

## **PRACTICE DIRECTION – 5.3**

### **LISTING AND HEARING OF SUMMONSES FOR INTERLOCUTORY ORDERS AND INJUNCTIONS**

#### **1. SUMMONS DAY**

1.1 In future each Friday during term time will be a summons day. The return dates for all summonses for interlocutory injunctions, including those where injunctions have been granted *ex parte*, will be Friday mornings at 10.00 a.m.

1.2 In the event that a Friday during term time shall be a public holiday the summons day shall be on Thursday that week.

#### **2. LISTING**

2.1 The Clerk of Court will mark on the summonses for all injunction applications the date of the next summons day provided that two clear days' notice can be given to the respondent.

2.2 The judge granting an *ex parte* injunction will determine on which summons day the injunction shall be returnable. In usual circumstances the return date for *ex parte* injunctions granted less than two clear days before a summons day will be the second summons day following the grant.

2.3 Applications for *ex parte* injunctions which are ready for hearing on summons day may be brought before the Summons Judge prior to 4 p.m. that day.

#### **3. SUMMONS JUDGE**

3.1 There will be one judge to hear summonses. For the time being the judge in charge of the Companies List shall be the Summons Judge.

3.2 If the volume requires it, any other judge available to assist with summonses will hear such summonses as the Summons Judge may direct.

#### **4. NOTIFICATION OF REPRESENTATION**

4.1 The solicitors for the applicant, if the applicant is legally represented, shall be responsible for completing representation forms which shall be lodged with the judge's clerk by 9.45 a.m. on summons day.

4.2 If the applicant is not legally represented the respondent's solicitors, if any, shall be responsible for completing the representation form.

#### **5. ORDER OF HEARING**

The judge hearing summonses will review all cases listed at 10.00 a.m. All parties and their representatives should attend in the court room at that time. If any party requires his case to be

heard in the absence of persons not a party to the action, the applicant should so endorse the summons and the respondent should make his wishes known to the judge when the case is called on. The judge will exercise his discretion as to the order in which he hears the cases, so that he may, for instance, give priority to any application that he considers to be sufficiently urgent, as may be the case with some *ex parte* applications. Subject to this:

5.1 summonses affecting the liberty of the subject will take priority over all summonses;

5.2 ineffective summonses, that is to say matters which are to be adjourned or have been settled, will be dealt with before effective matters;

5.3 all other listed, unlisted and *ex parte* summonses and applications to discharge *ex parte* orders will be heard in the order determined by the Summons Judge irrespective of the seniority of counsel or solicitor;

5.4 summonses likely to last more than half a day may be adjourned to a date to be fixed unless the state of work permits the judge to deal with them as they arise;

5.5 when another judge is available to assist with summonses, the Summons Judge may transfer to him such summonses as he considers appropriate, irrespective of priority;

5.6 any summons which at the end of the day is part heard will normally be heard on the next court day; and

5.7 the judge will usually give effect to any variation in this order of priority which is agreed by all who are affected.

## **6. ADJOURNMENT OF SUMMONS**

6.1 If all parties to a summons agree to do so, a summons can be adjourned for not more than 14 days by counsel or solicitors attending before the Clerk of Court at any time before 4.30 p.m. on the day before the hearing of the summons and producing a consent or consents signed by counsel or solicitors representing all parties agreeing to the adjournment. A litigant in person who is a party must attend before the Clerk of Court as well as signing a consent.

6.2 Not more than two successive adjournments may be made under para.6.1 and no adjournment shall be made to the last summons day of any sitting as defined by O.64 r.1.

6.3 In addition to the consents required under para.6.1 above, an agreed time-table for the swearing of any evidence must be produced to the Clerk of Court. Any application arising from the default of a party in abiding by the time-table and any application by the parties to extend the time-table must be made to the court. No period of longer than 14 days from the preceding step in the proceedings shall be allowed except with leave of the court.

6.4 Undertakings previously given to the court may be continued unchanged over the duration of any adjournment. Adjournments on which an undertaking is to be varied or a new undertaking given must be dealt with by the court. If the parties require an order to be made, whether as to costs or any other matter, application must be made to the court.

## **7. COURT BUNDLES**

7.1 The applicant should provide to the court and the respondent(s):

7.1.1 A lever arch bundle containing copies of only the court documents (summons, pleadings, affidavits etc.) relevant to the particular application. The pages should be numbered. Solicitors should use their discretion in copying exhibits and only include those exhibits in the bundle which are important to the case or will be referred to frequently; other exhibits such as copies of advertisements, brochures, annual reports can be referred to in the court file unless specific pages are required. In the latter case only those pages are required. Documents which are merely repetitive of or similar in content to other documents should where possible not be copied.

7.1.2 A bundle containing relevant *inter partes* correspondence relating to the particular application.

7.1.3 The bundles should be agreed with the other party/parties and should be sent to the clerk to the Summons Judge and delivered not less than 24 hours and where possible 48 hours before the hearing.

7.2 Should further affidavits be filed, copies of these with holes punched ready for inclusion in the lever arch bundles prepared, should be given to the judge's clerk as early as possible.

7.3 Not later than 9.30 a.m. two days (i.e. one clear day) before the hearing, the solicitors for the applicant should file in court, with copies sent directly to the judge's clerk and to the respondent, a short and succinct skeleton setting out what the application is. Not later than 2.30 p.m. on the day before the hearing the solicitors for the respondent should file in court, with copies sent directly to the judge's clerk and to the applicant, a short statement setting out what is agreed and what is not and in very brief encapsulated form why that part which is not agreed is disputed. (Approximately half a page of A4 paper in total should suffice.)

## **8. CONSENT ORDERS**

8.1 Where the respondent to a summons does not appear either by counsel, solicitor or in person, the applicant may ask the court to make a consent order, relying on a letter of consent from the respondent or his solicitors or on draft minutes of order signed by the respondent's solicitors.

8.2 If the relief sought by the applicant falls wholly within the relief claimed in the summons, no difficulty will normally arise, provided the court is able to grant the relief even in the absence of effective consent by the respondent.

8.3 Where, however, the order sought goes outside the relief claimed in the summons, or even in the writ, or when undertakings are proffered by the respondent, subject always to the discretion of the judge, no order will normally be made unless a consent signed by or on behalf of the respondent is put before the court in accordance with the following provisions:

8.3.1 Where there are solicitors on the record for the respondent, the court will normally accept as sufficient a written consent signed by those solicitors on their headed notepaper.

8.3.2 Where there are solicitors for the respondent but they are not on the record, the court will normally accept as sufficient a written consent signed by those solicitors on their headed

notepaper only if in the consent (or in some other document) the solicitors certify that they have fully explained to the respondent the effect of the order and that the respondent has signified his understanding of the explanation.

8.3.3 Where there is a written consent signed by a respondent who is acting in person, the court will normally not accept it as being sufficient unless the court is satisfied that the respondent understands the effect of the order, either by reason of the circumstances (e.g. that the respondent is himself a barrister or solicitor) or by means of other material (e.g. that the respondent's consent is given in reply to a letter to him which sufficiently explained the effect of the order in simple language or there is a certificate from the solicitor for the represented party that he had explained the order to the party acting in person. Translations into English of such letters should be made available to the court. These need not be certified unless the judge so requires).

8.3.4 Where the respondent offers any undertaking to the court,

(a) the letter or other document offering the undertaking must be signed by the respondent personally;

(b) solicitors must certify on their headed notepaper that the signature is the signature of the respondent; and

(c) the solicitor must similarly certify, if the case falls within sub-para. (2) or sub-para. (3) above, that they have explained to the respondent the consequences of giving the undertaking and that the respondent has signified his understanding of the explanation.

## **9. SPEEDY TRIAL**

9.1 If on hearing a summons a judge considers that the trial of the matter should be expedited then he may direct the issue pro forma of a summons for directions. Subject to adjustment according to the circumstances the judge shall make an order in the following form:

And the solicitors for the Plaintiffs (by counsel for the Plaintiffs being their counsel for this purpose) undertaking forthwith to issue a summons for directions pro forma as for hearing.

And the court treating the summons for directions as before it [or treating this summons as the summons for directions]

It is ordered:

(a) that the Defendants do serve their defence within 14 days after the date of this order or after-service of the statement of claim and that the Plaintiffs do serve their reply (if any) within 7 days after the service of the said defence;

(b) that the Plaintiffs and the Defendants respectively do within 14 days after the service of the said reply or within 21 days after service of defence if there is no reply make and serve on the other of them a list of documents which are or have been in their possession, custody or power relating to the matters in question in this action and accounting therefor and do at the same time serve on the other of them a notice in conformity with O.24, r.9;

(c) that the Plaintiffs and Defendants respectively do within 7 days after service upon them respectively of such lists of documents produce and give inspection of the documents specified in their respective lists to the other of them and permit them to inspect the same and to take copies thereof;

(d) the matter be restored for further directions on summons day within 14 days of the time limited for inspection.

9.2 The court may give further directions at the time of ordering a speedy trial, including orders in relation to exchange of witness statements, expert evidence, bundles etc. depending on the nature of the case.

## **10. NON COMPLIANCE WITH DIRECTIONS**

Those not observing or complying with the directions are liable to be penalized in costs irrespective of whether or not they represent the parties who succeed on the application.

**11.** This Practice Direction should come into effect on 25 April 1995.