

New Procedure for Initial Directions Hearing Before Judge for Defended Matters in Possession List

The following procedure has been introduced for Possession List matters in which a Defence/Cross Claim has been filed.

When a Defence/Cross Claim is filed, the Registrar is to take steps to list the matter for initial directions hearing before a Judge.

An initial directions hearing of defended matters before a Judge is intended to achieve the following:

- (a) to allow the Judge to scrutinise, at an early time, the issues raised in the proceedings including the nature of the defence and any cross claim - if no reasonable defence on the merits is disclosed, the Judge may consider striking out the Defence at that time;
- (b) identification of steps which are required to facilitate the just, quick and cheap resolution of the real issues in the proceedings: s.56 *Civil Procedure Act 2005*;
- (c) early examination of the likelihood of a Cross Claim or joinder of other parties to the proceedings - if a party indicates that consideration is still being given to the joinder of other parties (including the issue of a Cross Claim), the Court will expect a clear explanation as to the steps being taken in this respect, and the time within which any application will be made;
- (d) the Court will consider a referral to mediation under Part 4 (ss.25-34) *Civil Procedure Act 2005*, given the advantage of mediation occurring at a time before costs and interest have accumulated.

The Judge may:

- (i) order that the proceedings be referred for mediation: s.26 *Civil Procedure Act 2005*;
- (ii) adjourn a matter for further directions before that Judge, if that was considered appropriate to facilitate the just, quick and cheap resolution of the real issues in the proceedings (including by way of mediation);
- (iii) otherwise adjourn the matter for further directions before the Registrar, Common Law Case Management.

It is not intended that this new procedure will involve protracted or intensive case management of defended matters by Judges, instead of the Registrar. The procedure is intended to promote early resolution of defended matters (in particular by way of mediation) and to reduce delay, in the interlocutory phase, of defended matters which are to proceed to hearing.

Call-up of delayed defended matters, in accordance with paragraph 22 of Practice Note SC CL6, will continue to take place.

In the event that parties to existing defended matters in the Possession List are reluctant to engage in mediation, the Registrar may refer such matters to the Possession List Judge so that mediation may be directed under s.26 *Civil Procedure Act 2005* if the Court sees fit, without the consent of the parties to the proceedings.