

CPR UPDATE

WHAT'S NEW IN THE PROCEDURAL WORLD?

by

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The primary focus of Joanne's practice is property litigation and professional negligence related to property transactions. Her real property practice includes easements, restrictive covenants, land registration and adverse possession. In the commercial landlord and tenant field she advises on and litigates about issues such as rent review, repairing and other leasehold obligations and business tenancies, whilst in relation to residential landlord and tenant law she deals, for example, with leasehold enfranchisement and service charge disputes.

Joanne is an Editor of the Butterworths Property Law Handbook (7th edn).

Members of the PLA continue to be flattering about Joanne to the legal directories (the bribes have obviously paid off, then): this year Chambers & Partners says she "*sees the whole picture*" and "*really fills clients with confidence*", and Legal 500 says she is recognised for "*getting stuck in*".

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Pre-action Protocols

Q: Your client bank has lent £15m to a development company which has failed as a result of the credit crunch. Amongst the various forms of security held by the client is a mortgage over the £4m Kensington home of the main shareholder and chief executive. The client wants you to commence possession proceedings. The first step you take is...

A: Advise the mortgagor to make early contact with the Kensington & Chelsea housing department and suggest he gets in touch with the Citizens' Advice Bureau for debt counselling.

This answer is designed as a tongue-in-cheek way of bringing to PLA members' attention the new Pre-Action Protocol for Mortgage Possession Claims, which came into effect on November 19 2008. It brings mortgage possession proceedings into line with other kinds of claim by requiring the mortgagee to provide appropriate pre-action information and encouraging discussion of proposals for repayment. It understandably assumes a less sophisticated mortgagor than the one in the question and no doubt its provisions would need to be adapted in such a scenario.

Orange Personal Communications Services Ltd v Hoare Lea [2008] EWHC 223 (TCC)

Orange retained Kier to fit out premises, including the air-conditioning system. Kier subcontracted the installation to Haden Young. As a result of failure in the system, the premises flooded and Orange brought proceedings against Kier and Haden Young for negligence in the installation of the system. They in their defences claimed that they were not negligent and that the problems arose because of a design fault. Orange denied that the problem was one of negligent design but commenced proceedings against Hoare Lea, who had been responsible for the design, in case Kier and Haden Young were proved right. Hoare Lea applied for a stay of proceedings because the Pre-Action Protocol for Construction and Engineering Disputes had not been followed. Akenhead J refused the application for a stay, applying the principles set out in *Alfred McAlpine Capital Projects v SIAC Construction (UK) Ltd* [2005] EWHC 3139, [2006] BLR 139 and saying that the Court must look at non-compliance with the protocols in a pragmatic and commercially realistic way, and should avoid the slavish application of

individual rules, practice directions and protocols if to do so would undermine the overriding objective. The two claims should be tried together and there would be an opportunity for ADR as part of the timetable to trial, which was likely to be more fruitful in the circumstances than if a stay was ordered at this stage.

TJ Brent v Black & Veatch Consulting Ltd [2008] EWHC 1497 (TCC)

Akenhead J took the same approach as in *Orange Personal Communications* to dismiss an opportunistic attempt by a defendant to obtain a costs order in its favour on the grounds of technical non-compliance by the claimant with the pre-action protocol. In substance the protocol had been complied with and the minor deviation from it was inconsequential.

Which Court?

Q: You obtain a judgment in the County Court against a tenant for rent arrears of £40,000 and proceed to obtain a charging order over a property owned by the tenant and his wife. Where do you apply for an order for sale to enforce the charging order?

A: To the High Court: the County Court doesn't have jurisdiction over £30,000

Whilst the County Court has a wide (and in some cases, exclusive) jurisdiction to make charging orders under s.1 of the Charging Orders Act 1979, under s.23(c) of the County Courts Act 1984 it only has jurisdiction to enforce a charging order by way of an order for sale where the amount secured is less than the County Court limit of £30,000.

National Westminster Bank Plc v King [2008] EWHC 280 (Ch)

Natwest obtained a default judgment against Mr King in the Portsmouth County Court for £38,447.69. It subsequently obtained a charging order over property owned by Mr King, again from the Portsmouth County Court. Natwest commenced Part 8 proceedings in the High Court for an order for sale, whereupon the Chancery Master of

his own initiative transferred the proceedings to the Portsmouth County Court under s.40(2) of the County Courts Act 1984. When the case reached the Portsmouth County Court the District Judge decided he did not have jurisdiction to deal with the application for an order for sale, and transferred it back to the High Court. David Richards J held that the power of transfer under s.40(2) was not confined to cases within the County Court limit, that the Master had had jurisdiction to transfer the case to the County Court and the County Court had jurisdiction to hear it. Interestingly, the Judge made a comment, albeit *obiter*, which suggests that the limits on the County Court jurisdiction in s.23(c) apply even where the debtor owns property with another and so the charging order is over his or her beneficial interest, where one might think the unlimited jurisdiction under s.14 of the Trusts of Land and Appointment of Trustees Act 1996 might operate.

(see also *Lexi Holdings v Pooni* [2008] EWHC 1143 for discussion of issues concerning County Court jurisdiction in rather more unusual circumstances)

Neath Port Talbot Borough Council v Currie and Brown Project Management Ltd [2008] EWHC 1508 (TCC)

The Council brought a £54m claim against Currie and Brown, who were consulting engineers engaged in a PFI project concerning a waste to energy plant. There were complex issues of rectification involved as well as claims of professional negligence. The claim was issued in the Bristol District Registry and transferred to the TCC there. It had been case managed by the principal TCC Judge in Bristol. Currie and Brown's solicitors wrote to the TCC in London (under CPR 30.2(4)) seeking transfer to the London TCC and asked that the case should be categorised, pursuant to the TCC guide, as "HCJ" to ensure trial by a High Court Judge. It was held that the application should have been made by proper application notice rather than simply by letter, and should have been made to the Bristol District Registry. However, Ramsey J decided to deal with the substantive issues on the application rather than dismissing it on those grounds alone. He gave general guidance on the transfer of TCC cases between London and Regional Centres and reminded practitioners that a TCC case does not have to be transferred to London to be heard by a High Court Judge. In the circumstances of this case he decided that the case should remain in the Bristol District Registry and be case managed by the principal TCC Judge there, but that the trial and any important interlocutory orders should be heard by a High Court Judge.

Service

Q: You are acting for a tenant of a residential flat in a claim on the landlord's repairing covenant. The landlord has previously given an address for service under s.48 of the Landlord and Tenant Act 1987, but your client thinks he is no longer in business there. What do you do about service of the claim form?

A. Serve at the address for service given under s.48 of the 1987 Act.

A new Part 6 of the CPR, together with two new practice directions, came into effect on 1 October 2008, following consultation by the Ministry of Justice. The new rules about service of Court documents are substantially different from the old ones in several important respects and it is important for practitioners to ensure that they have to hand the current rules (which have not yet made their way into the main body of Civil Procedure, but are contained in a special supplement).

The old Part 6 rules gave rise to various problems as regards service, particularly of Claim Forms, and there were tensions in the caselaw, for example as to how solicitors should deal with service of Claim Forms in circumstances where they knew that the defendant was no longer at his "usual or last known residence" or "principal or last known place of business".

One of the distinguishing features of the new Part 6 is that it draws a clear distinction between Claim Forms (dealt with in the new Part II) and other documents (dealt with in the new Part III). It should be noted, however, that there is a wide definition of "Claim Form" under CPR6.2(c) which includes, for example, any application made before action: so an application for pre-action disclosure, for example, would be treated as a "Claim Form" within the meaning of the rules.

The main changes wrought by the new CPR 6 are as follows:

- Where an individual defendant has not given an address for service and the claimant has reason to believe that he no longer resides at his "usual or last

known residence” or no longer carries on business at his “principal or last known place of business”,

- the claimant must take reasonable steps to ascertain the defendant’s current address; and
 - if the claimant is unable to ascertain the defendant’s current address, the claimant must consider whether there is an alternative place where, or alternative method by which, service may be effected. If there is such an alternative place or method, an application must be made for service at that place or by that method.
- The deemed service rules now start the relevant period (after which the Claim Form will be deemed to have been served) from the date on which the Claim Form is dispatched by the Claimant; and the Claim Form will be validly served if dispatched according to the rules within 4 months of issue, even if not deemed to have been served by that date.
 - An order for service by an alternative method or at an alternative place may now be made with retrospective effect. Under the old rules the Court had no power to retrospectively confirm the validity of steps already taken; it may now do so in appropriate cases.

Of particular relevance to property litigators are the following:

- An amendment has been made to CPR 56.3 to bring claims for a new tenancy, and for termination of a current tenancy, under the Landlord and Tenant Act 1954 into line with other claims by providing that the Claim Form must be served within 4 months of issue, not the 2 months prescribed by the old rules.
- An address for service given by a landlord under s.48 of the Landlord and Tenant Act 1987 is a good address for service of a Claim Form, and this rule takes precedence over the rules regarding ascertainment of the defendant’s “usual or last known residence” or “principal or last known place of business”.
- The special rules about service of possession claims in CPR 55 continue to take precedence over the general rules in CPR 6.

Injunctions

Q: Your client is the freeholder of a large block of flats. It has fallen out with its managing agent and now thinks he may have been siphoning off funds for his own use. A number of tenants say they have paid him rents and service charges but he denies having received them. The client doesn't want to give a cross-undertaking in damages to support a freezing injunction until it is sure. Is there anything else it can do?

A: Make an application for information under CPR 25.1(1)(g)

Actually there are a number of different steps which may be taken, depending on the exact circumstances, but it is CPR 25.1(1)(g) which featured in *Lichter and Schwarz v Rubin* [2008] EWHC 450 (CH).

Lichter and Schwarz owned 3 substantial London properties and Rubin, as their managing agent, had handled substantial sums of money on their behalf for over 24 years: rents and service charges etc amounted to some £2m per year. The claimants terminated Rubin's agency and sued to require him to account to them. By disclosure of some bank statements they discovered that there had been some very large movements out of Rubin's client account at about the time he was told that he was going to be dismissed. Rubin's solicitors, however, said that these had nothing to do with the claimants but were in respect of other clients. The Claimants applied for an order under CPR 25.1(1)(g), which relates to orders directing a party to provide information about the location of "relevant property" or assets which are or may be the subject of an application for a freezing injunction. The Court held that the timing and amount of the payments was sufficient to give rise to suspicion that the Defendant was dissipating assets to avoid having to account to the claimants. CPR 25.1(1)(g) is designed for situations where either a freezing injunction is on foot or where there is at least a reasonable possibility, based on credible evidence, that there will be an application for a freezing order and it is not necessary to demonstrate that a freezing order will in due course be granted. The order was made, although on a narrower basis than that applied for.

The claimant obtained a search order and a freezing order, which were later discharged on the grounds of material non-disclosure, it being held that the claimant had deliberately misled the Court. This hearing was to determine the quantum of damages payable to the defendant on the claimant's cross-undertakings in damages. The defendant claimed damages under various heads, including special damages for loss of management time, general, aggravated and exemplary damages. Jack J explained the principles on which an award for loss of management time should be made and held that general damages are available, where supported by some evidence, to reflect the consequences of the orders which cannot be claimed as special damage, such as stigma or damage to business by virtue of the orders. However, there is no general ability to recover damages for emotional distress. Aggravated damages were appropriate since the search order had been obtained by intentionally concealing matters from the Court, but exemplary damages could only be awarded, under the standard terms of the search order, where the order had been carried out in breach of its terms or contrary to the duties of the Claimant's solicitor as officer of the Court.

Part 36

Q: You act for a developer claiming a fee under a complex development agreement which raises a number of difficult interpretation and valuation issues. Its claim is for a fee of £1m, but it is eventually awarded £500,000. In April 2008 the landowner made a Part 36 offer of £480,000. What advice do you give the client?

A: You have no idea whether or not the client has beaten the Part 36 offer.

On 6 April 2007 a new Part 36 came into force. The most significant change under the new rules was the abolition of any need to make a payment into Court when making an offer to settle a money claim. Also of importance is the new CPR 36.14, which deals with the rules as to the costs consequences of failing to beat a Part 36 offer. Under the old rules it was generally assumed to be enough to beat a payment in by £1. Now the phraseology requires the Court to consider whether "a claimant fails to obtain a

judgment more advantageous than a defendant's Part 36 offer" or "judgment against the defendant is at least as advantageous to the claimant as the proposals contained in a claimant's Part 36 offer."

Carver v BAA Plc [2008] EWCA Civ 412

In a personal injury case, the defendant made a payment into court of £4,000, making it clear subsequently that the sum was intended to be in addition to an interim payment of £520. At trial the Judge awarded the claimant £4,686.26, inclusive of interest, so taking account of interest the claimant beat the payment in by only £51. It was common ground that the new rules applied to the case. The Judge held that the claimant should pay the defendant's costs from the date for acceptance of the Part 36 payment, and that decision was upheld on appeal. The claimant sought to argue on the appeal that it was sufficient to beat the payment in/offer by a penny. The Court of Appeal disagreed: the question whether a judgment was "more advantageous" allows for a more wide-ranging review. No litigant would have continued this litigation just for £51.

Morgan v UPS [2008] EWCA Civ 1476; [2008] All ER (D) 100

Another personal injury case. This time the payment into court was £43,550, and the claimant obtained a judgment which was £629.10 better. The claimant was awarded his costs on the grounds, inter alia, that despite only beating the payment in "by a whisker", he had shown an active willingness to be flexible, and his counter-offers were not unreasonable. This decision was upheld on appeal.

Judgments

Q: Your client is a purchaser of land; it seeks to rescind the contract as the market turns against it and litigation ensues. The Judge circulates a draft judgment dismissing your client's claim: in doing so he makes a number of factual findings which flatly contradict the documentary evidence, he misspells your client's name throughout and he awards damages against your client of £150,000 when the claimant has only claimed £100,000, without explanation. What do you do?

A: Instruct Counsel to write to the Judge with the correct spelling of your client's name and asking him to give reasons for the damages award. Seek permission to appeal.

A new Practice Direction supplementing CPR Part 40 took effect on 1 October 2008. This deals with the procedures for handing down a draft judgment, the extent to which such draft is confidential and what needs to be done by way of orders consequential upon the judgment.

Egan v Motor Services (Bath) Ltd [2007] EWCA Civ 1002, Times Dec 24, 2007

On the trial of a claim regarding a defective car, the Judge handed down a draft judgment dismissing the Claimant's claim. The Claimant's Counsel then wrote to the Judge taking issue with a large number of points, seeking to reopen argument on them and inviting the Judge to reconsider. The Judge made some minor changes, which did not affect the result, before handing down judgment formally. Dismissing the appeal, the Court of Appeal deprecated the growing practice of Counsel writing to the Judge upon receipt of a draft judgment asking him to reconsider his conclusions. Only in the most exceptional circumstances was it appropriate to ask the Judge to reconsider a matter of substance, such as if the Judge has not given adequate reasons for some aspect of his decision or has decided the case on a point not properly argued on has relied on an authority which was not considered.

Along the same lines, the speech of Lord Hoffman in *R (on the application of Edwards) v Environment Agency* [2008] UKHL 22 contains the following "postscript":

"On 23 January 2008 the hearing in this appeal was concluded. On Friday 4 April 2008, after the members of the Appellate Committee had prepared drafts of the speeches which they proposed to deliver, the solicitors to the parties were notified that judgment would be given on 9 April. In accordance with the practice of the House, copies of the draft speeches were provided in confidence with a request that counsel check them for 'error and ambiguity'. On Monday 7 April the Appellant's solicitors notified the Judicial Office that they proposed to submit a memorandum pointing out errors in the judgments but that it could not be submitted until the following morning. Judgment therefore had to be postponed until 16 April. The memorandum when it arrived, consisted of 27 paragraphs of closely typed submissions referring to three Directives which had not been mentioned in the Appellant's lengthy submissions to the House and repeating other arguments which had already been considered. It contains nothing which

causes me to wish to change the views expressed in my draft speech. In my opinion the submission of such a memorandum is an abuse of process of the procedure of the House. The purpose of the disclosure of the draft speeches to counsel is to obtain their help in correcting misprints, inadvertent errors of fact or ambiguities of expression. It is not to enable them to reargue the case.”

Kynixa Limited v Hynes [2008] EWHC 1646 (QB)

In a claim for breach of contract and breach of fiduciary duty, a split trial was ordered. After the trial on liability, the Judge handed down a draft judgment, whereupon the solicitors for the (successful) Claimant asked the Judge by letter to make additional findings on liability. This allegation was not pleaded, but was said to arise from the evidence given during the trial. The Judge gave permission for an amendment to the Particulars of Claim and adjourned the issue to be dealt with at the trial on quantum.

Re M (a child) [2008] EWCA Civ 1261

In *English v Emery Reimbold v Strick Ltd* [2002] 1 WLR 2409 the Court of Appeal recommended that if an application for permission to appeal on the ground of lack of reasons was made to the trial judge, he should consider whether to provide additional reasons and dismiss the application for permission to appeal. *Re M* was a family case in which it was said, not only that *English v Emery* applies to family cases, but also that counsel have a positive duty to raise with the Judge, not just any alleged deficiency in the judge's reasoning process, but any genuine query or ambiguity which arises on the judgment. “Judges should welcome this process and, any who resent it are likely to find themselves the subject of criticism in the Court of Appeal”.

Jackson v Marina Homes Ltd [2007] EWCA Civ 1404

Trial Judge reserved judgment after 3 days of trial, indicating that he would hand it down the following week, when it was known neither Counsel would be available. He handed down the judgment formally on 23 March 2007, at a hearing attended by solicitors. Nothing was said about permission to appeal at this hearing. The Judge subsequently made an order for the exchange of submissions on consequential orders and the written submissions received included an application by the Claimant for permission to appeal. The Judge made various orders on May 21, and refused the application for permission to appeal, but the order was not drawn up until June 4, and

the parties first learned about it on June 6. Notice of Appeal was filed on June 27. After criticising both parties and the Judge for not having their wits about them, the Court of Appeal decided to extend time for the Notice of Appeal, but also gave guidance about the practice which should be followed in such a case: if the Judge reserves judgment and excuses the attendance of the parties from the handing down of the judgment, a party who wishes to seek permission to appeal should the decision go against him should so indicate and the Judge should, after handing down judgment in an empty court, formally adjourn the hearing to give that party the opportunity to apply for permission to appeal. Then when he has granted or refused permission, he should make a direction extending the period within which Notice of Appeal should be filed at the Court of Appeal

Costs: I – Unreasonable Conduct

Q: You represent the defendant to a professional negligence claim. The claimant claims £10m; at a mediation he indicates he will only settle for £9m and his costs. At trial he succeeds on liability but is only awarded £1m. What do you do in advance of the costs hearing?

A: Write to the claimant's solicitors to ask for their permission to put in a witness statement showing how unreasonable the claimant was at the mediation

Earl of Malmesbury v Strutt & Parker [2008] EWHC 424 (QB)

The Earl sued Strutt & Parker for negligence in relation to the grant of leases for car parking around Bournemouth International Airport. A split trial was ordered, and mediation took place only after a finding of negligence at the trial on liability. The Earl's claim was at times as high as £87.8m, and at the mediation he had said he would accept £9m plus 80% of his costs. He was eventually awarded damages of £915,139. The claimant's costs were £1.84m; the defendant's (including the costs of Part 20 proceedings), £2.4m. The case contains a detailed discussion of the impact of various factors on the award of costs, but is chiefly of relevance in establishing that an unreasonable stance taken in mediation should be treated as akin to an unreasonable refusal to mediate. The point often missed by commentators, however, is that,

unusually, the parties had agreed to waive privilege in relation to all without prejudice matters. If this had not been the case, what was said or not said at the mediation could not have been put in evidence.

Costs: II – Third-party costs orders

Q: You are acting for the tenant in a bitter dilapidations dispute, which you consider is being orchestrated by the building surveyor for the landlord. He gives flagrantly biased evidence at trial. The Judge finds for your client and is highly critical of the landlord's expert witness. Do you...

**A. Seek an order for costs against the expert under s.51(3) of the Supreme Court Act 1981 AND
Complain to the RICS**

In *Phillips v Symes (No 2)* [2005] 1 WLR 2045 Peter Smith J held that an expert witness could be the subject of a non-party costs order if he was in flagrant disregard of his duties to the Court. This is to be compared with the comments of the majority in *Oriakhel v Vickers*, below, in relation to non-expert witnesses.

Oriakhel v Vickers [2008] EWCA Civ 748

Oriakhel brought proceedings against Vickers in respect of an alleged road traffic accident. Witness statements were provided, including one from Khan, a garage proprietor. Vickers' insurers believed that the claim was a fraudulent conspiracy and were joined in the proceedings for the purpose of bringing a counterclaim for conspiracy. At trial, Khan gave evidence. The Judge found for the insurers, disbelieved Oriakhel and found a conspiracy involving Oriakhel, Vickers and Khan. The insurers applied for a non-party costs order against Khan, which the Judge refused on the grounds that Khan had not funded or controlled the litigation. The CA held: the Judge was wrong to dismiss the application on those grounds as it was not necessary to show that the non-party funded or controlled the action for an order for costs to be made. Nor was the Judge right to hold that the findings in his judgment were binding on Khan as a non-party to the proceedings. However, it was exceptional for costs to be ordered against a non-party against whom a claim could have been brought and in the present

case the insurers had been able to, and could still, bring a claim for damages for conspiracy against Khan, in which case he would have all the protections of a party to proceedings whereas he had only been notified of the intention to seek costs against him during closing submissions. Arden and Jacob LJ also held that to allow a non-party costs order to be made in these circumstances would be to infringe the principle of witness immunity.

Sims v Hawkins [2007] EWCA Civ 1175 (CA)

Sims bought a unit on a property development from a company and brought proceedings against it in relation to flooding. Mr Hawkins was the sole director of the company and his wife a de facto director; both were shareholders. Shortly before the trial, the claimant put Mr and Mrs Hawkins on notice that he intended to seek a non-party costs order against them and he duly did so when he succeeded. The Judge awarded costs against Mr and Mrs Hawkins from a date shortly before the trial. The claimant appealed, seeking costs against them from the date of the letter of claim. The appeal was dismissed. An order for payment of costs by a non-party under s.51(3) of the Supreme Court Act 1981 (CPR 48.2) may be made against the funders of a losing defendant, as well as a losing claimant, but different considerations apply. On its own, the fact that non-parties maintain a company's claim after it has ceased trading is not sufficient for the making of a costs order against them. A non-party should be put on notice of the possibility that costs may be sought against him at the earliest opportunity.

Palmer v Palmer [2008] EWCA Civ 46 (CA)

The claimant brought a claim against a deceased driver's estate for severe personal injuries; the motor insurers' bureau being joined as a second defendant. The claimant joined a third defendant to the claim in order to make a claim that it was the manufacturer of a device in the vehicle which had proved faulty. The claims against the third defendant were defended by their insurers under a product liability policy with a limit of £500,000, inclusive of costs, which was substantially exhausted by the time of the trial. The judge found that the insurers knew that the third defendant was in a parlous financial and commercial position and had no commercial interest in continuing to litigate, the defence being funded, controlled and directed by the insurers on the basis that the only real interest being protected was that of the insurers. He held that

the insurers should be liable for costs from a certain date and the CA dismissed an appeal from his decision.

Dolphin Quays Development Ltd v Mills [2008] EWCA Civ 385; [2008] 4 All ER 58

Receivers brought, and lost, proceedings in the name of an insolvent company. The defendant applied for a costs order against the receivers personally, but this was refused and the refusal upheld on appeal. The effect of authority was that there was a recognition that injustice might be caused where litigation was conducted by a receiver on behalf of an insolvent company for the benefit of secured creditors and that in appropriate cases a non-party order against a receiver or against the secured creditor could be made, especially where the non-party was the 'real party'. A costs order against receivers would be more readily made where the company was in liquidation and the receiver's agency had terminated or where the successful party had not been able to obtain security, or adequate security, for costs. There was no requirement that before a costs order could be made against a liquidator or receiver that there be impropriety or unreasonableness. The Court placed weight on the fact that the defendant could have, but did not, make an application for security for costs.

PR Records Ltd v Vinyl 2000 Ltd [2008] EWHC 192 (Ch)

The first defendant was a family company run by the second defendant and her husband. The claimant succeeded in two sets of proceedings against the defendants, who were ordered to pay the claimant's costs. The claimant applied for a non-party costs order against the husband. It was common ground that the second defendant's defence in the second action had been funded by monies raised on the beneficial interests of the husband and wife in their matrimonial home. Morgan J held that it was an appropriate case for the making of a non-party costs order. Although such orders are "exceptional", authority suggested that one should not read too much into this word. It could be said that there was nothing exceptional about the instant case, which involved a little family company run by a husband and wife. It was not exceptional for such a director to fund litigation. However, upon the failure of the company's defence, it was not unjust for such a director to be held liable for the costs incurred.

See also *In the matter of Professional Computer Group Limited* [2008] EWHC 1541 (Ch)

Costs: III – Pro Bono Representation

On 1 October 2008 s.194 of the Legal Services Act 2007 came into effect. This applies to proceedings where one (or more) of the parties receives pro bono representation. It permits the Court to make an order that the other party make a payment to the “prescribed charity” in respect of the pro bono representation, having regard to the questions whether, if the party with pro bono representation had in fact paid for their representation, it would have ordered costs in his or her favour and, if so, what the terms of that costs order would have been. By the Legal Services Act 2007 (Prescribed Charity) Order 2008 (SI 2008/2680), the prescribed charity is the Access to Justice Foundation. Also in effect as of 1 October 2008 are various changes to the CPR Rules about costs (notably a new CPR 44.3C) dealing with the making of such orders, including requiring parties with pro bono representation to provide the equivalent of schedules of costs for the purpose of summary assessment.

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