information.

TRIAL

12.13 At trial the evidence of expert witnesses is usually taken as a block, after the evidence of witnesses of fact has been given. The introduction of additional expert evidence after the commencement of the trial can have a severely disruptive effect. Not only is it likely to make necessary additional expert evidence in response, but it may also lead to applications for further disclosure of documents and also to applications to call further factual evidence from witnesses whose statements have not previously been exchanged. Accordingly, experts' supplementary reports must be completed and exchanged not later than the progress monitoring date and the introduction of additional expert evidence after that date will only be permitted upon application to the trial judge and if there are very strong grounds for admitting it.

13. The Pre-trial Review and Trial Timetable

13.1 Where a PTR has been ordered, the Pre-trial Check List (substantially in the form reproduced here as Appendix D) must be filed at Court not less than **7** days before the PTR.

13.2 If no PTR has been ordered, the Pre-trial Check List should be served 6 weeks before the trial date unless otherwise ordered. In such a case, the judge will consider the Pre-trial Check Lists and decide then whether to order a PTR. If he does not, he may on his own initiative give directions for the further preparation of the case or as to the conduct of the trial.

13.3 Where a PTR has been ordered it will be conducted by the trial judge whenever possible. The advocates who will appear at the trial should attend.

13.4 A PTR gives the Court the opportunity to review the case before the trial and the parties the opportunity to ventilate any remaining procedural issues between them. Failure by the parties to mention any matter which ought properly to be dealt with at this stage and which is left to trial may be taken into account when the Court at trial decides what order (including any order for costs) to make.

13.5 The Court will also revisit the time estimate for trial and consider the trial timetable. This should provide for openings, witness evidence, expert evidence and oral closing submissions, over the course of the trial. The trial timetable should be submitted 2 clear days before the PTR.

13.6 The parties may not less than 7 days before the PTR request the Court in writing to vacate it on the basis that there are no issues which fall to be determined or that any such issues have been resolved by consent in the form of agreed directions submitted to the Court at the same time in hard copy and by e-mail. The Court will consider the position on paper and may vacate the PTR, order it to take place by telephone, maintain it or make any other appropriate order. Parties must assume that the hearing will proceed unless notified to the contrary.

14. The Trial

TRIAL BUNDLES

14.1 The bundles of documents for the trial should be prepared in accordance with Appendix 7 of the Commercial Court Guide which contains an essential checklist. The number, content and organisation of the trial bundles should be approved by the advocates with the conduct of the trial. They should consist of files with 2 and not 4 rings.

14.2 Parties are reminded that apart from certain specified documents, trial bundles should include only necessary documents: PD39A para.3.2(11). Consideration must always be given to what documents are and are not relevant and necessary. Where the court is of the opinion that costs have been wasted by the copying of unnecessary documents it will have no hesitation in making a special order for costs against the party responsible.

14.3 The number, content and organisation of the trial bundles should be agreed in accordance with the following procedure, subject to any other direction of the Court:

(a) the claimant should submit proposals to all other parties at least 4 weeks before the date fixed for trial;

(b) the other parties should submit details of additions they require and any suggestions for revision of the claimant's proposals to the claimant at least 3 weeks before the date fixed for trial.

14.4 Preparation of the trial bundles should be completed not later than 2 weeks before the date fixed for trial. Parties are reminded of the requirement under PD39A para.3.9 to agree questions of authenticity and admissibility or summarise their disagreement.

14.5 It is the responsibility of the claimant's legal representative to prepare and lodge the agreed trial bundles: see PD39A para. 3.4. If another party wishes to put before the court a bundle that the claimant regards as unnecessary he must prepare and lodge it himself. Bundles should be lodged with the Court at least 7 days before trial. If bundles are lodged late, this may result in the trial not commencing on the date fixed, at the expense of the party in default. An order for immediate payment of costs may be made.

14.6 If oral evidence is to be given at trial, the claimant should provide a clean unmarked set of all relevant trial bundles for use in the witness box: PD39A para.3.10. The claimant is responsible for ensuring that these bundles are kept up to date throughout the trial.

OPENING SUBMISSIONS

14.7 The Claimant's opening note should outline its case on the issues for trial, highlighting (by reference to trial bundle numbering) the key documents and providing a reading list for the Court with an estimate of how long pre-reading will take. The legal framework for the claim should also be set out although extensive legal argument or citation of authorities is not required at this stage. The Defendant's note should be similarly concise. The timing and mode of service of the notes will have been set at the PTR or by agreement between the parties and the Court. Under normal circumstances such notes must be provided at least 2 clear days before the trial and may be ordered to be sequential.

OPENING SPEECHES

14.8 The Court will usually permit a brief opening speech by the Claimant and a response from the Defendant. This gives the Court and the parties an opportunity to clarify any matters arising out of the opening notes and narrow issues if possible.

APPLICATIONS AT TRIAL

14.9 If it is necessary to make an application for example in relation to evidence it should be made at the earliest point in the trial which may be during opening. Parties should not delay in making such applications on the basis that as the trial progresses they might become unnecessary.

CLOSING SUBMISSIONS

14.10 The form and timing of closing submissions will be decided in the course of the trial. The usual course particularly in the case of shorter trials, is that the advocates will be expected to make oral closing submissions, either immediately after the evidence has been completed or shortly thereafter. Unless the trial judge directs otherwise, the claimant will make his oral closing submissions first, followed by the defendant in the order in which they appear on the claim form with the claimant having a right of reply.

14.11 In a more substantial trial, the court may well require written closing submissions before oral closing submissions. In such a case the court will normally allow an appropriate period of time after the conclusion of the evidence to allow the preparation of these submissions.

15. Costs

GENERALLY

15.1 See Part 44. The general rule is that the unsuccessful party will pay the successful party's costs but the judge may make a different order: rule 44.3 (2). Parties should note that their conduct during the proceedings may be taken into account in the ways set out in rule 44.3 (4) and (5). The judge may disallow the costs of, or make a costs order against, any party which has unnecessarily increased costs at any stage.

15.2 Circuit Commercial cases are often complex with a variety of different issues to be decided. Accordingly, the judge may have regard to the outcome on particular issues as well as who has succeeded overall; see rule 44.3 (4) (b).

15.3 The judge has the power to make a wide range of orders to give effect to the merits of the parties' position on costs, including ordering payment of a proportion only of a party's costs or in a fixed amount, or from or until particular dates: rule 44.3 (6).

THE EFFECT OF A CMO

15.4 Where a CMO has been made and there is an assessment of the costs of the party awarded its costs ("the receiving party") on the standard basis, the court must have regard to that party's costs budget! and may not depart from it without good reason. This applies to both summary and detailed assessments. It is thus important for parties to keep their costs budgets up to date. See further paragraph 16.18 below.

SUMMARY ASSESSMENT OF COSTS

15.5 The general rule is that if a hearing in the Circuit Commercial Court takes no longer than a day, the judge will assess the costs summarily. If a CMO has been made the Court is likely to assess summarily the costs in longer hearings including trials. If the application disposes of the whole claim, those costs may be summarily assessed, too: PD44 para.13.2.

15.6 If a party wishes the Court to make a summary assessment of its costs, if the other side is ordered to pay them, it must provide statement of those costs with a detailed schedule, no later than 24 hours before the hearing: PD44 para.13.5. If this rule is not complied with, the judge may well decline to make an assessment and order that the costs be the subject of a detailed assessment in the usual way.

15.7 The Senior Court Costs Office's *Guide to the Summary Assessment of Costs* is at 48GP.17-48GP.56. Appendix 2 to the Guide contains a list of guideline hourly rates for solicitors across England and Wales, last updated in 2010. The Court is not bound to limit a party's costs to those rates but they are often regarded as a useful starting point. Cases justifying higher rates may be where the work has had to be done with real urgency or where the amount at stake or the complexity of the case, is substantial.

PAYMENT ON ACCOUNT OF COSTS

15.8 Even if a summary assessment is not made, for example because of pressure of time or the nature or extent of the disputes over the costs incurred, or because the hearing has exceeded one day, the Court will usually order that a payment on account of such costs be made. See rule 44.2 (8). But if it is to do so, it will normally require a document which gives at least some detail as to how the sum claimed is arrived at. If a CMO has been made the Court is likely to order a payment on account by reference to the receiving party's costs budget.

PRO BONO COSTS ORDERS

15.9 If a party had legal representation which was provided free of charge (for example under the Bar Pro Bono Scheme or by the Access to Justice Foundation), the Court may order the other party to pay such costs as it would have ordered against it, had the first party's representation not been free of charge. It can assess such costs or order a detailed assessment in the usual way. The recipient is, however, not the first party but the Access to Justice Foundation. Such orders may not be made against those whose own representation is provided without charge or who are funded by the Legal Services Commission. See s194 of the Legal Services Act 2007, CPR 46.7 and PD46 para.4.1.

16. Litigants in Person and Companies without Representation

16.1 Those bringing or defending claims in the Circuit Commercial Court are sometimes unable to afford legal representation or do not have it for some other reason. Such "litigants in person" require special consideration.

16.2 Where a litigant in person is involved in a case the court will expect solicitors and counsel for other parties to do what they reasonably can to ensure that he has a fair opportunity to prepare and put his case. The duty of an advocate to ensure that the court is informed of all relevant decisions and legislative provisions of which he is aware (whether favourable to his case or not) and to bring any procedural irregularity to the attention of the court during the hearing is of particular importance in a case where a litigant in person is involved.

16.3 Further, the court will expect solicitors and counsel appearing for other parties to ensure that they provide the various documents required for the management of the case and trial, even where the litigant in person is unwilling or unable to participate. If the claimant is a litigant in person the judge at the CMC will normally direct which of the parties is to have responsibility for the

preparation and upkeep of the case management bundle. The court may also give directions relating to the costs of providing application bundles, trial bundles and, if applicable, transcripts of hearings to the litigant in person.

16.4 The Court itself will adopt such procedure at any hearing as it considers appropriate to further the overriding objective where a litigant in person is involved. This may include ascertaining from such a person the matters on which he should give evidence or be cross-examined or putting questions to him.

16.5 A litigant in person does not have to file a costs budget.

16.6 Litigants in person are reminded that if their case is in Birmingham, Bristol, Cardiff Leeds, Liverpool, London, or Manchester, they may obtain very helpful support before and during a hearing (though not extending to legal advice or representation) from the court's Personal Support Unit ("PSU"). See its website at: www.thepsu.org.uk and the individual contact details at Appendix A for those Court centres where the PSU operates. The other parties in the case should remind the litigant in person of this service at those centres if he appears to he unaware of it. The Court's experience is that the involvement of the PSU can be of great assistance to both parties, as well as the judge.

16.7 Litigants in person may also seek the assistance of a "McKenzie friend" who may sit alongside them in court and provide assistance such as taking notes or making quiet suggestions to them. If sought, permission for a McKenzie friend is usually given unless fairness or the interests of justice do not require it. It is less common for the court to grant a right of audience to a particular individual who is not otherwise qualified to act as an advocate although there is power to do so under paragraph 1(2) of Schedule 3 to the Legal Services Act 2007. It would be exceptional for the court to grant permission where the person concerned is unqualified but holds himself out as providing advocacy services. See generally section 13G in Volume 2 of the White Book.

16.8 Although rule 39.6 enables the Court to allow a company or other corporation without legal representation to be represented at trial by an employee, the complexity of cases in the Circuit Commercial Court may make that unsuitable.

17. Arbitration Claims

17.1 Applications to the court under the Arbitration Acts 1950 - 1996 and other applications relating to arbitrations are known as "arbitration claims". The procedure applicable to arbitration claims is to be found in Part 62 and PD62. The most common claims are (a) appeals on a point of law against the arbitration award where the parties have provided for this in the contract (b) applications for permission to appeal where they have not (c) applications to set aside the award for serious irregularity and (d) applications to enforce an arbitration award. Almost all arbitration claims are made under the Arbitration Act 1996. Only the Commercial Court, the Technology and Construction Court and the Circuit Commercial Court have jurisdiction to deal with them. The claims dealt with by the Technology and Construction Court will usually relate to construction or similar contracts. Part 59, which deals with the Circuit Commercial Court generally, applies to arbitration claims unless any provision in Part 62 says otherwise: rule 62.1(3). In general, the Circuit Commercial Court will apply section O of the Commercial Court Guide.

17.2 The automatic directions set out in PD62 para .6 will apply unless the Court has otherwise ordered.

17.3 Where the claim is for permission to appeal, the detailed procedure set out in PD62 para. 12 will apply. Sometimes a party also seeks to challenge the award on the grounds of serious irregularity. If so, both claims should be made in the same claim form. On receipt of the papers the judge will consider whether such claims should be dealt with together or separately and give appropriate directions or order a hearing to take place to discuss the matter further.

17.4 In the interests of saving costs and of proportionality the Circuit Commercial Courts may be expected to deal informally and robustly with some smaller arbitration claims which seem obviously misconceived.

17.5 Enforcement of awards is governed by rule 62.18. An application to enforce must be made without notice in an arbitration claim form, supported by written evidence and accompanied by two copies of the draft of the order required. If the Court gives permission to enforce the defendant will be given 14 days (more if outside the jurisdiction) to apply to set it

aside and no enforcement will take place until the 14 days or longer period expires or any application to set aside is disposed of.