

PRACTICE DIRECTION - 11.1

EX PARTE, INTERIM AND INTERLOCUTORY APPLICATIONS FOR INJUNCTIONS

PART I - PROCEDURE FOR URGENT APPLICATIONS

General

1. (a) Applications should, save in exceptional circumstances, be made on affidavit to a Judge or the Practice Master.

(b) Enquiries should be made of the Clerk of Court if the application is to be to a Judge. If the application is to the Practice Master, the papers, appropriately marked, should be handed in at the Registry counter.

Urgent applications to a Judge

2. (a) Solicitors who have an urgent application should, as early as possible, contact the Clerk of Court who will direct them to any Judge or Deputy Judge who is free. This applies from Monday to Friday.

(b) If no Judge is free during Court hours, or if there is good reason why the application cannot be made earlier, the Duty Judge will be available at 4.30 p.m.

(c) The Duty Judge will be available in chambers on Saturday from 9 a.m. to 12 noon, when solicitors may approach his clerk direct.

(d) At any other time, the Duty Judge should be approached at home in the usual way.

(e) Solicitors should distinguish between an urgent application, which requires an immediate order, and an application which, because of confidentiality, requires an *ex parte* hearing but does not necessarily require an immediate order. In the latter case, they should ask the Clerk of Court for an appointment before a Judge in the usual way.

(f) Practitioners are reminded that applications for injunctions which are not so urgent as to require an immediate order, but which for reasons of confidentiality are required to be heard *ex parte*, should not be made to the Duty Judge. Solicitors should ask the Clerk of Court for an appointment before a Judge in the usual way.

Urgent applications to a Master

3. Solicitors who have an urgent application to a Master should contact the clerk to the Practice Master who will arrange an attendance before the Practice Master or, if he is engaged, any other Master who is available.

PART II - MATERIALS REQUIRED IN APPLICATIONS FOR INJUNCTIONS

General

4. In all applications *ex parte* for the grant, continuance or discharge of interim or interlocutory injunctions, the papers (including a draft of the order which the Court will be invited to make) should be delivered to the Court sufficiently long before the hearing to enable the Judge to read and digest them all before the hearing.

5. Usually the issue of a writ or originating summons and the swearing of an affidavit in support of an *ex parte* application for injunction is required before the application is made (O.29, r.1).

6. Where disclosures not contained in the evidence or skeleton argument are made orally during the *ex parte* hearing, an undertaking to the Court will be required to file and serve a supplemental affidavit setting out these further disclosures.

7. If in very exceptional circumstances precise compliance with this Practice Direction is not possible, the Court will expect an explanation as to why this is so.

Affidavits

8. The affidavit(s) in support of the application should be limited to evidence necessary to give a clear, concise and fair statement of relevant facts.

9. Affidavits should not contain submissions and argument.

10. Exhibits to affidavits should be strictly limited to the issues in the application. No documents should be exhibited which are not of essential importance.

11. The affidavit in support should contain a clear and concise statement :

(a) of the facts giving rise to the claim against the defendant in the proceedings;

(b) of the facts giving rise to the claim for interlocutory relief;

(c) of the facts relied upon as justifying the application *ex parte* for each part of the order sought; this should include any details of any notice given to the defendant or the reasons

for giving none;

(d) of any answer either asserted by the defendant or which he is likely to assert, either to the claim in the action or to the claim for interlocutory relief;

(e) of any facts known to the applicant which might lead the Court not to grant the relief sought or not to grant it ex parte;

(f) of the precise relief sought.

Skeleton Arguments

12. The application should be accompanied by a skeleton argument setting out precisely and succinctly how it is said that the case : -

(a) meets the requirements for the order sought; and

(b) if applicable, gives rise to the specified exceptional circumstances justifying the grant of a worldwide injunction.

The skeleton argument should identify the precise passages in the evidence relied upon.

13. The skeleton argument lodged with the Court must be served on the opposite party together with the order and evidence.

Orders

14. Applicants for *ex parte* relief should prepare and lodge with the papers relating to the application a draft minute of the order sought. Such minute should specify the precise relief which the Court is asked to grant. While the undertakings required of an applicant will vary widely from case to case, he will usually be required : -

(a) to give an undertaking in damages;

(b) to notify the defendant of the terms of the order forthwith by appropriate means;

(c) in Mareva injunctions, to pay the reasonable costs and expense incurred in complying with the order by any third party to whom notice of the order is given;

(d) if proceedings have not been issued, to issue them forthwith;

(e) if a draft affidavit has not been sworn, or where the facts have been placed before the Court orally, to procure the swearing of the affidavit or the verification on affidavit of the facts outlined orally to the Court.

15. The order should, as a general rule, contain provision : -

- (a) for the defendant to apply on notice for discharge or variation of the order;
- (b) for a return date, of an *inter partes* hearing;
- (c) for the costs to be reserved.

16. This Practice Direction consolidates and supersedes the Practice Directions now appearing at pages 12.1, 12.2 and 12.3.

17. This Practice Direction shall take effect on 1 February 1999.

Dated this 31st day of December 1998.

(Andrew Li)
Chief Justice